WESTMINSTER
COLORADO

June 11, 2007
7:00 P.M.

CITY COUNCIL AGENDA

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

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

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings**
4. **Report of City Officials**
   A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
   A. American West Little League Recognition
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. Outside Legal Services for Pension Plans
   B. Environmental Services Office Legal Services Agreement with Philip C. Lowe, LLC
   C. Construction Contracts re Sheridan Boulevard and 72nd Avenue Roadway Improvement Project
   D. 2007 Local Sewer and Water Line Replacement Construction Contract Award
   E. Amended IGA with Urban Drainage and Flood Control District for Quail Creek Improvements
   F. West Nile Virus IGA with Jefferson County Department of Health and Environment
   G. IGA re Support of GIS Regional Map for Jefferson and Broomfield Counties
   H. IGA with Jefferson County and Other Participating Municipalities re County-wide Dog License Program
   I. IGA with Crestview Water and Sanitation District
   J. Amendment to IGA with UDFCD for Little Dry Creek Bank Stabilization and Utility Protection Project
   K. Change Order No. 2 re 2007 Wastewater Collection System Improvement Project/Phase I
   L. Change Order re Bornengineering Inc. Property Condition Evaluation and Physical Needs Analysis
   M. Second Reading Councillor's Bill No. 20 re 2006 Final Supplemental Appropriation
   N. Second Reading Councillor's Bill No. 21 re 1st Qtr 2007 Supplemental Appropriation
   O. Second Reading Councillor's Bill No. 22 re Amendment to Syncroness Inc. Economic Development Agreement
   P. Second Reading Councillor's Bill No. 23 re Crosswalk Inc. Economic Development Agreement
   Q. Second Reading Councillor's Bill No. 24 re Shoenberg Farm Commercial Center
   R. Second Reading Councillor's Bill No. 25 re Legacy Ridge Filing No. 17 CLUP Amendment
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
    A. Public Hearing re Boulevard Plaza CLUP Amendment, PDP, and ODP
    B. Councillor's Bill No. 26 re CLUP Amendment for Boulevard Plaza
    C. Fifth Amended Preliminary Development Plan for Boulevard Plaza
    D. Fifth Amended Official Development Plan for Boulevard Plaza
    E. Councillor's Bill No. 27 re Sun Edison Economic Development Agreement
    F. Councillor's Bill No. 28 re TAB Boards International, Inc. Economic Development Agreement
    G. Councillor's Bill No. 29 re Big Dry Creek Park and Cheyenne Ridge Park Supplemental Appropriation
    H. Councillor's Bill No. 30 re Municipal Code Modifications for the Industrial Pretreatment Program
    I. Councillor's Bill No. 32 re Lease for the Former Police Building
    J. Resolution No. 21 re Approval of Selected Documents for WEDA Bond Issue
11. **Old Business and Passage of Ordinances on Second Reading**

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

A. City Council

B. Executive Session – Discuss Strategy and Progress on Potential Sale, Acquisition, Trade or Exchange of Certain Real Property Pursuant to WMC 1-11-3(C)(2), WMC 2-1-6, WMC 2-11-2 and CRS 24-6-402(4)(a) and (e).

13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

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GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

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

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

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

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

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

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

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

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

J. Final comments/rebuttal received from property owner;

K. Final comments from City Staff and Staff recommendation.

L. Public hearing is closed.

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JUNE 11, 2007 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call. J. Brent McFall, City Manager, Jane Greenfield, Assistant City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Price, to approve the minutes of the regular meeting of May 28, 2007, as written and presented. The motion passed by a 6:1 margin with Councillor Dittman abstaining because he had not attended the May 28 meeting.

CITY MANAGER'S REPORT

Mr. McFall announced that with the coming of hot summer months, Standley Lake was full and ready for increased demand due to irrigation. Further, he reported that the Westminster Economic Development Authority (WEDA) would meet following adjournment of this meeting; and, following the WEDA meeting, the Council would convene an executive session, as permitted by the Westminster Municipal Code, to discuss strategy and progress on potential sale, acquisition, trade or exchange of certain real property.

CITY COUNCIL COMMENTS

Councillor Price reported that the Spring Fling Golf Tournament held at the Heritage Golf Course had been a huge success. Participants not only enjoyed perfect golf weather, but also enjoyed the added bonus of observing an air show at Rocky Mountain Metropolitan Airport.

Councillor Lindsey reported having attended the ceremonies to dedicate the Jim Baker Mountain Man statute on June 9. She encouraged the public to stop by to see it.

Mayor Pro Tem Kauffman reported having attended the ribbon cutting and official opening of the Westchester Apartments. The renovations were well done and would meet a need for transitional housing in the community.

Mayor McNally reported that the Urban Partnership grant application to fund immediate improvements to US Highway 36 had been selected as one of nine finalist and would vie for one of the five projects to be awarded funding. It was the only application from Colorado in the competition. Mayor McNally was optimistic that the grant would be awarded and noted that the consistency and unity demonstrated by Mayors and City Councillors over the years, coupled with the steadfastness of Commissioners and Mayors along the US Highway 36 corridor were clearly recognized and understood at the federal level. If approved, the grant would bring $230 million for highway improvements that were separate from the EIS solutions for which no federal funding was forthcoming.

PRESENTATIONS

Councillor Dittman read a proclamation declaring June 16, 2007 to be American West Little League Day in recognition of the organization's 25th Anniversary. He presented the proclamation to Cliff Deffke and Scott King, officers and coaches within the organization. Also present were members of the 2006 Senior Boys' team that had won the State Championship and competed in the regional tournament.

CITIZEN COMMUNICATION

Kaaren Hardy, 5133 West 73rd Avenue, requested that the City keep residents of the 72nd Avenue/Sheridan Boulevard vicinity informed of construction activities and recommended alternate routes while road improvements in progress. Further, she hoped that a mechanism for performance auditing would be used to assure that expenditures of WEDA bond proceeds and revenues generated to repay them really were benefiting the area.

Don McGill, 3932 West 103rd Avenue, requested the City's support of residential solar power projects that generated electricity for use at the residence and had positive results on the environment. Specifically, he asked that the City's usage fees to install these systems be reduced or eliminated to encourage solar power projects.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authority for the City Manager to execute a contract with Reinhart Boerner Van Deuren Norris & Rieselbach PC for special legal services associated with updating the City's Pension documents for a total fee not to exceed $4,000; authority for the City Manager to sign a contract with Philip C. Lowe, LLC for special legal services associated with environmental regulatory compliance and related matters; authority for the City Manager to award and execute a $4,572,950.48 construction contract with Castle Rock Construction Company of Colorado for the Sheridan Boulevard/72nd Avenue project, to execute a $372,634 construction engineering services contract for the project with Short Elliott Hendrickson, Inc., to sign a $75,880 change order for engineering design services provided by ASCG, Inc., and authorize a $450,000 contingency for the construction project; authority for the City Manager to execute a $1,949,210 contract with Concrete Works of Colorado for construction of the 2007 local sewer and water line replacement project and authorize a $195,000 contingency for the construction project; authority for the City Manager to sign an amendment to the Intergovernmental Agreement with the Urban Drainage and Flood Control District for the design and construction of drainage improvements for Quail Creek west of Huron Street and authorize payment of $400,000 to the District per the agreement; authority for the City Manager to sign an Intergovernmental Agreement between the City and the Jefferson County Department of Health and Environment to reimburse the City $11,467.50 for 2007 mosquito control expenses within the Jefferson County portion of the City; authority for the City Manager to sign an Intergovernmental Agreement concerning implementation of a Geographic Information System Regional Map for Jefferson and Broomfield Counties; authority for the City Manager to sign an Intergovernmental Agreement, substantially similar to the draft distributed with the agenda, among Jefferson County and the Cities of Westminster, Arvada, Golden, Wheat Ridge, and Lakewood regarding the Jefferson County-wide Dog License Program; authority for the Mayor to sign an Intergovernmental Agreement with Crestview Water and Sanitation District to provide a gravity sewer connection from the Crestview sanitary sewer collection system to the City sewer system in the vicinity of 70th Avenue and Federal Boulevard; authority for the City Manager to sign an amendment to the Intergovernmental Agreement that was originally approved in December 2005 with the Urban Drainage and Flood Control District for the design and construction of a bank stabilization and utility protection project on Little Dry Creek upstream of Federal Boulevard for an additional City expense of $50,000; authority for the City Manager to execute a change order to the 2007 Wastewater Collection System Improvement Contract Phase I with Insituform Technologies in the amount of $79,680 for lining of an additional 250 feet of sanitary sewer line along Little Dry Creek; authority for the City Manager to sign a $43,280 change order with a $4,000 contingency to the contract with Bornengineering, Inc. for additional engineering services and to increase the scope of work needed to complete the property condition and physical needs assessment of City facilities; final passage of Councillor's Bill No. 20 providing for supplementary appropriations to the 2006 budget of the General, General Capital Improvement, and Parks and Open Space Funds; final passage of Councillor's Bill No. 21 providing for supplementary appropriations to the 2007 budget of the General, General Capital Improvement, General Capital Outlay Replacement, and the Storm Drainage Funds; final passage of Councillor's Bill No. 22 authorizing the City Manager to execute and implement the amendment to the Business Assistance Package for Syncroness, Inc.; final passage of Councillor's Bill No. 23 authorizing the City

Manager to execute and implement the Economic Development Agreement with Crosswalk, Inc.; final passage of Councillor's Bill No. 24 approving the Comprehensive Land Use Plan amendment from R-8 Residential to Retail Commercial for a portion of the Shoenberg Farm property; and final passage of Councillor's Bill No. 25 approving the Comprehensive Land Use Plan amendment to change the designation from Retail Commercial to R-18 Residential for the southwest corner of Federal Boulevard and 112th Avenue.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. There were no requests to amend the consent agenda, and Councillor Dittman moved to approve the consent agenda as presented. Councillor Major seconded the motion and it passed unanimously.

PUBLIC HEARING RE BOULEVARD PLAZA CLUP, PDP, AND ODP

At 7:21 p.m., Mayor McNally opened a public hearing to consider the Boulevard Plaza Comprehensive Land Use Plan (CLUP) amendment to change the designation from Industrial to Retail Commercial, the Fifth Amended Preliminary Development Plan (PDP), and the Fifth Amended Official Development Plan (ODP). Dave Shinneman, Planning Manager, introduced the public hearing. The Boulevard Plaza property included 2.833 acres and was located north of 92nd Avenue and west of Wadsworth Boulevard. The CLUP designation for the parcel had been changed in 2002 from Business Park to Industrial to accommodate a proposal for Hank's Auto Body repair facility. The applicant, Guardian Self Storage, proposed a change in designation from Industrial to Retail Commercial, a PDP amendment, and an ODP amendment to develop the site for a three-story, 119,114-square-foot indoor self-storage facility. Mr. Shinneman entered the agenda memorandum and attendant documents and advised that legal notice of this public hearing and the proposed changes had been provided in accordance with provisions of the Westminster Municipal Code. Current and proposed CLUP maps were displayed and businesses in the vicinity described.

Steve Cohen, president of Guardian Self Storage, and Tom Siebert of Sybazz Architecture, the project architect, addressed Council providing general background information about the project location and businesses in the vicinity. The proposed building would be built to environmentally conscience standards. Entry would be by key pad with specific code per user and the property would be secured with video and audio surveillance. Mr. Siebert described the materials and design of the building, as well as the landscape plan.

Amanda Clymer, 9485 Teller Street, submitted a petition signed by 48 residents of the vicinity who strongly objected to the requested change in land use designation. The commercial building would obstruct mountain views and the rural aesthetics of the neighborhood, depreciate property values and the quality of life.

Council questioned Messrs. Shinneman and Siebert about the height of the proposed structure, the former proposed used of the parcel as an auto body shop, the proximity of residential properties to the parcel under consideration, another building pad in the area on which an approved use had not been constructed but had the potential to block views, and participation in the neighborhood meeting that preceded formal consideration of this request.

In conclusion, Mr. Shinneman advised that the Planning Commission had considered this proposal on May 22, 2007 and had unanimously recommended approval following its review.

No others wished to testify, and the Mayor closed the hearing at 7:47 p.m.

COUNCILLOR'S BILL NO. 26 RE BOULEVARD PLAZA CLUP AMENDMENT

It was moved by Councillor Dittman and seconded by Councillor Price to pass Councillor's Bill No. 26 on first reading approving the Comprehensive Land Use Plan amendment for the Boulevard Plaza property to change the designation from Industrial to Retail Commercial based on a finding that the proposed amendment would be in the public good; that there was justification for the proposed change and the Plan was in need of revision as

proposed; that the amendment was in conformance with the overall purpose and intent and the goals and policies of the Plan; that the proposed amendment was compatible with existing and planned surrounding land uses; and that the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. The motion passed unanimously on roll call vote.

FIFTH AMENDED PRELIMINARY DEVELOPMENT PLAN WITHIN BOULEVARD PLAZA PUD

Upon a motion by Councillor Dittman, seconded by Councillor Kaiser, the Council voted unanimously to approve the Fifth Amended Preliminary Development Plan within the Boulevard Plaza Planned Unit Development based on the finding that criteria in Section 11-5-14 of the Westminster Municipal Code had been met.

FIFTH AMENDED OFFICIAL DEVELOPMENT PLAN WITHIN THE BOULEVARD PLAZA PUD

It was moved by Councillor Dittman and seconded by Councillor Price to approve the Fifth Amended Official Development Plan within the Boulevard Plaza Planned Unit Development subject to conditions that the black metal picket fence along the south drive up against the drive on all sheets, as shown on the landscape plan, be moved and detail on the ODP for the gates to match the black picket fence with brick pillars on each side of the gate and brick wall connecting to the building be provided. The motion was based on a finding that the criteria set forth in Section 11-5-15 of the Westminster Municipal Code had been met. The motion passed unanimously.

COUNCILLOR'S BILL NO. 27 RE SUN EDISON ECONOMIC DEVELOPMENT AGREEMENT

It was moved by Councillor Major and seconded by Councillor Dittman to pass Councillor's Bill No. 27 on first reading authorizing the City Manager to execute and implement the Economic Development Agreement with Sun Edison. The motion passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 28 RE TAB BOARDS INTERNATIONAL, INC. EDA

It was moved by Councillor Price, seconded by Councillor Dittman, to pass Councillor's Bill No. 28 on first reading authorizing the City Manager to execute and implement an Economic Development Agreement (EDA) with TAB Boards International, Inc. The motion carried unanimously on roll call vote.

COUNCILLOR'S BILL NO. 29 RE BIG DRY CREEK & CHEYENNE RIDGE SUPPLEMENTAL FUNDING

Mayor Pro Tem Kauffman moved to pass Councillor's Bill No. 29 on first reading authorizing a supplemental appropriation in the amount of $1,080,000 reflecting the City's receipt of an Adams County Open Space Grant for Big Dry Creek Park in the amount of $500,000; the City receipt of a contribution from Hyland Hills Park and Recreation District per the City's Intergovernmental Agreement for construction of the Big Dry Creek Park in the amount of $500,000; and receipt of an $80,000 Adams County Open Space Grant for Cheyenne Ridge Park. The motion was seconded by Councillor Kaiser and passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 30 RE CODE CHANGES TO INDUSTRIAL PRETREATMENT PROGRAM

It was moved by Councillor Major and seconded by Councillor Price to pass Councillor's Bill No. 30 on first reading approving modifications to the Municipal Code relating to the Industrial Pretreatment Program. The motion carried with all Council members voting yes on roll call vote.

COUNCILLOR'S BILL NO. 31 RE LEASE OF FORMER POLICE BUILDING

Upon a motion by Councillor Lindsay, seconded by Councillor Kaiser, the Council voted unanimously on roll call vote to pass Councillor's Bill No. 31 as an emergency ordinance authorizing the City Manager to sign a Sublease and Option Agreement, in substantially the same form as distributed in the agenda packet, with the

Colorado Department of Corrections and the Colorado Department of Transportation for the former City of Westminster Police Department Building at 8800 Sheridan Boulevard.

RESOLUTION NO. 21 RE APPROVAL OF SELECTED DOCUMENTS FOR WEDA BOND ISSUE

Due to a conflict of interest through employment, Mayor McNally recused herself from participation in this item as well as the matter to be considered by the Westminster Economic Development Authority in the meeting to immediately follow this action. She passed the gavel to Mayor Pro Tem Kauffman and left the Council Chambers.

It was moved by Councillor Dittman, seconded by Councillor Kaiser, to adopt Resolution No. 21 approving selected documents for the Westminster Economic Development Authority (WEDA) Series 2007 Bonds of up to $8.5 million to which the City was a party, including the Replenishment Resolution, the City Cooperation Agreement with WEDA, and the letter of Credit Reimbursement Agreement in substantially the same form as those documents distributed with the agenda packet. The Mayor Pro Tem requested roll call and the motion passed with six yes votes and the Mayor's abstention.

CITIZEN PRESENTATIONS

Jason Zickerman with TAB Boards International, Inc. thanked Council for approving the economic development agreement under Item 10F. TAB had significant growth plans and wanted to be a good corporate citizen within the community.

ADJOURNMENT

There was no further business to come before the City Council, and the Mayor Pro Tem adjourned the meeting at 8:00 p.m.

ATTEST:

_____
Mayor

_____
Mayor Pro Tem

_____
City Clerk

Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: American West Little League Day Proclamation

Prepared by: Philip Jones, Management Intern II
Linda Yeager, City Clerk

Recommended City Council Action

Proclaim June 16 as American West Little League Day in the City of Westminster in recognition of the 25th Anniversary of this organization.

Summary Statement

- Councillor Dittman will present a proclamation to Cliff Deffke, American West Little League President and coach; Scott King, American West Little League Treasurer and coach; and Jamie Miliken, American West Little League Vice President.

- American West Little League is celebrating its 25th year of serving the families and children of Westminster.

- Last season, the Senior Boys team won the State Championship and was invited to the regional tournament.

Expenditure Required: $ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

City Council could decide not to issue a proclamation recognizing American West Little League. This is not recommended as American West has served Westminster youth baseball very well for 25 years.

Background Information

This year marks the 25th anniversary of American West Little League serving the citizens of Westminster. In conjunction with their anniversary, the team is being honored for their splendid record last season, as the senior boys' team won the State Championship and was invited to the regional tournament.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment—American West Little League Day Proclamation

WHEREAS, June 16, 2007, marks the 25th anniversary of American West Little League; and

WHEREAS, the American West Little League has assisted in developing character and life skills of Westminster children; and

WHEREAS, innumerable families and children have been served by American West Little League; and

WHEREAS, the Senior Boys' team won the State Championship and qualified for the regional tournament in 2006.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim June 16, 2007, as

AMERICAN WEST LITTLE LEAGUE DAY

in the City of Westminster and congratulate all current and former members of the American West Little League on the occasion of their 25h anniversary.

Signed this 11th day of June, 2007.

_____

Nancy McNally, Mayor

WESTMINSTER
COLORADO

Agenda Item 8 A

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Outside Legal Counsel for Pension Plans

PREPARED BY: Leslie Annand, Assistant City Attorney
Gordon Tewell, Pension Administrator

Recommended City Council Action

Authorize the City Manager to execute a contract with Reinhart Boerner Van Deuren Norris & Rieselbach P.C. for special legal services in connection with the updating of the City's Pension Documents for a total fee not to exceed $4,000.

Summary

- All special counsel agreements are subject to approval by the City Council in accordance with City Charter requirements. Additionally, the agreement between the City of Westminster and the Police and General Employee Pension Boards states that the City will pay all expenses incurred to amend the Plans including attorney costs.

- Pension staff is seeking City Council's approval to hire special legal counsel to assist in amending the City of Westminster Police and General Employee Pension Plans (Plans) to comply with changes in the Internal Revenue Code created by the Pension Protection Act of 2006.

- The document update will also streamline the Plans' administration, eliminating redundancies and obsolete procedures that cause additional, unnecessary expenses to the Plans and their participants. The proposed fees are well within the range of fees experienced for similar assistance in the past.

Expenditure Required: $4,000

Source of Funds: General Fund-Central Charges - Pension Account

Policy Issues

Whether or not to retain pension counsel on behalf of the City to assist with updating the portion of Municipal Code which governs the Plans for the Pension Protection Act of 2006 and to streamline the administration of the plans.

Alternatives

Do not retain special legal counsel to assist with these updates. Staff does not recommend this as pension law is complex, highly-detailed and constantly changing. Interpretation and application of tax law as it applies to the documents that govern the Plans requires an in-depth understanding of the law that can be provided by outside counsel who specialize in this field.

Background Information

The Internal Revenue Code is often changed and updated following the passage of new laws by Congress. The most recent changes occurred with the Pension Protection Act of 2006. The Internal Revenue Service requires pension plans to update their plan documents in accordance with the legal changes and submit applications to the IRS for approval. Those plans that do not submit proper amendments can potentially lose their status as "tax-qualified," meaning that contributions to the plan would become taxable to the participants.

Because the consequences of not filing timely or correctly in accordance with IRS requirements could be substantial for plan participants, Staff requests the assistance of outside legal counsel in amending the Plans in preparation for this filing. The firm of Reinhart Boerner Van Deuren Norris & Rieselbach P.C. has extensive experience in dealing with pension law and Staff requests that their services be employed to assist with aligning the Plans with the changes in Internal Revenue Code created by the Pension Protection Act of 2006.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this _____ day of _____, 2007, by and between Reinhart Boerner Van Deuren Norris & Rieselbach P.C (the "Firm") and the CITY OF WESTMINSTER, COLORADO (the "City").

RECITALS

1. The City is desirous of contracting with the Firm for legal services.

2. The Firm and its attorneys are authorized to practice law in the State of Colorado.

AGREEMENT

1. The Firm shall furnish special legal services to the City in connection with the amendment of the City of Westminster Police and General Employee Pension Plans for the Pension Protection Act of 2006.

2. Mary Brauer of the Firm shall be principally responsible for the Services.

3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.

4. The City shall pay for the Services at the hourly rate of $325 per hour.

5. This Contract may be terminated by the City at any time with or without cause.

6. The Westminster City Council authorized this contract on _____.

7. Payments pursuant to this Contract shall not exceed $4,000 without further written authorization by the City.

Reinhart Boerner Van Deuren Norris & Rieselbach P.C

By_____
Mary Brauer

CITY OF WESTMINSTER, COLORADO

By_____
Brent McFall

WESTMINSTER
COLORADO

Agenda Item 8 B

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Environmental Services Office Legal Services Agreement with Philip C. Lowe, LLC

Prepared By: Rachel Harlow-Schalk, Environmental and Administrative Services Officer

Recommended City Council Action

Authorize the City Manager to sign a contract for legal services with Philip C. Lowe, LLC for special legal services in connection with environmental regulatory compliance and related matters.

Summary Statement

- In 2004 the Environmental Services Office published a Request for Proposals to provide legal counsel on environmental regulatory compliance. Council approved the recommendation of Staff at that time to retain Carlson Hammond and Paddock, LLC (CHP) and Sherman and Howard, LLC (S&H) to provide a two pronged legal support team for 2004 with optional annual renewal for up to four consecutive years. CHP was retained to address storm water quality matters and S&H was retained for all other environmental matters. At S&H, Philip C. Lowe was the primary S&H contact to the City and he has since left that firm to start his own law practice.

- Staff recommends the City not renew the annual legal services agreement for environmental regulatory compliance support with S&H for 2007. Instead, Staff recommends retention of Philip C. Lowe, LLC for legal support on environmental regulatory compliance and related environmental matters in 2007 with the option of four annual renewals of the agreement.

- Since the Environmental Services Office works with stormwater quality issues and the Department of Public Works and Utilities Water Resources Division on all other water quality related issues, it is important that legal counsel serving both workgroups foster the same perspective. Environmental Services will continue to utilize CHP for storm water quality issues and Mr. Lowe will be utilized for all other environmental matters.

Expenditure Required: $3,000 annually

Source of Funds: 2007 General Fund, General Services Environmental Services Office Budget

Policy Issue

Whether to continue to retain special environmental law counsel for support of environmental regulatory compliance and related environmental matters.

Alternatives

1. Do not retain special environmental counsel. This alternative is not recommended since environmental regulatory compliance requires interpretation of many environmental laws and regulations.

2. Continue with previous environmental counsel at Sherman & Howard, LLC to handle environmental legal matters for the City. This option is not recommended since it would not allow the City access Mr. Lowe who has two years of history on environmental compliance matters with the City.

Background Information

In 2004 the Environmental Services Office published a Request for Proposals to provide legal counsel on environmental regulatory compliance. City Council approved the recommendation of Staff at that time to retain Carlson Hammond and Paddock, LLC (CHP) and Sherman and Howard, LLC (S&H) to provide a two pronged legal support team for 2004 with optional annual renewal for up to four consecutive years. CHP addressed storm water quality matters and S&H handled all other environmental matters.

The S&H contact to the City served in the environmental management division of a major electrical utility conducting implementation work similar to the City's Environmental Services Office prior to his becoming an attorney. With Mr. Lowe's departure from S&H to start his own firm, the City will lose this expertise unless it contracts directly with him. Since the Environmental Services Office works with storm water quality issues and the Department of Public Works and Utilities Water Resources Division on all other water quality related issues, it is important that legal counsel serving both workgroups foster the same perspective. Environmental Services will continue to utilize CHP for storm water quality issues and Mr. Lowe will be utilized for all other environmental matters.

Staff recommends that City Council retain Mr. Lowe directly through his firm of Philip C. Lowe, LLC and does not recommend contract renewal with S&H. His background with the City coupled with resources such as up to date information on environmental case settlements and efficient access to large case settlement databases provides a well rounded resource of environmental legal support to the City. Had Mr. Lowe stayed at S&H he would be charging the City $350 per hour. With his new firm, he will be charging $225 per hour with reasonable expenses at cost incurred.

Respectfully submitted,

J. Brent McFall
City Manager

Agenda Item 8 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Construction Contracts re Sheridan Boulevard and 72nd Avenue Roadway Improvement Project

Prepared By: John Burke, Senior Engineer

Recommended City Council Action

Authorize the City Manager to award the project and execute a construction contract with Castle Rock Construction Company of Colorado in the amount of $4,572,950.48; authorize the City Manager to execute a contract with Short Elliott Hendrickson, Inc. in the amount of $372,634 for construction engineering services for the Project; authorize the City Manager to sign a change order for engineering design services provided by ASCG, Inc. in the amount of $75,880; and authorize a construction project contingency in the amount of $450,000.

Summary Statement

- Sheridan Boulevard is designated as a six lane arterial street section between Interstate 76 and 120th Avenue on the Denver Regional Council of Governments (DRCOG) Regional Transportation Plan. With redevelopment occurring on the west side of Sheridan both north and south of 72nd Avenue, this is the City's best opportunity to widen Sheridan Boulevard to six through lanes and improve the appearance of the southern entryway into the City of Westminster.
- Generally, these improvements will result in: 1) a six lane street section with auxiliary lanes from approximately 70th Avenue to 74th Avenue, including raised medians in Sheridan Boulevard; 2) a landscaped area and detached sidewalk on the east side of Sheridan Boulevard between 70th and 72nd Avenues; 3) a new traffic signal at 70th Avenue; and 4) intersection improvements at 72nd Avenue to allow two eastbound through lanes on 72nd across Sheridan and double left hand turns in every direction.
- Additionally, the Public Works and Utilities Department will be funding the installation of a waterline connection across Sheridan Boulevard in 70th Ave. in order to loop the City's water system.
- The roadway project was advertised for construction for four weeks in the Daily Journal and six bids were opened on May 17, 2007.
- City staff and the engineering consultants have reviewed the bids and recommend awarding this contract to Castle Rock Construction Company of Colorado in the total amount of $4,572,950.48.
- The requested $450,000 contingency is just under 10% of the contract amount, which is standard for a project of this size and complexity.
- Staff solicited Short Elliott Hendrickson (SEH) for construction engineering and materials testing services since the project manager and lead engineering designer for this project resigned from ASCG and both now are employed with SEH.
- ASCG, Inc. submitted a change order for additional services rendered during the design phase of this project. One administrative change order has already been processed in the amount of $46,611. The requested change order of $75,880 will bring the contract total for design engineering to $309,403.

Expenditure Required: $5,471,464.48

Source of Funds: General Capital Improvement Fund - 72nd Avenue and Sheridan Boulevard Project – $5,305,217.48
Utility Fund CIP – Shoenberg to 70th Water Main - $166,247.00

Policy Issue

Should the City continue with plans for the construction of the Sheridan Boulevard and 72nd Avenue roadway improvement project?

Alternative

One alternative includes postponing or abandoning the construction of this project. Given the commitment to have these improvements completed prior to the opening of the Wal-Mart store as discussed in public meetings, this alternative is not recommended.

Background Information

Sheridan Boulevard is designated as a six lane arterial street section between Interstate 76 and 120th Avenue on the Denver Regional Council of Governments (DRCOG) Regional Transportation Plan and has been for several years. The right-of-way needed for such an improvement was acquired as part of the redevelopment of the commercial properties on the west side of Sheridan between 70th & 74th. Wal-Mart dedicated just over two acres to the City at no cost and the City purchased just over 2 acres from the Shoenberg Farms commercial project located on the northwest corner of 72nd Avenue and Sheridan Boulevard.

Generally, the roadway improvements will result in a six lane street section with auxiliary lanes between approximately 70th Avenue and 74th Avenue, including raised medians in Sheridan Boulevard, a landscaped area and detached sidewalk on the east side of Sheridan Boulevard between 70th and 72nd Avenues, a new traffic signal at 70th & Sheridan and intersection improvements at 72nd Avenue to allow two eastbound through lanes on 72nd across Sheridan and double left hand turns in every direction.

The existing roadway will shift significantly to the west to create a landscaped buffer and sidewalk on the east side of Sheridan Boulevard south of 72nd Avenue. This shift will allow the contractor to keep two lanes northbound and southbound open throughout construction to minimize the overall project impact to through traffic.

A large portion of this roadway improvement project cost will be shared by the private redevelopment projects located at the southwest and northwest corners of 72nd Avenue and Sheridan Boulevard.

The design of this project was recently completed by ASCG, Inc. and the construction package was advertised in The Daily Journal for four weeks. Bids were opened on May 17th, 2007. Six contractors submitted bids and the results are as follows:

Bidder	**Amount of Bid**
Castle Rock Construction Company of Colorado	$4,572,950.48
Asphalt Specialties, Inc.	$4,767,447.73
New Design Construction, Inc.	$4,998,425.56
Brannan Sand & Gravel	$5,179,205.00
Concrete Express of Colorado, Inc.	$5,196,004.20
Concrete Works of Colorado, Inc.	$6,402,800.94
Engineer's Estimate	**$ 4,778,599.00**

City Staff, ASCG and Short Elliott Hendrickson (SEH) representatives have reviewed the bid results and recommend that the low bidder, Castle Rock Construction Company of Colorado, be awarded the contract for construction in the amount of $4,572,950.48. Staff, ASCG and SEH are familiar with Castle Rock Construction and believe this company is very capable of constructing this type of project. The contingency amount of $450,000 is just under 10% of the cost of construction, and Staff believes that this is adequate "insurance" for a project of this size and complexity.

This construction project will begin in early July 2007 and will be completed in the spring of 2008. Both Wal-Mart and the Shoenberg Farms retail projects will be under construction during the same time frame.

Short Elliott Hendrickson (SEH) was selected for the construction engineering services because the project manager and lead engineering designer resigned from ASCG, Inc. and accepted employment with SEH shortly after completing the construction drawings for the 72nd Avenue and Sheridan Boulevard project. Although ASCG offered to take on the construction management services, City staff felt it was in the City's best interest to contract directly with SEH as this will hopefully expedite the response time when questions arise during construction.

Lastly, ASCG, Inc. submitted a contract modification for additional services rendered during the design phase of this project. These additional services were at the request of City staff primarily to reduce overall construction costs. The changes to the design prior to going out to bid resulted in approximately $680,000 in project savings. One administrative change order has been processed in the amount of $46,611. The requested change order of $75,880 will bring the contract total for design engineering to $309,403. This is approximately 6.7% of the construction costs which is within the normal range for engineering services on a project of this size and complexity.

Respectfully submitted,

J. Brent McFall
City Manager

Agenda Item 8 D

W E S T M I N S T E R

C O L O R A D O

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: 2007 Local Sewer and Water Line Replacement Construction Contract Award

Prepared By: Kent W. Brugler, Senior Engineer, Capital Projects and Budget Management

Recommended City Council Action

Authorize the City Manager to execute a contract with Concrete Works of Colorado in the amount of $1,949,210 for construction of the 2007 Local Sewer and Water Line Replacement, and authorize a ten percent construction contingency in the amount of $195,000 for a total construction budget of $2,144,210.

Summary Statement

- Every three years, the Utilities Operations Division completes an inspection program of all of the City's sewer collection system, and identifies pipelines that must be repaired or replaced.

- As a result of the current inspections, the Utilities Division has identified approximately 7,750 feet of sewer lines that must be replaced in 2007 due to numerous physical deficiencies, along with approximately 5,690 feet of adjacent waterlines that should be replaced at the same time.

- The engineering design phase was completed in April and the project was advertised for construction bids on May 4, 2007. Ten contractors attended the mandatory pre-bid conference and four contractors submitted bids on May 24, 2007. Concrete Works of Colorado submitted the lowest responsible bid in the amount of $1,949,210.

- After careful evaluation of the proposals and discussions with references from prior completed projects, Staff and the design engineer, The Engineering Company, recommend award of the construction contract to Concrete Works of Colorado.

- Construction is tentatively scheduled to begin June 25, 2007 and be completed by December 1, 2007.

- City Council previously authorized a $400,000 budget in 2005 and another $1,686,000 in 2007 for the Pipeline Assessment and Certification Program (PACP) Sewer Line Open-Cut Replacement project, for a total sewer line replacement budget of $2,086,000. Council also authorized $3,000,000 for 2007 Water Line Open-Cut Replacement projects. This project involves approximately $1,039,261 of sewer related work and $909,949 of water related work. Including the engineering design fees, street cut impact fees and contingencies, the total project budget is $2,525,860, and will be funded out of the appropriate sewer and water line replacement accounts.

Expenditure Required: $2,144,210

Source of Funds: Utility Fund Capital Improvement Program
- 2005 Local Sewer Line Replacement-80521035409
- 2007 PACP Sewer Line Open-Cut Replacement-80721035750
- 2007 Open-Cut Water Line Replacements-80720035754

Policy Issue

Should the City proceed with the replacement of these deteriorated water and sewer lines, and award the construction contract to Concrete Works of Colorado?

Alternative

1. The City could choose to delay the start of the construction for this project or choose to not complete these sewer and water line improvements at this time. Since this project has been approved in the 2007/2008 Utility Fund Capital Improvement Budget and these lines have been identified as high priority lines for replacement, delaying the project could result in increased maintenance and repair expenses and possible service impacts to the residents.

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

Background Information

Every three years, Public Works and Utilities conducts video inspections of all the City's wastewater collection lines, evaluates their condition and establishes a priority list for lines to be replaced or repaired. The most recent inspections have identified approximately 7,750 feet of 6 inch and 8 inch diameter sewer lines that must be replaced in the southern section of the City, generally located between 72nd Avenue and 78th Avenue from Sheridan Boulevard to Irving Street (see attached map). These lines have one or more physical deficiencies, including being undersized, containing sags or depressions along their length, having off-set joints or otherwise having damage. In addition to the sewer lines, Staff has identified approximately 5,690 feet of water lines, that run adjacent to these sewer lines, that should be replaced due to age, condition, break history or as recommended in the recently completed Utility System Master Plan. By improving both utility lines in these mostly residential areas concurrently and in advance of planned street improvements in these areas, the City will reduce future utility related impacts to these residents.

The project was advertised for bids on May 4, 2007 and the City received four qualified bids on May 24, 2007. The following is a summary of the bids received:

Contractor Name	Bid Amount
Concrete Works of Colorado	$1,949,210
Quality Paving Company	$2,200,704
Scott Contracting, Inc.	$2,470,857
Tierdael Construction	$2,506,774
Engineer's Estimate	$2,692,150

After thoroughly reviewing all four bids and checking references, Staff recommends awarding the contract to Concrete Works of Colorado. Construction is tentatively scheduled to start on June 25, 2007 and be completed by December 1, 2007.

City Council previously authorized a budget of $400,000 in 2005 and $1,686,000 in 2007 for the completion of local sewer line replacement projects. Council also authorized $3,000,000 for 2007 Water Line Open-Cut Replacement projects. During the design process, it became apparent that some of the older water lines that are adjacent to the sewer lines being replaced should also be replaced at the same time, thereby disturbing the neighborhood just one time and minimizing the impact to the streets. The water line replacement portion of the project will be funded from the 2007 Open-cut Water Line Replacement account. The construction phase of this project involves approximately $1,039,261 of sewer related work and $909,949 of water related work. Including the engineering design fees, street cut impact fees and contingencies, the total project budget is $2,525,860, and will be funded out of the appropriate sewer and water line replacement accounts.

The total budget breakdown for the project is as follows:

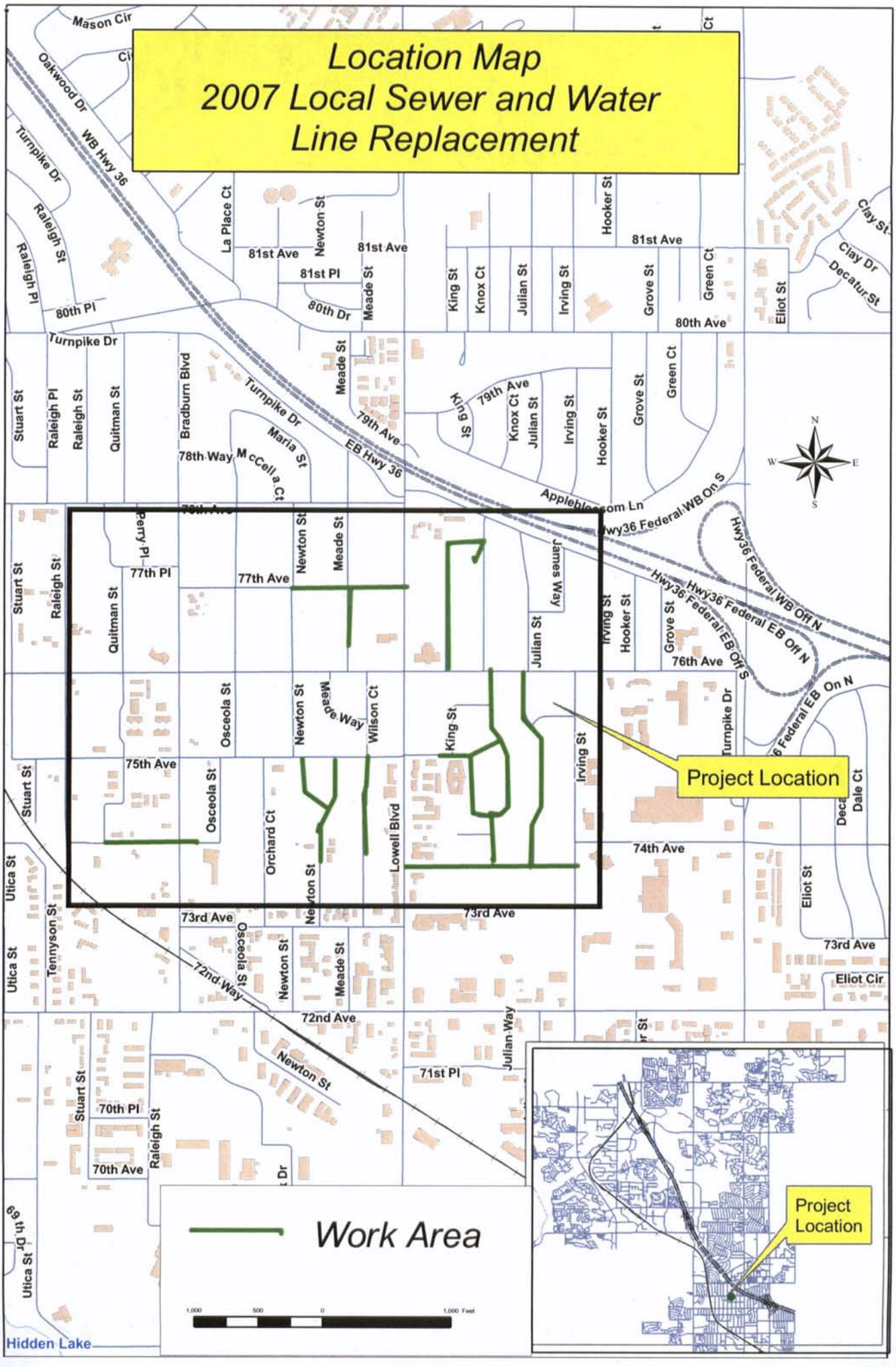
Item	**Amount**
Design and Construction Management Services	$278,450
Design/Construction Management Contingency	$3,200
Construction	$1,949,210
Construction Contingency (10%)	$195,000
Street Cut Impact Fees	$100,000
Total	$2,525,860

This project achieves City Council's Strategic Plan Goals, "Financially Sustainable City Government" and "Vibrant Neighborhoods and Commercial Areas," due to the City's replacement of aging water and wastewater infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment


Location Map
2007 Local Sewer and Water
Line Replacement
Project Location
Work Area
Project Location
Hidden Lake
Mason Cir
Oakwood Dr
Turnpike Dr
WB Hwy 36
Raleigh St
La Place Ct
Newton St
81st Ave
81st Pl
80th Pl
80th Dr
Meade St
King St
Knox Ct
Julian St
Irving St
Hooker St
Grove St
Green Ct
Eliot St
Clay St
Clay Dr
Decatur St
80th Ave
Stuart St
Raleigh Pl
Quitman St
Bradburn Blvd
Maria St
78th Way
McCella Ct
79th Ave
EB Hwy 36
Applebloom Ln
Hwy36 Federal WB On S
Hwy36 Federal WB Off N
Hwy36 Federal EB Off N
Hwy36 Federal EB Off S
Hwy36 Federal EB On N
76th Ave
77th Pl
77th Ave
Perry Pl
James Way
Osceola St
Wilson Ct
Meade Way
75th Ave
Orchard Ct
Lowell Blvd
Turnpike Dr
74th Ave
Dale Ct
Utica St
Tennyson St
73rd Ave
72nd Way
72nd Ave
Julian Way
71st Pl
70th Pl
70th Ave
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Agenda Item 8 E

W E S T M I N S T E R

C O L O R A D O

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Amended Intergovernmental Agreement with Urban Drainage and Flood Control District for Quail Creek Improvements

Prepared By: Stephen C. Baumann, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to sign an Amendment to the Intergovernmental Agreement with the Urban Drainage and Flood Control District for the design and construction of drainage improvements for Quail Creek west of Huron Street and authorize payment of $400,000 to the District as called for in the Agreement.

Summary Statement

- The City and the Urban Drainage and Flood Control District entered into an Intergovernmental Agreement (IGA) in June of 2006 for the purposes of improving the capacity and condition of existing Quail Creek between Huron Street and Pecos Street. Under the IGA, the District is managing the project, developing contracts for preliminary engineering design and final design and a planned construction start in 2007. The City and the District have each provided $50,000 for the preliminary design and, under the proposed Amendment, the District will contribute an additional $200,000 to go with $400,000 in City-budgeted funds.

- The proposed Quail Creek improvements will reduce and confine major drainage flows to a landscaped channel and thereby remove approximately 25 residences and portions of a 9-acre commercial property at the southwest corner of Huron Street and 136th Avenue from the floodplain. The preliminary estimate of the cost of construction is $2 million, a figure that will be refined during the final design phase this summer. Another amendment of the IGA will be needed to appropriate the additional funding needed for construction.

Expenditure Required: $400,000 (2007)

Source of Funds: Utility Fund - Storm Water Capital Improvement Account

Policy Issue

Should the City amend the IGA with the Urban Drainage and Flood Control District (UFCD) to continue with its commitment to the project for improvements to Quail Creek upstream of Huron Street?

Alternative

Council could choose not to execute the proposed Amendment. However, proposed modifications to Quail Creek have been of high importance to the neighborhood, both in terms of improving the condition and operation of the channel and reducing the extent of floodplain. In addition, UDFCD continues its commitment to share in the costs. If Council chooses not to approve this IGA, these funds may not be available in the future.

Background Information

Quail Creek was first channelized in the 1980's with the development of the first phase of Quail Crossing Subdivision. The last ten years have seen ongoing and increasing concerns from the neighborhood focused on the overgrowth of vegetation and the pooling of water in the existing channel. Constraints such as inadequate fall from Pecos Street east under Huron Street and down to I-25, as well as undersized culverts at street crossings have made for poor operation over the years. In addition, mapping of the 100-year floodplain by the Federal Emergency Management Agency (FEMA) shows approximately two dozen residential properties in Quail Crossing Subdivision are still affected by the Quail Creek floodplain. This floodplain also affects the commercial property at the southwest corner of Huron Street and 136th Avenue.

The issues downstream of Huron Street have been addressed in various projects. The last piece of the necessary improvements is to rebuild the Quail Creek channel between Huron Street and Pecos Street. The preliminary plans call for restoration of the park-like channel banks with new trees and for building an extension of the Quail Creek trail west from its present terminus at Huron Street. Trail access to Quail Crossing Park will also be incorporated into the improvements.

The City approached the UDFCD for assistance with funding the project and, in 2006, City Council authorized an IGA to jointly pursue the improvements. Under the IGA, the District will manage the project and develop contracts for design/construction using funding from both jurisdictions and a contribution from the abutting commercial development. In 2006, the City and the District each contributed $50,000 to fund preliminary design. The proposed amendment of the IGA pools additional funding for the project--$400,000 from the City and $200,000 in 2007 funds from the District to begin final design activities and to arrange for relocation of high-pressure gas lines that conflict with the proposed lower alignment of the channel. The preliminary estimated cost of construction is $2 million, a figure that will be refined during final design. The IGA will need to be amended at least once more to incorporate additional funds for construction to be received from the commercial developer, the City and the District. Those shares of the cost will be determined in the near future.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Amendment to June 2006 Agreement

AMENDMENT TO
AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
QUAIL CREEK IMPROVEMENTS, HURON STREET TO PECOS STREET,
CITY OF WESTMINSTER

Agreement No. 06-04.02A

THIS AGREEMENT, made this _____ day of _____, 2007, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Quail Creek Improvements, Huron Street to Pecos Street, City of Westminster" (Agreement No. 06-04.02) dated June 5, 2006; and

WHEREAS, PARTIES now desire to construct improvements; and

WHEREAS, PARTIES desire to increase the level of funding by $600,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. __, Series of 2007); and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and are limited to the following:

1. Final design services;
2. Construction of improvements;
3. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed $700,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

	ITEM	AMOUNT
1.	Final Design	$150,000
2.	Construction	500,000
3.	Contingency	50,000
	Grand Total	$700,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	Percentage Share	Maximum Contribution	Previously Contributed
DISTRICT	31%	$250,000	$50,000
CITY	69%	450,000	50,000
TOTAL	100%	$700,000	$100,000

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973 and Resolution No. 49, Series of 1977), the cost sharing shall be after subtracting state, federal, or other sources of funding from third parties. However, monies CITY may receive from federal funds, the Federal Revenue Sharing Program, the Federal Community Development Program, or such similar discretionary programs as approved by DISTRICT's Board of Directors may be considered as and applied toward CITY's share of improvement costs.

Payment of each party's full share (CITY - $450,000; DISTRICT - $250,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

3. All other terms and conditions of Agreement No. 06-04.02 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By_____

ATTEST:

Title Executive Director

_____

Date_____

CITY OF WESTMINSTER

(SEAL)

By_____

ATTEST:

Title_____

_____

Date_____

APPROVED AS TO FORM:

_____
City Attorney

WESTMINSTER
COLORADO

Agenda Item 8 F

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: West Nile Virus Intergovernmental Agreement with Jefferson County Department of Health and Environment

PREPARED BY: Richard Dahl, Park Services Manager

Recommended City Council Action:

Authorize the City Manager to sign the attached Intergovernmental Agreement (IGA) between the City of Westminster and the Jefferson County Department of Health and Environment to reimburse the City in the amount of $11,467.50 for mosquito control expenses within the Jefferson County portion of the City for the year 2007.

Summary Statement:

- The objective of Jefferson County's public health mosquito control is to prevent the mosquito-borne transmission of diseases to humans, livestock, and domestic pets. In order to effectively deal with the continuing threat of mosquito-borne transmission of West Nile Virus and other arboviral diseases, Jefferson County, for 2007, is contracting with Colorado Otter Tail Environmental, Inc. for Integrated Mosquito Management (IMM) services within certain areas of Jefferson County.

- On December 14, 2004, the City entered into a three-year agreement with Colorado Mosquito Control (CMC) to manage and control all mosquito populations including those capable of transmitting West Nile Virus within the boundaries of the City of Westminster.

- In 2007, the City's costs for mosquito control using the services of CMC will total $44,398.66.

- Because the City currently contracts for mosquito control within Jefferson County, the County will reimburse a portion of the City's West Nile Virus maintenance program in the amount of $11,467.50.

Expenditure Required: $ 0

Source of Funds: N/A

Policy Issue

Should the City of Westminster enter into an Intergovernmental Agreement with the Jefferson County Department of Health and Environment to receive reimbursement in the amount of $11,467.50 for mosquito control in the portion of the City within Jefferson County?

Alternative

Council could choose to not approve the IGA. However, Staff would advise against this option as additional funding for the program will offset future expenses in mosquito control related to the West Nile Virus.

Background Information

The Jefferson County Health Department has concluded that the threat of West Nile Virus to be serious enough to initiate a County-wide mosquito control program. As Westminster currently has a comprehensive mosquito management program (originally established in 1986) the County will reimburse the City for the cost it would have paid its contractor, Otter Tail Environmental Inc., to perform West Nile Virus control measures within the City of Westminster. The Department of Parks, Recreation and Libraries will be responsible to provide the County with documentation necessary to comply with the IGA Mosquito Management reimbursement program.

The City's participation in this IGA helps meet City Council's Strategic Plan Goal of "Safe and Secure Community."

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

INTERGOVERNMENTAL AGREEMENT FOR COOPERATIVE MOSQUITO MANAGEMENT PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into effective as of the ___ day of _____, 2007, between the **JEFFERSON COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT**, whose address is 1801 19th Street, Golden, CO 80401, hereinafter referred to as the "Health Department"; and the **CITY OF WESTMINSTER**, a municipal corporation of the State of Colorado, with its principal office located at 4800 W. 92ND Ave., Westminster, CO, hereinafter referred to as "Westminster."

WITNESSETH:

WHEREAS, the objective of public health mosquito control is to prevent the mosquito-borne transmission of diseases to humans, livestock, and domestic pets, and in order to effectively deal with the continuing threat of mosquito-borne transmission of West Nile Virus and other arboviral diseases, the Health Department has contracted with OtterTail Environmental, Inc., ("OtterTail") for Integrated Mosquito Management ("IMM") services within certain areas of Jefferson County, Colorado, during the year 2007; these services shall be provided to Jefferson County and various municipalities within Jefferson County at a cost per square mile basis, and

WHEREAS, said IMM services are detailed in a document entitled PURCHASE OF SERVICES AGREEMENT, signed April 17, 2007, which includes the scope of work, the service area map, the mosquito surveillance plan, the sentinel zone protocols, and a copy of the signed confidentiality statement; a copy of which is attached hereto and incorporated herein as **Attachment A,** and

WHEREAS, Westminster has established their own contract for IMM services within the boundaries of the Westminster, and

WHEREAS, for a price to be paid by the Health Department to Westminster based on the same rate as the Health Department will pay to the OtterTail to perform the IMM services detailed in the **Attachment A**, and

WHEREAS, the parties now desire to enter into this Intergovernmental Agreement so as to memorialize their agreement with respect to their respective responsibilities regarding the provision of such IMM services within Westminster's boundaries.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **PROVISION OF IMM SERVICES WITHIN WESTMINSTER:** Upon the signing of this Intergovernmental Agreement by the parties hereto, Westminster shall direct their contractor, during the year 2007, to perform similar IMM services as those set forth in **Attachment A** for the areas of Westminster located within Jefferson County. The services and service fee do not include adulticide services. The Health Department will monitor the need for adulticiding and advise the County and all participating municipalities if an adulticide program is recommended and approved by the Board of Health and Board of County Commissioners.

2. **PROVISION OF OTHER IMM SERVICES BY WESTMINSTER:** Westminster shall designate a point of contact for communication with the Health Department; provide a copy of their contractors liability insurance indemnifying the Health Department against any liability resulting from the delivery of their contractor's IMM services; provide public education to their citizens; coordinate with the Health Department on IMM services or concerns; and advise the Health Department, by report, of the IMM services conducted by Westminster or it's contractor within the portions of Westminster located within Jefferson County. The IMM service reports shall be submitted on a monthly basis on or before the 5th of the month effective July 2007 and ending October 2007. At a minimum the IMM service report shall address the number of larval development sites inspected, number of sites treated, and public educational activities conducted by Westminster and/or Westminster's IMM service contractor. A copy of Westminster's IMM service contract(s) shall be attached to the July report. The monthly report, with the notation "re: West Nile IGA Report", shall be sent to Jefferson County Department of Health and Environment, 1801 19th Street, Golden Colorado 80401.

3. **MONITORING THE PROVISION OF IMM SERVICES:** Staff from the Health Department will monitor the work of Westminster and their IMM service contractor to ensure that the IMM services detailed in Paragraph 1 and 2 above are fulfilled. As needed, the Health Department will provide Westminster with public education information and periodic reports regarding the status of mosquito-borne diseases and vector control. Questions regarding the Health Department's IMM services shall be through Dr. James Dale, Jefferson County Department of Health and Environment, 1801 19th Street, Golden, Colorado, 80401; PHONE: 303-271- 5718; FAX: 303-271-5702; EMAIL: jdale@jeffco.us .

4. **PAYMENT OF WESTMINSTER IMM SERVICE FEE:** The Health Department agrees to pay to Westminster eleven thousand four hundred and sixty seven and 50/100 dollars ($11,467.50) to reimburse Westminster for a portion of the IMM services provided by their contractor during the year 2007 for the areas of Westminster that are located within Jefferson County. This amount is based on IMM service rate paid by the Health Department to OtterTail for the IMM services detailed in **Attachment A**. After execution of this Intergovernmental Agreement by the last party and upon receipt of July, August, and September 2007 billings by Westminster, the Health Department will pay Westminster a total of three equal payments of three thousand eight hundred twenty two and 50/100 dollars ($3,822.50). Billings, with a notation "re: West Nile IGA", shall be sent to Jefferson County Department of Health and Environment, 1801 19th Street, Golden Colorado 80401.

5. **PAYMENT OF UNICORPORATED JEFFERSON COUNTY IMM SERVICE FEE:** The Health Department will pay for and direct OtterTail to perform the IMM services as set forth in **Attachment A** located within unincorporated Jefferson County.

6. **TERM:** The term of this Intergovernmental Agreement shall be from the date of signature by the last party hereunder to and until December 31, 2007.

7. **LIABILITY INSURANCE COVERAGE/INDEMNITY/WARRANTY:** As described in Paragraphs 5 and 6 of the PURCHASE OF SERVICES AGREEMENT, Otter Tail will maintain liability insurance coverage and will hereby indemnify and hold the Health Department and Westminster harmless from all claims, damages, loss, injury, cost and expense, including attorneys' fees resulting from or related to any negligent or intentional acts or omissions of

OtterTail, its agents, employees, subcontractors and consultants, in its performance of the agreement. A copy of OtterTail's Certificate of Liability Insurance is provided as **Attachment B**.

8. **NO GUARANTEE BY THE HEALTH DEPARTMENT:** Westminster acknowledges that although the objective of the IMM services to be performed within Westminster's boundaries is to reduce the mosquito population and consequent threat of transmission of West Nile Virus, the Health Department makes no guarantee as to the effectiveness of such IMM services in achieving such objective.

9. **ENTIRE AGREEMENT:** This writing constitutes the entire Intergovernmental Agreement between the parties hereto with respect to the subject matter herein, and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

10. **NO WAIVER OF IMMUNITY:** No portion of this Intergovernmental Agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess, nor shall any portion of this Intergovernmental Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Intergovernmental Agreement.

11. **NO THIRD PARTY BENEFICIARY ENFORCEMENT:** It is expressly understood and agreed that the enforcement of the terms and conditions of this Intergovernmental Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Intergovernmental Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Intergovernmental Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Intergovernmental Agreement shall be an incidental beneficiary only.

Signed by the parties' the_____ day of _____, 2007.

Jefferson County Department of Health and Environment

By: _____, Secretary to the Board of Health

By: _____, President Board of Health

ATTEST: CITY OF WESTMINSTER, a municipal corporation of the STATE OF COLORADO

By: _____, City/Town Clerk

By: _____, City Manager

APPROVED AS TO FORM:

By: _____, City Attorney

Attachment A

PURCHASE OF SERVICES AGREEMENT

THIS AGREEMENT, dated for reference purposes only the 30th day of March, 2007, is made and entered into by and between the **Jefferson County Department of Health and Environment (JCDHE)**, 1801 19th Street, Golden, CO 80401, hereinafter referred to as "JCDHE", and **OtterTail Environmental, Inc.**, 1045 N. Ford Street, Golden, CO 80401, hereinafter referred to as "Contractor."

WITNESSETH

WHEREAS, JCDHE is interested in contracting with a professional to provide public health integrated mosquito management services for the purpose of preventing and controlling mosquito-borne diseases such as West Nile Virus and West Equine Encephalomyelitis; and

WHEREAS, the Contractor desires to provide those services to JCDHE,

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto covenant and agree as follows:

1. TERM

This Agreement shall be in effect for the period April 17, 2007 through December 31, 2007.

2. RESPONSIBILITIES

These are defined in the Integrated Mosquito Management Program, Jefferson County, Colorado, Scope of Work, General Description and Specifications (Eight pages plus Attachments A,B, and C) that are attached as Exhibit A.

3. COMPENSATION AND PAYMENT

a. JCDHE will reimburse the Contractor a total of $213,226 in 5 equal monthly payments starting in June, 2006. Contractor services will be documented and approved prior to authorization for payment. The final or fifth payment will be made after the completion and approval of all contract requirements.

b. Contractor shall submit a monthly invoice to JCDHE by the 5th of the following month of service. Failure to submit billing information in a timely manner and correct format shall result in non-payment of invoice.

c. Contractor shall be reimbursed within fourteen (14) days after receipt and approval of the invoice.

4. CONFIDENTIALITY

a. In performing services under the terms and conditions of this Agreement, Contractor agrees to comply with all JCDHE confidentiality requirements. Contractor must sign and return the Statement of Confidentiality, attached as Exhibit B, with the Purchase of Services Agreement.

5. INDEPENDENT CONTRACTOR STATUS, PAYMENT OF TAXES AND INSURANCE COVERAGE

   a. In performing services under this Agreement the Contractor is acting as an independent contractor and not as an agent or employee of JCDHE.

   b. As an independent contractor, the Contractor is solely liable and responsible for maintaining worker's compensation insurance which complies with statutory requirements in the State of Colorado, unemployment insurance benefits, and the withholding and payment of any and all federal, state and local taxes applicable to the receipt of funds or other consideration by the Contractor under the terms of this Agreement.

6. INDEMNIFICATION

   a. Contractor hereby indemnifies and holds JCDHE and the municipalities in Jefferson County harmless from all claims, damages, loss, injury, cost and expense, including attorneys' fees resulting from or related to any negligent or intentional acts or omissions of the Contractor, its agents, employees, subcontractors and consultants, in its performance of this Agreement. This provision shall survive the termination of this Agreement.

7. INSURANCE

   a. In performing services under this Agreement, the Contractor shall submit a certificate of insurance to JCDHE establishing the Contractor has professional liability insurance provided by an insurance carrier licensed to do business in the State of Colorado and meets or exceeds JCDHE minimum insurance requirements.

8. NON ASSIGNMENT

   a. Neither this Agreement nor any interest therein, or any claim thereunder, shall be assigned by the Contractor to any third person without the prior written consent of JCDHE.

9. OFFICIALS NOT TO BENEFIT

   a. No elected or employed member of JCDHE shall directly or indirectly receive or be paid any share or part of this Agreement or any benefit that may arise thereof. The Contractor warrants that it has not retained any company or person (other than a bona fide employee working solely for the Contractor) to solicit or secure this Agreement, and that the Contractor has not paid or agreed to pay to any company or person, (other than a bona fide employee working for the Contractor), any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award of this Agreement to the Contractor. Upon learning of any breach or violation of this provision, JCDHE shall have the right to terminate this Agreement with no further liability or obligation for payment.

10. EMPLOYMENT OPPORTUNITY USE OF COLORADO LABOR, ILLEGAL ALIENS

a. The Contractor shall not refuse to hire, discharge, promote, demote or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, sex, color, national origin or ancestry, disability or age. The Contractor shall not knowingly employ unauthorized aliens to perform any portion of the Agreement and shall comply with the provisions of the Immigration Reform and Control Act of 1986.

11. NON-APPROPRIATION

a. The payment of JCDHE's obligations hereunder in the fiscal years subsequent to the Agreement period are contingent upon funds for this Agreement being appropriated and budgeted. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of the execution of this Agreement, this Agreement shall terminate. JCDHE's fiscal year is the calendar year.

12. STATUTES, REGULATIONS AND ORDINANCES

a. The Contractor shall observe and comply with federal, state and local laws, regulations, rules or ordinances that affect those employed or engaged by it, the materials or equipment used or the performance of the project and shall procure any and all necessary approvals, licenses and permits all at its own expense.

13. SEVERABILITY

a. If any provision of this Agreement or the application thereof to any person or in any circumstance shall be unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or in other circumstances shall not be effected thereby and shall be enforced to the greatest extent permitted by law.

14. ENTIRE AGREEMENT

This Agreement and Exhibits constitute the entire Agreement among the partners and all other and prior Agreements among the parties relating to such subject matter are hereby cancelled and superseded in their entireties. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by such party.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of 4/17/07 be effective as of 4/17/07.

JEFFERSON COUNTY DEPARTMENT
OF HEALTH AND ENVIRONMENT

Cathy Corcoran

Cathy Corcoran, President
Board of Health

ATTEST: Bonnie McNulty
By: Bonnie McNulty, Secretary
Board of Health

CONTRACTOR

Ed Fleming

02-0695531
SSN / EIN

EXHIBIT A

JEFFERSON COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT

2007 INTEGRATED MOSQUITO MANAGEMENT SERVICES

Service Agreement: SCOPE OF WORK

GENERAL DESCRIPTION AND SPECIFICATIONS

GENERAL DESCRIPTION

The service provider shall conduct an Integrated Mosquito Management (IMM) Program for Jefferson County Department of Health and Environment (JDCHE) during the spring, summer and fall of 2007. This program will be designed and implemented to control the spread of the West Nile Virus (WNV) and other mosquito-borne diseases such as Western Equine Encephalitis (WEE) by reducing the number of disease causing mosquitoes.

The service provider shall employ established IMM principles and practices to reduce the numbers of disease causing mosquitoes in Jefferson County. These principles and practices include: identification and classification of mosquito breeding habitat, surveillance of adult and larval mosquitoes, larval mosquito control (application of larvicides, source reduction, and/or biologic controls), and public education and outreach. Adulticiding - the killing of adult mosquitoes through aerial sprays and fogging - is not anticipated but the service provider shall maintain the capabilities to implement, manage, and / or provide properly trained staff and supervisors to conduct adulticiding if requested by JCDHE to do so.

The service provider shall provide the following IMM services within the service area:

A. Adult Mosquito Surveillance
B. Larval Mosquito Surveillance and Control
C. Public Education
D. Reporting
E. Record Keeping
F. Adult Mosquito Control Service Coordination
G. Department Employee Training
H. Board of Health Appearances

The service provider shall follow all applicable and appropriate Federal, State, and Local rules and regulations such as EPA, OSHA, FIFRA and the like pertaining to the implementation of the IMM services provided by the service provider in this Scope of Work.

The service area is generally described as the "plains" area of Jefferson County Colorado and consists of approximately 153 square miles. Specific requirements pertaining to the service area, the services to be provided, term of the contract, and the work products are described in the Specifications section of this Scope of Work.

EXHIBIT A

JEFFERSON COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT

2007 INTEGRATED MOSQUITO MANAGEMENT SERVICES

Service Agreement: SCOPE OF WORK

SPECIFICATIONS

I. SERVICE AREA

The service area is generally described as the "plains" area of Jefferson County bounded by Broomfield County on the north, Chatfield State Park on the south, Sheridan Boulevard on the east, and the Hogback on the west. The 2006 Integrated Mosquito Management Service Area Map (Attachment A) illustrates the service area and the known potential larval development (PLD) sites. A summary of the service area is provided in the table below.

Area / Municipality	Square Miles
Unincorporated Jefferson County	77.2
Edgewater	0.7
Lakeside	0.3
Littleton	0.6
Morrison	1.2
Mountain View	0.1
Golden	9.3
Wheat Ridge	9.5
Lakewood	26.7
Bow Mar	0.3
Arvada	27.5
Total Square Miles:	153.4

II. SERVICES TO BE PROVIDED

A. Adult Mosquito Surveillance

1. The service provider shall provide all supplies, equipment and personnel to operate and maintain:

   a) Sixteen (16) CDC light traps at various sites selected with the concurrence of JCDHE within the service area. These traps shall be operated one night per week on the same day of the week for a period of 13 weeks from June 4, 2007 to August 31, 2007

   b) Nine (9) gravid traps at sites selected with the concurrence of JCDHE within the service area. The gravid trap sites may or may not coincide with the CDC light trap sites identified in paragraph a) above. These traps shall be operated one night per week on the same day of the week for a period of 13 weeks from June 4, 2007 to August 31, 2007.

c) Five (5) traps, included in paragraphs A, 1, a & b above, a second night each week during the period of June 25, 2007 through August 10, 2007 as part of the Mosquito Sentinel Program in accordance with state guidelines. The Mosquito Sentinel Program trap locations will be designated by JCDHE in collaboration with the service provider.

2. If for any reason, such as inclement weather, any of the trap nights described in paragraph a, b, and/or c above is cancelled, the service provider shall notify JCDHE immediately. JCDHE may require the service provider to reschedule the cancelled trap night as conditions allow.

3. After each trap night the service provider shall collect, identify, speciate, and count all trapped mosquitoes by methods recognized by CDC and/or the Colorado Department of Public Health and Environment (CDPHE) and report this information to JCDHE at least once per week.

4. All mosquito trapping activities including the submission of mosquito pool specimens shall be conducted in accordance with the protocols established in the current CDPHE Mosquito Surveillance Plan. A copy of the CDPHE 2005 Mosquito Surveillance Plan and West Nile Virus Mosquito Testing 2007 Sentinel Zone Protocol are provided in Attachment B and C respectively. CDPHE updates or changes to these plans will provided by JCDHE to the service provider.

5. The service provider shall assume all liability for the placement and operation of any and all equipment. JCDHE shall not be responsible for any lost, damaged or stolen traps and/or equipment.

6. The service provider shall maintain a toll-free (in Colorado) telephone line and shall accept calls from the public reporting mosquito problems and/or standing, stagnant water in the service area that may indicate the presence of PLD sites. The service provider shall maintain a log of calls received and shall summarize call activity in weekly and annual reports.

B. **Larval Mosquito Surveillance and Control:** The primary and priority focus of larval control will be for those mosquitoes competent to transmit diseases such as WNV. All mosquito complaints shall be thoroughly investigated and larval control implemented based a balanced evaluation of risk associated with concurrent infestation with mosquitoes presenting a public health problem and impact on quality of life in the community.

Initial Inspection of PLD Sites: By June 21, 2007 the service provider shall conduct an initial inspection of all known PLD sites within the service area. At the end of the 2006 IMM season there were approximately 600 known PLD sites

contained in the 153.4 square mile service area. The 2007 IMM service area and known PLD sites are identified on the Jefferson County Integrated Mosquito Management Service Area Map (Attachment A).

The purpose of the initial PLD inspection is to classify each PLD site as "targeted" or "non-breeding". Targeted PLD sites are those sites which have the highest potential for mosquito breeding. The remaining sites shall be classified as non-breeding PLD sites or removed from the list of PLD sites if the site no longer has the potential to breed mosquitoes. Any new PLD sites identified during the initial inspection of PLD sites shall be added to the list of PLD sites and shall be classified as "targeted" or "non-breeding".

On or before June 30, 2007 the service provider shall provide an updated list, based on the previous end-of-season PLD inventory, of all PLD sites and their classification. The list shall include the service provider's recommendations for additions, deletions, and/or revisions to the list of PLD sites.

1. **Larval Mosquito Surveillance and Control:** Upon completion and/or commensurate with the initial inspection of designated PLD sites, the service provider shall commence the following routine PLD surveillance and larval control activities:

   a) Targeted sites shall be inspected at least once per week by visual observation and by dipping any standing water for mosquito larvae.

   b) Non-breeding sites shall be inspected based on changes in climactic conditions but at least once per month to determine if any changes have occurred that would warrant a re-evaluation of their status.

   c) Storm water structures shall be inspected based on environmental conditions that could promote the development of mosquito larva at such structures. Strategically located storm water structures (catch basins, detention ponds, storm water inlet boxes, and the like) shall be inspected at least once per week for the presence of mosquito larvae. The results of the storm water structure inspections shall be included in the weekly totals and year to date totals in the weekly reports.

   d) During the course of conducting IMM activities, identify any additional and/or new PLD sites by noting any areas of clogged ditches and streams, standing water, etc., and inspect and classify each additional and/or new PLD site as a targeted or non-breeding site. All additional and/or new PLD sites shall be mapped and recorded, regardless of their classification. Note such features as abandoned swimming pools, etc., which have the potential for supporting larval development, report these features to

JCDHE, and work with local code enforcement officials to locate, identify, and apply the appropriate IMM measures to these sites.

e) If it is determined that any PLD site in a, b, c, and/or d above are producing Culex sp. or other potential arboviral vector mosquitoes, apply the appropriate, federally approved materials, such as but not limited to 180-day briquettes, 30-day residual pellets, granular larvicides, monomolecular oils, etc. and/or utilize other recognized methods of larval control such as source reduction.

f) Use the most appropriate method for larvicide distribution, such as hand application, backpack broadcasters, All Terrain Vehicle (ATV), etc.

g) Maintain Material Safety Data (MSD) sheets for all products used and provide such information upon request to employees, the public, and/or JCDHE.

h) As appropriate, conduct and document post-treatment quality control inspections within 24 to 48 hours to assure the larvae population has been controlled. If larvae are found, a second application of control material shall be applied. These activities shall be included in the weekly activity reports.

i) Develop a method to contact private property land owners and obtain permission to enter property to conduct IMM activities. Entry onto private property shall be by prior authorization of the owner/agent.

j) Maintain real-time documentation of all PLD site surveillance and larval control activity and enter real-time data into a JCDHE approved electronic database. An electronic copy of the database shall be provided to JCDHE on or before November 1, 2007 and/or upon the request of JCDHE.

C. Public Education

1. The service provider shall maintain a public education website providing general information on WNV and WEE, including basic disease information, tips for personal protection, information for homeowners on standing water, aerial spraying information (if appropriate), phone numbers to call, links to other websites, etc.

2. The service provider shall coordinate with JCDHE to provide printed public education information relating to WNV and/or WEE for the topics referenced in paragraph 1, above.

3. In the event that adulticiding or aerial spraying is to be performed, the service provider shall notify all residents in the area to be sprayed who are registered

in the State of Colorado Pesticide Sensitive Registry. A minimum of 3 attempts shall be made to reach these persons prior to the spraying or application. The Ultra Low Volume (ULV) insecticide application will be shut off in front of and upwind from sensitive resident's properties. The service provider shall maintain MSD sheets for all products used and shall provide such information upon request to employees, the public, and/or JCDHE. If adulticide spraying is required the service provider shall collaborate with JCDHE to coordinate the delivery of these services.

D. Record Keeping

The service provider shall maintain all records and documents pertaining to the services provided under this contract for a period of 3-years. By December 1, 2007 and/or upon the request of JCDHE, the service provider shall provide JCDHE with copies of any and all records and documents pertaining to the services provided under this contract in an electronic and/or hard copy format approved by JCDHE.

E. Reporting

1. **Weekly Report:** The service provider shall provide a weekly summary report of IMM service activities. Weekly reports shall include but not limited to:

   a) The total number of PLD site inspections and post-treatment quality control inspections performed and the number these inspections for each municipality and for the unincorporated area of the County.

   b) The number of larvicide applications, including products used and methods of dispersal.

   c) The number of mosquitoes caught in light and gravid trapping, including the number of the various Culex or other arboviral vector species.

   d) The number of inspectors used and the amount of time spent conducting contract work, reported as larval inspection time, mosquito trapping time, and office or support time.

   e) The number of complaints received, areas inspected because of those complaints, the findings of each inspection and actions taken.

2. **Annual Report:** By December 1, 2007 the service provider shall provide an annual report to JCDHE regarding all IMM service activities performed under this contract. The annual report shall be provided in a format acceptable to JCDHE both electronically and in hard copy (5 copies) and shall include but not limited to:

   a) surveillance activities and findings,

b) total hours logged for each service activity by the service provider and its employees,

c) total number of PLD sites inspected, total number of sites treated, total number of mosquito trap nights, etc.

d) an end of season map that illustrates the PLD sites identified and inspected during the contract season,

e) the GIS shape files or other electronic files used to create the PLD site map,

f) a complete list of all PLD sites and their classification. The PLD list shall include the service provider's recommendations for additions, deletions, and/or revisions to the list of PLD sites.

F. **Adult Mosquito Control Program Development and Coordination:** In the event of a Public Health Emergency, the service provider shall assist JCDHE in the development of timely adult mosquito control programs, such as ground and/or aerial adulticide spraying. Adult mosquito control programs shall be conducted accordance with all state and federal requirements. The cost of this service and adult mosquito control programs are not included in this contract.

G. **Department Employee Training:** Upon request the service provider shall provide up to four (4) hours of training for Department employees.

H. **Board of Health Appearances:** Upon request the service provider shall appear before the Jefferson County Board of Health to provide updates and/or a year-end report on contract activities. Up to six Board of Health appearances may be requested by JCDHE.

III. TERM OF SERVICE AGREEMENT

The Service Agreement shall be in effect for the period beginning April 17, 2007 through December 31, 2007. All field service activities shall commence no later than June 1, 2007 and shall continue until JCDHE determines that a specific field service is no longer needed, but no later than September 30, 2007.

IV. WORK PRODUCTS

Any and all maps, reports, spreadsheets, databases, geographical information system (GIS) files, newsletters and other hard copy or electronic documents generated by the service provider in fulfillment of its obligations under this contract shall be the property of JCDHE, who shall have sole and complete discretion regarding their use and distribution. All work products shall be delivered to JCDHE in a mutually agreed upon hardcopy and/or electronic format suitable for including in reports and folders. The data

and weekly reports will be furnished in standard 8 ½ by 11 inch paper. All reports will include the activity undertaken in each of the cities in the County. Delivery of the principal work products shall be provided according to the following delivery schedule.

Work Product Delivery Schedule

Work Product	Delivery Date
Begin Larval Mosquito Surveillance and Control	June 1, 2007
Begin Adult Mosquito Surveillance	June 4, 2007
First Weekly Report	June 8, 2007
Complete Initial Inspection of PLD Sites	June 21, 2007
Provide updated list of PLD sites and their classification	June 30, 2007
End Adult Mosquito Surveillance	August 31, 2007
End Larval Mosquito Surveillance and Control	September 30, 2007
Last Weekly Report	October 5, 2007
Electronic database of larval surveillance and control activities	November 1, 2007
Copy of records and documents pertaining to 2007 IMM services under this contract	December 1, 2007
First draft Annual Report	December 1, 2007
Final draft Annual Report	December 31, 2007

ACRONYMS

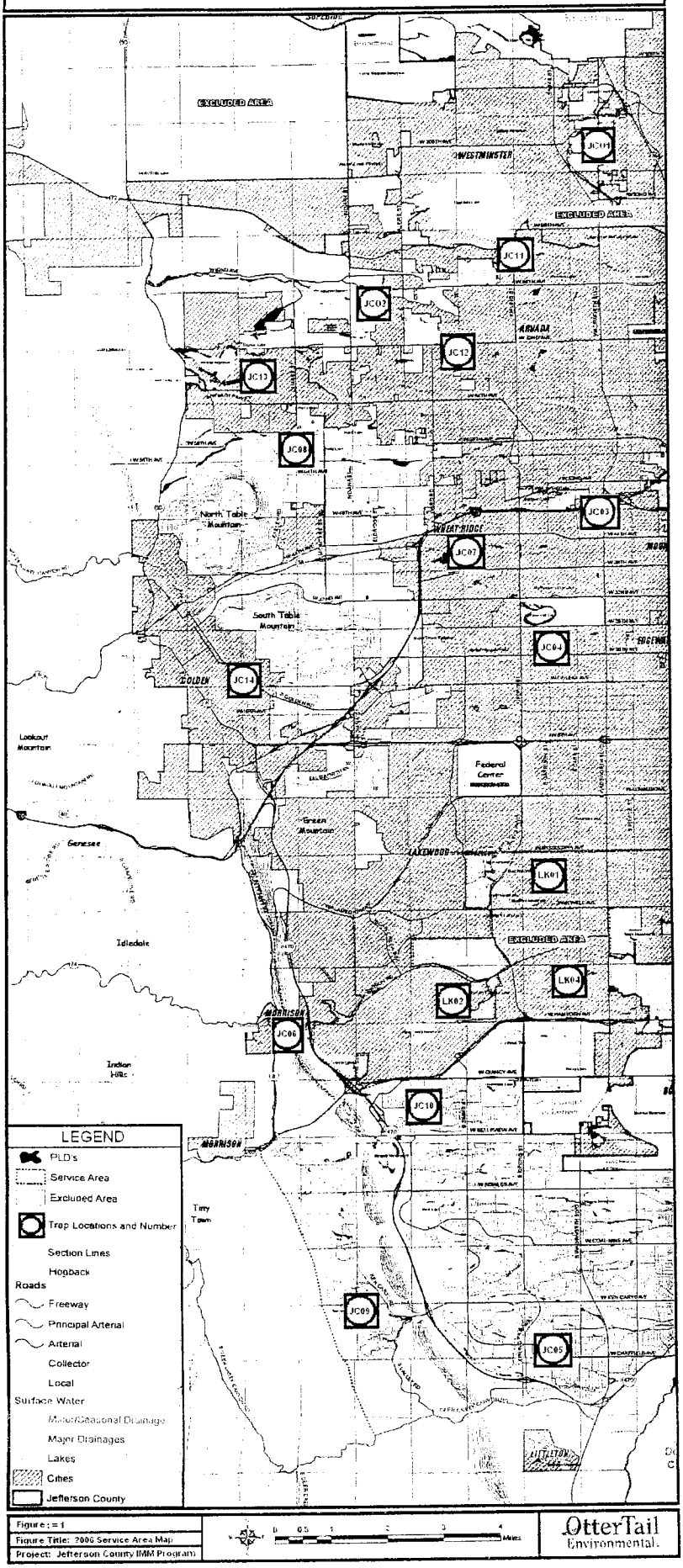
Acronym	Definition
CDC	Centers for Disease Control and Prevention
CDPHE	Colorado Department of Public Health and Environment and its employees
GIS	Geographical Information Systems
IMM	Integrated Mosquito Management
JCDHE	Jefferson County Department of Health and Environment and its employees
MSD	Material Safety Data
PLD	Potential Larval Development
WEE	Western Equine Encephalitis
WNV	West Nile Virus

Attachment A: Jefferson County IMM Program Service Area Map

Attachment B: CDPHE 2005 Mosquito Surveillance Plan

Attachment C: CDPHE West Nile Virus Mosquito Testing 2007 Sentinel Zone Protocol

2006 Integrated Mosquito Management Service Area Map



Attachment A

Attachment B

Colorado Department
of Public Health
and Environment

2005 Mosquito Surveillance Plan

3/23/05

A. Introduction:

Mosquito trapping and testing data provide both qualitative and quantitative information on arbovirus activity and potential human risk in an area. Advances in testing mosquito pools and calculation of minimum infection rates allow an integrated system based on mosquito surveillance to comprise a large part of the arbovirus surveillance strategy. Testing will focus on Culex species of mosquitoes, as these are the primary human vectors.

B. Plan Description:

Mosquito testing this season will remain essentially unchanged from 2004. It will again have a three-tiered approach utilizing, once again, *sentinel*, *floater*, and *permanent* mosquito trap sites. *Sentinel* sites (see attached *Mosquito Sentinel Site Guidelines*) will act as a longitudinal system to replace chicken flocks, provide population data based on a consistent trapping protocol, and allow testing for the three arboviruses present in Colorado (Western equine, St Louis, and West Nile). *Permanent* traps are the long-term mosquito trap sites that local surveillance / control operations maintain at their own discretion, above and beyond the sentinel sites agreed to by CDPHE. *Floater* traps are those that are deployed based on current surveillance data such as positive birds and horses or human cases to provide local risk assessment, and to support local control and prevention decisions.

Sentinel Traps

Unlike sentinel chicken flocks, whose sole purpose as a surveillance tool was to detect the presence of mosquito borne viruses, mosquito sentinel sites will also provide temporal mosquito population data, species make-up, and infection rate data. In addition, the long-term baseline data that will be collected, using a standardized trapping and testing protocol, can be used to accurately compare year-to-year changes in mosquito populations. It is hoped that this approach can be sustained and provide a long-term surveillance system for arbovirus activity into the future.

Mosquitoes will be collected at the sentinel sites weekly and all pools of *Culex* species will be tested for WNV using RT-PCR. A sample of submitted pools will also be tested for Western Equine Encephalitis (WEE) and St. Louis Encephalitis (SLE) viruses. This will permit accurate mosquito infection rates to be calculated. The number of sentinel mosquito trap sites will increase slightly (21 sites) from last season (15 sites) to upgrade the level of coverage across the state. As was the case last season, the selection of *sentinel* sites will

be determined by geographic location and the willingness of the local health agency, MAD, etc. to assume the responsibilities of maintaining a site during this and subsequent years.

Floater Mosquito Traps

"Floater" mosquito trap testing will integrate the qualitative virus data collected from dead birds, horse and human cases with the quantitative data mosquito trapping can provide. Local agencies will decide the need for trapping in their area, which should be driven by positive virus findings using other surveillance tools (positive dead birds or horses). These trap site locations are expected to change from year to year based on local surveillance needs.

Permanent Mosquito Traps

The third category of mosquito trapping includes *permanent* mosquito trap sites that local organizations and agencies operate and maintain, usually to monitor nuisance mosquito populations. The testing of Culex pools collected from these traps depends largely upon the conditions that exist at that site. Sampling and testing criteria will be discussed below (see C. 3. c. *Mosquito testing criteria*).

Surveillance Dates to Remember

Dead bird and mosquito surveillance activities will commence **May 1st**. Initial testing will focus on dead birds as they will be a more sensitive indicator of virus activity early in the season when mosquito populations and infection rates are low. Once virus is detected in an area, mosquito testing should be used to assess the level of risk for human transmission. Dead bird testing should be limited to no more than two or three WNV+ birds from the same area (i.e., approx. 5 mi^2 area or 1.25 mi. radius). Further bird testing does not provide additional information and expends limited lab resources. **Unlike last season however, corvid bird specimens meeting sampling criteria will be accepted beyond the July 1st deadline date for bird testing if no other WNV + birds or other surveillance tool indicates virus activity in that area.**

All Culex spp. mosquito pools from **sentinel** trap sites will be tested using RT-PCR at the CDPHE/LSD lab in Denver. However, mosquito pools from **sentinel** traps in Moffat, Mesa, and Delta counties will be sent to and tested at the regional laboratory in Grand Junction.

Prior to July 1st, Culex mosquito pools from *floater and permanent* traps should be tested at the CDPHE Laboratory Services Division (LSD) using RT-PCR because of its greater sensitivity.

Zone Trapping: During this early trapping period (May 1st to July 1st), in an effort to stretch diagnostic resources, surveillance participants are strongly encouraged to "*zone*" trap their **floater** and **permanent** trap captures. That is, co-mingle, by species, Culex mosquito captures from several floater or permanent traps in a general geographic area to increase the size of pools being tested. Because early season Culex numbers are not expected to be very high until later in the season, pooling captures from several traps will reduce the number of small mosquito pools that use the same test as would a pool of 50

mosquitoes. If a positive, co-mingled pool is detected, subsequent collections specific to a trap may be submitted in order to determine which trap the positive pool came from. **After July 1st**, when expanding Culex mosquito populations and increasing infection rates should offset the lower sensitivity of VecTest®, mosquitoes from these floater and permanent traps will be tested by VecTest® at the six regional laboratories. If WEE or SLE activity is observed, regional labs will be provided with multi-antigen VecTest® kits valid for all three viruses.

Participants in the surveillance program are encouraged to use limited mosquito testing resources responsibly. At this time there will be no testing quota assigned to each county. Depending on the intensity of virus activity that is detected, the risk of human exposure, planned control efforts, etc., diagnostic resources may be diverted to where they are needed most. Regional epidemiologists and CDPHE will be monitoring diagnostic resource usage, suggesting where testing is needed and curtailing usage when it's appropriate based on virus activity and the resources that are available for that region or county.

C. Plan Criteria:

1. **Sentinel Mosquito Trap Sites:**
   a. Obligations:
      1) Trapping Schedule: weekly from early May through September. In 2005, it is recommended that a trapping frequency of one night per week be observed, adding additional nights if needed due to inclement weather.
      2) Each site will consist of 2 CDC CO^2 baited, light traps and one gravid trap.
      3) Traps shall be properly maintained and baited appropriately (i.e., dry ice for light traps and straw-manure infusion for gravid traps). See "Mosquito Trapping and Handling Protocol" dated 4/29/04.
      4) Accurate records maintained (date, # trap nights, # mosquitoes by species, Culex population density, weather conditions, etc.)
      5) **Weekly** submission of *Culex* mosquito pools and data to LSD in Denver or if the pools are from Mesa, Delta, and Moffat counties, pools should be sent to the regional lab in Grand Junction.
      6) Calculation of Infection Rates
   b. Site considerations:
      1) Care should be used in selecting a sentinel trap site so they do not have to be moved to insure continuity of data. Site should be stable and easily accessible.
      2) Site has a history of significant *Culex* mosquito activity and close proximity to appropriate *Culex* breeding habitat
      3) Close proximity to human populations
      4) Availability of resting sites and protection from wind (e.g., culverts, fences, shrubbery, trees, sheds, etc.)
      5) Away from competing sources of light (light traps) or oviposition sites (gravid traps).
      6) Avoid areas where heavy, regular adult mosquito and/or insect control areperformed.
      7) History of past arbovirus activity.

      Note: "Sentinel" trap sites should remain at the same site each season; however, traps can be moved within a general area (< 0.5 mile) of similar habitat in order

to improve trap performance and are not required to hang from the same tree week after week.

c. Mosquito pooling suggestions:
   1) Sorted Culex mosquitoes of the same species from the two light traps can be co-mingled into common pools.
   2) Sorted mosquitoes from the gravid traps **cannot** be co-mingled with the same species from light traps. They must remain segregated in separate pools. Note: to calculate mosquito population density, take the total number of captured mosquitoes, by species, and divide by the number of trap nights.

2. **Floater Mosquito Traps**
   a. Location preferences: same as above, except that a confirmed, infected dead bird, horse, and/or human case has been reported in the area.
   b. Deployment considerations:
      1) Surveillance data will be used to support mosquito control activitivies .
      2) Trap(s) deployed for a minimum of two (2) weeks.
      3) Trap(s) operated a minimum of one night per week, adjusted to allow for inclement weather.
      4) Traps properly maintained and baited appropriately.
      5) Mosquito captures sorted and pooled. Culex species submitted to the appropriate regional lab or LSD lab for testing.
   c. Obligations:
      1) Trap data (e.g., trap nights, species, #'s, dates, Culex population density, weather conditions, etc.) maintained.
      2) Calculation of Infection Rates
      3) ***"Zone Trapping"*** see above.

3. **Permanent Mosquito Traps**
   a. Location preferences: same as those described for *sentinel* and *floater* traps.
   b. Deployment considerations: the selected location has a history of trapping at that site.
   c. Mosquito testing criteria:
      1) Many permanent traps have an established history and have collected an abundance of mosquito data over the years, but often have been deployed as a result of nuisance mosquito monitoring as opposed to arbovirus activity in which case, nuisance mosquito species will not be tested at this time
      2) Culex mosquitoes from permanent traps should be tested if the site is within 1.25 mi. of a WNV+ bird, horse or human case, a sustained increase in the Culex mosquito population is noted, and/or the site provides the only arbovirus surveillance data for that area.
   c. Obligations:
      1) Trap data (e.g., trap nights, spp. #'s, dates, Culex population density, weather conditions, etc.) maintained.
      2) Calculation of Infection Rates
      3) ***"Zone Trapping"*** see above.

orado Department
of Public Health
nd Environment

Attachment C

West Nile Virus Mosquito Testing 2007
SENTINEL ZONE PROTOCOL

Sentinel Zone Concept

The goal of surveillance for mosquito-borne viruses (WNV, SLE, WEE) is to determine the human transmission risk in order to implement control and prevention strategies. To facilitate a standardized method of data collection and insure continued operation during anticipated budget reductions, the mosquito sentinel site concept was launched in 2004. Although these sites have, in general, accurately assessed West Nile Virus (WNV) activity in the region some problems have been identified. Specifically there was concern that a single site provided a poor representation of the region's mosquito populations and, more importantly, a single site was vulnerable to environmental changes that could reduce its effectiveness.

To address the problems associated with a single trap location, the sentinel site concept is being modified into a "Sentinel Zone" approach. Within a defined "sentinel zone" mosquito traps are set in strategic locations to ensure successful trapping of adequate numbers of mosquitoes throughout the WNV season. If one trap or site becomes inoperable, mosquitoes from other traps in the zone can still be tested and the poor trap site can be relocated to another location within the zone.

Following standardized trapping and testing protocols, a sentinel zone would provide data about mosquito population density, species make-up and arboviral activity that is comparable over the years. Furthermore, this approach will provide sufficient mosquito testing volume for calculating accurate infections rates to allow control decisions to be made (i.e. to spray or not to spray) in time to have a public health benefit. All Culex species mosquitoes collected in the sentinel zones will be tested for WNV by RT-PCR and a sample of the submitted pools will also be tested for Western equine encephalitis (WEE) and St. Louis encephalitis (SLE).

Scope of Work

1) Defining a zone: Local agencies can determine where a zone will be located and what geographic area it will encompass within the following parameters:
   - ✧ A zone will be a circle with a minimum radius of 1.5 miles and a maximum radius of 5 miles
   - ✧ The center point of the circle will be used as the geo reference point for the zone (latitude/longitude).

2) Trap placement: Each zone will consist of five CO_2 baited light traps. Local agencies can determine where within the zone these traps are located.
   - ✧ Gravid traps or additional light traps can be maintained in the zone, however mosquitoes from other traps cannot be combined with the five zone traps for either testing or calculation of infection rates.
   - ✧ The same location for each trap must be used throughout a season. However, when necessary a non-producing trap can be moved to another location within the zone although this should be minimized and occur early in the season.

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3) Trapping schedule: To better reflect the WNV transmission season in Colorado AND ensure the majority of samples (≥60%) are tested during the peak of the transmission season the following schedule will be used. This schedule will result in a total of 100 trap/nights per zone for the season. Agencies can decide which night of the week to use although the same day should be used each week when possible
   - ✧ Weeks of June 4th through June 18th, 2007 – trap one night per week
   - ✧ Weeks of June 25th through August 6th, 2007 – trap two nights per week
   - ✧ Weeks of August 13th through August 27th, 2007 – trap one night per week

4) Mosquito Submission: The 5 traps within the sentinel zone could be viewed as one large mosquito trap from which the pooled infection rate and vector index will be calculated to assess human risk.
   - ✧ All female *Culex* mosquitoes trapped in a sentinel zone must be submitted to the state lab.
   - ✧ Submit mosquitoes in separate pools by *Cx. taralis* and other *Culex* (i.e. *Cx. pipiens, Cx erythrothorax, Cx resturans* combined).
   - ✧ Pool size can be up to 65 mosquitoes per vial.
     - ➢ CRITICAL -- the exact number of mosquitoes per vial must be recorded as this affects the infection rate calculations.
   - ✧ *Culex* mosquitoes captured in the 5 zone traps and the captures from the 2 nights per week during the peak of the trapping period should be co-mingled into the minimum number of pools. This will extend limited testing resources.

5) Data Maintenance: Accurate records of trapping results must be maintained to allow year-to-year comparisons and monitor trends in mosquito populations. Dramatic changes in *Culex* numbers or proportions can provide an early indication of increasing human risk.
   - ✧ It is **strongly** recommended that all mosquitoes in the traps be identified to species and that population data be maintained for all species.
   - ✧ At a minimum, data to maintain should include: trapping dates, # mosquitoes in the zone traps, *Culex* population density by species (*Cx tarsalis* and other *Culex* at a minimum), and weather conditions on night of mosquito trapping.
   - ✧ At the end of the season, a file with the sentinel zone data for the entire season (preferably in electronic format) must be sent to CDPHE.

6) Other Considerations:
   - ✧ Sentinel zones should contain areas that are suitable for *Culex* mosquitoes to breed and are in close proximity to human populations.
   - ✧ Sentinel zone traps should not be located in an area with regular, heavy spraying operations for adult mosquito or other arthropod control (orchards or agriculture areas). Areas with ongoing larviciding are OK.
   - ✧ Traps within a zone should have an availability of mosquito resting sites and protection from wind (i.e. culverts, fences, shrubbery, trees, sheds, etc) and should be placed away from competing sources of light and carbon dioxide (e.g., a stockyard).
   - ✧ Traps should be placed on the leeward side of obstacles if possible. For example, if the prevailing wind is generally from the west just after dusk, try to place the trap on the east side of trees, sheds, etc.

Exhibit B

JEFFERSON COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT

STATEMENT OF CONFIDENTIALITY

Clients of JCDHE have the right to protection of their personal and confidential information. This protection is required of all staff, business associates, independent contractors, students, volunteers, and any other individuals that access paper and electronic records. State statutes and Federal regulations require this protection by the department and individuals.

Appropriate and proper uses and disclosures of protected health information are described in the department's Policy 5 and the Notice of Privacy Practices. Every individual in the department that has access to protected health information is responsible for the proper use and disclosure of this information. (See the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C., regulations at 45 C.F. R. Parts 160 and 164.)

Specific state statutes and Federal laws govern the use and disclosure of information about clients enrolled in our alcohol and substance abuse programs. (See 42 U.S.C. 290dd-3 & 42 U.S.C. 290ee-3 and 42 CFR Part 2 for law and regulations.) Violation of these laws and regulations is a crime and will be reported.

I understand that violation of the department's privacy practices and policies is punishable by the county disciplinary policy and various state and Federal laws. I will not use or disclose any protected health information in violation of these policies, laws and regulations. I have received a copy of the department's Privacy Policy and the Notice of Privacy Practices.

Ed Fleming — 4-30-07

Staff / Business Associate / Independent Contractor / Student / Volunteer Signature — Date

Ed Fleming / OtterTail Environmental, Inc.

Print Name

Attachment B

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 03/29/2007

PRODUCER (303)740-9404 FAX (303)779-8376
Gaspar-Jones & Assoc., Inc.
7100 E. Belleview #101
P.O. Box 4516
Greenwood Village, CO 80155

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED OTTERTAIL ENVIRONMENTAL
1045 N FORD ST
GOLDEN, CO 80403

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Hartford Casualty Insurance Co	29424
INSURER B: Pinnacol Assurance Co	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWIT ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUI MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC	34SBAPC7671	06/23/2006	06/23/2007	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 300,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
A		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	34SBAPC7671	06/23/2006	06/23/2007	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
		GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
		EXCESS/UMBRELLA LIABILITY [ ] OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE [ ] RETENTION $				EACH OCCURRENCE AGGREGATE	$ $
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	4072127	07/01/2006	07/01/2007	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The cities of Arvada, Golden, Littleton, Lakewood and Wheat Ridge are held harmless as per the insured contract.

* 10 day notice on non-payment

CERTIFICATE HOLDER

Jefferson County Dept of Health & Environment
Attn: Jenni Springer
1801 19th Street
Golden, CO 80401

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Maureen Norejko

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

WESTMINSTER
COLORADO

Agenda Item 8 G

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Intergovernmental Agreement re: the Support of Geographic Information System Regional Map for Jefferson and Broomfield Counties

PREPARED BY: Steve Peterson, Commander
Karin Hermosillo, Communications Supervisor

Recommended City Council Action

Authorize the City Manager to sign an Intergovernmental Agreement (IGA) concerning the Implementation of a Geographic Information System (GIS) Regional Map for Jefferson and Broomfield Counties.

Summary Statement:

- The Jefferson County Emergency Telephone Service Authority (JCETSA) is a governmental entity that was formed by an Intergovernmental Agreement, October 28, 1983. The members of JCETSA are Jefferson County, Cities within Jefferson County, Broomfield City and County, and the Arvada, Evergreen, and West Metro Fire Protection Districts. The agreement delegates the members' authority concerning the collection of the funds from 9-1-1 emergency telephone charges and their expenditure on 9-1-1 services to JCETSA.

- In early 2006, JCETSA entered into an agreement with GeoComm, Inc. to develop, provide and maintain a 9-1-1 GIS regional map and database system with the support of all the JCETSA member agencies that are responsible for providing their jurisdiction's information for the program.

- JCETSA is funding and implementing the 9-1-1 geographic information system regional map and database, which is designed for use by, and in cooperation with, all Jefferson and Broomfield County emergency services agencies. JCETSA is providing all of the funding for hardware and software for each jurisdiction to access the mapping and information system. This mapping and database system will be invaluable to Westminster emergency services and to those emergency services outside the Jefferson or Broomfield County area who are responding to support the City of Westminster.

- Under the provisions of the IGA the City of Westminster has agreed to continue providing updated mapping and Geographic Information System (GIS) information to the Authority for use in updates on future map/database revisions. Additionally, member agencies are also responsible for providing staff to be trained for the "Train the Trainers" program. These trainers will then be responsible for training the appropriate staff on the use and operation of the system.

- The Intergovernmental Agreement has been approved by the City Attorney's Office.

Expenditure Required: $ 0

Source of Funds: N/A

Policy Issue

Should the City continue to participate in the JCETSA mapping and database project to enhance emergency services within Jefferson and Broomfield Counties?

Alternative

Council could choose to decline participation by the City of Westminster in the JCETSA mapping and database project. Staff does not recommend this alternative. Emergency events requiring multi-jurisdictional response are not uncommon within Jefferson and Broomfield Counties. Working from the same mapping and database and good communications are imperative to an efficient and an effective resolution to any emergency event.

Background Information:

The Jefferson County Emergency Telephone Service Authority (JCETSA), a governmental entity established pursuant to C.R.S. § 29-1-203, was formed by an Intergovernmental Agreement dated October 28, 1983 among the following members of JCETSA: Cities of Arvada, Golden, Lakewood, Wheat Ridge, Westminster; the City and County of Broomfield; the Arvada Fire Protection District, Evergreen Fire Protection District, West Metro Fire Protection District, and Jefferson County. The agreement delegated to JCETSA the members' authority concerning the collection and expenditure of funds for 9-1-1 services.

In early 2006, the members agreed to support the JCETSA in the development of the Jefferson/Broomfield County Geographic Information System (GIS) Regional Map. The JCETSA hired the software company, GeoComm, Inc. to develop the mapping and database system. The City of Westminster and all of the other entities provided the data and GIS information for their respective jurisdictions for the development of this system.

This new IGA provides for the continued maintenance, use, and support of the mapping and database, which is accomplished through the cooperation of the participating entities. The responsibility of the member agencies is to provide updated data and GIS information to support the program on an ongoing basis. In addition, member agencies are also responsible for providing staff to be trained for the "Train the Trainers" program. These trainers will then be responsible for training the appropriate staff on the use and operation of the system. Expenses related to this program are paid by JCETSA through the funds collected from the 9-1-1- emergency telephone charges.

This mapping and database system will be invaluable to Westminster emergency services in responding to an incident anywhere in Jefferson or Broomfield County. Conversely, emergency services outside of Jefferson or Broomfield County, who are responding to support the City of Westminster in an emergency, would have valuable up-to-date mapping and database information at their disposal.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

INTERGOVERNMENTAL AGREEMENT CONCERNING THE IMPLEMENTATION OF A GEOGRAPHIC INFORMATION SYSTEM REGIONAL MAP FOR JEFFERSON AND BROOMFIELD COUNTIES

THIS INTERGOVERNMENTAL AGREEMENT CONCERNING THE IMPLEMENTATION OF A GEOGRAPHIC INFORMATION SYSTEM REGIONAL MAP FOR JEFFERSON AND BROOMFIELD COUNTIES (this "Agreement") is entered into this 12th day of January, 2007 (the "Effective Date") by Jefferson County Emergency Telephone Service Authority ("JCETSA"), a governmental entity established pursuant to C.R.S. § 29-1-203, and the following members of JCETSA: the City of Arvada, the City of Golden, the City of Lakewood, the City of Wheat Ridge, the City and County of Broomfield, and the City of Westminster, each of which is a Colorado municipal corporation; the Arvada Fire Protection District, Evergreen Fire Protection District, West Metro Fire Protection District, each of which is a Colorado special district organized pursuant to Title 32, C.R.S.; and Jefferson County, a political subdivision of the State of Colorado. Hereinafter the JCETSA members listed above may be referred to collectively as the "Members" or "Parties" or individually as "Member."

RECITALS

A. Pursuant to C.R.S. § 29-11-100.5 *et seq.*, the Members have the authority to spend funds collected from the 9-1-1 emergency telephone charge (the "Funds") on costs directly related to the continued operation of the emergency telephone service and the emergency notification service ("9-1-1 Services"). The Members, along with other municipalities and special districts that are not Parties to this Agreement, formed JCETSA by intergovernmental agreement dated October 28, 1983 (the "JCETSA IGA"), and delegated their authority concerning the collection of the Funds and their expenditure on 9-1-1 Services to JCETSA; and

B. JCETSA has determined that there is a need for implementing within Jefferson and Broomfield Counties a 9-1-1 geographic information system regional map and database; and has contracted with GeoComm, Inc. ("GeoComm") to develop, provide, and maintain such map and database; and

C. Each Member possesses the data ("Member Data") and will possess the updates to Member Data ("Update Member Data") (hereinafter, "Member Data" and "Update Member Data" will be referred to collectively as the "Data") necessary for the successful development and maintenance of the 9-1-1 Map and Database (defined below); and

D. Each Member is desirous of providing such Data for integration and incorporation of such data into the 9-1-1 Map and Database; and

E. JCETSA and the Members are desirous of receiving such Data for the 9-1-1 Map and Database, in accordance with the terms and conditions set forth herein.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

ARTICLE I
DEFINITIONS

A. "9-1-1 Database" means the database created from the Data, and other data acquired by JCETSA for such purpose, which includes information that would not be considered public records as that term is defined by the Colorado Open Records Act, C.R.S. § 24-72-101 *et seq.*, ("Colorado Open Records Act").

B. "9-1-1 Map" means the map created from the Data, and other data acquired by JCETSA for such purpose, which includes information that would not be considered public records as that term is defined by the Colorado Open Records Act.

C. "9-1-1 Map and Database" means the 9-1-1 Map and the 9-1-1 Database, collectively.

D. "Jefferson County 9-1-1 Advisory Committee" means the committee which manages the technical development and maintenance for all the Members within JCETSA.

E. "Non-9-1-1 Database" means the version of the 9-1-1 Database from which only that information identified by Members or JCETSA as not being a public record has been redacted.

F. "Non-9-1-1 Map" means the version of the 9-1-1 Map from which only that information identified by Members or JCETSA as not being a public record has been redacted.

G. "Non-9-1-1 Map and Database" means the Non-9-1-1 Map and the Non-9-1-1 Database, collectively.

H. "Services" means the contractual responsibilities GeoComm has to Jefferson County Emergency Telephone Service Authority as set forth in the "AGREEMENT CONCERNING THE IMPLEMENTATION OF A GEOGRAPHIC INFORMATION SYSTEM REGIONAL MAP FOR JEFFERSON AND BROOMFIELD COUNTY," dated June 5, 2006, as the same may be amended from time to time (the "GeoComm Agreement").

ARTICLE II
TERM

This Agreement shall remain in effect from the Effective Date until termination by JCETSA or by a Member, as set forth below.

ARTICLE III
JCETSA'S RESPONSIBILITIES

JCETSA agrees that it is responsible for:

A. Paying GeoComm per the GeoComm Agreement, or other vendor authorized by JCETSA, for developing, providing and maintaining the 9-1-1 Map and Database, the Non-9-1-1 Map and Database, and any other authorized version thereof approved by JCETSA, and for all JCETSA authorized training by GeoComm.

B. Furnishing to the Members equipment and hardware approved and authorized by JCETSAB and required by GeoComm.

C. As determined by JCETSA, gathering information from all sources, other than Members, to be used to create the 9-1-1 Map and Database.

ARTICLE IV
MEMBER RESPONSIBILITIES

Each Member agrees that it is responsible for:

A. Furnishing such Data as JCETSA and the Members reasonably agree is necessary or desirable to effectuate the purposes and intent for the development and use of the 9-1-1 Map and Database of such quality so as to allow for the professional and timely performance of the Services by GeoComm;

B. Providing Update Member Data to GeoComm via Internet or on CD via mail and in the format agreed to in the GeoComm Agreement;

C. Identifying any information in the Member Data and Update Member Data that is not a public record as defined by the Colorado Open Records Act;

D. Making its employees available to receive training by GeoComm pursuant to the GeoComm Agreement and to, in turn, provide training to other appropriate Member employees and designated staff of Jefferson County fire protection districts for the Member's and such fire protection district's use of the 9-1-1 Map. Each Member will choose representatives to receive the training provided by the GeoComm. These representatives will, in turn, train the appropriate staff of such Member and the designated staff of Jefferson County fire protection districts regarding the 9-1-1 Map software.

E. Using its best efforts to provide Member Data and Update Member Data for the development and continued use of the 9-1-1 Map and Database.

ARTICLE V
OWNERSHIP OF PREPARED INFORMATION

A. Ownership and License Grant of the 9-1-1- Map and Database and Non-9-1-1 Map and Database

1. Each Member warrants it is the exclusive owner of and has the authority to provide the Data for incorporation into the 9-1-1 Map and Database. Each Member hereby grants to JCETSA the right to incorporate the Data provided by the Member into the 9-1-1 Map and Database.

2. JCETSA is the exclusive owner of all right, title and interest in and to the 9-1-1 Map and Database and in and to all updates, modifications and enhancements thereof.

3. Each Member is hereby granted by JCETSA a non-exclusive, royalty-free, perpetual (except as provided otherwise herein), non-assignable and non-sublicensable license to use the 9-1-1 Map solely for the Member's governmental 9-1-1 purposes.

4. Each Member is hereby granted by JCETSA a non-exclusive, royalty-free, perpetual (except as provided otherwise herein), non-assignable and non-sublicensable license to use the 9-1-1 Database solely in conjunction with the 9-1-1 Map and solely for the Member's 9-1-1 governmental purposes; provided, however, that the database layer comprised of the digital orthophotography product ("Product") licensed to JCETSA by the Denver Regional Council of Governments ("DRCOG") may only be used (i) as part of the GIS Regional Map or (ii) for the maintenance of the GIS Regional Map for 9-1-1 purposes.

5. Each Member is hereby granted by JCETSA, a non-exclusive, royalty-free, perpetual (except as provided otherwise herein) and non-assignable license to use the Non-9-1-1 Map and Database for the Member's non-9-1-1 governmental purposes, including responding to open records requests pursuant to the Colorado Open Records Act. Each Member agrees to only use or disclose, pursuant to Article VII. below, such Non-9-1-1 Map and Database for governmental non-9-1-1 purposes and disclosure to third persons under the Colorado Open Records Act, unless otherwise agreed in writing by JCETSA

6. Upon approval by JCETSA, JCETSA will pay for a software license from GeoComm for the software necessary for each Member to operate the 9-1-1 Map and Database for 9-1-1 purposes. However, each Member who wants to use the Non-9-1-1 Map and Database (except for the DRCOG Product which may only be

used as set forth in 4, above), for its governmental, non-9-1-1 purposes, must itself acquire and pay for the software and hardware necessary to operate the Non-9-1-1 Map and Database.

7. Members may not sell, license, sub-license or otherwise distribute or disclose the 9-1-1 Map or Database, or any portion or version thereof, to any third person (including any non-Member governmental entity), unless otherwise authorized in writing by JCETSA or as provided in Articles V and VII herein. Any requests for a copy of or access to the 9-1-1 Map or Database from a third person should be referred to JCETSA, except as provided in Articles V and VII, herein.

B. Limited Use of Member Data and Update Member Data

Each Member hereby grants JCETSA a non-exclusive, royalty-free, irrevocable, perpetual, non-assignable and non-sublicensable license to use the Data provided by the Member solely to integrate and incorporate such Data into the 9-1-1 Map and Database and the Non-9-1-1 Map and Database. Such license includes the right of JCETSA to sublicense the Data that is integrated and incorporated into the 9-1-1 Map and Database, if and when JCETSA licenses such 9-1-1 Map or Database to third persons, provided that the JCETSA Board of Directors has approved such license to such third person and such third person agrees in writing to protect the confidential nature of the non-public record information included in the Data.

ARTICLE VI
EQUIPMENT/HARDWARE

A. Each Member will select the equipment and hardware it wishes to use to operate and maintain the 9-1-1 Map and Database for 9-1-1 purposes. JCETSA will pay for such equipment and hardware and their installation to the extent it falls within the cost parameters set by JCETSA. The Member will be responsible for any equipment and hardware cost that exceeds the amount paid by JCETSA.

B. Each Member will allow GeoComm access to its facilities to assess the equipment and hardware needed to install, operate and maintain the 9-1-1 Map and Database.

C. Each Member will provide space for the equipment and hardware needed to install, operate and maintain the 9-1-1 Map and Database.

ARTICLE VII
CONFIDENTIALITY

A. All Parties agree that the Data are the proprietary information of the Member who submitted such Data ("Disclosing Member"). Because the Data supplied by the Members may contain confidential information that would not be considered a public record as defined by the Colorado Open Records Act, each Party agrees to

hold the Data of all other Parties in confidence and not to disclose or distribute the Data provided by a Disclosing Member without the prior written consent of the Disclosing Member. The Disclosing Member may, at its discretion, release to any person its Data, but not as part of the 9-1-1 Map or Database.

B. All Parties agree that the 9-1-1 Map and Database are the confidential and proprietary information of JCETSA. Because the 9-1-1 Map and Database may contain confidential information that would not be considered a public record as defined by the Colorado Open Records Act, each Party agrees to hold the 9-1-1 Map and Database in confidence and not to disclose or distribute 9-1-1 Map and Database without the written permission of JCETSA. Each Member will instruct its employees, agents, and representatives in writing not to disclose or distribute the 9-1-1 Map and Database to any third person without the written permission of JCETSA.

C. Each Member warrants that it has identified or will identify all non-public record information in the Data it has provided or will provide to GeoComm, or other authorized vendor, for inclusion in the 9-1-1 Map and Database. The Parties are entitled to rely on each Member making such identification and shall not be liable for disclosing any non-public record information in the Non-9-1-1 Map and Database that has not been so identified. At the request of a third person for disclosure of the 9-1-1 Map and Database, or any portion thereof or information contained therein, under the Colorado Open Records Act or otherwise, each Member agrees that the appropriate and only version of the 9-1-1 Map and Database to be disclosed and provided to such requesting third person is a copy, print-out or photograph of the Non-9-1-1 Map and Database.

D. If a third person seeks to legally compel a Member to disclose the 9-1-1 Map and Database, or any portion thereof, or the confidential Data of another Disclosing Member, or any portion thereof, by the filing in a court of competent jurisdiction a petition or other pleading to compel disclosure under the Colorado Open Records Act, or otherwise, the Member subject to the petition or other pleading, shall provide written notice of such petition or other pleading to JCETSA or such other Disclosing Member, as the case may be, as soon as practicable after receiving such petition or other pleading, so that JCETSA and/or such other Disclosing Member may take legal action to prevent such disclosure prior to any disclosure by such Member, at JCETSA's and such Member's cost. Provided that JCETSA or such other Disclosing Member, as the case may be, takes timely legal action to prevent such disclosure, Member agrees that it shall not disclose the 9-1-1 Map or Database or other Disclosing Member's confidential Data, or any portion thereof, unless otherwise authorized in writing by JCETSA or such other Disclosing Member or upon being thereafter ordered by a court of competent jurisdiction to make such disclosure. Provided further, that if JCETSA or such other Disclosing Member, as the case may be, does not take such timely legal

action to prevent such disclosure, Member may disclose such requested information in accordance with the Colorado Open Records Act.

E. The Members shall not decompile or reverse engineer the software containing the 9-1-1 Map or Database.

ARTICLE VIII
TERMINATION

JCETSA reserves the right to terminate this Agreement with a Member at any time (1) upon termination of the Agreement with GeoComm or other authorized vendor; or (2) for material breach of this Agreement by a Member, which breach is not cured within fifteen (15) days after such Member receives notification of such breach by JCETSA. Each Member has the right to terminate this Agreement as it relates to such Member upon the Member's withdrawal as a Member of JCETSA pursuant to the terms of the JCETSA IGA. Upon termination, whether by JCETSA or a Member, and upon the request of JCETSA, each affected Member will immediately cease to use the 9-1-1 Map and Database and the Non-9-1-1 Map and Database, and will return to the Jefferson County 9-1-1 Advisory Committee all copies and/or versions of the 9-1-1 Map and Database and the Non-9-1-1 Map and Database in its possession, custody or control.

ARTICLE IX
GENERAL TERMS AND CONDITIONS

A. Assignment. No assignment is permitted unless authorized in writing by the JCETSA Board of Directors. All successors in interest of a Party shall be bound by this Agreement.

B. Dispute Resolution. In the event of a dispute, all effected parties will meet in good faith to solve the dispute. In the event this process is not successful, all avenues provided by law or equity will be available.

C. Amendments. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of all Parties.

D. No Third Party Beneficiary. This Agreement is for the benefit of the Parties and their successors and permitted assigns, and nothing in this Agreement gives or should be construed to give any legal or equitable rights under this Agreement to any person or entity, other than the successors and assigns of the Parties

F. No Waiver. The failure of a party in any one or more instances to insist upon strict performance of any of the terms and provisions of this Agreement, or to exercise any option herein conferred shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms, provisions or options on any future occasion. No provision of the Agreement

shall be deemed waived, unless such waiver is made in writing and signed by a majority of the parties.

G. Severability. If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the party shall be construed and enforced accordingly to effectuate the essential intent and purposes of this Agreement.

H. Governing Law and Venue. This Agreement shall be construed in accordance with, and its performance governed by, the laws of the State of Colorado. Any legal action concerning the provisions hereof shall be brought in Jefferson County, Colorado.

I. Survival. The provisions of this Agreement that, by their sense and context, are intended to survive performance by the Parties shall also survive the completion, expiration, termination or cancellation of this Agreement.

J. **Disclaimer of Warranties. JEFFERSON COUNTY EMERGENCY TELEPHONE SERVICE AUTHORITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE SUITABILITY, RELIABILITY, COMPLETENESS, AVAILABILITY, TIMELINESS, OR ACCURACY OF THE 9-1-1 MAP AND DATABASE OR THE NON-9-1-1 MAP AND DATABASE. THE 9-1-1 MAP- AND DATABASE AND THE NON-9-1-1 MAP AND DATABASE ARE ALL PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. JEFFERSON COUNTY EMERGENCY TELEPHONE SERVICE AUTHORITY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE AND NON-INFRINGEMENT, WITH REGARD TO THE 9-1-1 MAP AND DATABASE OR THE NON-9-1-1 MAP AND DATABASE.**

K. Indemnification. To the extent permitted by law, including the Colorado Revised Statutes and the Constitution of the State of Colorado, each Member agrees to indemnify and hold JCETSA, and its officers, agents, partners and employees harmless from any claim or demand of any third person, including reasonable attorneys' fees, arising out of such Member's access to or use of the 9-1-1 Map and Database and/or the Non-9-1-1 Map and Database.

L. Execution in Counterparts. This Agreement may be executed in one or more counterparts, including by facsimile, which will be effective as original agreements of the Parties executing the counterpart.

M. Governmental Immunity. JCETSA and the Members, their officers, and their employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars ($150,000) per person and six hundred thousand dollars ($600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to JCETSA and the Members and their officers or employees.

L. No Multiple Fiscal Year Obligation. Because the Members have no obligation to make financial contributions to JCETSA or any other third party under the terms of this Agreement, nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20.

IN WITNESS WHEREOF, the parties have authorized and caused their duly authorized representatives to sign this Intergovernmental Agreement Concerning the Implementation of a Geographic Information System Regional Map for Jefferson and Broomfield Counties as of the date first stated above.

[Two Signature Pages]

Jefferson County Emergency Telephone Service Authority	City of Arvada
By:_____	By:_____
Its:_____	Its:_____
City of Golden	City of Lakewood
By:_____	By:_____
Its:_____	Its:_____

City of Wheat Ridge

By:_____

Its:_____

City of Westminster

By:_____

Its:_____

City and County of Broomfield

By: _____

Its:_____

Jefferson County

By:_____

Its::_____

Arvada Fire Protection District

By:_____

Its:_____

Evergreen Fire Protection District

By:_____

Its:_____

West Metro Fire Protection District

By:_____

Its:_____

Agenda Item 8 H

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Intergovernmental Agreement with Jefferson County and Other Participating Municipalities re County-wide Dog License Program

Prepared By: Mary McKenna, Animal Management Supervisor
Eugene Mei, Assistant City Attorney

Recommended City Council Action

Authorize the City Manager to sign an Intergovernmental Agreement substantially similar to the attached draft among Jefferson County and the Cities of Westminster, Arvada, Golden, Wheat Ridge and Lakewood regarding the Jefferson County–wide Dog License Program.

Summary Statement

- The Cities of Westminster, Arvada, Golden, Wheat Ridge and Lakewood are in the process of implementing ordinances requiring owners to license their dogs.
- One purpose of the Jefferson County-wide Dog License Program is to create a funding source for the construction of a new Table Mountain Animal Center (TMAC) from the dog licensing fees.
- The Intergovernmental Agreement governs the generation and distribution of revenue from the Jefferson County-wide Dog License Program.
- The Intergovernmental Agreement has been approved by the City Attorney's Office.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue

Should the City of Westminster enter into an Intergovernmental Agreement among Jefferson County and the Cities of Westminster, Arvada, Golden, Wheat Ridge and Lakewood relating to the generation and distribution of revenue from the Jefferson County-wide Dog License Program?

Alternative

Do not enter into the Intergovernmental Agreement. Staff does not recommend this course of action because the revenue will support the proposed construction of a new TMAC facility, and the current TMAC facility will soon be unable to meet the needs of the City.

Background Information

On May 14, 2007, City Council approved Councillor's Bill No.16 on second reading which adopted an ordinance requiring Westminster citizens to license their dogs, effective July 1, 2007. The City adopted the dog licensing ordinance in part so that it could participate in the new Jefferson County-wide Dog License Program. One purpose of that Program is to provide a funding source for the construction of a new TMAC facility. This Intergovernmental Agreement is a necessary companion to the dog licensing ordinance because it governs the generation and distribution of revenue from the Jefferson County-wide Dog License Program. The dog license program to be administered by Jefferson County will apply to both the Jefferson County and Adams County portions of Westminster and Arvada.

With respect to the generation of revenue, the fundamental principle of the Intergovernmental Agreement is that a participating entity and its citizens should contribute to the funding of a new TMAC facility in proportion to its jurisdiction's dog population relative to the total dog population of the Intergovernmental Agreement participants. The Intergovernmental Agreement achieves this goal by establishing minimum contribution levels for each jurisdiction proportional to its dog population that must be received each year to ensure an adequate baseline revenue stream is generated. For each program year, all fees paid by the citizens to license their dogs are deposited into a dog licensing fund administered by Jefferson County. If the total amount of dog license fees collected for that program year from Westminster citizens does not meet the minimum contribution requirement, then the City will have to pay the difference to Jefferson County for deposit into the dog licensing fund. If the minimum contribution requirement is exceeded, the City is refunded the amount exceeding the minimum contribution requirement.

With respect to the distribution of revenue, the Intergovernmental Agreement establishes that Jefferson County is entitled first to recoup its staff and administrative costs incurred in the operation of the Jefferson County-wide Dog License Program. The remaining monies are then to be used for the construction of the new TMAC facility, or capital improvements or maintenance of the current facility.

Should the City elect to terminate its participation in the Intergovernmental Agreement, the City would have to pay its share of the minimum contribution requirement for that program year prior to termination of the agreement. In addition, if a loan was taken out for construction of the new TMAC facility, the City would have to pay its share of the loan prior to termination of the agreement

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

INTERGOVERNMENTAL AGREEMENT
BETWEEN JEFFERSON COUNTY, THE CITY OF ARVADA, THE CITY OF LAKEWOOD, THE CITY OF WHEAT RIDGE, THE CITY OF GOLDEN, AND THE CITY OF WESTMINSTER FOR THE IMPLEMENTATION OF A COUNTY-WIDE DOG LICENSING PROGRAM

THIS AGREEMENT, dated for reference purposes only this ___ day of June, 2007, is made and entered into by and between the **COUNTY OF JEFFERSON, STATE OF COLORADO,** a body politic and corporate (the "County"); the **CITY OF ARVADA,** a municipal corporation ("Arvada"); the **CITY OF LAKEWOOD,** a municipal corporation ("Lakewood"); the **CITY OF WHEAT RIDGE,** a municipal corporation ("Wheat Ridge"); the **CITY OF GOLDEN,** a municipal corporation ("Golden"); and the **CITY OF WESTMINSTER,** a municipal corporation ("Westminster");

WITNESSETH

WHEREAS, C.R.S. Section 30-15-101(1) authorizes the board of county commissioners of each county to provide for licensing of dogs and other animals; and

WHEREAS, C.R.S. Section 30-15-101(2) authorizes counties and municipalities to enter into an intergovernmental agreement to provide for the control, licensing, impounding, or disposition of pet animals or to provide for the accomplishment of any other aspect of a county or municipal dog control or pet animal control licensing resolution or ordinance; and

WHEREAS, C.R.S. Section 31-15-401(m)(I) and Colorado Constitution Article XX, Section 6 authorize municipalities to regulate and control animals within the municipality including, but not limited to, licensing, impoundment, and disposition of impounded animals; and

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S. permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S. authorizes governments to contract with one another to provide any function, service, or facility lawfully authorized to each of the contracting units through the establishment of a separate legal entity; and

WHEREAS, the above-referenced parties entered into an intergovernmental agreement dated January 1, 1998, that established a separate legal entity known as the Table Mountain Animal Center ("TMAC").

WHEREAS, it would be in the best interest of all of the above-referenced parties to participate in a county-wide licensing program in order to provide county-wide tracking of dogs to increase the number of dogs returned to their owners and to provide increased funding for the construction of a new facility for TMAC after coverage of administrative costs; and

WHEREAS, the entities agree that each jurisdiction and its residents should contribute toward the funding of the TMAC in equal proportion to the number of dogs in their jurisdiction;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereinafter contained, the receipt and sufficiency of which are hereby confessed, it is understood and agreed as follows:

I. COUNTY-WIDE LICENSING PROGRAM

A. ORDINANCE ADOPTION. Each party shall adopt an ordinance which establishes a dog licensing program and penalties within its jurisdiction. The dog licensing ordinances adopted by the parties shall be consistent with the County ordinance concerning licensing of dogs; however, each jurisdiction has discretion to adopt its own penalties.

B. ENFORCEMENT. Each jurisdiction shall be responsible for enforcement of the penalties for its dog licensing ordinance within their own jurisdiction. Each jurisdiction agrees to actively pursue enforcement of said ordinance.

C. DELEGATION OF AUTHORITY. The parties hereby delegate authority to the County to issue licenses and collect fees for said dog licenses on behalf of all parties. The dog licenses shall all be identified as "County Dog Licenses."

II. FUNDS AND OPERATIONS

A. DESIGNATION OF FUNDS. The County agrees that all monies paid to the County for the licensing of dogs within the jurisdictions of all parties, shall be placed into a designated fund (the "Dog Licensing Fund") except the funds due to the County as provided in Article II, Section B.

B. COUNTY'S ADMINISTRATIVE COSTS. On August 1st of each year this Agreement is in effect, the County shall provide each party with a statement of the County's administrative costs directly attributable to the operation of the County-Wide Dog Licensing Program from July 1st through June 30th of each year, and the projected administrative costs for the upcoming year. The County shall then transfer the amount of the County's administrative costs to the County general fund to reimburse the County for its administrative costs. The County shall be entitled to payment for the cost of, at a maximum, two full-time employees including salary, benefits and overhead. The County employee positions shall be Administrative Specialist I or II positions as currently defined by the County or equivalent positions. The County shall also be entitled to the cost of tags, mailers (for new tags and renewals), postage, printing, maintenance/updates of dog licensing software and miscellaneous office supplies, and any other costs directly attributable to the operation of the County-Wide Dog Licensing Program.

C. DISBURSEMENT OF FUNDS. Except for the funds paid to the County general fund as provided in Article II, Section B, the funds contained in the Dog Licensing Fund shall be retained by the County to be used for the construction of a new facility for the TMAC which replaces the existing facility at 4105 Youngfield, Wheat Ridge, Colorado, or capital improvements or maintenance of the current facility. This includes but is not limited to roof, plumbing or ventilation repair and cages, kennels or equipment required to comply with Pet Animal Care Facility Act regulations. Upon completion of a new facility and final payment of all costs for the design and construction of the new facility, the parties shall amend this Agreement to provide for permissible uses of future revenues. If no agreement is reached as to the use of future revenues within three (3) months, the revenue, except for the County's Administrative Costs as provided in Article II, Section B, shall be returned to the parties as provided in Article II, Section E, Surplus Revenues, without the requirement of approval of the other parties.

D. FUNDING DETERMINATIONS/LOAN LIMITS/WEIGHTED VOTING. Except as provided in Article II, Section B and C, funds shall not be disbursed from the Dog Licensing Fund for

any purpose unless approved by a majority of the parties' City Managers and the County Administrator or their designees (hereinafter "Manager or Managers"). Further the parties agree that no loans shall be obtained obligating the funds raised from the County-Wide Licensing Program to be used for payments on the loan or to secure the loan without the unanimous consent of the parties' Managers. If the Managers approve the use of the funds in the Dog Licensing Fund to secure or make payments on a loan, the parties agree that this Agreement shall not be terminated or any party's participation terminated until the loan has been paid in full or that party's share of the loan has been paid in full. A party's share of the loan shall be directly proportional to ratio of its Estimated Dog Population to the total Estimated Dog Population, as that term is defined in Subparagraph IV.A.2. of this Agreement. Any such loan shall comply with the requirements of Colorado Constitution Article X, Section 20. If there are other funds available for the construction of the facility, such as the TMAC capital improvement fund, such funds should be considered in any future funding of a facility.

Each Manager shall have one vote unless any Manager requests a weighted vote. For weighted voting, each manager's vote would be weighted based on the number of households in each jurisdiction relative to the total number of households in all of the parties' jurisdictions. Arvada's and Westminster's jurisdictions shall include the area within their respective jurisdictions that is within Adams County and Jefferson County. Weighted voting shall not be used to alter the revenue formulas as provided in Articles IV and V.

E. REVENUES. The County may return any revenues generated by the County-Wide Licensing Program to the respective parties hereto in the same proportion that said parties' residents and the parties contributed to the Dog Licensing Fund if approved by a majority of the parties as provided in Article II, Section D.

III. BOOKS AND RECORDS

RECORD KEEPING. The County shall maintain adequate and correct accounts of the funds, which accounts shall be open to inspection at any reasonable time by the parties hereto, their attorneys, or their agents.

IV. REPORTS

A. DEFINITIONS.

1. *Compliance Rate* shall mean the rate calculated by dividing
   a. the number of licenses issued for dogs residing in a jurisdiction during a one year period by
   b. the Estimated Dog Population in each jurisdiction for the same period.

The first reporting period shall be from July 1, 2007, or the date the County begins issuing dog licenses under the terms of this Agreement, until June 30, 2008, and the remaining periods shall be from July 1st to June 30th of each subsequent year. The number of licenses issued for dogs residing in Westminster and Arvada shall include the households in their respective jurisdictions that are within Adams County and Jefferson County.

2. *Estimated Dog Population* means
   a. the percentage of households harboring one or more dogs, obtained from the most current U.S. Pet Ownership and Demographic Source Book published

by the American Veterinarian Medical Association (currently 43.5%); multiplied by

b. the number of households in a jurisdiction, as reported in the most current publication by the State Demographer's Office (the calculation of estimated households for Westminster and Arvada shall include the households in their respective jurisdictions which are within Adams County and Jefferson County); multiplied by

c. the average number of dogs per household for each household with a dog, obtained from the most current U.S. Pet Ownership and Demographic Source Book (currently 1.52).

B. ANNUAL REPORT. By August 1st of each year, the County shall prepare and present to the respective City Councils and the Board of County Commissioners of Jefferson County an annual report of the number of animals licensed during the prior year in each party's jurisdiction, the estimated household population of each jurisdiction as reported in the most current publication by the State Demographer's Office, the Compliance Rate for each jurisdiction and the funds collected during the prior year. A sample of the report format is attached as Exhibit A.

C. REPORTS REQUESTED BY THE PARTIES. The County shall also render to the parties hereto, at reasonable intervals, such reports and accountings as the parties hereto may from time to time request.

V. REVIEW OF REVENUES AND JURISDICTION COMPLIANCE

A. REVIEW OF REVENUES AND COMPLIANCE BY JURISDICTION. If during the reporting period ending June 30, 2008, there is less than ten per cent (10%) compliance by the residents in a jurisdiction, the respective jurisdiction shall pay to the County for placement in the Dog Licensing Fund an amount equal to the difference between the funds that the Dog Licensing Fund would have received if there was ten per cent (10%) compliance at the spayed dog licensing rate and the amount of dog license fees actually collected from the residents of that jurisdiction. If during the second full reporting period (July 1, 2008 to June 30, 2009), there is less than twenty per cent (20%) compliance by the residents in a jurisdiction, the respective jurisdiction shall pay to the County for placement in the Dog Licensing Fund an amount equal to the difference between the funds that the Dog Licensing Fund would have received if there was twenty per cent (20%) compliance at the spayed dog licensing rate and the amount of dog licensing fees actually collected from the residents of that jurisdiction.

The ten percent (10%) and twenty percent (20%) Compliance Rates set forth above shall be defined as the Minimum Compliance Rates for the first and second year this Agreement is in effect respectively. When the annual report is distributed at the end of the second full year and every year thereafter, a new Minimum Compliance Rate shall be set for the following year. If all the parties' jurisdictions exceed a Minimum Compliance Rate of twenty percent (20%) according to the annual report, the new Minimum Compliance Rate for the following year shall be the lowest Compliance Rate of all the parties in the Annual Report. If any party's jurisdiction fails to meet the Minimum Compliance Rate set for a reporting period, the party shall pay to the County for placement in the Dog Licensing Fund an amount equal to the difference between the funds that the Dog Licensing Fund would have received if the Minimum Compliance Rate was met at the spayed dog licensing rate, and the amount of dog license fees actually collected from the residents of that jurisdiction.

Any party whose jurisdiction has a Compliance Rate above the Minimum Compliance Rate during any reporting period shall be reimbursed for the amount of funds the County received from the residents of their jurisdiction which exceeded the amount of funds the County would have received if the Minimum Compliance Rate was met but not exceeded during that reporting period.

B. APPROPRIATION AND PAYMENT OF FUNDS. The parties agree to pay the amounts set forth in Article V, Section A, to the County for placement in the Dog Licensing Fund by January 31st of the year following which the Annual Report determined a party failed to meet the Compliance Rate, provided, however, that all payments to the Dog Licensing Fund pursuant to this Agreement are subject to annual appropriation by the County and municipal
parties hereto in the manner required by statue. It is the intention of the parties that no multiple-year fiscal debt or other obligation be created by this Agreement.

VI. POWER TO CONTRACT WITH NON-PARTIES

It is mutually agreed that the County shall have the authority to contract with other cities or towns to provide dog licensing services. The funds collected from the other cities or towns shall be placed in the Dog Licensing Fund and used in accordance with the terms of this Agreement. The County shall have the discretion to require said city or town to comply with the Minimum Compliance Rate provisions set forth in Article V. Nothing herein permits a non-party contracting with the County for dog licensing services to use TMAC facilities unless specifically authorized by the Intergovernmental Agreement creating TMAC dated January 1, 1998, or approved by a majority of the Managers.

VII. DEFAULT IN PERFORMANCE

In the event any party fails to make the payments to the County when due as provided by Article V, or to perform any of its covenants and undertakings under this Agreement, the County shall cause written notice to be given to the governing body of the defaulting party of the termination of the party's participation in the Agreement, unless such default is cured within thirty (30) days from the date of such notice. Upon failure to cure said default within said thirty (30) day period, the defaulting party shall no longer be a party to the Agreement. The County shall no longer provide licensing services to said defaulting party and said defaulting party shall thereafter have no voting rights as provided in Article II, Section D. The defaulting party whose participation is terminated under this section of this Agreement shall forfeit all right, title, and interest in and to any funds in the Dog Licensing Fund which said party may otherwise have been entitled upon the dissolution of this Agreement. If a party is in default of this Agreement for any reason other than nonappropriation of funds for payment to the County for placement in the Dog Licensing Fund, termination of the defaulting party's participation in the Agreement shall not relieve the defaulting party of the obligation to make the payments to the County for placement in the Dog Licensing Fund as provided in Article V that were due prior to the defaulting party's termination. This Section is not intended to limit the right of any party under this Agreement to pursue any or all other remedies it may have for breach of this Agreement. A party who fails to make the payments required by Article V for any reason other than nonappropriation of funds shall be obligated to pay all costs of collection of said payment, including reasonable attorneys' fees.

Upon termination of the defaulting party, the other parties may terminate this Agreement by a majority vote of the Managers as provided in Article II, Section D.

VIII. TERM, RENEWAL AND TERMINATION OF AGREEMENT

A. TERM AND RENEWAL OF AGREEMENT. This Agreement shall be in full force and effect on the date that all parties have executed this Agreement and the last of all the parties has adopted a licensing ordinance. The County shall begin issuing licenses and collecting fees for all parties upon written notice by each party that it has executed the Agreement and adopted a dog licensing ordinance. This Agreement shall automatically renew for a one (1) year term on July 1 of each subsequent year unless any party gives notice of its intent to terminate this Agreement before April 1st of the year the party seeks to terminate the Agreement. Termination of this Agreement for any reason other than a party's failure to appropriate funds shall not relieve the parties of their obligation to make the payments to the County for placement in the Dog Licensing Fund as provided in Article V for the time periods prior to the termination of this Agreement. Funds shall be due for the failure to meet the Compliance Rate for all years prior to termination including the final year prior to termination.

B. TERMINATION BY WRITTEN NOTICE. Notwithstanding Article VIII, Section A, a party may terminate its participation in this Agreement with or without cause after ninety (90) days notice to each of the other parties. Termination of the Agreement for any reason other than nonappropriation of funds shall not relieve the terminating party of the obligation to make the payments to the County for placement in the Dog Licensing Fund as provided in Article V. The amount owed shall be prorated for the percentage of the one-year term the terminating party was a party to this Agreement.

C. DISBURSEMENT OF FUND UPON TERMINATION. If this Agreement is terminated, the County shall retain any funds held in the County Wide Licensing Funds which funds shall be disbursed by the County as provided in Article II, Section B, C, D and E. This provision and the provisions of Article II, Section B, C, D and E, shall survive termination of this Agreement.

IV. AMENDMENT

This Agreement may be amended at any time in writing by agreement of two-thirds of the parties to this Agreement subject to the approval of the various governing bodies.

X. SEVERABILITY CLAUSE

If any provisions of this Agreement or the application thereof to any party or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of the Agreement are declared to be severable.

XI. COUNTERPARTS

This Agreement may be signed in counterparts, and each counterpart shall be deemed an original, and all the counterparts taken as a whole shall constitute one and the same instrument. The Agreement shall not be effective until executed by all parties.

XII. NO THIRD PARTY BENEFICIARIES

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not named as parties, limit in any way governmental immunity and other

limited liability statutes for the protection of the parties, nor limit the powers and responsibilities of any other entity not a party hereto. Nothing contained herein shall be deemed to create a partnership or joint venture between the parties with respect to the subject matter hereof.

XII. NO GENERAL OBLIGATION INDEBTEDNESS

Because this Agreement will extend beyond the current fiscal year, the parties understand and intend that the obligation of the parties to pay any funds hereunder constitutes a current expense of the parties payable exclusively from the parties' funds and shall not in any way be construed to be a general obligation indebtedness of the parties within the meaning of any provision of Article XI of the Colorado Constitution, or any other constitutional or statutory indebtedness. None of the parties has pledged the full faith and credit of the state, or the parties to the payment of the charges hereunder, and this Agreement shall not directly or contingently obligate the parties to apply money from, or levy or pledge any form of taxation to, the payment of any funds.

XIV. NONAPPROPRIATION

The payment of parties' obligations in fiscal years subsequent to the current year is contingent upon funds for this Agreement being appropriated and budgeted. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement, the nonappropriating party's participation in this Agreement shall terminate. The parties' fiscal years are currently the calendar year.

XV. GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Colorado and venue shall be in the County of Jefferson, State of Colorado.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

JEFFERSON COUNTY,
STATE OF COLORADO

_____
Deputy Clerk and Recorder

By_____
Jim Congrove, Chairman
Board of County Commissioners
Date:_____

APPROVED AS TO FORM:

_____
Gay B. Ummel
Assistant County Attorney

ATTEST:

CITY OF ARVADA,
STATE OF COLORADO

_____
City Clerk

By_____
Name & Title:_____
Date:_____

APPROVED AS TO FORM:

_____
Office of the City Attorney

ATTEST:

CITY OF LAKEWOOD
STATE OF COLORADO

_____
City Clerk

By_____
Name & Title:_____
Date:_____

APPROVED AS TO FORM:

_____
Office of the City Attorney

ATTEST:

CITY OF GOLDEN
STATE OF COLORADO

_____
City Clerk

By_____
Name & Title:_____
Date:_____

APPROVED AS TO FORM:

_____
Office of the City Attorney

ATTEST:

CITY OF WHEAT RIDGE
STATE OF COLORADO

_____
City Clerk

By_____
Name & Title:_____
Date:_____

APPROVED AS TO FORM:

_____
Office of the City Attorney

ATTEST:

CITY OF WESTMINSTER
STATE OF COLORADO

_____
City Clerk

By_____
Name & Title:_____
Date:_____

APPROVED AS TO FORM:

_____
Office of the City Attorney

Exhibit A

Example Report
2007 Dog License Revenue
July 1, 2007 to June 30, 2008
(Submitted to cities, August 1, 2008)

	Col C Households	Col D # Dog Owning Households (.435 x total households)	Col E Total Dogs by Jurisdiction (1.52 Dogs/Dog Owning Household)	Col F Actual Licenses Issued by Jurisdiction	Col G Actual Compliance (Col F/Col E)	Col H 10% Compliance Rate	Col I #Licenses Above (-)or Under (+)	Col J Spayed Rate of License Fee for Current Year	Amount Owe (+) or Refund (-) (Col I * Col J)		Actual Amount Collected (July 1, xxxx to June 30, xxxx) - Payable by January 31, xxxx)
Arvada	41,530	18,066	27,460	2,800	10.20%	2,746	-54	$15	-$811	Refund	xxx
Golden	7,721	3,359	5,105	530	10.38%	511	-19	$15	-$292	Refund	xxx
Uninc. Jeffco	74,434	32,379	49,216	4,000	8.13%	4,922	922	$15	$13,824	Owe	xxx
Lakewood	64,755	28,168	42,816	4,300	10.04%	4,282	-18	$15	-$276	Refund	xxx
Westminster	43,412	18,884	28,704	2,900	10.10%	2,870	-30	$15	-$444	Refund	xxx
Wheat Ridge	15,098	6,568	9,983	1,000	10.02%	998	-2	$15	-$26	Refund	xxx

Total Revenues =	xxxxx
Less Administration costs (actual) =	$105,000
Less Refunds =	$ 1,849
Plus Payments =	$ 13,824
Fund Contribution for 2007-2008	

WESTMINSTER

COLORADO

Agenda Item 8 I

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Intergovernmental Agreement with the Crestview Water and Sanitation District

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

Recommended City Council Action

Authorize the Mayor to sign an Intergovernmental Agreement (IGA) with Crestview Water and Sanitation District to provide a gravity sewer connection from the Crestview sanitary sewer collection system to the City of Westminster sewer system in the vicinity of 70th Avenue and Federal Boulevard.

Summary Statement

- City Staff and representatives of Crestview Water and Sanitation District met recently to discuss the possibility of eliminating duplication of sewer services in the Federal View Subdivision area by connecting a portion of the Crestview collection system to the Westminster sewer system.

- The new sewer connection will be built as a part of the Urban Drainage & Flood Control District (UD&FCD) project currently in design. The Crestview sewer will be diverted into the Westminster system at the northern edge of the UD&FCD project.

- Westminster shall assume the day-to-day operations and maintenance of the new connection and of all existing pipelines within the Federal View Subdivision. Costs for routine repair and maintenance shall be the responsibility of Westminster. Any capital replacements, repairs or improvements shall be the responsibility of Crestview.

- Crestview staff have reviewed the IGA and the Crestview Board of Directors formally approved it at their May 9, 2007 Board of Directors meeting. The IGA was signed by their officials at that time.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue

Should the City enter into an Intergovernmental Agreement (IGA) with Crestview Water and Sanitation District to provide for a sewer connection from the Federal View Subdivision located in the area of 70th Avenue and Federal Blvd.

Alternatives

Reject, modify, or delay the approval of the IGA with the Crestview District and associated sewer connection project work to a later time. Given the benefits of the IGA to both the City and the District, none of these alternatives are recommended.

Background Information

Representatives of the Crestview Water and Sanitation District have agreed to construct a sewer connection between the systems based on the terms and conditions set forth in the IGA (attached). The City would take over these 25 sewer services from the Crestview District in order to assume utility control of the sanitary sewer system in this area as planning develops for the regional transit oriented development project in the area of 70th Avenue and Federal Blvd.

The IGA states that the City will be responsible for the day-to-day operations and maintenance of the new connection and of all existing pipelines within the Federal View subdivision. Costs for routine repair and maintenance shall be the responsibility of Westminster. Any capital replacements, repairs or improvements shall be the responsibility of Crestview.

All 24 existing sewer customers within the Federal View subdivision, as identified on attached, shall remain customers of Crestview. All customers shall be billed by Crestview at the same rate Crestview charges similarly situated customers. Crestview shall provide payment to Westminster, Utility Billing Division, in an amount equal to the revenue received within sixty days after date of billing.

Westminster shall be responsible for conveyance of the flows from the Federal View subdivision area to the Metro Wastewater Reclamation District and for payment of the flows. Crestview agrees to enforce its regulations regarding the use of its sewer system in a manner that protects Westminster and the Metro District.

The Utilities Division has previously entered into other intergovernmental agreements with the Crestview Water and Sanitation District to provide water and sanitary sewer connections between both agencies and has utilized these agreements to benefit area residents.

The attached IGA, authorizing the sewer connection between the City of Westminster and Crestview Water and Sanitation District, has been reviewed by Utilities Staff, the City Attorney's Office, and Crestview staff. The Board of Directors of the Crestview Water and Sanitation District approved this IGA at its Board meeting on May 9, 2007. Metro Wastewater Reclamation District staff have also reviewed the IGA and have indicated that they do not have any concerns with the proposed agreement.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into this _____ day of _____ 2007, by and between the **CITY OF WESTMINSTER, COLORADO**, hereinafter referred to as "Westminster," and **CRESTVIEW WATER AND SANITATION DISTRICT**, hereinafter referred to as "Crestview" and hereinafter referred to collectively as "Parties."

WITNESSETH

WHEREAS, the parties are authorized by Colorado Constitution, Article XIV, Section 18 and C.R.S. Section 29-1-201 et seq., to enter into cooperative agreements to provide to each other any function, service, or facility lawfully authorized to each of them; and

WHEREAS, both Westminster and Crestview operate sanitary sewer systems for the benefit of their respective citizens and customers; and

WHEREAS, said Parties deem it desirable to eliminate duplication of services in the Federal View Subdivision; and

WHEREAS, in order to facilitate a sewer connection between the respective systems, it is the desire of the Parties to construct a sanitary sewer connection between their systems, upon the terms and conditions hereinafter appearing.

NOW, THEREFORE, in consideration of the covenants and agreements below, the parties agree as follows:

1. DESCRIPTION OF PROJECT. The project is to provide a gravity sewer connection to allow the Crestview sanitary sewer collection system from the Federal View Subdivision to flow into the Westminster sewer system, along Federal Boulevard in the vicinity of 70th Avenue and Federal Boulevard, or at another location mutually agreed on by both parties Attachment 1 is a two page map of the existing sewer collection system owned by Crestview in the Federal View Subdivision. The sewers included and excluded from this agreement are as noted on the legend of said Attachment 1, which is hereby incorporated herein by this reference.

2. DESIGN AND CONSTRUCTION. Westminster shall design and construct at its sole cost the facilities required to effectuate the sewer connections. Crestview shall approve the design of said facilities before the project is let for bid.

The sewer connection will be built to the current Westminster specifications for connecting and handling sanitary sewer flows.

3. MAINTENANCE. Westminster shall assume the day-to-day operations and maintenance of the new connection and of all existing pipelines within the Federal View Subdivision, upstream (north) of Crestview manhole FV-1. Costs for routine repair and maintenance shall be the responsibility of Westminster. Any capital replacements, repairs or improvements shall be the responsibility of Crestview.

4. METERING AND RATES. All 24 existing sewer customers within the Federal View Subdivision, as identified on Attachment 2, shall remain customers of Crestview. All customers shall be billed by Crestview at the same rate Crestview charges similarly situated customers. Crestview shall provide an accounting of all revenues received within thirty (30) days after date of billing. Crestview shall provide payment to Westminster, Utility Billing Division in an amount equal to the revenue received within sixty (60) days after date of billing.

5. OPERATION. Westminster shall be responsible for conveyance of the flows from the Federal View Subdivision area to the Metro Wastewater Reclamation District and for payment of said flows. Crestview agrees to enforce its regulations regarding the use of its sewer system in a manner that protects Westminster. Westminster shall be responsible for conveyance of the flows from the Federal View Subdivision area to the Metro District and for payment of treatment charges for said flows.

Westminster and Crestview are both bound by the Metro District's "Rules and Regulations Governing the Operation, Use, and Services of the System." Crestview agrees to enforce the applicable rules and regulations of the City and Metro District in the Federal View Subdivision portion of the sanitary sewer collection systems.

Crestview agrees to prohibit any use of the Federal View Subdivision portion of the sanitary sewer collection systems that would (1) violate any Federal minimum pretreatment standards and requirements or (2) violate any user discharge limits promulgated by the Metro District.

6. NEW CONNECTIONS. Crestview agrees to prohibit any new connections to the Crestview sanitary sewer collection system within the Federal View Subdivision without the written consent of the City.

7. TRANSFERENCE. Crestview agrees to enter into good faith negotiations with Westminster for the ultimate exclusion of the Federal View Subdivision from the District and transfer of ownership of Crestview's water and sewer facilities within the Federal View Subdivision to Westminster.

8. NOTICE OF EMERGENCY. The following contacts shall be notified in the event of any emergency involving the sanitary sewers in the area.

WESTMINSTER - PRIMARY CONTACT

NAME: Richard A. Clark, P.E.
Utilities Operations Manager
ADDRESS: 6575 West 88th Avenue
Westminster, CO 80031
TELEPHONE: (303) 430-2400, Ext. 2507
AFTER HOURS: (303) 430-2400, Ext. 2447

WESTMINSTER - SECONDARY CONTACT

NAME: Robert L. Booze
Utilities Services Supervisor
ADDRESS: 6575 West 88th Avenue
Westminster, CO 80031
TELEPHONE: (303) 430-2400, Ext. 2532
AFTER HOURS: (303) 430-2400, Ext.2447

CRESTVIEW - PRIMARY CONTACT

NAME: William R. Roecker
District Manager
ADDRESS: 7145 Mariposa Street
Denver, CO 80221

TELEPHONE: (303) 429-1881
AFTER HOURS: (303) 452-9472

CRESTVIEW – SECONDARY CONTACT

NAME: Mitch Terry
Utility Superintendent
ADDRESS: 7145 Mariposa Street
Denver, CO 80221

TELEPHONE: (303) 430-1660
AFTER HOURS: (303) 434-2982

9. TERM. This Agreement may be terminated at will by either Party upon one (1) year advance written notice to the non-terminating Party. Any such termination shall be conditioned upon the agreement by the terminating party to pay the cost of transferring the sewer service provided for by this Agreement back to Crestview.

10. This Agreement is entered into in accordance with the charters and ordinances of Westminster and rules and regulations of Crestview and any provision hereof not in compliance with said charters and ordinance shall be void and of no effect.

CITY OF WESTMINSTER

By: _____
Nancy McNally
Mayor

ATTEST

_____
Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney

CRESTVIEW WATER AND SANITATION DISTRICT

By:_____
President

ATTEST:

_____
Secretary

APPROVED AS TO LEGAL FORM:

_____
Attorney

Attachment 2

CRESTVIEW WATER AND SANITATION DISTRICT
FEDERAL VIEW TAPS

ADDRESS	TAP SIZE	EQUIVALENTS	SERVICE
7055 FEDERAL BLVD	3/4"	1	WA/SW
7095 FEDERAL BLVD	3/4"	1	WA/SW
7101 FEDERAL BLVD	3/4"	1	WA/SW
7115 FEDERAL BLVD	3/4"	1	WA/SW
7117 FEDERAL BLVD	3/4"	1	WA/SW
7135 FEDERAL BLVD	3/4"	1	WA/SW
3076 W. 71ST WAY	2"	9	WA/SW
7140 GROVE ST.	3/4"	1	WA/SW
3051 CRAFT WAY	1"	3	WA/SW
3065 CRAFT WAY	3/4"	1	WA/SW
3103 CRAFT WAY	3/4"	1	WA/SW
3145 CRAFT WAY	1-1/2"	1	WA/SW
7111 HOOKER ST.	1"	3	WA/SW
7120 HOOKER ST.	1-1/2"	6	WA/SW
7121 HOOKER ST.	1"	3	WA/SW
7140 HOOKER ST.	1"	3	WA/SW
7155 HOOKER ST.	1-1/2"	6	WA/SW
3050 W. 71ST AVE.	3/4"	1	WA/SW
3100 W. 71ST AVE.	3/4"	1	WA/SW
3120 W. 71ST AVE.	3/4"	1	WA/SW
3140 W. 71ST AVE.	3/4"	1	WA/SW
3200 W. 72ND AVE.	1-1/2"	6	WA/SW
6971 FEDERAL BLVD	1"	3	WA/SW
7001 FEDERAL BLVD	3/4"	1	WA/SW
~~7151 FEDERAL BLVD~~	~~1-1/2"~~	~~6~~	~~WA~~
~~7169 FEDERAL BLVD~~	~~3/4"~~	~~1~~	~~WA~~
~~7171 FEDERAL BLVD~~	~~3/4"~~	~~1~~	~~WA~~
~~7195 FEDERAL BLVD~~	~~3/4"~~	~~1~~	~~WA~~
~~3001 W. 71ST WAY~~	~~3/4"~~	~~1~~	~~WA~~
~~3055 CRAFT WAY~~	~~3/4"~~	~~1~~	~~WA~~
~~7160 HOOKER ST.~~	~~3/4"~~	~~1~~	~~WA~~
~~7180 HOO KER ST.~~	~~3/4"~~	~~1~~	~~WA~~
~~7181 HOOKER ST.~~	~~3/4"~~	~~1~~	~~WA~~
~~6981 FEDERAL BLVD~~	~~3/4"~~	~~1~~	~~WA~~

Agenda Item 8 J

W E S T M I N S T E R

C O L O R A D O

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Amendment to the Intergovernmental Agreement with Urban Drainage and Flood Control District for Little Dry Creek Bank Stabilization and Utility Protection Project

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

Recommended City Council Action

Authorize the City Manager to sign an amendment to the Intergovernmental Agreement (IGA) that was originally approved in December 2005 with the Urban Drainage and Flood Control District (UDFCD) for the design and construction of a bank stabilization and utility protection project on Little Dry Creek upstream of Federal Boulevard for an additional City expense of $50,000.

Summary Statement

- In December 2005, the City of Westminster entered into an IGA with the Urban Drainage and Flood Control District to complete a Supplementary Environmental Project (SEP) in the area of Little Dry Creek upstream of Federal Boulevard. This site was chosen due to the risk of a sanitary sewer line break and the erosion of the stream banks. This sanitary sewer system carries one-third of the City's wastewater and is currently exposed where is crosses Little Dry Creek.

- The total project cost (including contingency) was estimated to be $200,000 with $100,000 contributed by UDFCD ($75,000 per this agreement and $25,000 paid by UDFCD separately for engineering design). This amendment to the original IGA requests additional City funding of $50,000 due to increased project cost and scope, primarily due to the required sewer line by-pass pumping costs that were not included in the original project cost estimate.

- UDFCD is requesting this amendment to the IGA and will continue to manage the design and construction contracts for this project. The City of Westminster's participation will continue to be paid directly to UDFCD for their disbursement. Any rebates or overages will be divided equally between the City and UDFCD.

Expenditure Required: $50,000

Source of Funds: Utility Fund - Little Dry Creek Interceptor Sewer CIP Account

Policy Issue

Should the City approve this amendment to the Intergovernmental Agreement with the Urban Drainage and Flood Control District that includes an additional funding request of $50,000?

Alternative

Since the project is currently in progress and the UDFCD is also participating in the funding, City staff believes that there is no logical alternative to the recommendation.

Background Information

The City of Westminster entered into an IGA with the Urban Drainage and Flood Control District (UDFCD) in December 2005 to complete a utility protection and bank stabilization on Little Dry Creek upstream of Federal Boulevard. The objective of completing this project is the protection of various sewer lines upstream of Federal Boulevard at approximately 68th Avenue. There is a ten inch diameter steel encased sewer line that is approximately 12-inches above the channel bed as it crosses Little Dry Creek. Just upstream of this location, the top of a 24-inch diameter clay sanitary sewer line has been exposed by the degradation of the channel. That particular sewer line carries one-third of the City's wastewater. That line is being lined under a separate contract with Insituform Technologies (also on the June 11th Council Agenda).

Additionally, Crestview Water and Sanitation District has an eight inch diameter steel encased sanitary sewer line that crosses Little Dry Creek at the same location as a ten inch diameter Westminster sewer line. The top of this pipe has also been exposed due to continued channel erosion that requires rehabilitation at his time. Staff has formulated another IGA with Crestview District (also on the June 11th Council Agenda) to assume control of all of the sanitary sewer services in this area in order to be able to repair and maintain these sewer lines.

The City was approached by the UDFCD and has been requested to provide an additional $50,000 for this project due to increased project cost and scope, primarily due to the required sewer line by-pass pumping costs, which were not included in the original project cost estimate. Funding for this request would come from the Utility Fund – Little Dry Creek Interceptor Sewer CIP Account

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION OF
MAINTENANCE IMPROVEMENTS TO
LITTLE DRY CREEK, CITY OF WESTMINSTER

Agreement No. 05-11.01

THIS AGREEMENT, made this _____ day of _____, 2005, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES;"

WITNESSETH:

WHEREAS, the Colorado General Assembly in 1979 and 1983 amended 32-11-217(1)(C), Colorado Revised Statutes 1973 to authorize DISTRICT to levy up to four-tenth (.4) mill for the maintenance and preservation of floodways and floodplains within DISTRICT; and

WHEREAS, 32-11-203, Colorado Revised Statutes 1973, as amended in 1979 and 1983, further authorizes DISTRICT's Board of Directors to institute a systematic and uniform program of preventive maintenance for such floodways and floodplains within DISTRICT; and

WHEREAS, DISTRICT's Board of Directors, pursuant to such authorization, adopted a budget for 2005 (Resolution No. 77, Series of 2004) which includes funds for preventive maintenance of drainage and flood control facilities within DISTRICT; and

WHEREAS, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2005 Maintenance Work Program (Resolution No. 89, Series of 2004); and

WHEREAS, DISTRICT's Board of Directors authorized the Executive Director to contract for those services necessary to implement the 2005 Maintenance Work Program (Resolution No. 89, Series of 2004); and

WHEREAS, DISTRICT's Board of Directors adopted a policy that sets forth DISTRICT policy regarding the maintenance of drainage and flood control facilities within DISTRICT (Resolution No. 41, Series of 1978); and

WHEREAS, CITY requested DISTRICT maintenance funds and DISTRICT included in the 2005 Maintenance Work Program a work item to participate in the design and construction of maintenance improvements; and

WHEREAS, PARTIES desire to proceed with design and construction of maintenance improvements to Little Dry Creek upstream of Federal Boulevard (hereinafter called "PROJECT").

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES agree as follows:

1. SCOPE OF AGREEMENT
   This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.
2. SCOPE OF PROJECT
   PROJECT will consist of installation of two check structures, bank protection, protection of sanitary sewers, regrading, and revegetation.
3. PUBLIC NECESSITY
   PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of DISTRICT and the property therein.
4. PROJECT COSTS
   A. Definition of PROJECT Costs. PARTIES agree that for the purposes of this Agreement PROJECT costs for Paragraph 2. SCOPE OF PROJECT shall consist of, and be limited to, engineering services; construction services; and construction related services for the drainage and flood control portions of PROJECT.
   B. Estimated PROJECT Costs. The estimated costs associated with PROJECT as defined above are as follows:

ITEM		AMOUNT
1.	Engineering Services	$ -0- *
2.	Construction	175,000
	Total	$175,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

* DISTRICT has already encumbered $25,000 for engineering services.

5. ALLOCATION OF COSTS AND FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for elements of PROJECT as defined in Paragraphs 2 and 4 of this Agreement:

	Percentage Share	Maximum Contribution
DISTRICT	43%	$ 75,000
CITY	57%	$100,000
TOTAL	100%	$175,000

Payment of each party's full share (CITY - $100,000; DISTRICT - $75,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT and will not require an amendment to this Agreement.

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or dispersed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

6. MANAGEMENT OF DESIGN

A. DISTRICT shall contract for and be responsible for the management, administration, and coordination of the engineering services for design. This will include final design, utility coordination, surveying, bid preparation, addendum preparation, bid opening, and recommendation of award.

B. DISTRICT's contracting officer or representative shall be the only individual authorized to direct or redirect, by amendment(s) agreed to by PARTIES, the agreement for design of PROJECT.

C. DISTRICT shall have the authority to meet with and guide the engineer in design matters related strictly to drainage and flood control. Any direction given to the engineer by DISTRICT regarding those matters must first have the concurrence of PARTIES.

D. The contract documents must be reviewed and approved by all PARTIES before construction can begin. Any changes to the approved contract documents require the concurrence of PARTIES.

E. The engineer shall be required to submit to PARTIES a design report including all hydrologic data, hydraulic calculations, design criteria, structural data and calculations, and other pertinent and appropriate design information, calculations, and criteria used and/or developed during the course of the design after all PARTIES review and approve final plans and specifications.

F. PARTIES shall each receive at least one set of vellum reproducible plans and one set of construction specifications. An electronic copy of the plans and specifications shall also be provided.

G. DISTRICT shall be responsible for acquisition of all local, state and federal permits as needed.

H. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under this Agreement, such changes shall be rejected or approved in writing by the contracting officers. No design amendments shall be approved that increase the costs beyond the funds available in the project fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES by amendment to this Agreement.

7. MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.

B. Construction Management and Payment

1. DISTRICT shall administer and coordinate the construction-related work as provided herein.
2. DISTRICT shall advertise for construction bids, conduct a bid opening, prepare construction contract documents, and award construction contract(s).
3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY.
4. DISTRICT shall coordinate field surveying; staking; weekly inspection of work; testing; engineering; preparation of survey control points and explanatory sketches; revisions of contract plans; shop drawing review; preparation of reproducible record drawings; and final inspection as required to construct PROJECT. DISTRICT shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY as requested.
5. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
6. DISTRICT shall review and approve contractor billings and prepare partial and final payments. DISTRICT shall remit payment to contractor based on approved billings.
7. DISTRICT shall prepare and issue all written change or work orders to the contract documents.
8. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
9. DISTRICT shall provide CITY a set of reproducible record drawings if requested.

C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the project fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES by amendment to this Agreement.

8. OWNERSHIP AND MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

9. TERM OF AGREEMENT

The term of the Agreement shall commence upon final execution by all PARTIES and shall terminate one year after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein.

10. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

11. CONTRACTING OFFICERS AND NOTICES

A. The contracting officer for CITY shall be the City Manager, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80030.

B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, CO 80211.

C. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.

D. The contracting officers for PARTIES each agree to designate and assign a project representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives will have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

12. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments or modifications to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

13. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

14. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the County of Denver, State of Colorado.

15. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

16. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

17. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

18. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) day's written notice by any of PARTIES, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of all PARTIES and only upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions and subject to the maximum amount of each party's contribution as set forth herein.

19. PUBLIC RELATIONS

It shall be at CITY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of the proposed facilities and what impact it may have on them. Technical and final design recommendations shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY as needed and appropriate.

20. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

21. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

22. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatures as of the date and year above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL) By_____

ATTEST: Title Executive Director

_____ Date_____

CITY OF WESTMINSTER

(SEAL) By_____

ATTEST: Title_____

_____ Date_____

AMENDMENT TO
AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF MAINTENANCE IMP0ROVEMENTS TO
LITTLE DRY CREEK, CITY OF WESTMINSTER

Agreement No. 05-11.01A

THIS AGREEMENT, made this _____ day of _____, 2007, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESMINSTER (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Design and Construction of Maintenance Improvements to Little Dry Creek, City of Westminster" (Agreement No. 05-11.01) dated December 29, 2005; and

WHEREAS, PARTIES now desire to add additional construction funding; and

WHEREAS, PARTIES desire to increase the level of funding by $100,000; and

WHEREAS, District's Board of Directors reviewed and authorized expenditures for the 2007 Maintenance Work Program (Resolution No. 4, Series of 2007).

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS is deleted and replaced as follows:

   4. PROJECT COSTS

      A. Definition of PROJECT Costs. PARTIES agree that for the purposes of this Agreement PROJECT costs for Paragraph 2. SCOPE OF PROJECT shall consist of, and be limited to, engineering services; construction services; and construction related services for the drainage and flood control portions of PROJECT.

      B. Estimated PROJECT Costs. The construction costs associated with PROJECT as defined above is $275,000.

2. Paragraph 5. ALLOCATION OF COSTS AND FINANCIAL COMMITMENTS OF PARTIES is deleted and replaced as follows:

   5. ALLOCATION OF COSTS AND FINANCIAL COMMITMENTS OF PARTIES

   PARTIES shall each contribute the following percentages and maximum amounts for elements of PROJECT as defined in Paragraphs 2 and 4 of this Agreement:

	Percentage Share	Maximum Contribution
DISTRICT	45.4%	$125,000
CITY	54.6%	$150,000
TOTAL		$275,000

   Payment of each party's full share (CITY - $150,000; DISTRICT - $125,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT and will not require an amendment to this Agreement.

   Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, or dispersed, each party shall receive a shear of such monies, which shares shall be computed as were the original shares.

3. All other terms and conditions of Agreement No. 05-11.01 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND FLOOD CONSTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title _____

_____

Date _____

CITY OF WESTMINSTER

(SEAL)

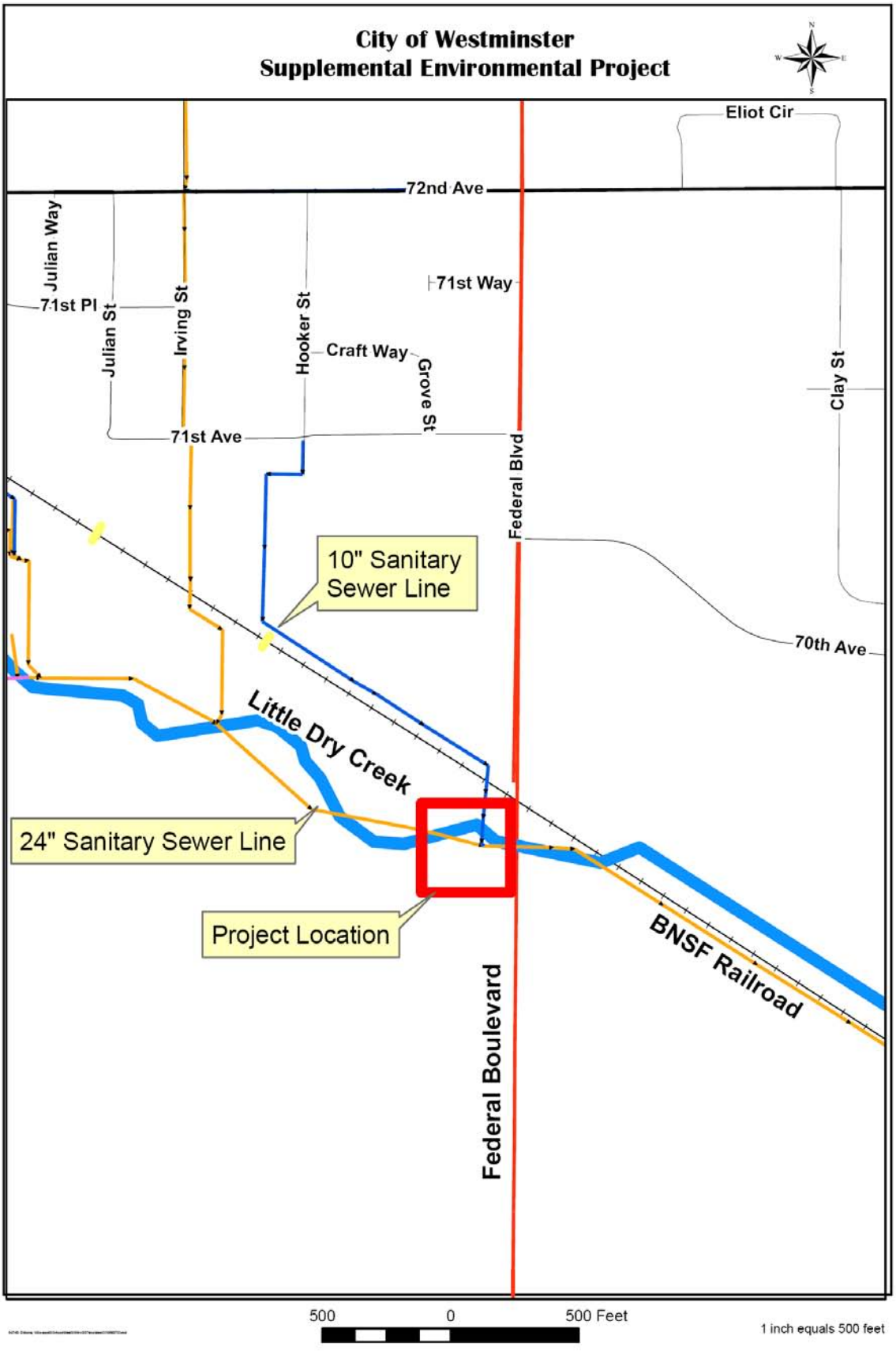
By _____

ATTEST:

Title _____

_____

Date _____


City of Westminster
Supplemental Environmental Project
Eliot Cir
72nd Ave
Julian Way
71st Pl
Julian St
Irving St
Hooker St
71st Way
Craft Way
Grove St
Clay St
71st Ave
Federal Blvd
10" Sanitary Sewer Line
70th Ave
Little Dry Creek
24" Sanitary Sewer Line
Project Location
BNSF Railroad
Federal Boulevard
500
0
500 Feet
1 inch equals 500 feet

WESTMINSTER

COLORADO

Agenda Item 8 K

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Change Order No. 2 re 2007 Wastewater Collection System Improvement Project/Phase I

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

Recommended City Council Action

Authorize the City Manager to execute a change order to the 2007 Wastewater Collection System Improvement Contract Phase I with Insituform Technologies in the amount of $79,680 for lining of an additional 250 feet of sanitary sewer line along Little Dry Creek.

Summary Statement

- City Council approved the 2007 Wastewater Collection System Improvement Project Phase I contract with Insituform Technologies at the March 26, 2007 City Council meeting.

- Since the approval of the project contract, Utilities Staff was informed of critical sewer line defects in the same area that a project is being completed by the Urban Drainage & Flood Control District (UD&FCD). This 24-inch, 250 foot sewer line will require immediate repairs so as not to interfere with improvements being completed by UD&FCD. These defects were not identified until very recent inspections illustrated the problems. These defects present a potential environmental hazard that needs to be addressed in a timely manner.

- This project cost will be paid for by utilizing the Utility Fund Capital Improvement Project account – Little Dry Creek Interceptor Sewer. The cost of this additional sewer lining is $79,680 based on the unit prices provided by Insituform Technologies.

- This item is before City Council for action because it exceeds the contingency amount in the original contract. Any single change order of over five percent or combined change orders of over 10 percent require City Council approval.

Expenditure Required: $79,680

Source of Funds: Utility Fund – Little Dry Creek Interceptor Sewer CIP Account

Policy Issue

Should Utilities Staff have the contractor proceed with sewer rehabilitation in the additional area - totaling 250 feet of sanitary sewer line?

Alternative

Proceed with the original contract amount, which does not include the additional sewer rehabilitation area that requires repair at this time.

Background Information

Each year, the Utilities Division completes wastewater collection system projects to repair defects in sanitary sewer lines throughout the City. The projects are competitively bid and work is performed by an approved contractor, using the latest "trenchless technology" rehabilitation methods to complete the work. Specific locations and footages are identified and prioritized for the contractor to complete within the given time frame. The most severe defects are addressed first and a prioritized list that fits within the available funds is used as the scope of work for the repair project(s).

The most recent contract was approved by City Council on March 26, 2007, with Insituform Technologies for $732,735. This project included 30,207 feet of sanitary sewer line lining and various manhole rehabilitation tasks. On May 24, 2007, Change Order No.1 in the amount of $12,192 was approved administratively. This change order added additional inspection service to the contract.

Since the award of the contract, additional information related to the large diameter sewer line inspections contract was been received that indicates another area – totaling 250 feet of sanitary sewer line – requires immediate attention. Staff has discussed this additional work with the contractor, Insituform Technologies, and they have agreed to include this area in their project.

In September 2006, the City awarded a contract to RnR Enterprises to complete video inspections of the large diameter sewer lines (18"and larger). These large diameter sanitary sewer main lines are not inspected as part of the annual sewer maintenance contracts. During the inspection program, a section of sanitary sewer pipe in the area of 68th Avenue and Federal Boulevard was found to be missing and patched with a piece of corrugated metal pipe. Given the environment of a sanitary sewer pipe, this piece of metal will continue to deteriorate and could eventually cause a total pipe failure and sewage leak. There are also two pipe barrels cracked along their entire length. Staff is recommending this change order to address this potential emergency in a timely manner.

Funding for this additional work would come from the Utility Fund Capital Improvements Project – Little Dry Creek Interceptor Sewer account. This sewer lining work is an immediate concern and requires that repairs be completed at this time. The estimated cost of this additional sewer lining is $79,680 based on prices provided by Insituform Technologies. The costs are comparable to a similar repair completed in 2005.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

CHANGE ORDER NO. 2

TO: Insituform Technologies, Inc.
9654 Titan Ct.
Littleton, CO 80125

DATE: June 11, 2007

Upon Contractor acceptance and the City of Westminster ("City") approval, the work and Contract Documents for City of Westminster Project No. WW-07-3 entitled 2007 Wastewater Collection System Improvements

Shall be adjusted to include the following:

Lining of 250 feet of 24-inch VCP sewer, line segment 7150
Provide complete bypass pumping for duration of project

ADDITIONS:
$79,680.00

DEDUCTIONS:
None

Adjustments to Contract Price & Time

Item Description	Contract Dollars	Calendar Days
Contract Totals through & including Change Order No. 1	744,927	N/A
Adjustments this Change Order No. 2 10.9% of original	79,680	N/A
Contract Totals to Date – Including Change Order No. 1 & 2	824,607	N/A

Contract Time Expires on: September 14, 2007.

Acceptance of this Contract Change Order by the Contractor is a complete waiver and release by the Contractor, its Subcontractors, and its suppliers of all direct, indirect, consequential and impact-related costs resulting from or related to this Change, and its effect, if any, on unchanged Work, including, but not limited to, delays, impacts and disruption as well as extended or increased jobsite and home office overhead costs that may be experienced or incurred as a result of performance of this Change Order.

This document will become a supplement to the Contract and all of its provisions will apply hereto.

ACCEPTED FOR CONTRACTOR

By_____

Print Name _____

Title _____

Date_____

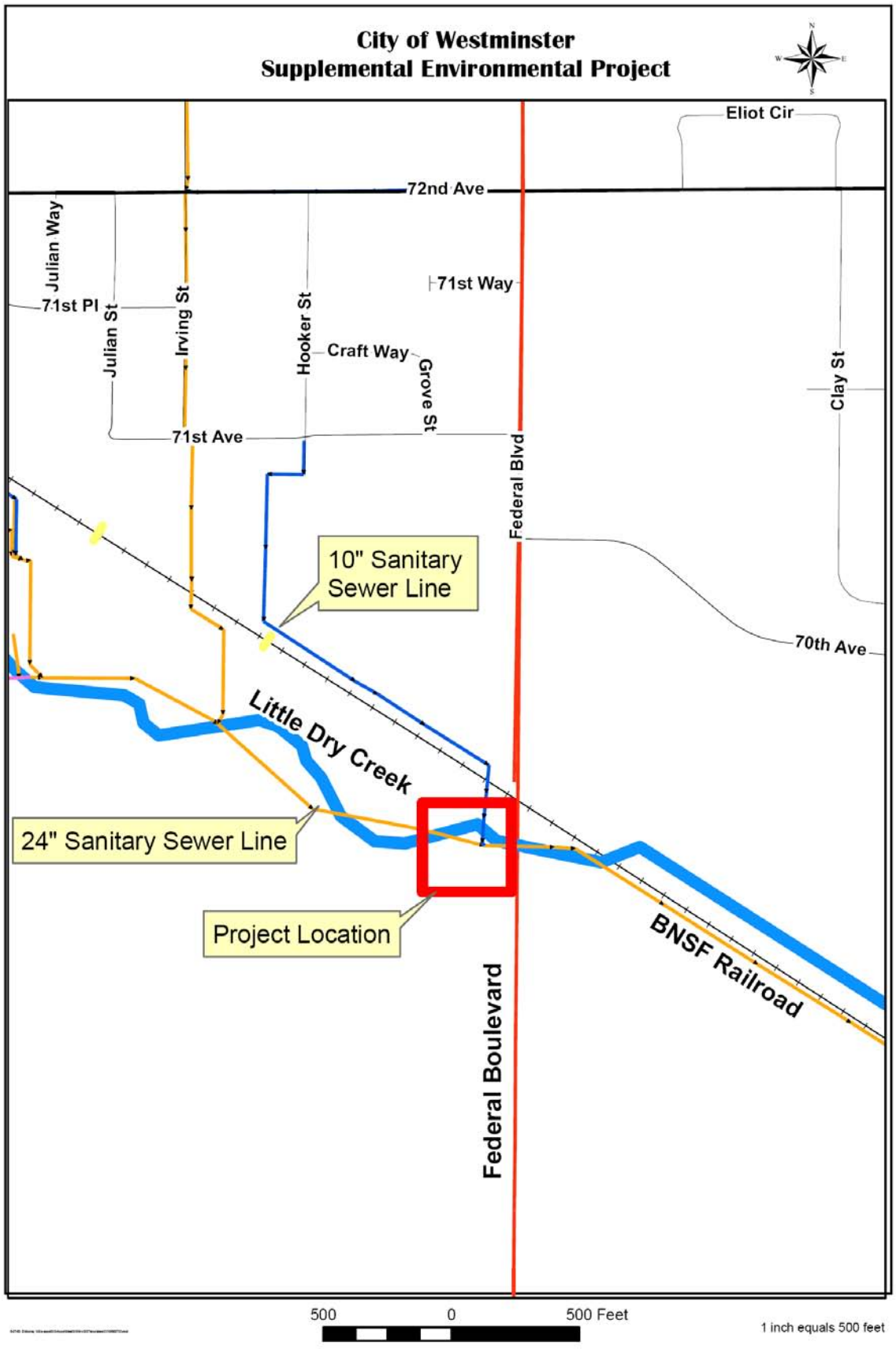
APPROVED FOR CITY OF WESTMINSTER

By_____

Print Name_____

Title_____

Date_____


City of Westminster
Supplemental Environmental Project
Eliot Cir
72nd Ave
Julian Way
71st Pl
Julian St
Irving St
Hooker St
71st Way
Craft Way
Grove St
Clay St
71st Ave
Federal Blvd
10" Sanitary Sewer Line
70th Ave
Little Dry Creek
24" Sanitary Sewer Line
Project Location
BNSF Railroad
Federal Boulevard
500
0
500 Feet
1 inch equals 500 feet

Agenda Item 8 L

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Change Order re Bornengineering Inc. Property Condition Evaluation and Physical Needs Analysis

Prepared By: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

Authorize the City Manager to sign a change order to the contract with Bornengineering, Inc. in the amount of $43,280 plus a $4,000 contingency for additional engineering services and to increase the scope of work needed to complete the property condition and physical needs assessment of City facilities.

Summary Statement

- In June 2006, City Council approved $190,000 in carryover funds for use in developing a comprehensive facility needs assessment and long-term Citywide facility maintenance plan with the emphasis on facility infrastructure for all City facilities.

- In November 2006, an invitation to bid was sent to five engineering firms for the purpose of providing the City with a comprehensive facility needs assessment for seven of the larger and more complex facilities. Bornengineering, Inc. was selected through the City's competitive bid process for this project.

- In December 2006, City Council authorized an expenditure of $57,100 from the previously approved carryover to cover the expense of contracting with Bornengineering, Inc. to provide facility physical needs evaluations on seven City-owned facilities.

- In an effort to reduce costs associated with an engineering firm evaluating all City facilities, the Building Operations & Maintenance Division planned to evaluate the remaining 27 facilities as time permitted and submit this information to Bornengineering, Inc. for review and inclusion in the overall citywide physical needs assessment report.

- To assure accuracy and consistency between Bornengineering's report and the City's in-house needs assessment, Bornengineering was asked to review two of City Staff's initial physical needs assessment reports. Bornengineering found that City Staff lacked the use of specialized engineering experience, and therefore was not able to identify critical areas where City facilities did not meet current building codes and standards, as well as non compliance with current regulatory requirements and conditions, including needed corrections or the need to replace certain building components.

- Staff believes the accuracy of the property evaluation and condition assessment and the use of specialized engineering services to be critical in accurately assessing the condition of the facilities infrastructure and future sustainable needs, and therefore is requesting to increase the scope of work with Bornengineering to include the remainder of the City's 34 facilities for a facility needs analysis.

Expenditure required: Not to exceed $47,280

Source of Funds: Building Operations & Maintenance Capital Improvement Project Funds

Policy Issue

Should City Council increase the scope of the project with Bornengineering, Inc. to include the remainder of the City's 34 facilities for facility needs analysis?

Alternatives

- Direct Staff to open project up for bid on the remaining 27 facilities not included in the original scope of work. Staff does not recommend this action since Bornengineering was selected as the low bidder through the City's competitive bid process for the original scope of the project and the extent of work which has been completed to date by Bornengineering.
- Direct Staff to continue working in-house on the remaining 27 facilities to provide property evaluations and physical needs assessments. Staff does not recommend this alternative based on the experience and professional engineering services needed for accuracy on this type of project and the amount of Staff time necessary to complete the assessment.

Background Information

In June 2006, City Council approved $190,000 in carryover funds to be used for the purpose of creating a Citywide facility infrastructure needs analysis on 34 facilities. Bornengineering was selected through the City's competitive bid process to provide an independent engineering property evaluation and physical needs assessment long term study.

In December, City Council authorized the expenditure of $48,600 with a contingency of $8,500 from the previously approved $190,000 for the purpose of developing a comprehensive facility needs assessment on seven of the larger or more complex facilities.

At that time, it was Staff's intent to complete an in-house evaluation and needs assessment on the remaining 27 facilities as time permitted. The in-house report would be reviewed by Bornengineering Staff for accuracy and consistency, and would then be included in the entire facility needs analysis document for City Council's review at a future study session regarding facility infrastructure and financial sustainability.

During Bornengineering's original review of Staff's evaluations, Bornengineering identified numerous omissions and inconsistencies with immediate physical needs and physical needs over the 20 year term of this report. During this process it was determined that in-house Staff does not have the engineering experience or expertise with evaluating physical needs, and therefore was unable to assess grading and drainage, building envelope components, substructures, and the numerous roofing systems presently installed on many existing facilities. This resulted in Bornengineering Staff having to revisit facility sites to reevaluate the conditions associated with the in-house assessments.

Staff believes the accurate reporting in the facility needs assessment document to be critical in identifying future funding needs and financial sustainability for the next 20 years and therefore is recommending the increase in the scope of work to include the remaining 27 facilities in the facilities physical needs, property condition assessment report project.

To date, Bornengineering has completed 100% of the facility needs assessments on the seven facilities included within the contract's original scope of work.

Should City Council decide to authorize the additional expenditure of $47,280 for the change order increasing the scope of work to include the remaining 27 facilities, the total amount that will be expended to complete the entire facility needs assessment and property condition assessment will still be $85,620 less than the $190,000 in carryover funds that was originally approved by City Council in 2006.

Respectfully submitted,

J. Brent McFall, City Manager

WESTMINSTER

COLORADO

Agenda Item 8 M

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Second Reading of Councillor's Bill No. 20 re 2006 Final Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Adopt Councillor's Bill No. 20 on second reading providing for supplementary appropriations to the 2006 budget of the General, General Capital Improvement, and Parks and Open Space Funds.

Summary Statement

- City Council action is requested to adopt the attached Councillor's Bill on second reading authorizing a supplemental appropriation to the 2006 budget of the General, General Capital Improvement, and Parks and Open Space Funds.
    - General Fund amendments total: $125,733
    - General Capital Improvement Fund amendments total: $1,624,383
    - Parks and Open Space Fund amendments total: $4,920,000
- This Councillor's Bill was passed on first reading May 14, 2007.

Expenditure Required: $6,670,116

Source of Funds: The funding sources for these expenditures include lease proceeds, a grant, and a reimbursement.

Respectfully submitted,

J. Brent McFall, City Manager
Attachment

BY AUTHORITY

ORDINANCE NO. **3349** COUNCILLOR'S BILL NO. **20**

SERIES OF 2007 INTRODUCED BY COUNCILLORS

Dittman - Price

A BILL

FOR AN ORDINANCE AMENDING THE 2006 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, AND PARKS AND OPEN SPACE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2006 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2006 appropriation for the General, General Capital Improvement and Parks and Open Space Funds, initially appropriated by Ordinance No. 3162 are hereby increased in aggregate by $6,670,116. This appropriation is due to the receipt of lease proceeds, a grant, and a reimbursement.

Section 2. The $6,670,116 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10D dated May 14, 2007 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	$125,733
General Capital Improvement Fund	1,624,383
Parks and Open Space Fund	4,920,000
Total	$6,670,116

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 14th day of May, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ATTEST:

_____
Mayor

_____
City Clerk

WESTMINSTER

COLORADO

Agenda Item 8 N

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Second Reading of Councillor's Bill No. 21 re 2007 1st Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Adopt Councillor's Bill No. 21 on second reading providing for supplementary appropriations to the 2007 budget of the General, General Capital Improvement, General Capital Outlay Replacement, and Storm Drainage Funds.

Summary Statement

- City Council action is requested to adopt the attached Councillor's Bill on Second reading authorizing a supplemental appropriation to the 2007 budget of the General, General Capital Improvement, General Capital Outlay Replacement and Storm Drainage Funds.
    - General Fund amendments total: $15,629
    - General Capital Improvement Fund amendments total: $2,204,915
    - General Capital Outlay Replacement Fund amendments total: $405,017
    - Storm Drainage Fund amendments total: $3,592
- This Councillor's Bill was passed on first reading May 14, 2007.

Expenditure Required: $2,629,153

Source of Funds: The funding sources for these expenditures include grants, reimbursements, program revenues, participation awards, funds transfer, and lease proceeds.

Respectfully submitted,

J. Brent McFall, City Manager
Attachment

BY AUTHORITY

ORDINANCE NO. **3350** COUNCILLOR'S BILL NO. **21**

SERIES OF 2007 INTRODUCED BY COUNCILLORS

Major - Dittman

A BILL

FOR AN ORDINANCE AMENDING THE 2007 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, GENERAL OUTLAY REPLACEMENT AND STORM DRAINAGE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2007 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2007 appropriation for the General, General Capital Improvement, General Capital Outlay Replacement, and Storm Drainage Funds, initially appropriated by Ordinance No. 3316 are hereby increased in aggregate by $2,629,153. This appropriation is due to the receipt of grants, reimbursements, program revenues, participation awards, funds transfer, and lease proceeds.

Section 2. The $2,629,153 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 E&F dated May 14, 2007 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	$15,629
General Capital Improvement Fund	2,204,915
General Capital Outlay Replacement Fund	405,017
Storm Drainage	3,592
Total	$2,629,153

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 14th day of May, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ATTEST:

_____
Mayor

_____
City Clerk

Agenda Item 8 O

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Second Reading for Councillor's Bill No. 22 re Amendment to the Syncroness, Inc. Economic Development Agreement

Prepared By: Susan F. Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillor's Bill No 22 on second reading authorizing the City Manager to execute and implement the amendment to the Business Assistance Package (BAP) for Syncroness, Inc.

Summary Statement

- This Councillor's Bill was passed on first reading on May 14, 2007.
- Syncroness, Inc. is an existing business located in the Walnut Creek Business Center that is expanding.
- The company is purchasing 6,000 square feet to add on to the 5,280 square feet they already own.
- Employment is expected to grow from 40 to 142 by 2012, with average salaries of $85,700.
- Assistance is based on the City's desire to fill existing office space and to encourage growth of existing high tech employers.
- The amendment to the BAP totals $16,750, which includes $1,750 in permit fee rebates, $6,750 in construction use tax rebates and $8,250 in equipment use/sales tax rebates
- Should Syncroness, Inc. relocate outside of Westminster within 5 years of this Amended Business Assistance Package, assistance would have to be paid back to the City by the company.
- Syncroness, Inc. has looked at sites from Denver to Boulder along US36.
- This agreement will amend the original BAP approved by Council in April, 2004.

Expenditure Required: $16,750

Source of Funds: The Amended Business Assistance Package with Syncroness, Inc. will be funded through revenue received from permit fees, construction use tax, and sales and use tax on furniture, fixtures, and equipment at move-in.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO. **3351** COUNCILLOR'S BILL NO. **22**

SERIES OF 2007 INTRODUCED BY COUNCILLORS
Kauffman - Major

A BILL
FOR AN ORDINANCE AUTHORIZING THE AMENDMENT OF THE BUSINESS ASSISTANCE PACKAGE WITH SYNCRONESS, INC. TO AID IN THEIR EXPANSION IN WALNUT CREEK BUSINESS CENTER

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

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

WHEREAS, Syncroness, Inc. plans to acquire an additional 6,000 square feet in Walnut Creek Business Center in Westminster, and

WHEREAS, Council approved an assistance package for Syncroness, Inc. in April 2004; and

WHEREAS, a proposed Amendment to that Assistance Agreement between the City and Syncroness, Inc. is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Amendment to the Assistance Agreement with Syncroness, Inc. 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 14th day of May 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ATTEST:

_____
Mayor

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

SUPPLEMENTAL BUSINESS ASSISTANCE PACKAGE FOR SYNCRONESS, INC. IN THE CITY OF WESTMINSTER

THIS SUPPLEMENTAL AGREEMENT is made and entered into this _____ day of _____, 2007, between the CITY OF WESTMINSTER (the "City"), and the Syncroness, Inc..

WHEREAS, the City wishes to provide additional assistance to Syncroness, Inc. to aid in the retention and expansion of this company in the City; and

WHEREAS, Syncroness, Inc. plans to purchase and furnish an additional 6,000 square feet of office space in Walnut Creek Business Center, thus providing primary job retention and growth within the City (the "Expansion"); and

WHEREAS, the City and Syncroness, Inc. are parties to a previous Business Assistance Package agreement dated April 26, 2004, which they now wish to supplement with this agreement in consideration of the Expansion; and

WHEREAS, City Council finds the execution of this Supplemental 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 economic development project within the City.

In consideration of the mutual promises set forth below, the City and Syncroness, Inc. agree to amend the April 26, 2004 Business Assistance Agreement to add the following sections:

1. Building Permit Fee Rebates For Expansion. The City shall rebate to Syncroness, Inc. 50% of the building permit fees related to the Expansion, that are otherwise required under W.M.C. Section 11-10-3 (E). This rebate excludes water and sewer tap fees, collected from Syncroness, Inc. in connection with the Expansion. The permit fee rebate for the Expansion will be approximately $1,750.

2. Use Tax Rebate- Construction For The Expansion. The City shall rebate to Syncroness, Inc. 50% of the Building Use Tax on the construction materials, collected from Syncroness, Inc. related to the Expansion that are otherwise required under W.M.C. sections 4-2-9 and 4-2-3. The rebate will be approximately $6,750.

3. Sales and Use Tax Rebate- Furniture and Fixtures For The Expansion. The City will rebate 50% of the General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishings and equipment purchased for the Expansion over the next 60 month period. This amended rebate will not exceed $8,250.

4. Payments of Rebates. The rebates will be paid to Syncroness, Inc. by the City in quarterly installments from revenue actually collected and received by the City from Syncroness, Inc. in connection with the Expansion. Payments of each quarterly installment shall be made within 20 days of the calendar quarter end and will be submitted electronically.

5. Entire Agreement. This Supplemental Agreement along with the April 26, 2004 Business Assistance Package Agreement shall constitute the entire agreement between the City and Syncroness, Inc. and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

6. Termination. This Supplemental Agreement shall terminate and become void and of no force or effect upon the City if Syncroness, Inc. has not moved into the Expansion by August 1, 2008 or should Syncroness, Inc. not comply with the City regulations or code.

7. Business Termination. In the event Syncroness, Inc. ceases business operations within the City within five (5) years after the expanded operations commence, then Syncroness, Inc. shall pay to the City the total amount of fees and taxes that were due and payable by Syncroness, Inc. to the City for the Expansion but were rebated by the City, pursuant to this Supplemental Agreement.

8. Subordination. The City's obligations pursuant to this Supplemental 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 Supplemental 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 Supplemental Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

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

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

11. Intent of Parties. It is the intent of the parties that this Supplemental Agreement, and the April 26, 2004 original Business Assistance Package Agreement be independently construed and enforced according to their respective provisions. It is the further intent of the parties that this Supplemental Agreement shall not be deemed or construed as replacing or modifying the April 26, 2004 Agreement.

SYNCRONESS, INC.

_____

President

CITY OF WESTMINSTER

_____

J. Brent McFall
City Manager

ATTEST:

_____

Linda Yeager
City Clerk

Adopted by Ordinance No. 3351

Agenda Item 8 P

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Second Reading for Councillor's Bill No. 23 re Crosswalk Inc. Economic Development Agreement

Prepared By: Susan F. Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillor's Bill No. 23 on second reading authorizing the City Manager to execute and implement the Economic Development Agreement (EDA) with Crosswalk, Inc.

Summary Statement

- This Councillor's Bill was passed on first reading on May 14, 2007.
- Crosswalk is an existing Westminster business currently located in Westmoor Technology Park that needs more computer lab spaces and expansion capabilities.
- This company has considered locations in Boulder, Louisville, and Broomfield.
- At move-in, 50 jobs will have been retained in Westminster with average salaries of $98,000.
- Crosswalk will be moving from 18,000 square feet of leased space in Westmoor to 34,000 square feet of space they will purchase in Church Ranch Corporate Center owned space.
- Crosswalk expects to grow to about 300 employees in 5 years.
- The EDA totals $180,000, which includes use tax and sales tax rebates on equipment and furnishings at move-in and over the first five years of operation.
- Assistance is based upon addressing the City's goal of retaining existing basic employers in Westminster.
- Should Crosswalk decide to move out of Westminster within 5 years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.

Expenditure Required: Not to exceed $180,000

Source of Funds: The Economic Development Agreement with Crosswalk, Inc. will be funded through revenue received from sales and use tax on furniture, fixtures, and equipment at move-in, and over the next five years of business operations.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO. **3352**

COUNCILLOR'S BILL NO. **23**

SERIES OF 2007

INTRODUCED BY COUNCILLORS
Dittman - Price

A BILL
FOR AN ORDINANCE AUTHORIZING A ECONOMIC DEVELOPMENT AGREEMENT WITH CROSSWALK, INC. TO AID IN THEIR RELOCATION AND EXPANSION IN CHURCH RANCH CORPORATE CENTER

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

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

WHEREAS, Crosswalk, Inc. plans to purchase 34,000 s.f. feet in Church Ranch Corporate Center in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and Crosswalk, Inc. is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Crosswalk, Inc. 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 14th day of May, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ATTEST:

_____
Mayor

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

ECONOMIC DEVELOPMENT AGREEMENT FOR
CROSSWALK, INC. IN THE CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this _____ day of _____, 2007, between the CITY OF WESTMINSTER (the "City"), and the Crosswalk, Inc.

WHEREAS, the City wishes to provide certain assistance to Crosswalk, Inc. to aid in the retention and expansion of this company in the City; and

WHEREAS, Crosswalk, Inc. plans to purchase 34,000 square feet in Church Ranch Corporate Center, thus providing primary job retention and growth within the City; 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 economic development project within the City.

In consideration of the mutual promises set forth below, the City and the Crosswalk, Inc. agree as follows:

1. Sales and Use Tax Rebate- Furniture and Fixtures at Move-In. For a period of 3 months before and 3 months after Crosswalk, Inc. obtains the Certificate of Occupancy for the new facility in Church Ranch Corporate Center and over the next 60 months of operation, the City will rebate 50% of the General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishing and equipment purchased to furnish the new facility. The rebate shall not exceed $180,000.

2. Payments of Rebates. Rebates will be paid to Crosswalk, Inc. by the City in quarterly installments from revenue actually collected and received by the City from Crosswalk, Inc. Payments of each quarterly installment shall be made within 20 days of the calendar quarter end and will be submitted electronically.

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

4. Termination. This Business Assistance Package shall terminate and become void and of no force or effect upon the City if Crosswalk, Inc. has not moved into their new space in Church Ranch Corporate Center by August 1, 2008 or should Crosswalk, Inc. not comply with the City regulations or code.

5. Business Termination. In the event Crosswalk, Inc. ceases business operations within the City within three (5) years after the new operations commence, then Crosswalk, Inc. shall pay to the City the total amount of taxes that were due and payable by Crosswalk, Inc. to the City but were rebated by the City, pursuant to this Agreement.

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

whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

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

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

CROSSWALK, INC.

_____

President

CITY OF WESTMINSTER

_____

J. Brent McFall
City Manager

ATTEST:

_____

Linda Yeager
City Clerk

Adopted by Ordinance No. 3352

WESTMINSTER
COLORADO

Agenda Item 8 Q

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Second Reading of Councillor's Bill No. 24 re the Shoenberg Farm Comprehensive Land Use Plan Amendment

Prepared By: David Falconieri, Planner III

Recommended City Council Action

Pass Councillor's Bill No. 24 on second reading approving the Comprehensive Land Use Plan (CLUP) amendment for a portion of the Shoenberg Farm property changing the designation from R-8 Residential to Retail Commercial. This recommendation is based on a finding that the proposed amendment will be in the public good and that:

a. There is justification for the proposed change and the Plan is in need of revision as proposed; and
b. The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
c. The proposed amendment is compatible with existing and planned surrounding land uses; and
d. The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.

Summary Statement

- Councillor's Bill No. 24 was passed on first reading by the City Council on May 21, 2007.
- This proposal went before the Planning Commission on May 8, 2007. The Commission unanimously recommended approval of all three requests.
- Shoenberg Farm Commercial Center is a 26.9 acre property located at the northwest corner of 72nd Avenue and Sheridan Boulevard. The property includes the historic Shoenberg dairy farm structures including the old house, silos, milk buildings and Quonset hut. The City Council has entered into an agreement with the property owner concerning the preservation of those structures.
- The proposed CLUP amendment only involves the area north of 73rd Avenue that is currently designated as R-8 Residential. Staff is supporting this amendment in part because the applicant is preserving the historical structures.
- The proposed architecture of the center is designed around the look of the old red brick farm buildings, using a matching red brick as the main material and other similar architectural features.

Expenditure Required: $ 0
Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3353** COUNCILLOR'S BILL NO. **24**

SERIES OF 2007 INTRODUCED BY COUNCILLORS
KAUFFMAN - MAJOR

A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owner(s) of the properties described below, incorporated herein by reference, requesting a change in the land use designations from "R-8 Residential" to "Retail Commercial" for the Shoenberg Farm Commercial Center, that portion north of 73rd Avenue.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on May 8, 2007, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C.§ 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C.§11-4-16(D).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly Goal A2, which states "Retain areas for commercial .and industrial developments as significant revenue or employment generators on the remaining developable land."

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designation of the property more particularly described as follows to "Retail Commercial", also depicted on the map attached as Exhibit A:

A parcel of land within the southeast quarter of the southeast quarter of Section 36, Township 2 South, Range 69 West of the Sixth Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, said parcel being more particularly described as follows:

Commencing at the northeast corner of said southeast quarter of the southeast quarter of Section 36, whence the southeast corner of said Section 36 bears South 00˚10'37" East and all bearings are made as a reference hereon;

Thence westerly along the northerly line of said southeast quarter of the southeast quarter of Section 36, South 89˚41'00" West 53.91 feet to the point of beginning;

Thence departing said northerly line, South 03˚13'50" West 216.56 feet;
Thence South 07˚23'25" West 165.44 feet;
Thence South 03˚13'50" West 186.59 feet;
Thence South 01˚00'04" West 109.82 feet;
Thence North 86˚11'41" West 0.37 feet;
Thence South 00˚55'52" West 30.04 feet;
Thence North 86˚11'41" West 25.43 feet to the beginning of a tangent curve concave northeasterly having a radius of 175.00 feet;
Thence Northwesterly 63.85 feet along said curve through a central angle of 20˚54'22";
Thence tangent to said curve North 65˚17'19" West 130.03 feet to the beginning of a tangent curve concave southwesterly having a radius of 180.00 feet;
Thence northwesterly 73.42 feet along said curve through a central angle of 23˚22'10";
Thence non-tangent to said curve North 00˚24'22" East 30.00 feet;
Thence North 14˚37'54" East 21.36 feet to the beginning of a tangent curve concave westerly having a radius of 134.50 feet;
Thence northerly 33.39 feet along said curve through a central angel of 14˚13'32";
Thence tangent to said curve North 00˚24'22" East 390.08 feet to the beginning of a tangent curve concave southeasterly having a radius of 80.50 feet;
Thence northeasterly 61.24 feet along said curve through a central angle of 43˚35'09";
Thence non-tangent to said curve South 89˚35'38" East 88.99 feet;
Thence North 00˚19'00" West 88.71 feet to said northerly line of the southeast quarter of the southeast quarter of Section 36;
Thence easterly along said northerly line North 89˚41'00" East 199.04 feet to the point of beginning.

Containing 4.150 acres (180,772 sq. ft.), more or less.

Section 3. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. 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 21st of May, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ATTEST:

_____
Mayor

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

Agenda Item 8 R

W E S T M I N S T E R

C O L O R A D O

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Second Reading of Councillor's Bill No. 25 re the Comprehensive Land Use Plan Amendment for Legacy Ridge Filing No. 17 (Southwest Corner of Federal Boulevard and 112th Avenue)

Prepared By: Patrick Caldwell, Planner II

Recommended City Council Action

1. Pass Councillor's Bill No. 25 on second reading approving the Comprehensive Land Use Plan (CLUP) amendment changing the designation from Retail Commercial to R-18 Residential for the southwest corner of Federal Boulevard and 112th Avenue. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
    a. There is justification for the proposed change and the Plan is in need of revision as proposed; and
    b. The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
    c. The proposed amendment is compatible with existing and planned surrounding land uses; and
    d. The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.

Summary Statement

- Councillor's Bill No. 25 was approved on first reading by City Council on May 21, 2007.
- The site is located at the southwest corner of Federal Boulevard and 112th Avenue.
- The proposed CLUP amendment changes the land use from a commercial use to a less intensive residential use.
- The proposed senior housing development will consist of two buildings (approximately 280,000 square feet) and 168 units on 7.86 acres. There will be 84 independent, 73 assisted, and 11 memory care units. The southern building is built into the slope and is two stories along the south edge of the property. This southern building becomes a type of walkout with three stories facing north. The northern building is a three story building.
- The proposed buildings use exposed timbers, stone, stucco and earth colors that are very consistent with the materials and design of adjacent residential uses in Legacy Ridge and in subdivisions to the north and east. A landscaped berm and brick wall will screen the site along 112th Avenue and Federal Boulevard.

Expenditure Required: $ 0
Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.**3354** COUNCILLOR'S BILL NO. **25**

SERIES OF 2007 INTRODUCED BY COUNCILLORS
MAJOR - PRICE

A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owner(s) of the properties described in Exhibit A, incorporated herein by reference, requesting a change in the land use designations from "Retail Commercial" to "R-18 Residential" for the 7.86 acre Legacy Ridge Filing 17 parcel at the southwest corner of 112th Avenue and Federal Boulevard.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on May 8, 2007, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C.§ 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C.§11-4-16(D).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly compatibility with existing and surrounding land uses.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designation of the property more particularly described on attached Exhibit A to "R-18 Residential", as depicted on the map attached as Exhibit B.

Section 3. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. 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 21st day of May, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11 day of June, 2007.

ATTEST:

_____
Mayor

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

WESTMINSTER
COLORADO

Agenda Item 10 A-D

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Public Hearing and Action on Councillor's Bill No. 26 re the Boulevard Plaza Comprehensive Land Use Plan Amendment, Preliminary Development Plan and Official Development Plan

Prepared By: John Quinn, Planner II

Recommended City Council Action

1. Hold a public hearing.
2. Pass Councillor's Bill No. 26 on first reading approving the Comprehensive Land Use Plan (CLUP) amendment for the Boulevard Plaza property changing the designation from Industrial to Retail Commercial. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
    a. There is justification for the proposed change and the Plan is in need of revision as proposed; and
    b. The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
    c. The proposed amendment is compatible with existing and planned surrounding land uses; and
    d. The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
3. Approve the Fifth Amended Preliminary Development Plan (PDP) within the Boulevard Plaza Planned Unit Development (PUD). This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code (WMC) have been met.
4. Approve the Fifth Amended Official Development Plan (ODP) within the Boulevard Plaza Planned Unit Development (PUD) with the following conditions:
    1) Move the black metal picket fence along the south drive up against the drive on all sheets, as shown on the landscape plan; and
    2) Provide a detail on the ODP for the gates to match the black picket fence with brick pillars on each side of the gate and brick wall connecting to the building.

    This recommendation is based on a finding that the criteria set forth in Section 11-5-15 of the Westminster Municipal Code have been met.

Summary Statement

- These proposals went before the Planning Commission on May 22, 2007. The Commission voted unanimously (6-0) to recommend approval of all three requests.
- The Boulevard Plaza property is comprised of 2.833 acres and is located north of 92nd Avenue, west of Wadsworth Boulevard, just north of the State Farm office building site. (Please see attached vicinity map.)
- The CLUP designation for this parcel was changed in 2002 from Business Park to Industrial to accommodate a proposal for a Hank's Auto Body repair facility.
- The applicant has proposed to change the Boulevard Plaza CLUP designation from Industrial to Retail Commercial, a PDP amendment and an ODP amendment in order to develop the site for a three-story, 119,114 square foot indoor self storage facility.

Expenditure Required: $0
Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission reviewed this proposal on May 22, 2007, and voted unanimously (6-0) to recommend that the City Council approve the Comprehensive Land Use Plan amendment for the Boulevard Plaza property changing the designation from Industrial to Retail Commercial, the Fifth Amended Preliminary Development Plan within the Boulevard Plaza Planned Unit Development, and the Fifth Amended Official Development Plan within the Boulevard Plaza Planned Unit Development with the following conditions:

1) Move the black metal picket fence along the south drive up against the drive on all sheets, as shown on the landscape plan; and
2) Provide a detail on the ODP for the gates to match the black picket fence with brick pillars on each side of the gate and brick wall connecting to the building.

No one spoke in favor or opposition to the proposal.

Policy Issues

1. Should the City approve a Comprehensive Land Use Plan amendment for the Boulevard Plaza property changing the designation from Industrial to Retail Commercial?
2. Should the City approve the Fifth Amended Preliminary Development Plan within the Boulevard Plaza Planned Unit Development?
3. Should the City approve the Fifth Amended Official Development Plan within the Boulevard Plaza Planned Unit Development?

Alternatives

1. Deny the Comprehensive Land Use Plan amendment changing the designation for the Boulevard Plaza property from Industrial to Retail Commercial or another appropriate designation. The Preliminary and Official Development Plans could be approved without approval of this CLUP amendment, but staff recommends the CLUP land use designation be changed to Retail Commercial. This would permit the storage facility and would reduce the potential impacts of industrial uses in this location without another CLUP amendment.
2. Deny the Fifth Amended Preliminary Development Plan within the Boulevard Plaza Planned Unit Development, or approve the Plan with modifications.
3. Deny the Fifth Amended Official Development Plan within the Boulevard Plaza Planned Unit Development, or approve the Plan with modifications.

Background Information

Nature of Request

The applicant is requesting approval of a three-story, 119,114 square foot climate controlled self storage building. The entire 2.833 acre site is relatively flat and rectangular. This request requires CLUP, PDP, and ODP amendments. The CLUP designation for this parcel was changed from Business Park to Industrial in 2002 to accommodate a proposal for a Hank's Auto Body repair facility. That business was never constructed, and Guardian Self Storage is requesting a change to the CLUP to Retail Commercial for this self storage facility. Staff believes that Retail Commercial would be compatible with the surrounding retail and office uses.

Location

The site is currently vacant and located at 9241Wadsworth Boulevard on the west side of Wadsworth Boulevard, approximately 370 feet north of 92nd Avenue.

The Westminster Municipal Code requires the owner of the property requesting an amendment to the Comprehensive Land Use Plan (CLUP) to prove the amendment is in the public good and is in overall compliance with the purpose and intent of the CLUP. Further, the CLUP provides four criteria to be used when considering a CLUP amendment. Staff has reviewed these criteria and has provided the following comments on each.

1. The proposed amendment must, "Demonstrate that there is justification for the proposed change, and that the Plan is in need of revision as proposed." On August 26, 2002, City Council passed Ordinance 2966 that changed the designation of the Boulevard Plaza CLUP from Business Park to Industrial. Subsequent to that action, the parcel to the north in unincorporated Jefferson County was converted from a home to a cat hospital. The proposed CLUP amendment is consistent with adjacent land uses and CLUP designations in the area and therefore there is justification for the proposed change in the CLUP.

2. The proposed amendment must, "Be in conformance with the overall purpose, intent, goals, and policies of the Plan." Applicable goals are stated in Section III of the Community Goals and Policies section of the Plan. They include:
   - Goal D1 - Preserve, maintain, improve a variety of shopping facilities offering all necessary goods and services to community residents and businesses.
   - Policy D1a - Necessary goods and services will continue to be made available within the City.
   - Goal D16 – Emphasis will be placed on enhancing the quality and diversity of retail and office commercial developments in a manner that makes a positive contribution to the City's image and business environment.

   Based upon its review of the proposed amendment, staff has determined that it is in conformance with the overall purpose, intent, goals, and policies of the Plan.

3. The proposal must, "Be compatible with existing and surrounding land uses." This proposal is compatible with the office and retail commercial land uses to the north, west, east, and south. Landscaped buffers are provided around the entire perimeter of the site and a double row of evergreen and deciduous trees is proposed as a natural buffer adjacent to the City's open space to the west.

4. The proposal must, "Not result in detrimental impacts to the City's existing or planned infrastructure or provide measures to mitigate such impacts to the satisfaction of the City." While the development will have impacts, all have been mitigated to the satisfaction of City Staff as shown on the proposed ODP. Right-of-way dedication on the site is shown to accommodate the widening of Wadsworth Boulevard. In addition, the future closing of an entrance onto Wadsworth Boulevard from the property to the north will result in a single driveway access serving two properties that aligns with the access to the properties to the east. When Wadsworth Boulevard is fully improved, this intersection will be critical to improved traffic flow in the area.

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 was published in the Westminster Window on May 10, 2007.

- 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. One sign was posted on the property on May 11, 2007.

- 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 applicant has provided the Planning Manager with a certification that the required notices were mailed on May 11, 2007

Applicant/Property Owner
Guardian Self Storage
5879 Centre Avenue
Pittsburg, PA 15206
H. Kevin Cohen
303-250-2059
Surrounding Land Use and Comprehensive Land Use Plan Designations

Development Name	Zoning	CLUP Designation	Use
North: Unincorporated Jefferson County	N/A	N/A	Veterinary Office, Single-Family Detached
West: City Open Space	PUD	City Open Space	City Open Space
South: State Farm Business Park Brentcross Shops	PUD PUD	Office Retail Commercial	Office Retail Commercial
East: Meadow Pointe	PUD	Retail Commercial	Retail Commercial

Site Plan Information
The following site plan information provides a few examples of how the proposal complies with the City's land development regulations and guidelines; and the criteria contained in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached).

- Traffic and Transportation*:* The circulation and location of future curb cuts into and out of the self storage site have been reviewed and approved by City staff. The applicant has designed the entrance to serve both this property and the cat hospital property to the north and to meet the specifications and criteria of the City's Engineering Division. This joint access is necessary to align the driveway with the street intersection to the east across Wadsworth Boulevard. Preliminary street improvement plans have been prepared for widening Wadsworth Boulevard from 92nd Avenue north to 110th Avenue (by the City of Westminster.) The developers are constructing the required improvements on "Old" Wadsworth Boulevard along the street frontage of their property.

- Site Design: This project proposes one three-story self storage facility. Customer parking is provided at the front of the building (east elevation) directly adjacent to the office area. The site will be fenced using a black metal picket fence with brick pillars spaced a maximum of 65 feet on center adjacent to the drive lane around the building with the exception of a 50 foot brick wall from the front of the building back along the north and south sides. The applicant has not properly labeled the plans to show the location of the fence or the details of the gates. Thus, staff has included conditions in the recommendation for approval of the ODP. A 26-foot wide driveway extends around the entire self storage building providing fire access to all parts of the structure. After-hours access to the site is provided to both Police and Fire Departments through a Knox Box key system. Storm water detention is provided on site, metered through a controlled release onto the City's Wadsworth Wetlands Open Space located to the west and north of the site**.**

- Landscape Design**:** The applicants have provided 33% of the site as landscape area and the project conforms to the City's Landscape Regulations. In place of installing an eight-foot brick wall against the west property line, the applicant is providing a double row of evergreen and deciduous trees as a landscaped buffer between the self storage and the City's open space. The proposal includes landscape buffering along the entire perimeter of the site.

- Public Land Dedication/School Land Dedication**:** There is no residential development shown on the plan and therefore public land or school land dedications are not required.

- Parks/Trails/Open Space**:** There are no trails connected with this site. An eight-foot wide detached sidewalk will be constructed along the Wadsworth Boulevard frontage as part of this project.

- Architecture/Building Materials**:** The east and west ends of the building are designed to give the appearance of an office building. These areas use large areas of jumbo brick, colored concrete masonry block and a split faced charcoal concrete masonry block as the base of the building. The window areas are a smoked glass set in a clear anodized aluminum metal store front frame. There are no overhead doors that front on Wadsworth Boulevard. Overhead roll-up doors are located on the first floor of the other three elevations. The sides of the building on the first floor are colored concrete masonry block. The second and third floors of the building are tan stucco with "reddish brown accent stripes." Storage in these areas is climate controlled and accessed via elevators within the building.

- Signage**:** The applicant is proposing only one sign for the project, a monument sign on the Wadsworth Boulevard frontage. The proposed sign meets all of the sign requirements of the City of Westminster Sign Code.

- Lighting**:** The applicant is proposing to use low level downcast lighting fixtures mounted on the building with cut off lenses to prevent any lighting from shining onto adjoining properties. The lighting is being designed by a qualified lighting engineer to provide the minimum amount of lighting needed for security purposes. The lighting fixtures and photometric lighting patterns will be reviewed as part of the construction plans review.

Service Commitment Category

Service Commitments for this project will be provided out of the Category C, non-residential allocation. The exact number of commitments required will be calculated by staff at the time of building permit approval.

Referral Agency Responses

A copy of the proposed plans was sent to the following agencies: Xcel Energy, Comcast, and Qwest. Staff received responses from Xcel Energy, and their concerns regarding easements have been addressed on the ODP.

Neighborhood Meeting and Public Comments

A neighborhood meeting was held on March 13, 2007, concerning this project. Ten notices were mailed to the property owners within 300 feet of the subject property as required. The only citizens to attend the meeting were Tim Ebner and Jill Starcevich, DVM, who own the veterinary clinic property to the north of the self storage site. Issues discussed related to concern about the realigned access point and questions regarding the approval process and wing-wall construction adjacent to the entry. These issues have been addressed on the ODP to the satisfaction of the neighbors to the north.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Vicinity Map
- Comprehensive Land Use Plan Ordinance
- Comprehensive Land Use Plan Map (Exhibit A)
- Criteria and Standards for Land Use Applications
- Preliminary Development Plan
- Official Development Plan

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **26**

SERIES OF 2007 INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owner(s) of the properties described below incorporated herein by reference, requesting a change in the land use designations from "Industrial" to "Retail Commercial" for the Boulevard Plaza Planned Unit Development for a 2.833 acre parcel located at 9241 Wadsworth Boulevard.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on May 22, 2007 after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C.§ 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C.§11-4-16(D).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly by providing commercial areas necessary to serve the needs of surrounding neighborhoods.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designation of the property more particularly described as follows: 'That part of the Northwest ¼ of Section 23, Township 2 South Range 69 West of the 6th Principal Meridian, County of Jefferson, State of Colorado, described as follows:

Beginning at the southeast corner of the northwest ¼ of said Section 23;
Thence North 00˚ 09 Minutes 49 Seconds East along the east line of the said northwest ¼ a distance of 330.00 feet;
Thence south 89˚ 00 Minutes 14 Seconds West a distance of 30.00 feet to the true point of beginning;
Thence continuing south 89˚ 00 Minutes 14 Seconds West along the north line of a parcel ~ described in Book 720 at Page 362, Jefferson County Records, a distance of 549.69 feet;
Thence North 00˚ 09 Minutes 49 Seconds East and parallel to said East line of the Northwest 1/4, a distance of 230.62 feet to a point on the southerly line of that parcel described in Book 2170 at Page 429, Jefferson County Records;
Thence South 89˚ 43 Minutes 45 Seconds East along said South line a distance of 549.58 feet to a point on the West right-of-way line of Wadsworth Boulevard;

Thence South 00˚ 09 Minutes 49 Seconds West along said West right-of-way line a distance of 218.47 feet to the true point of beginning, County of Jefferson, State of Colorado. Containing 123,404 square feet or 2.833 acres more or less to

to "Retail Commercial", as depicted on the map attached as Exhibit A.

Section 3. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. 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 11th day of June, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of June, 2007.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

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

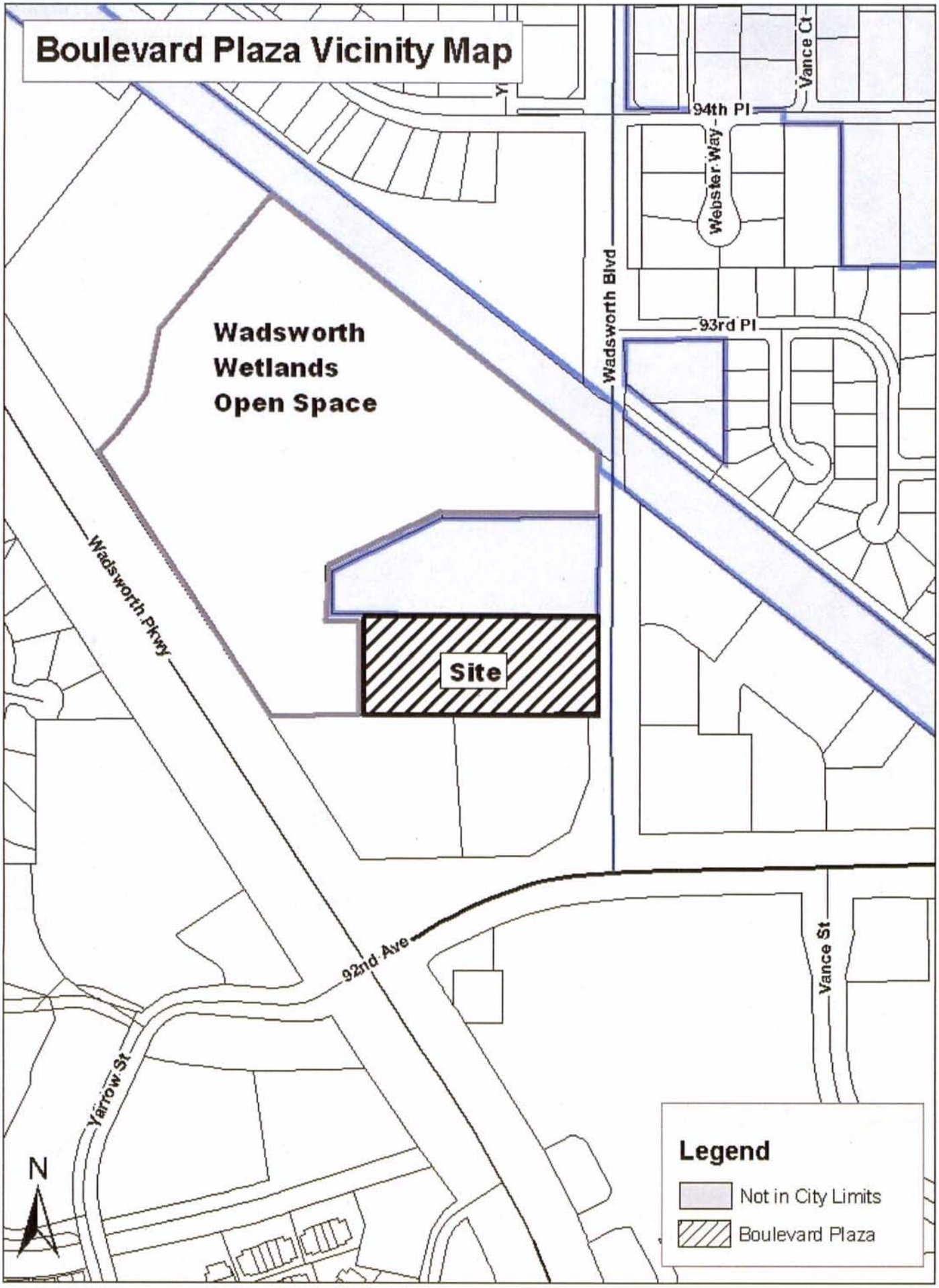
11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(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.

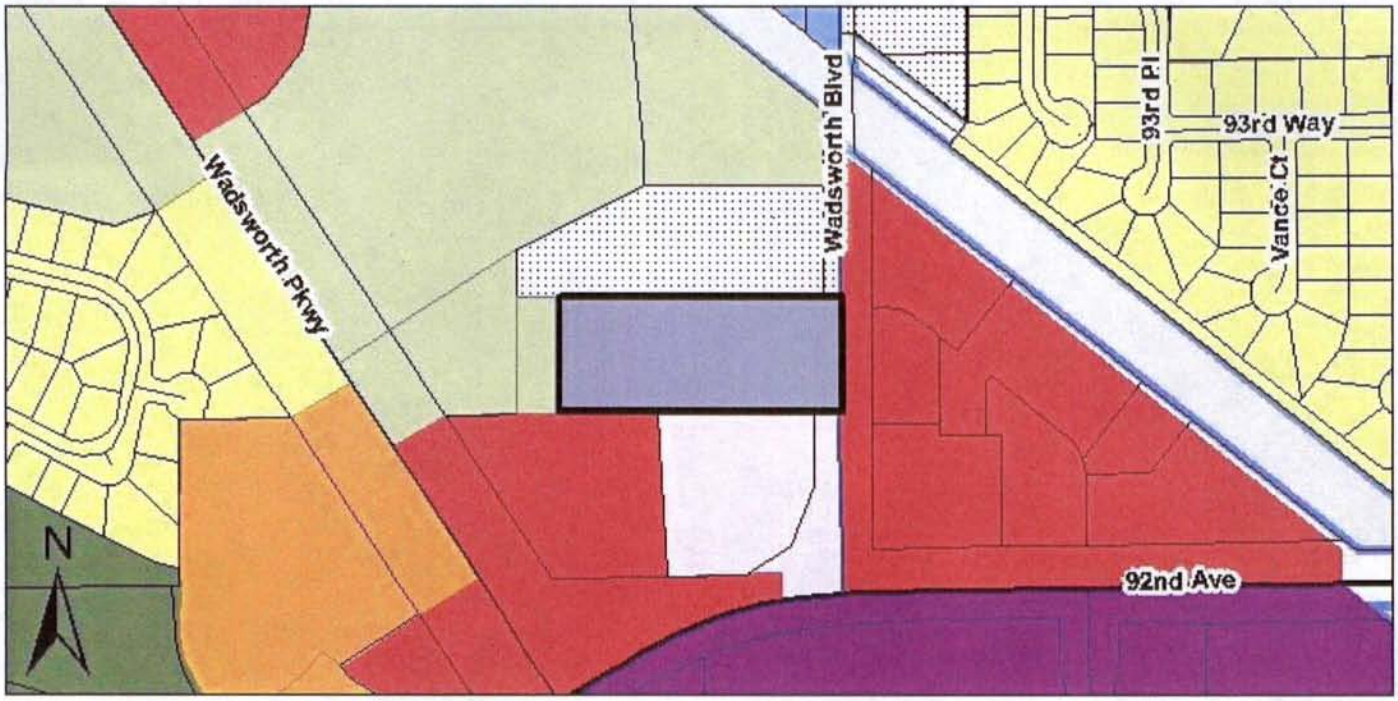
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.
5. The plan is compatible and harmonious with existing 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.


Boulevard Plaza Vicinity Map
94th Pl
Vance Ct
Webster Way
Wadsworth Blvd
93rd Pl
Wadsworth
Wetlands
Open Space
Wadsworth Pkwy
Site
92nd Ave
Vance St
Yarrow St
N
Legend
Not in City Limits
Boulevard Plaza

CLUP Designation

Exhibit A

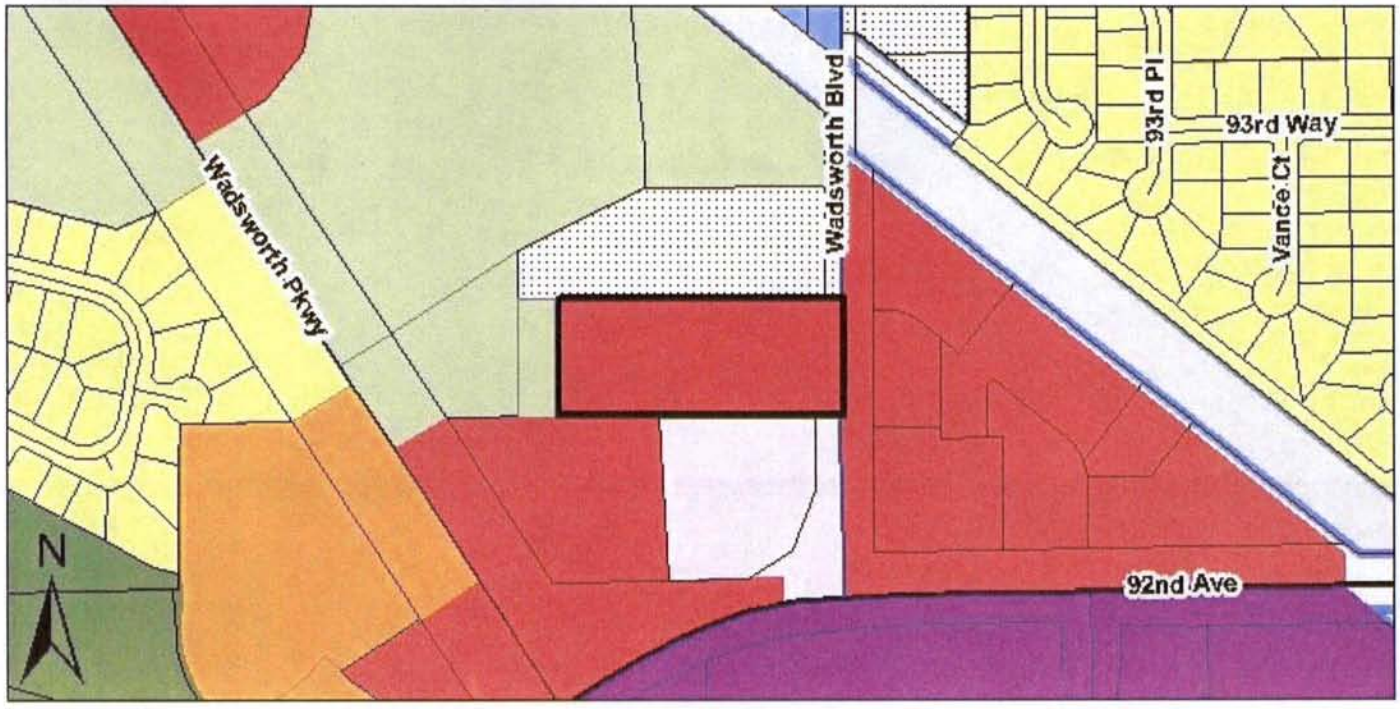


LEGEND

R-1	R-18	Office/Residential	Private Parks/Open Space
R-2.5	Retail Commercial	District Center	Golf Courses
R-3.5	Office	Traditional Mixed Use	Public/Quasi Public
R-5	Industrial	City Owned Open Space	N.E. Comprehensive Dev. Plan
R-8	Business Park	Public Parks	Major Creek Corridor Non Public

Description of Change: Industrial to Retail Commercial

New CLUP Designation



Agenda Item 10 E

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Councillor's Bill No. 27 re Sun Edison Economic Development Agreement

Prepared By: Susan F. Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillor's Bill No. 27 on first reading authorizing the City Manager to execute and implement the Economic Development Agreement (EDA) with Sun Edison.

Summary Statement

- Sun Edison is a renewable energy business planning to move into 12,000 square feet of existing vacant space in Lake Arbor Business Center by Costco near 90th Avenue and Pierce Street.
- The project is expected to employ approximately 35 employees with average salaries of $45,000.
- Assistance is based on the City's desire to fill existing office space and to encourage renewable energy businesses to locate in Westminster.
- Should Sun Edison decide to move out of Westminster within 5 years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.
- The company representatives have looked at sites from Denver to Boulder along US36.
- The City's EDA totals $17,865, which includes rebates of permit fees and construction use tax, as well as use tax rebates on equipment and furnishings at move-in and over the first five years of operation.

Expenditure Required: $17,865 (Rebates)

Source of Funds: The business assistance package with Sun Edison will be funded through revenue received from use tax on furniture, fixtures, and equipment at move-in, and over the next five years of business operations, as well as rebates of building related permit fees and construction use tax.

Policy Issue
Does Council desire to provide assistance to Sun Edison based on the desire to attract renewable energy businesses and filling of existing office space?

Alternatives
1. Do Nothing: One alternative to offering the business assistance package is to offer nothing to this company. Though the City may not lose the project if assistance is not provided, the result would be that the City's value of attracting new basic employment and filling existing space would not be supported.
2. Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended assistance package is consistent with other business retention packages.
3. Provide More: A third alternative would be to provide a greater amount of assistance than recommended. There is financial capacity for additional funding. However, it is staff's opinion that additional assistance is not needed, as it is consistent with other business retention packages.

Background Information

Sun Edison is a renewable energy power provider based in Maryland. They also have facilities in California and New Jersey. The company was recently selected by Xcel Energy to build, own and operate a solar power plant in the San Luis Valley. The purpose of the 12,000 square foot facility proposed in Westminster is to design, assemble and construct solar panel units. They will employ 35 people with an average salary of $45,000.

One of the industry sectors targeted by the City's Economic Development staff is the renewable energy industry. The City also desires to increase the number of manufacturing and assembly businesses in the City. Sun Edison's decision to locate in the City helps meet both of these goals.

It is anticipated that Sun Edison will generate over $36,000 of new revenue directly to the City in the first five years of operation. This is based primarily on the use tax on new equipment and furniture purchases, as well as building-related fees and taxes. It should be noted that the revenue projections are based on Sun Edison's best estimate of costs and growth trends. The actual revenue could vary, which will also impact the actual assistance provided.

Staff recommends the following assistance to be paid at time of tenant finish and over the first 5 years of operation:

	Approximate Value
Building Permit Fee Rebate 50% of the building related fees (excluding water and sewer tap fees) will be rebated ($2,250 x 50% = $1,125)	$1,125
Construction Use Tax Rebate 50% of the Use Tax on construction materials for this project will be rebated (Estimated Use Tax $1,530 x 50% = $765)	$765
Use Tax on Furniture and Fixtures Rebate For the period beginning 3 months prior to Sun Edison obtaining the Certificate of Occupancy and/or Final Inspection and over the following 60 months (five years), thereafter, the City will rebate 50% of the General Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishings and equipment purchased for Sun Edison's Westminster facility ($1,065,000 x 3% = $31,950 Use Tax x 50% - $15,975)	$15,975
Total Proposed Assistance Package Not To Exceed	**$17,865**

This assistance package is based upon the City's goals to attract renewable energy and assembly businesses, add primary jobs, and fill existing space. Staff believes that Sun Edison is the type of growth company the City desires for the community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **27**

SERIES OF 2007 INTRODUCED BY COUNCILLORS

_____

A BILL
FOR AN ORDINANCE AUTHORIZING A ECONOMIC DEVELOPMENT AGREEMENT WITH SUN EDISON TO AID IN THEIR LOCATION IN LAKE ARBOR BUSINESS CENTER

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

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

WHEREAS Sun Edison plans to lease 12,000 s.f. feet in Lake Arbor Business Center in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and Sun Edison is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Sun Edison 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 11th day of June, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of June, 2007.

ATTEST:

_____
Mayor

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

Exhibit A

ECONOMIC DEVELOPMENT AGREEMENT FOR SUN EDISON IN THE CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this _____ day of _____, 2007, between the CITY OF WESTMINSTER (the "City"), and Sun Edison.

WHEREAS, the City wishes to provide assistance to Sun Edison to aid in the location of this company in the City; and

WHEREAS, Sun Edison plans to lease 12,000 s.f. of office space in Lake Arber Business Center, thus providing primary job retention and growth within the City; 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 economic development project within the City.

In consideration of the mutual promises set forth below, the City and Sun Edison agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to Sun Edison 50% of the building permit fees that are otherwise required under W.M.C. Section 11-10-3 (E). This rebate excludes water and sewer tap fees, collected from Sun Edison. The permit fee rebate will be approximately $1,125.

2. Use Tax Rebate- Construction. The City shall rebate to Sun Edison 50% of the Building Use Tax on the construction materials, collected from Sun Edison that are otherwise required under W.M.C. sections 4-2-9 and 4-2-3. The rebate will be approximately $765.

3. Sales and Use Tax Rebate- Furniture and Fixtures. The City will rebate 50% of the General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishings and equipment purchased for the project during the period three months prior to receipt of the Certificate of Occupancy and/or Final Inspection and over the next 60 month period. This rebate will be approximately $15,975.

4. Payments of Rebates. The total rebate is not to exceed $17,865. The rebates will be paid to Sun Edison by the City in quarterly installments from revenue actually collected and received by the City from Sun Edison. Payments of each quarterly installment shall be made within 20 days of the calendar quarter end and will be submitted electronically.

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

6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if Sun Edison has not moved into their new location by June 1, 2008 or should Sun Edison not comply with the City regulations or code.

7. Business Termination. In the event Sun Edison ceases business operations within the City within five (5) years after the expanded operations commence, then Sun Edison shall pay to the City the total amount of fees and taxes that were due and payable by Sun Edison to the City but were rebated by the City, pursuant to this Agreement.

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

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

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

SUN EDISON

_____

President

CITY OF WESTMINSTER

_____

J. Brent McFall
City Manager

ATTEST:

_____

Linda Yeager
City Clerk

Adopted by Ordinance No.

Agenda Item 10 F

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Councillor's Bill No. 28 re TAB Boards International, Inc. (TAB) Economic Development Agreement

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillor's Bill No. 28 on first reading authorizing the City Manager to execute and implement an Economic Development Agreement (EDA) with TAB Boards International, Inc.

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill that authorizes the execution of the attached EDA with TAB to assist with the relocation of their corporate headquarters to Westminster.
- TAB is a franchisor of Peer Advisory Board and Business Coaching services.
- The company is planning to buy the building at 11031 Sheridan Boulevard that was formerly occupied by Melody Homes/D.R. Horton.
- The company will move 32 employees from Denver with a median salary of $70,000.
- The proposed assistance is based on the City's desire to fill existing office space.
- The Economic Development Agreement, which is valued at $29,500, will terminate after 3 years and is funded with rebates from permit fees and use tax on construction, furniture, and fixtures.
- The assistance would have to be reimbursed to the City by the company if TAB moves out of Westminster within 5 years of the approval of this EDA.
- The firm has looked at locations in Arvada and Westminster.

Expenditure Required: $29,500 (Rebates)

Source of Funds: The EDA with TAB will be funded through revenue received from permit fees and use tax on construction, furniture and fixtures directly generated from the location of TAB in the new Westminster facility.

Policy Issue

Does Council desire to provide assistance to TAB to aid in the location of their corporate headquarters?

Alternatives

Do Nothing: One alternative to offering the EDA is to offer nothing to this company. The City may lose the project if assistance is not provided. As a result the City's goal of encouraging the location of this Corporate Headquarter would not be supported.

Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended assistance package is considered in line with other companies that have received assistance.

Provide More: A third alternative would be to provide a greater amount of assistance than recommended. It is Staff's opinion that additional assistance is not needed.

Background

TAB is one of many businesses owned by Alan Fishman, CEO of Sun Development Company of Boulder. Mr. Fishman is an investor in small businesses world-wide. This company provides business consulting, aids in board development, and provides other business development services. The corporation currently occupies 6,500 square feet of space in Denver. The company desires a larger office building to consolidate the Denver and Boulder offices and to allow for projected growth. The company expects to bring 32 employees initially to the City and grow to almost 100 employees within 3 to 5 years

TAB has looked at several buildings in Arvada and Westminster. They are currently looking to acquire the 28,000 square feet building at 11031 Sheridan Boulevard.

This will be a corporate headquarters for TAB, as well as affiliated businesses. As such, the business is expected to attract entrepreneurial businesses to this area because of the business coaching and quasi "board of director" type services provided. Over $59,000 in tax and fee revenue is projected from this project as a result of TAB's relocation and expansion plans. It should be noted that the revenue projections are based on TAB's best estimate of costs and growth trends. The actual revenue could vary, which will also impact the actual assistance provided.

Proposed Assistance
To aid with the relocation of TAB to Westminster, Staff recommends the following assistance to be paid at time of tenant finish and over the first 3 years of operation:

	Approximate Value
Building Permit Fee Rebate 50% of the building related fees (excluding water and sewer tap fees) will be rebated ($3,500 x 50% = $1,750)	$1,750
Construction Use Tax Rebate 50% of the Use Tax on construction materials for this project (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) will be rebated (Estimated Use Tax $3,000 x 50% = $1,500)	$1,500

Use Tax on Furniture and Fixtures Rebate For the period 3 months prior TAB obtaining the Certificate of Occupancy or Final Inspection and over the following 36 months (3 years) the City will rebate 50% of the General Sales & Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishings and equipment purchased for TAB's. Westminster facility ($1,750,000 x 3% = $52,500 Use Tax x 50% - $26,250).	$26,250
Total Proposed Assistance Package	**$29,500**

Conclusion

This assistance package is based upon the City's goals to attract new business headquarters as well as to fill existing space. TAB will attract entrepreneurs from around the world to Westminster and will be an excellent addition to the City's business community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **28**

SERIES OF 2007 INTRODUCED BY COUNCILLORS

_____

A BILL
FOR AN ORDINANCE AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT WITH TAB BOARDS INTERNATIONAL, INC. FOR THE LOCATION OF THE CORPORATE OFFICES IN WESTMINSTER, COLORADO

WHEREAS, the successful attraction and retention of basic employers to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, TAB Boards International, Inc. (TAB) plans to redevelop and fill vacant space at 11031 North Sheridan Boulevard; and

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with TAB 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 this 11th day of June 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25thth day of June, 2007.

_____
Mayor

ATTEST: APPROVED AS TO LEGAL FORM:

_____ _____
City Clerk City Attorney's Office

EXHIBIT A

ECONOMIC DEVELOPMENT AGREEMENT
WITH TAB BOARD INTERNATIONAL, INC.

THIS AGREEMENT is made and entered into this _____ day of _____, 2007, between the CITY OF WESTMINSTER (the "City"), and TAB Board International, Inc. (TAB);

WHEREAS, the City wishes to provide certain assistance to TAB to encourage the location of TAB's corporate offices to Westminster; 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 economic development project within the City.

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

1. Building Permit Fee Rebates. The City shall rebate to TAB 50% of the building related permit fees for the tenant finish of the building at 11031 N. Sheridan Boulevard, required under W.M.C. Section 11-10-3 (E), excluding water and sewer tap fees. The rebate will be approximately $1,750.

2. Use Tax Rebate - Construction. The City shall rebate to TAB 50% of the building use tax on the construction materials (excluding the City's .25% open space tax and .6% public safety tax), resulting from the tenant finishes at 11031 N. Sheridan Boulevard, required under W.M.C. sections 4-2-9 and 4-2-3. The rebate will be approximately $1,500.

3. Use Tax Rebate – Furnishings and Equipment. For the period 3 months prior and 36 months after TAB obtains its Certificate of Occupancy or Final Inspection for its facility at 11031 N. Sheridan Boulevard, the City shall rebate to TAB 50% of the general use tax (excluding the City's .25% open space tax and .6% public safety tax) collected on equipment and furnishings purchased to furnish the facilities. The rebate will be approximately $26,250.

4. Payments of Rebates. The total rebate is not to exceed $29,500. Rebates will be paid to TAB by the City in quarterly installments from the Use Tax actually collected by the City from TAB. Payments of each quarterly installment shall be made within 20 days of the calendar quarter end and will be submitted electronically.

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

6. Termination. This Economic Development Agreement shall terminate and become void and of no force or effect upon the City if TAB has not moved into the building at 11031 N. Sheridan Boulevard on or before June 30, 2008; or, should TAB fail to comply with any City code and/or approval process. In the event TAB ceases business operations within the City within three (3) years after the new operations commence, then TAB shall pay to the City the total amount of fees and taxes that were due and payable by TAB to the City but were rebated by the City, as well as reimburse the City for any funds provided to TAB pursuant to this Agreement..

7. 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.

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

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

TAB Boards International, Inc.

_____
Alan Fishman
Chief Executive Officer

ATTEST:

_____

CITY OF WESTMINSTER

_____
J. Brent McFall
City Manager

ATTEST:

_____
Linda Yeager
City Clerk

Adopted by Ordinance No.

WESTMINSTER
COLORADO

Agenda Item 10 G

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Councillor's Bill No 29 re Big Dry Creek Park and Cheyenne Ridge Park Supplemental Appropriation

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action

Pass Councillor's Bill No. 29 on first reading authorizing a supplemental appropriation in the amount of $1,080,000 reflecting the City's receipt of an Adams County Open Space Grant for Big Dry Creek Park in the amount of $500,000; City's receipt of a contribution from Hyland Hills Park and Recreation District per the City's Intergovernmental Agreement (IGA) for construction of the Big Dry Creek Park in the amount of $500,000; and receipt of an $80,000 Adams County Open Space Grant for Cheyenne Ridge Park.

Summary Statement

- In February 2007, Staff received City Council's approval to apply for Adams County Open Space Grants for construction of Big Dry Creek Park and the Cheyenne Ridge Park.
- On May 21, 2007, the Adams County Open Space Board awarded the City $500,000 toward the Big Dry Creek Park and $80,000 toward the Cheyenne Ridge Park.
- Per an August 2002 IGA with Hyland Hills Park and Recreation District, Hyland Hills is to contribute $500,000 towards the Big Dry Creek Park as part of its 2002 general obligation bond.
- The Parks, Recreation and Libraries Department has appropriate matching funds in the 2007 Capital Improvement Program for the Big Dry Creek Park and Cheyenne Ridge Park.
- City Council approved a contract with Arrow J Landscape-Design, Inc. on May 21, 2007, for construction of the Big Dry Creek Park.
- Design Development crews will construct Cheyenne Ridge Park.

Expenditure Required: $1,080,000

Source of Funds: Adams County Open Space Grant and the Hyland Hills Park and Recreation District

Policy Issue

Should the City accept the grants and contribution to help pay for the Big Dry Creek Park and Cheyenne Ridge Park projects?

Alternatives

1. City Council could decline the grant and eliminate some of the features of Big Dry Creek Park. Staff does not recommend this, however, as the construction costs have escalated over recent years and the City would not be able to construct many of the park elements without this funding. In addition, City Council has already authorized the approval of the park construction contract assuming the inclusion of the Adams County Open Space Grant.

2. City Council could decline the grant for Cheyenne Ridge Park. This alternative is also not recommended due to the fact that without these funds the park design as approved through the public process would be severely under funded.

Background Information

Big Dry Creek Park is a joint project with the Hyland Hills Park and Recreation District. The City of Westminster, in partnership with Hyland Hills, requested a grant from Adams County Open Space on May 21, 2007, for this project and received an award of $500,000. The following is a breakdown of the projects budget:

Available CIP – Big Dry Creek	$ 950,000
Hyland Hills Park and Recreation District	$ 500,000
Adams County Open Space Grant	$ 500,000
2007 City of Westminster Parks and Open Space Bond (To be issued later this year)	$ 700,000
TOTAL	$2,650,000

The park construction will include two shelters, a play area, an off-lease dog area, two soccer fields, two ballfields, a restroom enclosure, a parking lot, and trail system. It will not include tennis courts or a basketball court due to budget constraints. City Staff will also help construct some elements of this park, including the play area in order to reduce project costs.

Cheyenne Ridge Park has a $300,000 budget in the City's 2007 Capital Improvement Program. The additional $80,000 grant funding will bring the total budget for this 5-acre park site to $380,000. Residents of the neighborhood have been very involved in the design of this park site, which was originally purchased in 1996 and have attended five budget hearings to request funding for development of the park. Staff will continue working with the residents to determine which elements will be included in the final design and construction of the project. Construction is anticipated to be completed by early 2008.

These projects meet City Council's Strategic Plan Goal of "Beautiful City" by providing the City with new community park development.

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
OS Grant ADCO	7501.40630.0010	$0	$580,000	$580,000
General	7501.43060.0000	$0	$500,000	$500,000
Total Change to Revenues			$1,080,000	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
128th Avenue & Huron Park Appropriation Holding	80175050179.80400.8888	$694,026	$1,000,000	$1,694,026
Cheyenne Ridge Park Appropriation Holding	80775050746.80400.8888	$300,000	$80,000	$380,000
Total Change to Expenses			$1,080,000	

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

Big Dry Creek Park

Schematic Site Plan

City of Westminster · May 9, 2006 · Sheffels & Team, Inc.

Cheyenne Ridge Master Plan

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **29**

SERIES OF 2007 INTRODUCED BY COUNCILLORS

_____

A BILL

FOR AN ORDINANCE INCREASING THE 2007 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2007 ESTIMATED REVENUES IN THIS FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2007 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3316 is hereby increased by $1,080,000. This appropriation is due to two grants and an IGA contribution.

Section 2. The $1,080,000 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10G, dated June 11, 2007 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement	$1,080,000
Total	$1,080,000

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 11th day of June, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of June, 2007.

ATTEST:

_____
Mayor

_____
City Clerk

Agenda Item 10 H

W E S T M I N S T E R

C O L O R A D O

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Councillor's Bill No. 30 re Municipal Code Modifications for the Industrial Pretreatment Program

Prepared By: Mike Happe, P.E., Water Resources and Treatment Manager
David Meyer, Water Quality Specialist

Recommended City Council Action

Pass Councillor's Bill No. 30 on first reading approving modifications to the Municipal Code relating to the Industrial Pretreatment Program.

Summary Statement

- The City administers an industrial pretreatment program in order to regulate discharges by industrial users into the sewage collection system.
- The program protects the City's wastewater treatment facility and reduces the possibility of release of contaminates to the environment.
- The proposed modifications to the Municipal Code consolidate and clarify existing industrial pretreatment program regulations, update local wastewater discharge limitations, incorporate new federal regulations, and follow model ordinance language recently developed by the United States Environmental Protection Agency (U.S. EPA).
- Currently four businesses in the City are issued Industrial Discharge Permits. Existing businesses in the City will not be negatively impacted and new businesses will not be at a competitive disadvantage because of the proposed changes.
- The proposed modifications to the Code were reviewed with City Council at their May 7 Study Session.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue

Should the City of Westminster update the local wastewater discharge limitations and other changes to the Municipal Code related to the Industrial Pretreatment Program as proposed?

Alternative

City Council could direct staff to develop alternative modifications; however, modifications have been required by U.S. EPA at this time. Proposed changes must also meet the approval of the U. S. EPA.

Background Information

The City of Westminster operates an Industrial Pretreatment Program as required by the U.S. EPA. The program regulates the types and quantities of pollutants industrial and commercial businesses may discharge to the City's Wastewater Treatment Facility. During a routine audit of the City's pretreatment program, the U.S. EPA required the City to evaluate and update its existing discharge limitations and perform a thorough review and update of the Municipal Code relating to the pretreatment program. Since the time of the program audit, the U.S. EPA also passed new federal regulations and developed changes to model language that cities may use to establish current legal authority to incorporate the new regulations and to administer the pretreatment program. The proposed Municipal Code changes use the U.S. EPA model as their basis. After approval by the City Council, the changes must also be presented to the U.S. EPA for approval by that agency.

Highlights of the proposed Municipal Code changes are as follows.

- Authority to waive monitoring for pollutants not present in a discharger's wastewater. Based on a new federal regulation, this change will provide a cost savings to businesses by eliminating the need to analyze for some pollutants.

- Authority to determine that certain dischargers of less than 100 gallons per day may be subject to reduced oversight by the City of Westminster pretreatment program. Based on a new federal regulation, this change will provide a cost savings to both businesses and the City by reducing time and money spent on pollutant analyses, facility inspections and reporting for those businesses that discharge only small volumes of wastewater.

- Authority to impose Best Management Practices in lieu of numeric discharge limits. Based on a new federal regulation, this change allows the City to specify Best Management Practices as a way to regulate pollutant discharges. Best Management Practices can be a more efficient and more cost effective alternative to numeric limits.

- Development of pollutant loading limits applicable to commercial dischargers, allowing for more effective protection of the City's wastewater treatment system. This is an alternative in keeping with guidance developed by U.S. EPA Region VIII and commonly used by cities in this area.

- Addition of administrative fines of up to $1000 as an enforcement option for violations of pretreatment requirements. Administrative fines can be used as an alternative to formal action in court. They are subject to appeal using a process already established by Municipal Code.

- Modification of numeric discharge limits as listed below. Discharge limits need to be updated periodically to reflect changing conditions and flows within the wastewater treatment system. Limitations for some pollutants have decreased, while others have increased. <u>The changes proposed will not require any modification of discharge practices or pretreatment methods by existing businesses in the City</u>.

Discharge Limit Changes

Pollutant	Current Limit (mg/L)	New Limit (mg/L)
Arsenic	0.54	0.09
Cadmium	0.20	0.14
Chromium (total)	17.21	19.93
Chromium (hexavalent)	no limit established	1.44
Copper	3.82	2.90
Lead	0.89	0.35
Mercury	0.046	0.0007
Molybdenum	5.2	0.56
Nickel	2.42	2.53
Selenium	0.18	0.04
Silver	0.44	0.19
Zinc	0.89	9.24
Cyanide	0.1	none detected, limit not needed

The proposed changes were developed using U.S. EPA protocols and incorporate recent changes to applicable federal regulations.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. _____ COUNCILLOR'S BILL NO. **30**

SERIES OF 2007 INTRODUCED BY COUNCILLORS

_____

A BILL
FOR AN ORDINANCE AMENDING SECTIONS 8-8-4 AND 8-8-7 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING USE OF THE SANITARY SEWERS AND REPEALING AND REENACTING CHAPTER 10 OF TITLE VIII OF THE WESTMINSTER MUNICIPAL CODE CONCERNING INDUSTRIAL PRETREATMENT OF WASTEWATER

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-8-4, subsection (A), W.M.C., is hereby AMENDED to read as follows:

8-8-4: USE OF THE SANITARY SEWERS:

(A) The discharge of ~~non-acceptable~~ wastes, LISTED IN THIS SUBSECTION, into the sanitary sewer system, whether directly or indirectly, is prohibited and where investigation reveals the presence in the system of ~~non-acceptable~~SUCH wastes emanating from any lot, land, building, or premise, the owner, lessor, renter, or occupant of same shall, at his own expense, treat, neutralize, or in any other way prepare the non-acceptable wastes to the satisfaction of the City Manager in order to convert the same into acceptable wastes. No person(s) shall discharge or cause to be discharged any of the following described waters or wastes to the waste treatment system from any source ~~of non-domestic discharge~~:

. . .

Section 2. Section 8-8-7, subsection (C), W.M.C., is hereby AMENDED to read as follows:

8-8-7: POWERS AND AUTHORITY OF INSPECTORS:

(C) While performing the necessary work on private properties, the City Manager or a duly authorized representative shall observe all safety rules applicable to the premises established by the company. The City shall provide insurance coverage against liability for injury or death of City representatives while on the premises of the company, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Section 8-8-4(E). ~~The company may request the City to add the company as an additional insured for purposes of this section.~~

Section 3. Chapter 10 of Title VIII, W.M.C., is hereby REPEALED AND REENACTED by the adoption of Exhibit "A," herein incorporated by reference, a revision of the Federal Environmental Protection Agency's model pretreatment ordinance in the form attached hereto.

Section 4. Severability. If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

Section 5. This ordinance shall take effect upon its passage after second reading.

Section 6. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The text of this ordinance shall be published within ten (10) days after its enactment after second reading; however, pursuant to Westminster City Charter section 8.6, Enactment of Code by Reference, the exhibit hereto need not be published in full, but a copy thereof shall be available for public review in the Office of the City Clerk.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this _____ day of June, 2007.

PASSED, ENACTED ON SECOND READING, AND ORDERED PUBLISHED PURSUANT TO CITY CHARTER SECTION 8.6 this _____ day of _____, 2007.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

EXHIBIT "A"

CHAPTER 10
INDUSTRIAL PRETREATMENT

8-10-1: GENERAL PROVISIONS - DEFINITIONS:

(A) PURPOSE AND POLICY: This Chapter sets forth uniform requirements for users of the Publicly Owned Treatment Works for the City of Westminster and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code Section 1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of this Chapter are:

1. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;

2. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;

3. To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

4. To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;

5. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the City of Westminster pretreatment program; and

6. To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

This Chapter shall apply to all users of the Publicly Owned Treatment Works. This Chapter authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(B) ADMINISTRATION: Except as otherwise provided herein, the City Manager shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the City Manager may be delegated by the City Manager to other City personnel.

(C) ABBREVIATIONS: The following abbreviations, when used in this ordinance, shall have the designated meanings:

BOD - Biochemical Oxygen Demand
BMP - Best Management Practice
CFR - Code of Federal Regulations
EPA - U.S. Environmental Protection Agency
gpd - gallons per day
IU – Industrial User
mg/l - milligrams per liter
NPDES - National Pollutant Discharge Elimination System
POTW - Publicly Owned Treatment Works
RCRA - Resource Conservation and Recovery Act
SIU - Significant Industrial User
TSS - Total Suspended Solids
U.S.C. -United States Code

(D) DEFINITIONS: Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:

1. Act or "the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. Section 1251 et seq.

2. Authorized Representative of the User.

(a) If the user is a corporation:

(1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(c) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(d) The individuals described in paragraphs (a) through (c), above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

3. Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 8-10-2(A)(1) and 8-10-2(A)(2). BMPs also include treatment requirements, operating

procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

4. Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).

5. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. Section 1317) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

6. Categorical Industrial User. An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.

7. City. The City of Westminster.

8. Daily Maximum Limit or Daily Maximum. The maximum allowable discharge of a pollutant during a calendar day. Where daily maximum limitations are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limitations are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

9. Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

10. Existing Source. Any source of discharge that is not a “New Source”.

11. Grab Sample. A sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

12. Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any nondomestic source regulated under section 307(b), (c) or (d) of the Act.

13. Instantaneous Maximum Allowable Discharge Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

14. Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

15. Local Limit. Effluent limitation developed for Industrial Users by the City Manager to specifically protect the “Publicly Owned Treatment Plant” (POTW) from “Interference” and “Pass through” based on site-specific design and disposal limits and conditions of the POTW. Local limits are developed to assure that IU discharges to POTWs do not cause the POTW to violate its permit limits, upset the POTW’s biological, chemical or physical treatment processes, prevent the disposal of biosolids (sludge), impact worker health and safety or harm the collection system infrastructure.

16. Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

17. Monthly Average Limit or Monthly Average. The arithmetic mean of the effluent samples collected during a calendar month or specified 30-day period.

18. New Source.

(a) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

(1) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

(2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(3) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (a)(2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(1) Begun, or caused to begin, as part of a continuous onsite construction program

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

19. Noncontact Cooling Water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

20. Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City's NPDES permit, including an increase in the magnitude or duration of a violation.

21. Person. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

22. pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

23. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, toxicity, or odor).

24. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

25. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

26. Pretreatment Standards or Standards. Pretreatment standards shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to industrial users. The term includes prohibitive discharge limits established pursuant to 40 CFR 403.5, categorical pretreatment standards, local limits, and best management practices.

27. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 8-10-2(A) of this ordinance.

28. Publicly Owned Treatment Works or POTW. A treatment works, as defined by Section 212 of the Act (33 U.S.C. Section 1292), which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

29. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

30. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).

31. Significant Industrial User (SIU). Except as provided in paragraphs (c) and (d) of this section, a significant industrial user is:

(a) A user subject to categorical pretreatment standards; or

(b) A user that:

(1) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

(2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(3) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(c) The City may determine that an Industrial User subject to categorical pretreatment standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown

wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(1) the Industrial User, prior to City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(2) the Industrial User annually submits the certification statement required in Section 8-10-6(N)(2), together with any additional information necessary to support the certification statement; and

(3) the Industrial User never discharges any untreated concentrated wastewater.

(d) Upon a finding that a user meeting the criteria in Subsection (b) of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

32. Slug Load or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 8-10-2(A) of this ordinance. A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions.

33. State. State of Colorado.

34. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

35. Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

36. User or Industrial User. A source of indirect discharge.

37. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

38. Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

8-10-2: GENERAL SEWER USE REQUIREMENTS – PRETREATMENT STANDARDS:

(A) PROHIBITED DISCHARGE STANDARDS:

1. General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.

2. Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

(a) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;

(b) Wastewater having a pH less than 5.5 or more than 10, or otherwise causing corrosive structural damage to the POTW or equipment. Limitations on pH are instantaneous discharge limitations;

(c) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference;

(d) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

(e) Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C);

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(h) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

(i) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit;

(j) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity testing;

(k) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;

(l) Storm water, surface water, ground water, artesian well water, roof runoff, and subsurface drainage, unless specifically authorized by the City Manager;

(m) Sludges, screenings, or other residues from the pretreatment of industrial wastes;

(n) Fats, oils, or greases of animal or vegetable origin in amounts that will cause interference or pass through;

(o) Trucked or hauled pollutants, except at discharge points designated by the City Manager and in accordance with Section 8-10-3(D) of this chapter;

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

(B) NATIONAL CATEGORICAL PRETREATMENT STANDARDS:

The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated. Users must comply with applicable categorical standards.

1. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the City Manager may impose equivalent concentration or mass limits in accordance with Section 8-10-2(B)(4) and (B)(5).

2. When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the City Manager may convert the limits to equivalent limitations

expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

3. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the City Manager shall impose an alternate limit in accordance with 40 CFR 403.6(e).

4. When a categorical pretreatment standard is expressed only in terms of pollutant concentrations, an Industrial User may request that the City convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the City Manager. The City may establish equivalent mass limits only if the Industrial User meets all of the conditions set forth in Sections 8-10-2(B)(4)(a)(1) through 8-10-2(B)(4)(a)(5) below.

(a) To be eligible for equivalent mass limits, the Industrial User must:

(1) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(2) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;

(3) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(4) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and

(5) Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

(b) An Industrial User subject to equivalent mass limits must:

(1) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

(2) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

(3) Continue to record the facility's production rates and notify the City Manager whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in section 8-10-2(B)(4)(a)(3) of this section. Upon notification of a revised production rate, the City Manager must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

(4) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraphs 2.2D(1)(a) of this section so long as it discharges under an equivalent mass limit.

(c) When developing equivalent mass limits, the City Manager:

(1) Will calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

(2) Upon notification of a revised production rate, will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(3) May retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to Section 8-10-2(F). The Industrial User must also be in compliance with Section 8-10-13(C) regarding the prohibition of bypass.

5. The City Manager may convert the mass limits of the categorical pretreatment standards of 40 CFR Parts 414 and 455 to concentration limits for purposes of calculating limitations applicable to

individual Industrial Users. The conversion is at the discretion of the City Manager. When converting such limits to concentration limits, the City Manager must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Section 8-10-2(F) of this ordinance.

6. The City Manager must document how the equivalent limits were derived for any changes from concentration to mass limits or vice versa and make this information publicly available.

7. Once incorporated into its control mechanism, the Industrial User must comply with the equivalent limitations developed in this Section 8-10-2(B) in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

8. Where categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

9. Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the City Manager within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the City Manager of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

(C) STATE PRETREATMENT STANDARDS: (reserved)

(D) LOCAL LIMITS:

1. The City Manager is authorized to establish local limits pursuant to 40 CFR 403.5(c).

2. The following pollutant limits are established to protect against pass through and interference.

3. Daily Maximum Discharge Limits: No person shall discharge wastewater containing in excess of the following maximum limits. These limits apply at the point where the wastewater is discharged to the POTW. The City Manager may impose mass-based limitations in addition to the concentration-based limits below.

0.09 mg/l arsenic (total)
0.14 mg/l cadmium (total)
19.93 mg/l chromium (total)
1.44 mg/l chromium (VI)
2.90 mg/l copper (total)
0.35 mg/l lead (total)
0.0007 mg/l mercury (total)
0.56 mg/l molybdenum (total)
2.53 mg/l nickel (total)
0.04 mg/l selenium (total)
0.19 mg/l silver (total)
9.24 mg/l zinc (total)

4. Pollutant Loadings: The following are the total cumulative pollutant loadings allowed from all commercial dischargers. The City manager may limit the discharge of pollutants from commercial dischargers as necessary to meet the following daily allowable loadings.

0.15 lbs/day arsenic (total)
0.24 lbs/day cadmium (total)
33.15 lbs/day chromium (total)
2.40 lbs/day chromium (VI)

4.83 lbs/day copper (total)
0.59 lbs/day lead (total)
0.021 lbs/day mercury (total)
0.93 lbs/day molybdenum (total)
4.20 lbs/day nickel (total)
0.07 lbs/day selenium (total)
0.31 lbs/day silver (total)
15.37 lbs/day zinc (total)

5. The City Manager may develop Best Management Practices (BMPs), by ordinance or in wastewater discharge permits, to implement local limits and the requirements of Section 8-10-2(A) and 8-10-2(D).

(E) CITY'S RIGHT OF REVISION: The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW consistent with the purposes of this chapter.

(F) DILUTION: No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The City Manager may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

8-10-3: PRETREATMENT OF WASTEWATER:

(A) PRETREATMENT FACILITIES: Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Section 8-10-2(A) of this ordinance within the time limitations specified by EPA, the State, or the City Manager, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the City Manager for review, and shall be acceptable to the City Manager before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City of Westminster under the provisions of this ordinance.

(B) ADDITIONAL PRETREATMENT MEASURES:

1. Whenever deemed necessary, the City Manager may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate domestic sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.

2. The City Manager may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

3. Grease, oil, and sand interceptors shall be provided when, in the opinion of the City Manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or solids; except that such interceptors shall not be required for residential users. All interceptors shall be of type and capacity approved by the City Manager, and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired by the user at their expense. Cleaning and maintenance requirements may be specified by the City Manager.

4. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(C) ACCIDENTAL DISCHARGE/SLUG DISCHARGE CONTROL PLANS: The City Manager shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control slug discharges. The City Manager may require any user to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control slug discharges. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

1. Description of discharge practices, including nonroutine batch discharges;

2. Description of stored chemicals;

3. Procedures for immediately notifying the City Manager of any accidental or slug discharge, as required by Section 8-10-6(F) of this ordinance; and

4. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(D) HAULED WASTEWATER:

1. Domestic wastewater from privately owned recreational vehicles may be introduced into the POTW only at locations, and at times, designated by the City Manager.

2. The discharge into the POTW of hauled septic tank waste, hauled commercial waste or hauled industrial waste is prohibited.

8-10-4: WASTEWATER DISCHARGE PERMITS:

(A) WASTEWATER ANALYSIS:

When requested by the City Manager, a user must submit information on the nature and characteristics of its wastewater within 30 days of the request or within such other time period specified by the City Manager. The City Manager may periodically require users to update this information and may specify the format of the information submitted.

(B) WASTEWATER DISCHARGE PERMIT REQUIREMENT:

1. No significant industrial user shall discharge wastewater into the POTW without first obtaining an individual wastewater discharge permit from the City of Westminster, except that a significant industrial user that has filed a timely application pursuant to Section 8-10-4(C) of this ordinance may continue to discharge for the time period specified therein.

2. The City Manager may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this ordinance.

3. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 8-10-10 through 8-10-12 of this ordinance. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State, and local law.

(C) WASTEWATER DISCHARGE PERMITTING: EXISTING CONNECTIONS: Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges, shall apply for a wastewater discharge permit in accordance with Section 8-10-4(E) within 30 days of the requirement, or within such other time period specified by the City Manager.

(D) WASTEWATER DISCHARGE PERMITTING: NEW CONNECTIONS:

Any user required to obtain a wastewater discharge permit who proposes to begin discharging into the POTW must obtain such permit prior to beginning such discharge. An application for this wastewater discharge permit, in accordance with Section 8-10-4(E), must be filed at least 30 days prior to the date upon which any discharge will begin or recommence.

(E) WASTEWATER DISCHARGE PERMIT APPLICATION CONTENTS:

1. All users required to obtain a wastewater discharge permit must submit a permit application. The City Manager may require users to submit all or some of the following information as part of a permit application.

(a) Identifying Information.

(1) The name and address of the facility, including the name of the operator and owner.

(2) Contact information, description of activities, facilities, and plant production processes on the premises;

(b) Environmental Permits. A list of any environmental control permits held by or for the facility.

(c) Description of Operations.

(1) The standard industrial classification(s) and a brief description of the nature of the operation(s) carried out by the user. This description should include each process used, each product produced by type, amount, rate of production and a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.

(2) Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

(3) Number and type of employees, hours of operation, and proposed or actual hours of operation;

(4) Type and amount of raw materials processed (average and maximum per day);

(5) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;

(d) Time and duration of discharges;

(e) The location for monitoring all wastes covered by the permit;

(f) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

(g) Measurement of Pollutants.

(1) The categorical pretreatment standards and/or local limits applicable to each regulated process.

(2) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the City Manager, of regulated pollutants in the discharge from each regulated process.

(3) Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.

(4) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 8-10-6(J) of this ordinance. Where the standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the the City Manager or the applicable standards to determine compliance with the standard.

(5) Sampling must be performed in accordance with procedures set out in Section 8-10-6(K) of this ordinance.

(h) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 8-10-6(D)(2).

(i) Any other information as may be deemed necessary by the City Manager to evaluate the wastewater discharge permit application.

2. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

(F) SIGNATURES AND CERTIFICATIONS:

1. All wastewater discharge permit applications, user reports and user certification statements must be signed by an authorized representative of the user and contain the certification statement in Section 8-10-6(N)(1)**.**

2. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the City Manager prior to, or together with, any reports to be signed by an authorized representative.

3. A facility determined to be a Non-Significant Categorical Industrial User by the City Manager pursuant to Section 8-10-1(D)(31)(c) must annually submit the signed certification statement in Section 8-10-6(N)(2).

(G) WASTEWATER DISCHARGE PERMIT DECISIONS: The City Manager will evaluate the data furnished by the user and may require additional information. The City Manager will determine whether or not to issue a wastewater discharge permit and may deny any application for a wastewater discharge permit. The City Manager may also issue a Zero Discharge Permit to a user. Zero Discharge Permits prohibit the discharge of wastewater from all, or from specific, commercial or industrial processes of a user.

(H) WASTEWATER DISCHARGE PERMIT DURATION: A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the City Manager. Each wastewater discharge permit will indicate a specific date upon which it will expire.

(I) WASTEWATER DISCHARGE PERMIT CONDITIONS: A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the City Manager to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

1. Wastewater discharge permits must contain:

(a) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;

(b) A statement that the wastewater discharge permit is nontransferable;

(c) Effluent limits, including Best Management Practices, based on applicable pretreatment standards;

(d) Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include representative sampling, an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.

(e) A requirement for industrial users subject to the reporting requirements in section 8-10-6(D) of this chapter to include the results of any monitoring of regulated pollutants done by the

industrial user that exceeds the frequency required by the City, if such monitoring uses procedures prescribed by section 8-10-6(J) of this chapter.

(f) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the discharge in accordance with Section 8-10-6(D)(2).

(g) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

(h) Requirements to notify the POTW immediately of any changes to its facility affecting the potential for a slug discharge and requirements to control slug discharge, if determined by the City Manager to be necessary.

(i) Any grant of a monitoring waiver by the City Manager.

2. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

(a) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

(b) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(c) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

(d) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

(e) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;

(f) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;

(g) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and

(h) Other conditions as deemed appropriate by the City Manager to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

(J) PERMIT APPEAL PROCESS: The permittee may petition the City Manager to reconsider the terms of a wastewater discharge permit within thirty (30) days of its issuance.

1. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

2. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

3. The provisions and effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

4. If the City Manager fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.

5. Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the District Court within thirty (30) days.

(K) WASTEWATER DISCHARGE PERMIT MODIFICATION: The City Manager may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

1. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;

2. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

3. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

4. Information indicating that the permitted discharge poses a threat to the POTW, City personnel, or the receiving waters;

5. Violation of any terms or conditions of the wastewater discharge permit;

6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

7. Revision of, or a grant of, a variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

8. To correct typographical or other errors in the wastewater discharge permit.

(L) WASTEWATER DISCHARGE PERMIT REVOCATION: The City Manager may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

1. Failure to notify the City Manager of significant changes to the wastewater prior to the changed discharge;

2. Failure to provide prior notification to the City Manager of changed conditions pursuant to Section 8-10-6(E) of this ordinance;

3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

4. Falsifying self-monitoring reports;

5. Tampering with monitoring equipment;

6. Refusing to allow the City Manager timely access to the facility premises and records;

7. Failure to meet effluent limitations;

8. Failure to pay fines;

9. Failure to pay sewer charges;

10. Failure to meet compliance schedules;

11. Failure to complete a wastewater survey or the wastewater discharge permit application;

12. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

(M) WASTEWATER DISCHARGE PERMIT REISSUANCE: A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 8-10-4(E) of this ordinance, a minimum of 60 days prior to the expiration of the user's existing wastewater discharge permit.

8-10-5: REGULATION OF WASTE RECEIVED FROM OTHER JURISDICTIONS:

(A) If another municipality, or user located within another municipality, contributes wastewater to the POTW, the City Manager shall enter into an intermunicipal agreement with the contributing municipality.

(B) Prior to entering into an agreement required by paragraph 1, above, the City Manager shall request the following information from the contributing municipality:

1. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;

2. An inventory of all users located within the contributing municipality that are discharging to the POTW; and

3. Such other information as the City Manager may deem necessary.

(C) An intermunicipal agreement, as required by paragraph 1, above, shall contain the following conditions:

1. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and local limits which are at least as stringent as those set out in Section 8-10-2(D) of this ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the City of Westminster’s ordinance or local limits;

2. A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis;

3. A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the City Manager; and which of these activities will be conducted jointly by the contributing municipality and the City Manager;

4. A requirement for the contributing municipality to provide the City Manager with access to all information that the contributing municipality obtains as part of its pretreatment activities;

5. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;

6. Requirements for monitoring the contributing municipality's discharge;

7. A provision ensuring the City Manager access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the City Manager; and

8. A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

8-10-6: REPORTING REQUIREMENTS:

(A) BASELINE MONITORING REPORTS:

1. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the City Manager a report which contains the information listed in paragraph 2, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the City Manager a report which contains the information listed in paragraph 2, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

2. Users described above shall submit the information set forth below.

(a) All information required in Section 8-10-4(E)(1)(a)(1), Section 8-10-4(E)(1)(b), Section 8-10-4(E)(1)(c)(1), Section 8-10-4(E)(1)(f) and Section 8-10-4(E)(1)(g)(1).

(b) Measurement of pollutants.

(1) The results of sampling and analysis identifying the nature and concentration and/or mass, where required by the standard of by the City Manager, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.

(2) The user shall take a minimum of one sample representative of daily operations to compile that data necessary to comply with the requirements of this section.

(3) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the City;

(4) Sampling and analysis shall be performed in accordance with section 8-10-6(J).

(5) The City Manager may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(6) The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(c) Compliance Certification. A statement, reviewed by the user's authorized representative as defined in Section 8-10-1(D)(2) and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(d) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to

this section must meet the requirements set out in Section 8-10-6(B) of this ordinance.

(e) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 8-10-6(N)(1) of this ordinance and signed by an authorized representative as defined by Section 8-10-1(D)(3).

(B) COMPLIANCE SCHEDULE PROGRESS REPORTS: The following conditions shall apply to the compliance schedule required by Section 8-10-6(A)(2)(d) of this ordinance:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

2. No increment referred to above shall exceed nine (9) months;

3. The user shall submit a progress report to the City Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

4. In no event shall more than nine (9) months elapse between such progress reports to the City Manager.

(C) REPORTS ON COMPLIANCE WITH CATEGORICAL PRETREATMENT STANDARD DEADLINE: Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the City Manager a report containing the information described in Section 8-10-4(E)(1)(f) and (g) and 8-10-6(A)(2)(b) of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 8-10-2(B), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 8-10-6(N)(1) of this ordinance. All sampling will be done in conformance with Section 8-10-6(K).

(D) PERIODIC COMPLIANCE REPORTS:

1. All significant industrial users must submit reports no less than twice per year (in June and December or on other dates specified by the City Manager), indicating the nature, concentration, and flow of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the City Manager or the Pretreatment Standard necessary to determine the compliance status of the User. The City Manager may require reporting more frequently than twice per year.

2. The City may authorize an Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

(a) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

(b) The monitoring waiver is valid only for the duration of the effective period of the Permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

(c) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

(d) The request for a monitoring waiver must be signed in accordance with Section 8-10-1(D)(2), and include the certification statement in 8-10-6(N)(1).

(e) Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(f) Any grant of the monitoring waiver by the City Manager must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the City Manager for 3 years after expiration of the waiver.

(g) Upon approval of the monitoring waiver and revision of the User's permit by the City Manager, the Industrial User must certify on each report with the statement in Section 8-10-6(N)(3), that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

(h) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the User's operations, the User must immediately: Notify the City manager and comply with the monitoring requirements of Section 8-10-6(D)(1), or other more frequent monitoring requirements imposed by the City Manager.

(i) This provision does not supercede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

3. All periodic compliance reports must be signed and certified in accordance with Section 8-10-6(N)(1) of this ordinance.

4. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

5. If a user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the City Manager, using the procedures prescribed in Section 8-10-6(K) of this ordinance, the results of this monitoring shall be included in the report..

(E) REPORTS OF CHANGED CONDITIONS: Each user must notify the City Manager of any significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change. A significant change for the purposes of this paragraph is an increase in the volume of wastewater of 20% or more, an increase in pollutant concentration or pollutant mass of 20% or more, or the addition any new regulated pollutant.

1. The City Manager may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 8-10-4(E) of this chapter.

2. The City Manager may issue a wastewater discharge permit or modify an existing wastewater discharge permit in response to changed conditions or anticipated changed conditions.

(F) REPORTS OF POTENTIAL PROBLEMS:

1. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug discharge or slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

2. Within five (5) days following such discharge, the user shall, unless waived by the City Manager, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance**.**

3. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph 1, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

4. Significant Industrial Users are required to notify the City Manager immediately of any changes at its facility affecting potential for a slug discharge.

(G) REPORTS FROM UNPERMITTED USERS: All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the City Manager as the City Manager may require.

(H) NOTICE OF VIOLATION/REPEAT SAMPLING AND REPORTING: If sampling performed by a user indicates a violation, the user must notify the POTW within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City Manager within thirty (30) days after becoming aware of the violation. Resampling by the Industrial User is not required if the City performs sampling at the user's facility at least once a month, or if the City performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the City receives the results of this sampling.

(I) NOTIFICATION OF THE DISCHARGE OF HAZARDOUS WASTE:

1. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 8-10-6(E) of this ordinance. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment

standards under the self-monitoring requirements of Sections 8-10-6(A), 8-10-6(C), and 8-10-6(D) of this ordinance.

2. Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

4. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

5. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

(J) ANALYTICAL REQUIREMENTS: All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the City Manager or other parties approved by EPA.

(K) SAMPLE COLLECTION: Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period. The City Manager shall require that frequency of monitoring necessary to assess and assure compliance by the user with applicable pretreatment standards and requirements.

1. Except as indicated in Section 2 and 3 below, the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the City Manager. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate.

2. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

3. For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 8-10-6(A) and 8-10-6(C), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City Manager may authorize a lower minimum. For the reports required by Section 8-10-6(D), the City

shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(L) DATE OF RECEIPT OF REPORTS: Written reports delivered by mail or other carrier will be deemed to have been submitted on the date postmarked. Other reports will be deemed submitted on the date of receipt.

(M) RECORD KEEPING:

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established under Section 8-10-2(D)(3). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the City Manager.

(N) CERTIFICATION STATEMENTS:

1. Certification of Permit Applications, User Reports and Initial Monitoring Waiver – The following certification statement is required to be signed and submitted by users submitting permit applications in accordance with Section 8-10-4(G); users submitting baseline monitoring reports under Section 8-10-6(A); users submitting reports on compliance with the categorical pretreatment standard deadlines under Section 8-10-6(C); users submitting periodic compliance reports required by Section 8-10-6(D), and users submitting an initial request to forego sampling of a pollutant based on Section 8-10-6(D)(2)**.** The following certification statement must be signed by an authorized representative as defined by Section 8-10-1(D)(2):

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

2. Annual Certification for Non-Significant Categorical Industrial Users - A facility determined to be a Non-Significant Categorical Industrial User by the City Manager pursuant to 8-10-1(D)(31)(c) and 8-10-4(G)(3) must annually submit the following certification statement signed in accordance with the signatory requirements in 8-10-1(D)(2). This certification must accompany an alternative report required by the City Manager:

> Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:
>
> (a) The facility described as _____
> [facility name] met the definition of a non-significant categorical Industrial User as described in section 8-10-1(D)(31)(c) [40 CFR 403.3(v)(2)];
>
> (b) the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based upon the following information.

_____

_____

3. Certification of Pollutants Not Present. Users that have an approved monitoring waiver based on Section 8-10-6(D)(2) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the user.

> Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 8-10-6.

8-10-7: COMPLIANCE MONITORING:

(A) RIGHT OF ENTRY: INSPECTION AND SAMPLING: The City Manager shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this ordinance and any wastewater discharge permit or order issued hereunder. Users shall allow the City Manager 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.

1. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City Manager will be permitted to enter without delay for the purposes of performing specific responsibilities.

2. The City Manager shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

3. The City Manager may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy. The City manager may specify the frequency of required calibrations.

4. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the City Manager and shall not be replaced. The costs of clearing such access shall be born by the user.

5. Delays in allowing the City Manager access to the user's premises shall be a violation of this ordinance.

(B) SEARCH WARRANTS:

If the City Manager has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City Manager may seek issuance of a search warrant from the Municipal Court.

8-10-8: CONFIDENTIAL INFORMATION:

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the City Manager’s inspection and

sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the City Manager, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State and federal law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

8-10-9: PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE: The City Manager shall publish at least annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to any significant industrial user that meets any of the criteria in paragraphs (A) through (H) below and any other user that meets the definition in paragraphs (C), (D) or (H) below. Significant noncompliance shall mean:

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric pretreatment standard or requirement**;**

(B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric pretreatment standard multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a pretreatment standard or requirement,as defined by Section 8-10-1(D), (daily maximum, long-term average, instantaneous limit, or narrative standard) that the City Manager determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

(D) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the City Manager's exercise of its emergency authority to halt or prevent such a discharge;

(E) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance; or

(H) Any other violation(s), which may include a violation of Best Management Practices, which the City Manager determines will adversely affect the operation or implementation of the local pretreatment program.

8-10-10: ADMINISTRATIVE ENFORCEMENT REMEDIES:

(A) NOTIFICATION OF VIOLATION: When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City Manager may serve upon that user a written Notice of Violation. The Notice of Violation may include specific required actions and may

require the user 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 of liability for any violations occurring before or after receipt of the Notice of Violation. 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 responsible for noncompliance. Such documents will include specific action to be taken by the user 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 8-10-10(D) and 8-10-10(E) of this ordinance and shall be judicially enforceable.

(C) SHOW CAUSE HEARING: The City Manager may order a user which has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the City Manager and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user 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. Such notice may be served on any authorized representative of the user as defined in Section 8-10-1(D)(2). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(D) COMPLIANCE ORDERS: When The City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City Manager may issue an order to the user responsible for the discharge, directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(E) CEASE AND DESIST ORDERS: When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the City Manager may issue an order to the user directing it to cease and desist all such violations and directing the user 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.

(F) ADMINISTRATIVE FINES:

1. When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City Manager may fine such user in an amount not to exceed $1000.00. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

2. Unpaid charges, fines, and penalties shall be assessed and accrue interest in accordance with the provisions of Chapter 8 of Title 1, Westminster Municipal Code, entitled "Penalties and Interest," as it may be amended from time to time.

3. Users 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 appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. 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.

(G) EMERGENCY SUSPENSIONS: The City Manager may immediately suspend a user's discharge, after informal notice to the user, 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 threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

1. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user'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 sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The City Manager may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City Manager that the period of endangerment has passed, unless the termination proceedings in Section 8-10-10(H) of this ordinance are initiated against the user.

2. A user 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 Sections 8-10-10(C) or 8-10-10(H) of this ordinance.

Nothing in this section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this section.

(H) TERMINATION OF DISCHARGE: In addition to the provisions in Section 8-10-4(L) of this ordinance, any user who violates the following conditions is subject to discharge termination:

1. Violation of wastewater discharge permit conditions;

2. Failure to accurately report the wastewater constituents and characteristics of its discharge;

3. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

4. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or

5. Violation of the pretreatment standards in Section 8-10-2 of this ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 8-10-10(C) of this ordinance why the proposed action should not be taken. Exercise of this option by the City Manager shall not be a bar to, or a prerequisite for, taking any other action against the user.

8-10-11: JUDICIAL ENFORCEMENT REMEDIES:

(A) INJUNCTIVE RELIEF: When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the City Manager may petition the District Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance 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 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.

(B) CIVIL PENALTIES:

1. A user who has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty of $1,000 per violation, per day. In the case of 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 violation, corrective actions by the user, the compliance history of the user, 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.

(C) CRIMINAL PROSECUTION:

1. A user who willfully or negligently violates any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than $1000.00 per violation, per day, or imprisonment for not more than one (1) year, or both.

2. A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall be subject to the penalty provisions of State law. This penalty shall be in addition to any other civil cause of action for personal injury or property damage available under State law.

3. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than $1000.00 per violation, per day, or imprisonment for not more than one (1) year, or both.

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

8-10-12: SUPPLEMENTAL ENFORCEMENT ACTION:

(A) LIABILITY INSURANCE: The City Manager may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this ordinance, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

(B) PAYMENT OF OUTSTANDING FEES AND PENALTIES: The City Manager may decline to issue or reissue a wastewater discharge permit to any user who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous wastewater discharge permit, or order issued hereunder.

(C) WATER SUPPLY SEVERANCE: Whenever a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(D) PUBLIC NUISANCES:

A violation of any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the City Manager. Any person(s) creating a public nuisance shall be subject to the provisions of the Westminster Municipal Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.

8-10-13: AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS:

(A) UPSET:

1. For the purposes of this section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph 3., below, are met.

3. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(c) The user has submitted the following information to the City Manager within twenty-four (24) hours of becoming aware of the upset if this information is provided orally, a written submission must be provided within five (5) days containing the following information:

(1) A description of the indirect discharge and cause of noncompliance;

(2) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

(3) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

4. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

5. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

6. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(B) PROHIBITED DISCHARGE STANDARDS: A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 8-10-2(A)(1) of this ordinance or the specific prohibitions in Sections 8-10-2(A)(2)(c) through 8-10-2(A)(2)(j) of this ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

1. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or

2. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(C) BYPASS:

1. For the purposes of this section:

(a) “Bypass” means the intentional diversion of wastestreams from any portion of a user's treatment facility.

(b) “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources, which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

2. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs 3 and 4 of this section.

3. Bypass Notifications:

(a) If a user knows in advance of the need for a bypass, it shall submit prior notice to the City Manager, at least ten (10) days before the date of the bypass, if possible.

(b) A user shall submit oral notice to the City Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The City Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

4. Bypass:

(a) Bypass is prohibited, and the City may take an enforcement action against a user for a bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The user submitted notices as required under paragraph 3 of this section.

(b) The City Manager may approve an anticipated bypass, after considering its adverse effects, if the City Manager determines that it will meet the three conditions listed in paragraph (C)(4)(a) of this section.

8-10-14: PRETREATMENT CHARGES AND FEES:

(A) The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include:

1. Fees for wastewater discharge permit applications including the cost of processing such applications;

2. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

3. Fees for reviewing and responding to accidental discharge procedures and construction;

4. Fees for filing appeals;

5. Fees to recover administrative and legal costs associated with the enforcement activity taken by the City to address IU noncompliance; and

6. Other fees as the City may deem necessary to carry out the requirements contained herein.

(B) These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the City.

Agenda Item 10 I

W E S T M I N S T E R

C O L O R A D O

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Councillor's Bill No. 31 re Lease for the Former Police Building

Prepared By: Carl Pickett, Purchasing Officer

Recommended City Council Action

Pass Councillor's Bill No. 31 as an emergency ordinance authorizing the City Manager to sign a Sublease and Option Agreement in substantially the same form as the attached sublease with the Colorado Department of Corrections (CDOC), and the Colorado Department of Transportation (CDOT), for the former City of Westminster Police Department Building at 8800 Sheridan Boulevard.

Summary Statement

- The City-owned improvements located at 8800 Sheridan Boulevard were constructed by the City, pursuant to a 1977 lease, on Colorado Department of Transportation (CDOT) land, that was not needed at that time for the Denver – Boulder Turnpike.
- The lease includes an option for CDOT or CDOC to purchase the building and terminate the underlying 1977 land lease.
- Negotiations have been on-going for nearly two years, and a draft letter of intent has been signed by both the City and the CDOC.
- The land on which the former Police Department building is located is owned by the Colorado Department of Transportation (CDOT). The lease between the City and CDOT gives CDOT the right to approve or deny any sublease. An agreement acknowledging CDOT's consent to the sublease is part of the sublease negotiated with the parties (Exhibit G).
- The sublease to CDOC provides for a term of up to 20 years at a variable lease rate that gives the City a reasonable return on the investments made in the buildings and parking improvements, as well as reimbursing the City for expenses for the remodeling described in this memo.
- The expenditure identified below is for tenant improvements to the building that will be reimbursed through the lease payments.
- Leasing of property by the City must be approved by ordinance under section 13.4 of the City's Charter.

Expenditure Required: $1,055,370

Source of Funds: Building and Maintenance General Capital Improvement $678,000
2006 General Fund Carryover $368,370

Policy Issue

Does the City Council wish to continue negotiations with the State to finalize the terms for leasing the former Police Building?

Alternative

Do not have staff proceed with negotiations. Staff does not recommend this alternative because of the potential for a revenue stream from the former Police Building. Also, Staff feels that the City projects a better image with its buildings being occupied and used to their full potential. Potential income after expenses and utilities is estimated at $1,472,594 over the next ten years. This number will adjust somewhat with final lease negotiations.

Background Information

Originally the former Police Building was built in 1978 as a combined Court and Police Facility on land owned by CDOT. This was land CDOT had acquired as right of way for the US 36 project back in the 1950's. The land lease with CDOT, at the lease rate of $1.00 for each 25 year period, stipulates that CDOT needs to approve any sublease of the improvements or the land.

The Municipal Court moved out of the building in 1991 to their current location, and the Police Department occupied the entire building until the new Public Safety Center was completed. The building continued to be used for police and fire training and records storage until recently.

Shortly after the Police Department moved to their new location, the City started investigating the potential for leasing the Police Building at 8800 Sheridan Boulevard. The lease between the City and CDOT that dates back to 1977 states that the property can not be subleased without CDOT's consent. With this restriction and the unique nature of the property, it took some time before an acceptable sublessee could be found. Staff has been in negotiations with the Colorado State Parole Office for about twenty months. One of the major hurdles that the City faced in the beginning was finding a funding source to do the necessary tenant remodel required by the Colorado State Parole Office. This money was identified in the 2005 carryover funds, and by front-loading the sublease arrangement with the Colorado State Parole Office, the City will achieve payback of the investment for remodel costs within five years (see attached Sublease).

Staff has been working with CDOT on a number of fronts to resolve the issues with the lease between the City and CDOT. CDOT's principal issue is their claim that the City's lease expired in 2002, and did not automatically renew. This issue has been resolved, thanks in part to intervention by the new director of CDOT. Under the proposed sublease with CDOC and CDOT, CDOC is guaranteed use of the building for five years, regardless of the status of US 36 improvements. After that time, CDOT has the ability to demolish the building. If acquisition or demolition of the building occurs before the value of the building (set at $2,000,000) has been paid via the sublease payments, the City will receive credit for the remaining value as an in-kind contribution to its share of the US 36 Project. Also, CDOT has stated that they may desire to occupy some portion of the building as an office for the US 36 project.

The sublease's rent structure with CDOC pays off the building's value after ten years, and CDOC will have the option to stay in the building, at cost, until CDOT needs to remove the building for the US 36 project. The proposed sublease will expire after 20 years with no renewals possible, even if the US 36 project has not gone forward. At that point, the ownership of the building will revert to CDOT as the City has agreed, in the Consent Agreement, that the underlying lease will terminate.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO. _____ COUNCILLOR'S BILL NO. **31**

SERIES OF 2007 INTRODUCED BY COUNCILLORS

_____

A BILL

FOR AN ORDINANCE APPROVING A SUBLEASE AND OPTION AGREEMENT WITH THE COLORADO DEPARTMENT OF CORRECTIONS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE LEASE OF A PORTION OFTHE FORMER CITY OF WESTMINSTER POLICE DEPARTMENT BUILDING AND ITS ATTENDANT PARKING, AND AN OPTION TO PURCHASE THE SAME

WHEREAS, the City of Westminster ("City") is the owner of the building at 8800 Sheridan Boulevard, Westminster, Colorado (the "Property"); and

WHEREAS, the Property was formerly used for municipal court and police administration; and

WHEREAS, the City desires to lease portions of the Property to the State for office use; and

WHEREAS, the City is willing to give an option to the State to purchase the building as well; and

WHEREAS, the final form of the building 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 Colorado Department of Corrections and Colorado Department of Transportation for the lease of approximately 23,674 square feet of the building and its attendant parking located at 8800 Sheridan Boulevard, Westminster, Colorado, is approved in substantially the same form as the Sublease and Option Agreement attached as Exhibit "1" hereto, and the City Manager is authorized to execute all documents related thereto.

Section 2. As a result of the needs of the State Department of Corrections to finalize the lease of office space and commence the renovation of the building by receiving certain invoices for its renovation and paying the same before the end of their fiscal year on June 30, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on June 11, 2007, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 3. This ordinance shall be published within ten days after its enactment, and a full copy of Exhibit 1 hereto shall be available for inspection by the public in the Office of the City Clerk.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 11th day of June 2007.

_____
Mayor

ATTEST: APPROVED AS TO LEGAL FORM:

_____ _____
City Clerk City Attorney's Office

SUBLEASE AND OPTION AGREEMENT

The printed portions of this form, except bold additions, have been reviewed
by the State of Colorado Attorney General and approved by the State Controller.
All additions to this form must be in bold type. All deletions must be shown by strike-through.

THIS **SUB**LEASE **AND OPTION AGREEMENT** (hereinafter "**Agreement**"), made and entered into this **12th** day of **June**, 2007 by and between **THE CITY OF WESTMINSTER, a Colorado municipal corporation**, whose address or principal place of business is **4800 West 92nd Avenue, Westminster, CO 80031**, hereinafter referred to as "**Sub**lessor" or the "**City"**, THE STATE OF COLORADO, acting by and through the DEPARTMENT **OF CORRECTIONS, Division of Adult Parole,** whose address is **2862 South Circle Drive, Colorado Springs, CO 80906**, hereinafter referred to as "**Sub**lessee" or "**DOC**", **and THE STATE OF COLORADO, acting by and through the DEPARTMENT OF TRANSPORTATION, whose address is 4201 E. Arkansas, Denver, CO 80222, hereinafter referred to as "CDOT."**

WITNESSETH:

WHEREAS, Sublessor is the Lessee of three (3) parcels of land (the "Land") under that certain Lease Agreement dated July 25, 1977 with the Colorado State Department of Highways, Division of Highways, the predecessor agency to CDOT ("Lease"), and an Amendment dated April 9, 1982 ("Amendment One") and an Amendment dated December 19, 1985 ("Amendment Two"). The Lease and Amendments One and Two are attached as Exhibits A, A-1, and A-2, and are incorporated herein and made a part hereof; and

WHEREAS, Sublessor constructed and owns improvements on a portion of the Land pursuant to the Lease consisting of approximately thirty-one thousand one hundred eight (31,108) gross square feet, (the "Building") and a surface parking lot (the "Parking"); and

WHEREAS, Sublessor is willing to lease a portion of the Building and a portion of the Parking to DOC and the Sublessee desires to lease a portion of the Building and a portion of the Parking pursuant to the terms of this Agreement and pursuant to a consent agreement between the CDOT, the City and DOC, ("Consent Agreement"), attached as Exhibit G and incorporated herein and made a part hereof, by which CDOT consents to this Agreement and the City and DOC consent to CDOT collocating a project office in the Building and to the early termination of the Lease and Amendment One, and this Agreement if CDOT requires the removal of the Building for expansion of U.S. Highway 36; and

WHEREAS, Sublessee desires Sublessor to construct Sublessee's improvements in the Premises, as defined in Section 2 below, to suit Sublessee's special requirements as provided for in this Agreement; and

WHEREAS, Sublessor agrees to grant Sublessee and CDOT an option to purchase the entire Building and its attendant Parking (as described in Section B. THE OPTION TO PURCHASE); and to assign the Lease and Amendment One to Sublessee or CDOT in consideration for entering into this Agreement; and

WHEREAS, Sublessor's City Council by ordinance on June 11, 2007, has approved this Sublease and the grant of an Option to Purchase to Sublessee and CDOT pursuant to the terms of this Agreement; and

WHEREAS, Sublessee is not currently authorized to exercise the Purchase Option or acquire title to the Purchase Option Premises, as defined in Part B of this Agreement, and until such time as Sublessee obtains statutory authority to acquire title, Sublessee desires the right to assign the Option to Purchase to CDOT or the Department of Personnel and Administration ("DPA"), subject to acceptance by the assignee; and

WHEREAS, as to Sublessee, authority to enter into this Agreement exists in the Law, and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number 100, Appropriation Code 030, Contract Encumbrance Number 07-CAA-00193.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. THE SUBLEASE

1. Except where otherwise noted, Articles 2 through 29 below shall apply unless and until such time as: (A) A closing has occurred under the Option to Purchase section of this Agreement; and (B) Title to the Building, and attendant Parking, comprising the Purchase Option Premises as defined in Part B of this Agreement, and assignment of the Lease and Amendments One or this Agreement, as applicable, have been conveyed by the Sublessor to the Sublessee, its permitted assignee or CDOT.

2. **SUB**LEASED PREMISES, TERM, RENT. (A) **Sub**lessor hereby leases and demises unto **Sub**lessee the premises, hereinafter referred to as "Premises" within the building located at **8800 Sheridan Boulevard, Westminster, Colorado,** hereinafter referred to as "Building". The Premises, known and described as **the first floor and a portion of the second floor,** includes approximately **twenty three thousand six hundred seventy-four (23,674)** square feet of rentable floor area **and the right to use the surface parking for the Building at a ratio equal to 4.87 spaces for every 1,000 square feet of leased space in the Building, as depicted on "Exhibit B"**, attached hereto and incorporated herein; the leased Premises being as shown on the plat attached hereto, made a part hereof and marked "Exhibit **C**".

(B) TO HAVE AND TO HOLD the same, together with all appurtenances, unto **Sub**lessee, for the term beginning **October 1, 2007 or upon Substantial Completion of Sublessee Improvements, whichever is earlier ("Commencement Date"),** and ending **September 30, 2022 ("Sublease Expiration")** at and for a monthly rental for the full term as shown below:

TERM DATE(S)	TERM RENT ($)	MONTHLY RENT ($)	APPROXIMATED MODIFIED GROSS ANNUALIZED SQ. FOOT COST ($/RSF)
Commencement Date (10/1/07) - 06/30/08	**TBD**	**$21,701.17**	**$11.00**
07/01/08 - 06/30/09	**$284,088.00**	**$23,674.00**	**$12.00**
07/01/09 - 06/30/10	**$307,761.96**	**$25,646.83**	**$13.00**
07/01/10 - 06/30/11	**$331,436.04**	**$27,619.67**	**$14.00**
07/01/11 - 06/30/12	**$355,110.00**	**$29,592.50**	**$15.00**
07/01/12 - 09/30/12	**$88,777.50**	**$29,592.50**	**$15.00**
10/01/12 - 06/30/13	**$281,903.40**	**$31,322.60**	**$15.88**
07/01/13 - 06/30/14	**$375,871.20**	**$31,322.60**	**$15.88**
07/01/14 - 06/30/15	**$375,871.20**	**$31,322.60**	**$15.88**
07/01/15 - 06/30/16	**$375,871.20**	**$31,322.60**	**$15.88**
07/01/16 - 06/30/17	**$375,871.20**	**$31,322.60**	**$15.88**
07/01/17 - 09/30/17	**$93,967.80**	**$31,322.60**	**$15.88**
10/01/17 - 06/30/18	**FTR***	**MR***	
07/01/18 - 06/30/19	**FTR***	**MR***	
07/01/19 - 06/30/20	**FTR***	**MR***	
07/01/20 - 06/30/21	**FTR***	**MR***	
07/01/21 - 06/30/22	**FTR***	**MR***	

07/01/22 - 09/30/22 FTR* MR*

***The monthly rent ("MR") charged the Sublessee from October 1, 2017 through September 30, 2022 shall be one-twelfth (1/12) of Sublessee's Proportionate Share of Sublessor's annual operating expenses for the Building, as defined in Exhibit F, attached and made a part hereof, incurred to provide Services by Sublessor as described in Section 3 of this Agreement. The Fiscal Term Rent shall be the MR times the number of months in the fiscal year term ("FTR"). A fiscal year is defined as July 1 through June 30.**

Sublessor shall provide Sublessee an estimate of the MR on June 1 prior to the date the MR is first due, and each June 1 thereafter until the Agreement terminates. Sublessee shall pay Sublessor the estimated MR until the Sublessor provides an accounting of its actual operating costs for the fiscal year, which accounting Sublessor shall provide Sublessee within ninety (90) days after the end of the fiscal year. Sublessee, or Sublessee's designee, shall have the right, at any time within thirty (30) days after a statement of actual Operating Expenses (hereinafter "Statement") for a particular fiscal year has been rendered by Sublessor as provided herein, at its sole cost and expense, to examine Sublessor's books and records relating to the determination of Operating Expenses; provided, however, that Sublessee shall give Sublessor prior written notice of its intent to exercise such right, the inspection may not take place outside of normal business hours, and Sublessee shall not interfere with Sublessor's normal business activities. Unless Sublessee objects to the rental adjustment within said thirty (30) day period, such statement and adjustment shall be deemed conclusive. However, if said examination right is exercised within the permissible period and Sublessee determines an overcharge of Operating Expenses to the Sublessee, then the Sublessee may request Sublessor to select an independent Certified Public Accountant (CPA) acceptable to Sublessee to audit Sublessor's books and records. The review of the CPA will be binding upon the parties. In the event that the CPA confirms that an overcharge of Operating Expenses has occurred, then Sublessor shall credit the difference against the Sublessee's estimated reimbursement for Operating Expenses for the current fiscal year and such credit shall be applied to the next payment or payments due from Sublessee to Sublessor. Further, Sublessor shall be responsible for all costs and expenses of the CPA provided that an overcharge exists; if the CPA confirms that no overcharge to Sublessee of Operating Expenses has occurred, Sublessee shall be responsible for all costs and expenses of the CPA.

If the Sublessee's estimated MR payments for the prior fiscal year are less than the Sublessor's actual monthly operating costs for the fiscal year, Sublessee shall pay Sublessor the amount underpaid within ninety (90) days from receipt of Sublessor's accounting. If the Sublessee's estimated MR payments exceed the Sublessor's actual monthly operating costs during the fiscal year, the amount of overpayment shall be applied as a credit against Sublessee's MR for the next fiscal year, unless the Agreement has terminate, in which case Sublessor shall refund Sublessee the overpayment within thirty (30) days.

The Premises is to be used and occupied as **office** space. Payment shall be made on the first of each month during the term hereof, to the **Sub**lessor at:

City of Westminster
Department of General Services
4800 West 92nd Avenue
Westminster, CO 80031

or at such place as **Sub**lessor from time to time designates by notice as provided herein, subject to the limitations and conditions set forth in Article 12, Fiscal Funding and Article 15, Federal Funding, herein.

Notwithstanding any other provision of this lease, if Substantial Completion has not occurred by October 15, 2007, then Sublessee may terminate this Agreement without penalty; however, if

Sublessor is delayed by Sublessee's acts or failure to act or requests for change orders, or for delays due to an occurrence of an event of force majeure, casualties, acts of God, strikes, shortages of labor or materials or other causes beyond the reasonable control of the Sublessor, then the above referred October 15, 2007 date for Sublessor's performance of Substantial Completion of the Premises shall be automatically extended for the same amount of time Sublessor is delayed.

If the term herein commences on a day other than the first day of a calendar month, then **Sub**lessee shall pay to **Sub**lessor the rental for the number of days that exist prior to the first day of the succeeding month, with a similar adjustment being made at the termination of the Agreement.

(C) CDOT TERMINATION OF THE LEASE - EARLY TERMINATION OF SUBLEASE. CDOT may terminate the Sublease, the Lease and Amendment One to the Lease pursuant to the terms of Article 5 of the Consent Agreement. CDOT agrees to meet at least annually with representatives of the Sublessor and Sublessee and provide them a written U.S. Highway 36 Expansion Project status report and briefing, including the anticipated date upon which CDOT will need to remove the Building.

3. SERVICES BY **SUB**LESSOR. **Sub**lessor shall provide to **Sub**lessee during the occupancy of said Premises, as a part of the rental consideration, the following services comparable to those provided by other office buildings of similar quality, size, age and location, in the **Westminster** submarket. **Sublessee shall provide its own janitorial or cleaning services**. The services shall include but not necessarily be limited to the following:

(A) Services to Premises.

(i) Heat, ventilation and cooling as required for the comfortable use and occupancy of the Premises during normal business hours. **Sub**lessor shall at all time be responsible for heat, ventilating and air conditioning (HVAC) services in quantities and distributions sufficient for **Sub**lessee's use of the Premises, including rebalancing of the HVAC distribution system as necessary, and also including service, repair and/or replacement of equipment, parts and accessories for the HVAC units and systems serving the Premises;

(ii) electric power as supplied by the local utility company. **Sub**lessee shall be entitled to its pro rata share of the base Building's electrical capacity for each floor on which **Subl**essee occupies space.

(iii) replacement of Building standard fluorescent tubes, light bulbs and ballasts as required from time to time as a result of normal usage.

(B) Building Service.

(i) domestic running water in washrooms sufficient for the normal use thereof by occupants in the Building;

(ii) access to and egress from the Premises, including elevator service maintenance, repair and replacement customary for buildings of similar age and quality, if included in the Building;

(iii) snow removal, sidewalk repair and maintenance, and landscape maintenance services;

(iv) heat, ventilation, cooling, lighting, electric power, domestic running water in those areas of the Building from time to time designated by **Sub**lessor for use by **Sub**lessee during normal business hours by **Sub**lessee in common with all sublessees and other persons in the Building but under the exclusive control of **Sub**lessor;

(v) a general directory board on which **Sub**lessee shall be entitled to have its name shown, provided that **Sub**lessor shall have exclusive control thereof and of the space thereon to be allocated to each **sub**lessee and the cost of the general directory board shall be the sole expense of the **Sub**lessee.

(C) Maintenance, Repair and Replacement. **Sub**lessor shall operate, maintain, repair and replace the systems, facilities and equipment necessary for the proper operation of the Building and for provision of **Sub**lessor's services under Subsections (A) and (B) above and shall maintain and repair the foundations, structure and roof of the Building and repair damage to the Building which **Sub**lessor is obligated to insure against under this Agreement.

(D) Additional Services.

(i) Maintenance of parking lot, maintenance of the external lighting devices for the Building parking lot. Maintenance, repair and replacement of Sublessee Improvements for damage caused by shifting or leaking of the foundation or of any other structural aspect or system of the Building.

The "normal business hours" of operation of the Building shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturdays, excepting legal holidays, which shall include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. Sublessee shall have access to the Building and the Premises, seven (7) days a week, twenty four (24) hours per day, with electric service and elevator being provided at all times.

4. WORK REQUIREMENTS. All tenant finish alterations in the Premises, now and hereafter undertaken, shall be designed and constructed in accordance with the technical design specifications of the **Americans with Disabilities Act Accessibility Guidelines (ADAAG)**, latest edition. Prior to the Premises being occupied by **Sub**lessee, **Sub**lessor agrees to:

(A) Construction by Sublessor. Sublessor, at Sublessor's sole cost and expense, shall provide to Sublessee leasehold improvements for the areas of the Premises identified on the space plan, "Exhibit D", attached hereto. Sublessor agrees to incur all costs, as limited in the next paragraph, sufficient to build out the Premises, which shall include, but not be limited to, hard and soft construction; construction and MEP drawings and fees; space planning; electrical, telephone, and computer wiring; mechanical alterations; construction management; and other items generally considered Sublessee improvements. As part of such costs, Sublessee may work with space planners/designers employed by Sublessor. Sublessor shall use its best efforts to commence construction of Sublessee Improvements by July 1, 2007, and complete the same by September 30, 2007.

Sublessor shall provide Sublessee a Sublessee Improvement Allowance of nine hundred ten thousand and 00/100 dollars ($910,000.00); however, if the cost of the Sublessee improvements exceeds nine hundred ten thousand and 00/100 dollars ($910,000.00), Sublessee shall be solely responsible for the cost and the payment of this overage. The Sublessee Improvement Allowance is based upon current estimates from AMA Construction, Inc. When the construction drawings and final cost estimates for the Sublessee improvements are complete, Sublessee shall have the option of requiring the Sublessor to reduce the scope of the Sublessee Improvements to within the Sublessee Improvement Allowance or approve the additional costs for the planned work. Sublessee's Executive Director or authorized delegate must approve Sublessee's liability for any additional costs. If Sublessee approves the additional costs, the Sublessor shall invoice the Sublessee when the work is completed. Sublessee shall review and approve the invoice for the additional charges. Sublessee shall pay the approved invoice for the additional charges within 30 days from receipt.

If the cost of the Sublessee Improvements shall be less than $910,000.00, the difference in the actual costs and this amount will be applied as a credit toward the monthly base rent payments beginning upon the Commencement Date. Sublessor will provide copies of the paid invoices to

Sublessee within ninety (90) days of Substantial Completion as defined in Article 4 (C), below; in order to verify the final cost of the Sublessee Improvements.

Parties acknowledge that Sublessor and Sublessee have selected Studio DH Architecture as the architect satisfactory to both parties ("Sublessor's Architect"). If, at any time, it becomes necessary to engage a new architect, Sublessor shall first obtain Sublessee's approval, which approval shall not be unreasonably withheld. Sublessor shall ensure that DOC tenant improvement planning and design is completed based on initial planning prepared by RNL Design in 2005 and in conjunction with the Master Space Plan prepared by the DOC, to be completed no later than May 15, 2007. Sublessor shall ensure that full architectural and engineering drawings and construction documents are produced for Sublessee Improvements, which shall be submitted to the Sublessee for its approval ("Improvement Plans"). At a minimum, Sublessor will impose those building construction standards mandated by local building code. Sublessee shall have five (5) business days from receipt of Sublessee's Improvement Plans for the construction of Sublessee Improvements to approve the Improvement Plans or provide written comments or objections thereto. Any such approval shall not be unreasonably withheld, conditioned, or delayed.

Parties acknowledge that AMA Construction, Inc. has been selected as the Construction Manager/General Contractor (CM/GC) satisfactory to both parties ("Sublessor's General Contractor"). If, at any time, it becomes necessary to engage a new general contractor, Sublessor shall first obtain Sublessee's approval, which approval shall not be unreasonably withheld. Sublessor, or Sublessor's General Contractor, shall obtain three (3) separate sub-contractor bids for each construction trade for the Sublessee Improvements and will work with Sublessee on an "open-book" basis. Sublessee shall have the right to include any/all of the sub-contractors on the bid list. Sublessee and Sublessor shall mutually select the acceptable sub-contractor bidders to construct the Sublessee Improvements. Sublessor shall be responsible for contracting for the work on a not-to-exceed basis, approved in writing by the Sublessee and managing the contractor's performance.

Sublessor shall provide for certain improvement to make the Premises compliant with applicable statute, regulation and codes, at no cost to the Sublessee including: a) removal of existing batt insulation and supporting framing in the ceiling/roof assembly and replacement with insulation to meet current building code and energy standards, and b) identification, removal, or encapsulation of asbestos containing materials.

Sublessor shall provide all utilities, including electrical, HVAC, water, etc., during the construction of the Sublessee Improvements at no cost to Sublessee.

Sublessor acknowledges and agrees that Sublessee, its agents, employees, and contractors shall be granted access to the Premises in coordination with Sublessor's contractors during the construction and installation of the Sublessee Improvements for the purpose of wiring the telephone and computer systems, installation of furniture systems, and other Sublessee improvement work, provided same does not interfere with the work carried out by Sublessor's contractors.

(B) Lessee's and Sublessor's Authorized Representatives. In connection with the requirements of this Article 4, Sublessor and Sublessee agree that Sublessee and Sublessor shall act only through its respective authorized representative ("Sublessee's Authorized Representative" and "Sublessor's Authorized Representative") for all inquires, requests, instructions, correspondence, approvals or communications with respect to said Sublessee Improvements. Sublessor may only rely on all approvals, requests, instructions or other information obtained from Sublessee's Authorized Representative and Sublessee may only rely on all approvals, requests, instructions or other information obtained from Sublessor's Authorized Representative.

Sublessee's Authorized Representative shall be:

James C. Ramsey, AIA, LEED AP
DOC State Buildings Delegate
State of Colorado
Department of Corrections
2862 South Circle Drive
Colorado Springs, CO 80906

Sublessor's Authorized Representative shall be:

Jerry Cinkosky
Building Operations and Maintenance
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Either Sublessee or Sublessor may change its Authorized Representative by written notice to the other given in accordance with the notice requirements of this Agreement.

(C) Substantial Completion shall occur upon the following: (1) Sublessor's Architect deems the Premises substantially complete and in conformance with the Sublessee Improvements as described in Exhibit D; (ii) Sublessor has obtained all required approvals, if any, for Sublessee's occupancy from all state, county and/or municipal agencies; (iii) Sublessee has provided written acceptance of the condition of the Premises subject to the "Punch List" as hereinafter described; and (iv) all systems and services to be furnished by the Sublessor pursuant to the terms and conditions of this Agreement are in operation. Such acceptance shall not be unreasonably withheld, conditioned or delayed.

(D) Punchlist: Within three (3) business days after Sublessee's receipt of Sublessor's notification of substantial completion of construction, Sublessee and Sublessor shall perform an inspection of the Premises and shall jointly prepare a written punch list of deficient items, previously undiscovered defects or additional work, if any ("Punch List"). Completion of the final Punch List shall be subject to Sublessee's approval. In the event Sublessor does not complete all Punch List items within thirty (30) days of the date the Punch List is prepared (except for those Punch List items that cannot reasonably be completed within thirty (30) days, provided Sublessor commences construction of Punch List items and diligently pursues the same to completion) Sublessee's monthly rent shall be reduced, on a per diem basis, by 10% until all Punch List items have been completed.

(E) Sublessor, at Sublessor's sole cost, shall provide that all Fire and Life safety systems, HVAC, electrical, plumbing and lighting systems specifically serving Premises shall be in good working order at commencement of this Lease.

(F) <u>Sublessee Payment of Sublessor Contractor Service Costs in Lieu of Higher Rent</u>. Sublessee agrees to reimburse Sublessor sixty thousand and no/100 dollars ($60,000.00) of the Sublessee Improvement Allowance for a portion of the architectural fees for design and construction management services of Sublessee's improvements and/or a portion of the Staubach Company real estate commission fees for negotiating the Sublease, incurred by the Sublessor prior June 30, 2007. Sublessor shall invoice the Sublessee not later than June 30, 2007. Sublessee shall pay Sublessor's invoice within 30 days. Payment by Sublessee of a portion of the architect and brokerage fees in connection with this transaction is made in lieu of paying Sublessor higher rent to recover these fees.

(G) <u>Sublessee Option to Reimburse Sublessor for Sublessee Improvements In Lieu of Higher Rent</u>. In order to reduce the monthly rental obligation, Sublessee shall have the option to reimburse the Sublessor up to three hundred thousand and no/100 dollars ($300,000.00) for costs incurred by the Sublessor for Sublessee Improvements, leasing commissions and other Sublessor sublease preparation costs provided for herein, incurred by the Sublessor prior to the commencement date of the Sublease. Sublessee shall exercise this option by written notice to the Sublessor, specifying the dollar amount of the Sublessee reimbursement. Sublessee shall have the option to deposit funds in an escrowed account maintained through the Sublessor, to have funds reimbursed to the Sublessor in accordance with these provisions, with the balance of escrow funds returned to the Sublessee at its discretion. Sublessor shall provide the Sublessee copies of contractor invoices for material and labor supporting the amount of Sublessee's reimbursement and shall invoice the Sublessee for the amount reimbursed, which invoice shall be provided to Sublessee within ten (10) days from the date this option is exercised. If Sublessee exercises this option, the Sublessor and Sublessee agree to amend the Sublease to reduce the monthly rent, the termination consideration amount and the Option Purchase Price by the amount of Sublessee's reimbursement over the term of the Sublease.

5. **SUB**LESSOR'S REPRESENTATIONS. (A) **Sub**lessor represents that either: (1) no "asbestos response action", pursuant to that portion of the Colorado Air Quality Control Commission, Regulation 8 entitled Emission Standards for Asbestos, hereafter referred to as "Regulation 8", is contemplated as a part of the **Sub**lessee Improvements for this Agreement; or (2) in the event that an "asbestos response action" is contemplated as a part of the **Sub**lessee Improvements for this Agreement, **Sub**lessor agrees to fully cooperate with **Sub**lessee in the **Sub**lessee's exercise of its duties and responsibilities in accordance with Section V of Part B of Regulation 8.

(B) **Sub**lessor, in **Sub**lessor's sole opinion, represents that with respect to this Agreement and the **Sub**lessee's Premises, the Building meets the requirements of the Americans with Disabilities Act.

6. MAINTENANCE OF PREMISES. **Sub**lessor shall, unless herein specified to the contrary, maintain the Premises in good repair and in tenantable condition during the term of this Agreement, except in the event of damage arising from an act or the negligence of **Sub**lessee, its agents or employees. **Sub**lessor shall have the right to enter the Premises at reasonable times for the purpose of making necessary inspections and repairs or maintenance.

7. **SUB**LESSOR'S **LEASEHOLD ESTATE** OWNERSHIP. **Sub**lessor warrants and represents itself to be the holder of a leasehold estate in the Land, pursuant to the Lease, and the owner of the Building in which, the Premises is located, in the form and manner as stated herein, and during the term of this Agreement covenants and agrees to warrant and defend **Sub**lessee in the quiet, peaceable enjoyment and possession of the Premises provided that **Sub**lessee is not then in default under the terms of this Agreement. In the event of any dispute regarding **Sub**lessor's leasehold estate in the Land or ownership of the Building, **Sub**lessor shall immediately, upon request from and at no cost to **Sub**lessee, furnish proof thereof by delivering to **Sub**lessee an "Ownership and Encumbrance Letter" issued by a properly qualified title insurance company.

8. LEASE ASSIGNMENT. Lessee shall not assign this Lease and shall not sublet the Premises, and will not permit the use of the Premises to anyone, other than Lessee, its servants, agents, DOC contractors or employees, without the prior written consent of **Sub**lessor and CDOT, which shall not be unreasonably withheld or delayed. **CDOT and Sublessor have consented to the further sublease of a portion of the Premises to Peer Assistance Services, a Colorado non-profit corporation.**

9. APPLICABLE LAW. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and

regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that this agreement is capable of execution.

10. EMINENT DOMAIN, TERMINATION OF LEASE. (A) If the leased Premises shall be taken by right of eminent domain, in whole or in part, then this Agreement, at the option of either party, shall forthwith cease and terminate and the current rent shall be properly apportioned to the date of such taking; and in such event the entire damages which may be awarded for such taking shall be apportioned between **Sub**lessor and **Sub**lessee, as their interests appear. **This provision shall not apply to the termination of the Lease and Sublease by CDOT pursuant to Article 2(C).**

(B) WAIVER OF JUST COMPENSATION AND RELOCATION. If CDOT terminates this Agreement pursuant to Article 2(C) of this agreement and such termination is determined to be an acquisition of property under the threat of eminent domain that may trigger state or federal constitutional or statutory just compensation rights or state or federal relocation requirements to which Sublessor or Sublessee may be entitled, Sublessor and Sublessee hereby voluntarily waive all such rights and acknowledge that they shall not be entitled to payment by CDOT of any funds associated with such rights or requirements. In the event of such termination, Sublessor will be entitled to recognition from CDOT of in-kind monetary contribution to the U.S. Highway 36 expansion project as provided for in the Consent Agreement.

11. DAMAGE AND DESTRUCTION. In the event the leased Premises are rendered untenantable or unfit for **Sub**lessee's purposes by fire or other casualty, this Agreement will immediately terminate and no rent shall accrue to **Sub**lessor from the date of such fire or casualty. In the event the leased Premises are damaged by fire or other casualty so that there is partial destruction of such Premises or such damage as to render the leased Premises partially untenantable or partially unfit for **Sub**lessee's purposes, either party may, within five (5) days of such occurrence, terminate this Agreement by giving written notice to the other party. Such termination shall be effective not less than fifteen (15) days from the date of mailing of the notice. Rent shall be apportioned to the effective date of termination.

12. FISCAL FUNDING. (A) As prescribed by State of Colorado Fiscal Rules, it is understood and agreed this Agreement is dependent upon the continuing availability of funds beyond the term of the State's current fiscal period ending upon the next succeeding June 30, as financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Further, the parties recognize that the act of appropriation is a legislative act, and the **Sub**lessee hereby covenants to take such action as is necessary under the laws applicable to the **Sub**lessee to timely and properly budget for, request of and seek and pursue appropriation of funds of the Legislature of the State of Colorado which will permit **Sub**lessee to make all payments required under this Agreement during the period to which such appropriation shall apply. In the event there shall be no funds made available, this Agreement shall terminate at the end of the then current fiscal year, with no penalty or additional cost as a result thereof to the **Sub**lessee.

(B) To make certain the understanding of the parties because this Agreement will extend beyond the current fiscal year, **Sub**lessee and **Sub**lessor understand and intend that the obligation of the **Sub**lessee to pay the monthly rental hereunder constitutes a current expense of the **Sub**lessee payable exclusively from **Sub**lessee's funds and shall not in any way be construed to be a general obligation indebtedness of the State of Colorado or any agency or department thereof within the meaning of any provision of Sections 1,2,3,4, or 5 of Article XI of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither the **Sub**lessee, nor the **Sub**lessor on its behalf, has pledged the full faith and credit of the State, or any agency or department thereof to the payment of the charges hereunder, and this Agreement shall

not directly or contingently obligate the State or any agency or department thereof to apply money from, or levy or pledge any form of taxation to, the payment of the annual rental charges.

(C) With such limitations in mind, **Sub**lessee contracts to lease the Premises herein before described and has reason to believe that sufficient funds will be available for the full term of this Agreement. Where, for reasons beyond **Sub**lessee's control, **Sub**lessee's funding entity does not allocate funds for any fiscal period beyond the one in which this Agreement is entered into, or does not allocate funds to continue this Agreement from the then current fiscal period, such failure to obtain funds not resulting from any act or failure to act on the part of **Sub**lessee, **Sub**lessee will not then be obligated to make the payments remaining beyond **Sub**lessee's then current fiscal period. In such event, **Sub**lessee shall notify **Sub**lessor of such non-allocation of funds by sending written notice thereof to the **Sub**lessor forty five (45) days prior to the effective date of termination.

(D) The parties hereto further understand and agree that the only funds that have or may be so appropriated and available for payment under this Agreement in any one particular fiscal year are for the purpose and in an amount sufficient only to pay the rental charges provided for in Article 2 above. Therefore, notwithstanding anything herein to the contrary, the payment by the **Sub**lessee of any other charges, liabilities, costs, guarantees, waivers, and any awards thereon of any kind pursuant to this Agreement against **Sub**lessee are contingent upon funds for such purpose(s) being appropriated, budgeted and otherwise made available through the said State of Colorado legislative process.

13. COMPLETE AGREEMENT. This Agreement, including all exhibits, **including the Consent Agreement executed concurrently herewith**, supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.

14. CAPTIONS, CONSTRUCTION, AND LEASE EFFECT. The captions and headings used in this Agreement are for identification only, and shall be disregarded in any construction of the Agreement provisions. All of the terms of this Agreement shall inure to the benefit of and be binding upon the respective heirs, successors, and assigns of both the **Sub**lessor and the **Sub**lessee. If any provision of this Agreement shall be determined to be invalid, illegal, or without force by a court of law or rendered so by legislative act then the remaining provisions of this Agreement shall remain in full force and effect.

15. FEDERAL FUNDING. In the event that any or all funds for payment of this Agreement are provided by the Federal Government, this Agreement is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof, and if such funds are not made available this Agreement may be unilaterally terminated by the **Sub**lessee at the end of any month provided a ninety (90) day advance notice of termination is given to the **Sub**lessor in writing.

16. NO BENEFICIAL INTEREST. The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

17. NO VIOLATION OF LAW. The signatories hereto aver that they are familiar with §18-8-301, et seq., (Bribery and Corrupt Influences) and §18-8-401, et seq., (Abuse of Public Office), C.R.S., as amended, and that no violation of such provisions is present.

18. CONTROLLER'S APPROVAL. In accordance with the requirements of §24-30-202 (1) C.R.S., as amended, this Agreement shall not be deemed valid until it has been approved by the State Controller, or such assistant as he may designate.

19. NOTICE. Any notice required or permitted by this Agreement may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address as hereinafter

provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

Sublessor:
c/o Deputy City Manager
City of Westminster
Department of General Services
4800 West 92nd Avenue
Westminster, Colorado 80031

Sublessee:
Department of Corrections

DOC State Buildings Delegate
2862 South Circle Drive
Colorado Springs, CO 80906

With a copy to:
City Attorney
City of Westminster
4800 W. 92nd Avenue
Westminster, Colorado 80031

With a copy to:
State Building and Real Estate Programs
1313 Sherman Street, Suite 319
Denver, CO 80103

CDOT:
Attn. Region 6 Regional Transportation Director
2000 South Holly Street
Denver, CO 80222

Notice of change of address shall be treated as any other notice.

20. HOLDING OVER. If **Sub**lessee shall fail to vacate the Premises upon expiration or sooner termination of this Agreement, **Sub**lessee shall be a month-to-month **Sub**lessee and subject to all the laws of the State of Colorado applicable to such tenancy. The rent to be paid by **Sub**lessee during such continued occupancy shall be the same being paid by **Sub**lessee as of the date of expiration or sooner termination. **Subl**essor and **Sub**lessee each hereby agree to give the other party at least thirty (30) days written notice prior to termination of this holdover tenancy.

21. CONSENT. Unless otherwise specifically provided, whenever consent or approval of **Sub**lessor or **Sub**lessee is required under the terms of this Agreement, such consent or approval shall not be unreasonably withheld or delayed and shall be deemed to have been given if no response is received within thirty (30) days of the date of request was made. If either party withholds any consent or approval, such party shall on written request deliver to the other party a written statement giving the reasons therefore.

22. LIABILITY EXPOSURE. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, §24-10-101 et seq., C.R.S., as now or hereafter amended. The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees **or the City, its departments and employees** is controlled and limited by the provisions of §24-10-101, et seq., C.R.S., as now or hereafter amended and §24-30-1501, et seq., C.R.S., as now or hereafter amended, **the state's tort laws, together with the Eleventh Amendment of the U.S. Constitution, and State Employee Qualified Immunity**. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the **Sublessor and Sub**lessee to the above cited laws.

23. SECURITY DEPOSIT. **Sub**lessee shall not be required to remit a security deposit to **Sub**lessor.

24. INTERRUPTION OF SERVICES. Notwithstanding anything in this Agreement to the contrary, if there is an interruption in essential services to the Premises (including, but not limited to HVAC,

electrical service, elevator service), and such interruption continues for a period of five (5) consecutive days, **Sub**lessee shall be entitled to an abatement of rent for the period that such services are not provided to the extent that such interruption interferes with the use of the Premises by the **Sub**lessee. If such interruption continues for a period of ninety (90) days, **Sub**lessee shall have the option to cancel and terminate this Agreement without penalty.

25. **TERMINATION DUE TO** COLLOCATION, **PRESERVATION OF CLAIMS**. In the event the State of Colorado builds, leases, or otherwise acquires a building for the purpose of collocating State agencies in one area, or designates an existing State owned building for such collocation of **Sub**lessee, this Agreement may be terminated by the **Sub**lessee upon giving written notice to the **Sub**lessor not less than sixty (60) days prior to the anticipated termination date. **Should this Agreement be terminated pursuant to this section or for any reason other than by natural expiration or that contemplated in section 2(C), Sublessor and CDOT agree that they each may revert to their respective legal positions held before CDOT and Sublessor agreed to sublet to DOC.**

26. INSURANCE

(A) Sublessor's and Sublessee's contractors, sublessees or assigns shall carry and maintain the following insurance coverage with respect to the Premises during the term of this Agreement:

(1) Commercial General Liability Insurance covering operations by or on behalf of the Parties to this Agreement on an occurrence basis against claims for bodily injury, property damage and personal injury liability with minimum limits as follows:

$1,000,000 each occurrence,
$2,000,000 general aggregate,
$2,000,000 products and completed operations aggregate.

(2) Workers' Compensation coverage for employees of the Sublessor's and Sublessee's contractors, sublessees or assigns as required by law and employer's liability insurance.

(B) Sublessee shall at its sole cost and expense, obtain insurance on its inventory, equipment, and all other personal property located on the leased Premises against loss resulting from fire or other casualty. The Sublessee shall have the right to provide such insurance under a self-insurance program, or, at any time during the term of this Agreement, to provide such insurance through an insurance company.

(C) Sublessor shall, at its sole cost and expense, obtain Property Insurance covering the Building, Premises, its equipment, and Sublessor's interest in improvements and betterments on an "All Risk" basis, including where appropriate the perils of Flood and Earthquake. Coverage shall be written with a Replacement Cost valuation and Include an agreed value provision. The policy shall also include a rental loss extension.

(D) GENERAL LIABILITY, PROPERTY AND WORKERS' COMPENSATION. The Sublessor and Sublessee shall have the right to provide such insurance under a self-insurance program, or, at any time during the term of this Agreement, to provide such insurance through an insurance company. With respect to general liability, the Sublessor recognizes that the Sublessee is self insured for general liability in accordance with the provisions of the Colorado Governmental Immunity Act and the Colorado Risk Management Act, §24-30-1501, et seq., C.R.S., as amended. All policies will be written with carriers approved to do business in the State of Colorado, with an A.M. Best Rating of at least A- VII and will contain a Waiver of Subrogation on behalf of the parties to this Agreement.

27. BROKER REPRESENTATION: **Sub**lessor and **Subl**essee acknowledge that **The City of Westminster** is acting as its own Agent in this transaction and **The Staubach Company** is acting as a

Sublessee Agent on behalf of **Sub**lessee in this transaction. Further, **Sub**lessor and **Sub**lessee acknowledge that in consideration of **The Staubach Company** acting as a **Sub**lessee Agent on behalf of the State of Colorado in this transaction, **The Staubach Company** will receive a leasing commission by separate agreement with **The City of Westminster.**

28. **CONVEYANCE OF THE PREMISES, ATTORNMENT AND NON-DISTURBANCE. The Sublessor agrees not to sell, transfer or convey its interest in the Building, except to the Sublessee, its permitted assigns or CDOT, as provided for in the Option Portion of this Agreement.**

29. ADDITIONAL PROVISIONS

(A) EXPANSION OPTION: With the consent of CDOT, who shall have first right to lease the space in the Building not included in the Premises, Sublessee has the option throughout the term of this Agreement, including any renewal term, to lease space within the Building permitted by CDOT ("Expansion Option Space"). The Expansion Option Space shall be leased subject to the same terms and conditions and for the same rental amounts as contained within this Agreement. Sublessor shall provide Sublessee a Lessee Improvement allowance of Twenty and 00/100 ($20.00) per rentable square foot as Expansion Option Space Improvement Allowance. The total dollar amount of the Sublessor's Expansion Option Space Improvement Allowance shall be amortized over the next five years of the remaining term of the Agreement and the monthly amortized amount shall be paid by the Sublessee as Additional Rent and paid monthly along with the Expansion Option Space Rent.

Sublessor shall have the right to bid, manage, and/or contract for required Improvements to the Expansion Option Space.

(B) TERMINATION CONSIDERATION: The Sublessee recognizes that the Sublessor will incur "out of pocket" costs within the first month of this Agreement in demising the space, constructing Sublessee Improvements and consummating this Agreement ("Sublessor's costs") which costs Sublessor usually recoups from rent payments during a lease term. Sublessor recognizes that Sublessee is an agency of the state government and is constitutionally constrained as to the fiscal commitments it can make, as set forth in the Fiscal Funding and Federal Funding of this Agreement. With this understanding in mind, the Sublessee covenants that in the event Sublessee terminates this Agreement effective anytime under the Fiscal Funding, Collocation or Federal Funding provisions of this Agreement, the Sublessee shall take such action as is necessary and prescribed under the laws applicable to Sublessee to request the appropriation(s) to pay Sublessor the unamortized portion of Sublessor's actual costs of architectural design fees, tenant improvements and leasing commissions associated with this Agreement. If the appropriation is granted, it will be paid to Sublessor for its intended purpose. If the General Assembly fails to approve the appropriation, none of the Sublessee, the State, nor the General Assembly shall be liable for any termination consideration to Sublessor. Sublessee's obligation under this paragraph shall not be construed or interpreted as creating a general obligation or other indebtedness of the State of Colorado, the Sublessee or the General Assembly within the meaning of any constitutional or statutory debt limitation.

At the commencement of the Agreement, "Sublessor's cost", is estimated to be nine hundred sixty-eight thousand three hundred seventy and no/100 dollars ($968,370.00), based on $910,000.00 allowance for Sublessee leasehold improvements, $118,370.00 ($5.00 times amount of rentable square feet leased) leasing commissions, less $60,000.00 Sublessee reimbursement required by Article 4 (F). This figure shall be reduced monthly over sixty (60) months from the Commencement Date at the rate of sixteen thousand one hundred thirty-nine and 50/100 dollars ($16,139.50) per month for each elapsed month until the date (prorated to the day) that this Agreement is terminated by Sublessee. As of the end of the sixty (60) months the unamortized portion of Sublessor's Cost shall be zero ($0.00). Within thirty (30) days after completion of

Improvements, Sublessor shall provide Sublessee an itemized statement of Sublessor's costs with supporting invoices and other documentation. If Sublessor's actual cost is less than the estimate herein identified, the parties agree to amend this Agreement to reflect the actual Sublessor's costs, Sublessee's rental payments, and the proper amortization amount.

(C) OPTION TO RENEW. So long as Sublessee is not in default under this Agreement, Sublessee may renew this Agreement for one (1) additional term commencing at the end of the sublease term through July 25, 2027 (the "Renewal Term"). At the conclusion of the Renewal Term, both this Agreement and future amendments, if any, and the Lease and Amendments One will terminate in any event. Written notice to exercise the Renewal Term shall be provided to the Sublessor no less than six (6) months prior to the expiration date of this Agreement. All the same terms and conditions of the Agreement shall apply to the Renewal Term, except that the monthly rent during the Renewal term shall be the same as the MR, as defined in Article 2(B) above, at the end of the sublease term. The parties agree to execute a written amendment to the Agreement confirming the renewal terms.

(D) PARKING. Sublessor shall provide to Sublessee and Sublessee's employees, clients, visitors and customers the exclusive use of a prorated portion of the Building parking lot at no charge for the term of this Agreement and any extension or renewal thereof. The prorated amount shall be the Premise size in rentable square foot divided by the total rentable square feet of the Building. The Building's overall allocation of spaces shall be approximately one hundred and forty-six (146) parking spaces as shown in Exhibit B. Sublessor shall provide adequate parking for the exclusive use of people with disabilities. In addition, Sublessee, its employees, clients, visitors and customers may use any unused parking within the parking lot except those spaces used by CDOT should CDOT collocate in the Building.

(E) FUTURE SERVICES OR ALTERATIONS TO PREMISES. Sublessee reserves the right to retain its own contractor to make future alterations which are cosmetic in nature, not visible from the exterior, and do not impact Building structure or systems, without Sublessor's consent or the payment of overhead charges to Sublessor.

(F) SUBLESSOR LIMITATION ON FURTHER SUBLEASING OF THE BUILDING. The parties recognize that, pursuant to the terms of the Lease, Sublessor may not sublease additional space in the Building to a third party without CDOT's consent. By Sublessor's grant of an option to purchase the entire Building to the Sublessee, its assigns and CDOT, Sublessor recognizes that CDOT may refuse to consent to additional subleasing of the Building. Accordingly, Sublessor agrees not to sublease additional space in the Building without first consulting the Sublessee and CDOT and securing their consent, which consent may be withheld at the sole judgment of Sublessee or CDOT.

(G) The Sublessee shall defend and hold harmless the Sublessor and CDOT, as Lessor of the Lease, against claims arising from the alleged negligent acts or omissions of the Sublessee's public employees, which occurred or are alleged to have occurred during the performance of their duties and within the scope of their employment, unless such acts or omissions are, or are alleged to be, willful and wanton. Such claims shall be subject to he limitations of the Colorado Governmental Immunity Act, CRS 24-10-101 to 24-10-120, as now or hereafter amended.

B. THE OPTION TO PURCHASE

30. GENERAL. **Except where otherwise noted, Articles 31 thru 38 below shall govern the Option to Purchase portion of this Agreement and shall provide for and govern the conveyance of the Building, its attendant parking and other improvements hereinafter referred to as the "Purchase Option Premises", and the assignment of the Lease and Amendment One and/or this Agreement, as applicable, to the party exercising the purchase option granted in this Part B.**

31. CONSIDERATION FOR OPTION. **The Sublessor agrees that Sublessee's execution of this Agreement constitutes good and valuable consideration for this Option to Purchase. The Sublessor does hereby grant to the Sublessee and to CDOT an option to purchase the Purchase Option Premises as provided for herein (the "Purchase Option"). The Purchase Option period shall commence upon the execution of this Agreement and remain in effect as long as the Sublessee leases the Subleased Premises and is not in default of this Agreement or until this Agreement terminates, except the Purchase Option period for CDOT shall commence sixty (60) months after the Commencement Date of this Agreement.**

32. ASSIGNMENT OF PURCHASE OPTION. **Sublessee may assign its right to exercise the Purchase Option to the State of Colorado, DPA for the use and benefit of the Department of Correction, CDOT or other agency of Colorado State Government, subject to acceptance by DPA, CDOT or other agency.**

33. EXERCISE OF PURCHASE OPTION. **(A) Prior to exercising the Purchase Option, the party holding such right (the "Exercising Party") shall notify the other party holding such right (the Non-exercising Party"), in writing, of its intention to exercise the Purchase Option and provide the Non-Exercising party with thirty (30) days to submit its written consent or objection to the exercise of the Purchase Option by the Exercising Party. If the Non-exercising Party objects to the exercise of the Purchase Option, the Executive Director of the Exercising Party and the Executive Director of the Non-Exercising Party shall meet to resolve any objections or issues over the exercise of the Purchase Option. If the respective Executive Directors cannot resolve the dispute over the exercise of the Purchase Option, the matter will be referred to the Colorado State Controller, who will decide the issue.**

(B) If CDOT exercises the Purchase Option, CDOT shall purchase the Building, subject to this Agreement, the Sublessor shall assign all of its interests in this Agreement and the Lease to CDOT and the Lease shall terminate. Sublessee may continue to occupy the Premises under the terms of this Agreement, until such time as CDOT provides notice to terminate this Agreement pursuant to Article 2 (C) above.

(C) If Sublessee exercises the Purchase Option, Sublessee shall purchase the Building, subject to the Lease, Sublessor shall assign all of its interest in the Lease and this Agreement to Sublessee and this Agreement shall terminate. CDOT and Sublessee agree to amend the Lease to incorporate therein the termination provisions of the Consent Agreement. Sublessee may continue to occupy the Land, until such time as CDOT provides notice to terminate the Lease pursuant to the terms of the Consent Agreement

(D) If an assignee of Sublessee exercises the Purchase Option, such assignee shall purchase the Building, subject to the Lease, and Sublessor shall assign all of its interests in the Lease and this Agreement to such assignee. Sublessee may continue to occupy the Premises under the terms of this Agreement, until such time as CDOT provides notice to terminate this Agreement pursuant to Article 2 (C) above.

(E) The exercise of the Purchase Option by an Exercising Party shall be by written notice to the Sublessor pursuant to Article 19 at least ninety (90) days prior to closing. The right of an Exercising Party to exercise of the Purchase Option is conditioned on the Exercising Party obtaining:

(1) An appraisal of the Purchase Option Premises pursuant to §24-30-202 (5)(b) C.R.S., unless a previously appraisal obtained by the agency is deemed by the State Real Estate Program and the State Controller's Office to be current,

(2) State Buildings Program review of the Building and other improvements for future controlled maintenance needs,

(3) Mechanical, engineering, environmental investigations and survey of the Building as may be appropriate under State Real Estate Programs policy and procedures,

(4) Any required agency, board, commission or legislative approval to purchase the Building, including the required appropriation, and

(5) Colorado State Controller, or his designate, approval of the Notice to Exercise Option document.

(F) An Exercising Party may exercise the Purchase Option, as provided for in Article 31, when the Purchase Option Price, as defined in Article 34, is greater than or equal to $100,000.00. When the Purchase Option Price falls below $100,000.00, only CDOT, or an authorized Sublessee assignee, shall have the right to exercise the Purchase Option.

34. PURCHASE OPTION PRICE. At the commencement of the Agreement, the "Purchase Option Price" shall be two million and no/100 dollars ($2,000,000) plus the unamortized amount of Sublessor's Costs, not reimbursed by DOC, comprised of Sublessee's Improvements and leasing commissions associated with this Agreement, totaling $968,370.00, for a combined amount of two million nine hundred sixty-eight thousand three hundred seventy and no/100 dollars ($2,968,370.00). During the first one hundred twenty (120) months of rent payments, a portion of each monthly rent payment shall reduce the Purchase Option Price as provided for in the schedule attached as Exhibit E, and made part hereof. At the end of one hundred twenty (120) months of rent payments the Purchase Option Price for CDOT or an authorized Sublessee assignee shall be $10.00 and the Purchase Option Price shall remain $10.00 throughout the remaining term of this Agreement.

35. OPTION CONTRACT TERMS: The terms provided for in the Colorado Real Estate Commission Contract to Buy and Sell Commercial Real Estate in affect at the time the Option to Purchase is exercised by the Exercising Party, shall govern the sale and transfer of the Purchase Option Premises, as more specifically provided for or modified as follows:

(A) SUBLESSOR'S REPRESENTATIONS. The Sublessor represents to the Exercising Party, as of the date this Agreement is executed: (1) Except as otherwise permitted herein, that Sublessor has no knowledge of any "Hazardous Substance," as defined in 42 U.S.C. Section 9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, being located on the Premises; and further, that Sublessor has received no notice of any violation or alleged violation of any law, rule, or regulation regarding such substances. (2) That Sublessor is the current owner of the Building, its attendant parking and other improvements (the Purchase Option Premises), and Lessee under the Lease, and that at closing the Exercising Party shall have good and marketable title to the Purchase Option Premises, subject to those matters of record revealed in the title commitment. (3) That there are no actions, suits, proceedings or investigations pending or, to Sublessor's knowledge,

threatened, against or affecting the Purchase Option Premises, or arising out of Sublessor's conduct on the Purchase Option Premises. (4) That to Sublessor's best knowledge, Sublessor is in compliance with the laws, order and regulations of each governmental department, commission, board or agency having jurisdiction over the Purchase Option Premises in those cases where noncompliance would have a material adverse affect on the Premises. (5) That Sublessor is not a party to or subject to or bound by any agreement, contract, or lease of any kind relating to the Purchase Option Premises that would conflict with Sublessor's performance under this Agreement.

(B) METHOD OF TRANSFER OF TITLE. The parties hereto expressly agree to execute any and all documents reasonably necessary in furtherance of the Option Portion of this Agreement. At closing, the Purchase Option Premises shall be conveyed to the Exercising Party from the Sublessor by (1) a Bargain and Sale deed, (2) assignment of the Lease and Amendments One and/or this Agreement, as appropriate, to the Exercising Party and (3) other documents reasonably required to transfer all rights in the Purchase Option Premises.

(C) CLOSING COSTS, DOCUMENTS AND SERVICES. The date and time of closing shall be at the mutual agreement of the parties (the "Closing Date" or "Closing"). Closing shall occur at the offices of the Title Company. Sublessor and the Exercising Party shall each pay one half of any closing costs; each party shall pay the customary closing costs that are normally paid by that party; each party shall pay its respective share of other customary closing costs and all other items required to be paid at closing, except as otherwise provided herein. Sublessor and the Exercising Party shall sign and complete all customary or required documents at or before closing.

36. TIME IS OF THE ESSENCE/REMEDIES. Time is of the essence hereof. If, in regard to the Option Portion of this Agreement, any note or check received as payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(A) If the Exercising Party is in default under the Option Portion of this Agreement, Sublessor expressly waives the remedies of specific performance and additional damages as related to the Option Portion of this Agreement.

(B) If Sublessor is in default under this Part B, the Exercising Party may elect to treat the Option Portion of this Agreement as canceled, in which case all payments and things of value received pursuant to the Option Portion of this Agreement shall be returned to the Exercising Party and the Exercising Party may recover such damages as may be proper, or the Exercising Party may elect to treat the Option Portion of this Agreement as being in full force and effect and the Exercising Party shall have the right to specific performance.

37. SURVIVE CLOSING. All of the rights, obligations, representations and warranties created under this Agreement shall survive the Closing for a period of one (1) year.

38. EXPLICIT ADVISEMENT OF THE REQUIREMENT TO OBTAIN ADDITIONAL CONTROLLER APPROVAL. Pursuant to a previous understanding reached with the State Controller, please be advised that payment of the Purchase Price and all other payments envisioned hereunder is explicitly contingent upon obtaining additional funding. The State Controller's approval of the Option Portion of this Agreement does not constitute approval of any payments above and beyond payment of obligations under the Sublease Portion of this Agreement. Additional approval of the State Controller is required in the future before any additional moneys can be encumbered and paid by the Exercising Party pursuant to the Option Portion of this Agreement.

PART C – MISCELLANEOUS

39. ENTIRE UNDERSTANDING. This Agreement, including exhibits and the Consent Agreement executed concurrently herewith, constitutes the entire understanding of the parties and there are no other provisions other than set forth herein, and any changes in this Agreement shall be made in writing and signed by both Sublessor and the Sublessee in accordance with required contracting procedures before the same shall be effective.

40. CAPTIONS. The captions used in this Agreement are for convenience only and shall not limit the meaning of the language contained herein.

41. SUCCESSION. The covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and permitted assigns of the respective parties.

42. MULTIPLE COPIES. This Agreement may be executed in multiple counterparts, all of which shall constitute one agreement, which shall be binding on all of the parties.

43. CIVIL RIGHTS ACT OF 1964. The undersigned are subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offer all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the undersigned on the basis of race, color, national origin, age, sex (in education activities) or disability.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this lease agreement on the day and year first above written.

CORPORATIONS:
(A corporate attestation is required)

ATTEST (Seal) By

_____

(Corporate Secretary or Equivalent, or Town/City/County Clerk)

(place corporate seal here, if available)

CDOT:
STATE OF COLORADO
Bill Ritter, Jr., Governor
Acting by and through the Department of Transportation

By: _____
For the Executive Director
Title: _____

Date: _____

DEPARTMENT OF PERSONNEL & ADMINISTRATION
REAL ESTATE PROGRAMS
For the Executive Director

By: _____

Date: _____

APPROVED:
DEPARTMENT OF LAW
ATTORNEY GENERAL (or authorized Delegate)

By: _____

Date: _____

APPROVED:
DEPARTMENT OF PERSONNEL & ADMINISTRATION
For the Executive Director

By: _____
State Risk Manager

Date: _____

SUBLESSOR:
CITY OF WESTMINSTER

By: _____
Authorized Signatory

_____
Name (Print) Title (Print)

Date: _____

846000726
Federal Tax Identification Number

SUBLESSEE:
STATE OF COLORADO
Bill Ritter, Jr., Governor
Acting by and through the **Department of Corrections**

By: _____
For the Executive Director
Title: _____

Date: _____

APPROVALS

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER:

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

APPROVED:
STATE OF COLORADO
STATE CONTROLLER'S OFFICE
State Controller (or authorized Delegate)

By: _____

Date: _____

EXHIBIT A – Page 1

94.0690 1977 NOV 29 [illegible] 29 [illegible]

County of Jefferson, State of [illegible] [illegible]

8.00

LEASE AGREEMENT

T 170-1(0)
Boulder Turnpike
Par Ex-2

3107 942

THIS AGREEMENT, made and entered into in triplicate this 25th day of July, A.D., 1977, by and between the STATE OF COLORADO for the use and benefit of STATE DEPARTMENT OF HIGHWAYS, DIVISION OF HIGHWAYS, the Lessor, and the CITY OF WESTMINSTER, Colorado, the Lessee,

W I T N E S S E T H

WHEREAS, the Department of Highways has acquired certain land in connection with Project T 170-1(0), Boulder Turnpike, for future use and such land is not presently needed,

THEREFORE, in consideration of the sum of One Dollar ($1.00) cash in hand paid to the Lessor as rent for the term of this lease, the Lessor, pursuant to the authority conferred by Section 43-1-210(3) C.R.S. 1973, does hereby rent to the Lessee, for the term of 25 years, beginning at 12:00 noon on the 25th day of July, A.D., 1977, and ending at 12:00 noon on the 25th day of July A.D., 2002, all of the following described premises:

A tract or parcel of land No. EX-2 of the State Department of Highways, Division of Highways, State of Colorado, containing 147,435 sq. ft., more or less, in the NE 1/4 of the NE 1/4 of Section 25, Township 2 South, Range 69 West, of the Sixth Principal Meridian, in Jefferson County, Colorado, and in the NW 1/4 of the NW 1/4 of Section 30, Township 2 South, Range 68 West, of the Sixth Principal Meridian, in Adams County, Colorado, said tract or parcel being more particularly described as follows:

Beginning at a point on the east line of said Section 25, from which the NE corner of Section 25 bears N 0°08'11" E, a distance of 70.29 feet;

1. Thence N 30°19'39" W, a distance of 81.68 feet to a point on the North line of Section 25, from which point the NE corner of said Section 25 bears S 89°42'39" E, a distance of 41.41 feet;

2. Thence N 89°42'39" W, along the North line of said Section 25, a distance of 293.08 feet;

3. Thence S 26°41'59" E, a distance of 610.09 feet;

4. Thence N 61°33'56" E, a distance of 67.20 feet to the East line of said Section 25;

5. Thence N 0°08'11" E, along the East line of said Section 25, a distance of 441.01 feet, more or less, to the point of beginning.

The above described portion of Parcel EX-2 contains 104,525 sq. ft., more or less.

ALSO

3107 942

Beginning at a point on the West line of said Section 30, from which the NW corner of Section 30 bears N 0°08'31" E, a distance of 70.29 feet;

1. Thence S 0°08'31" W, along the West line of said Section 30, a distance of 441.01 feet;

2. Thence N 61°33'56" E, a distance of 193.90 feet;

3. Thence N 19°05'56" E, a distance of 39.28 feet;

4. Thence N 30°19'39" W, a distance of 361.00 feet, more or less, to the point of beginning.

The above portion of Parcel EX-2 contains 42,910 sq. ft., more or less.

The above described parcel contains a total of 147,435 sq. ft., more or less.

1. This is a paid-up lease requiring no further rental for the term of 25 years from the inception date first above written. The lease shall automatically be extended for additional terms of 25 years upon the same terms and conditions as herein contained unless two (2) years notice of cancellation is given by the City of Westminster.

2. It is understood and agreed that the Lessee will use the premises for construction and operation of a police station and municipal court building, and for parking related thereto; that the tenure of this lease is contingent upon submission by the City of Westminster to the Department of Highways for review and approval, any plans for buildings, structures, or improvements of any nature as well as additions to or remodeling of said structures or improvements, as well as any maintenance of said structure estimated to cost more than ten percent (10%) of the appraised value of the improvements being maintained during the term of this lease.

It is further agreed that at the expiration of this lease, or any extensions thereof, the Lessee shall have the option of removing the improvements which have been placed on the premises in their entirety, leaving the land clear and free of debris, or leaving the improvements in their entirety, in which case they will become property of the Lessor.

3. The premises hereby leased may not be sublet, nor assigned, without specific permission of the Lessor, but this is a joint lease with the Regional Transportation District, and in the event that there is insufficient parking space to accommodate the cars in the designated R.T.D. parking area, parking for that purpose will be permitted in the area covered by this lease, if such space is available.

Nothing in this section however will prohibit the City of Westminster from regulating said parking including the signing, striping, or

designation of areas for parking for specific purposes or prohibition of parking in areas where prudent traffic regulation would require it.

4. Lessor reserves the right to enter on leased area at any time to inspect area when necessary.

5. The lessee shall keep the leased premises clean and free from rubbish, trash, or debris.

6. The Lessee shall not commit, nor permit the commission of any act or thing which shall be a violation of any ordinance of the County of Jefferson or Adams in their respective area, or of any law of the State of Colorado or the United States.

7. The Lessee shall save and hold harmless, the Lessor from any liability for damage to persons or property resulting from occupancy of the leased premises.

8. The repair of all facilities and payment of utilities will be the responsibility of the Lessee.

10. The Lessee, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land:

(a) That no person, on the ground of race, color, of national origin, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities that may be developed on the leased premises;

(b) That in connection with the construction of any improvements on said premises, and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors;

(c) That such discrimination shall not be practiced against the public in its access to and use of the facilities and services provided on the leased premises; and

(d) That the Lessee shall use the premises in compliance with all other requirements imposed pursuant to Title 13, Code of Federal Regulations, Commerce and Foreign Trade, Subtitle A, Office of the Secretary of Commerce, Part 8 (15 C.F.R., Part 8), and as said Regulations may be amended.

11. Violation of any of the covenants and conditions herein contained shall, at the option of the Lessor, constitute a breach of this agreement, and in any such event, the Lessor may without notice, repossess the leased premises and declare a forfeiture of all of Lessee's rights hereunder. Failure of the Lessor to exercise such option in any particular case shall not be construed as a waiver of its right in any other case.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers duly authorized herein, all of the day and year first above mentioned.

CITY OF WESTMINSTER, COLORADO

By _____
Mayor Vi June

ATTEST:

_____
City Clerk

APPROVED:

_____ 10/26/77
City Attorney

STATE OF COLORADO
STATE DEPARTMENT OF HIGHWAYS
DIVISION OF HIGHWAYS

By _____
E. H. Haase, Chief Engineer
November 7, 1977

Boulder Turnpike
Parcel EX-2
P 11-035-00

AMENDMENT TO LEASE AGREEMENT P 11-035-00 DATED 7-25-77

WHEREAS, the State Department of Highways, Division of Highways, State of Colorado has entered into an agreement with City of Westminster to lease certain property in Jefferson County, Colorado, more particularly described in said lease, and

WHEREAS, City of Westminster and the State Department of Highways have agreed and by this amendment do agree to amend the description in lease agreement by adding Area #3 as also which describes as follows:

ALSO

A parcel of land located in the City of Westminster, County of Adams, State of Colorado, more particularly described as follows:

Beginning at the Northwest corner of Section 30 T. 2 S., R. 69 W;

1. Thence S. 00° 08' 11" W., a distance of 511.30 feet;
2. Thence N. 61° 34' 06" E., a distance of 34.16 feet to the true point of beginning;
3. Thence S. 00° 08' 11" W., a distance of 47.50 feet;
4. Thence S. 72° 45' 00" W., a distance of 60.00 feet;
5. Thence N. 36° 12' 00" W., a distance of 30.00 feet;
6. Thence N. 61° 34' 06" E., a distance of 84.00 feet to the point of beginning.

Total parcel containing .058 acres or 2,557.5 square feet.

The above described amendment makes the total parcel contain a total of 149,992 sq. ft., more or less.

THEREFORE, all other terms and conditions being agreeable to both parties the lease is hereby amended upon addition of the above description.

IN WITNESS WHEREOF, the parties hereto have caused this amendment and renewal to be executed by their respective officers on April 7, 1982.

STATE DEPARTMENT OF HIGHWAYS
DIVISION OF HIGHWAYS
STATE OF COLORADO, LESSOR

T. A. LARIMER, Chief Clerk

For E. N. HAAST, Chief Engineer

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 7th day of April, 1982 by E. N. Haast, Chief Engineer, and T. A. LARIMER, Chief Clerk, for the State Department of Highways, Division of Highways, State of Colorado.

Witness my hand and official seal.

My commission expires

My Commission Expires [illegible]
Address [illegible]

Notary Public

ATTEST:

CITY OF WESTMINSTER

By William Christopher

STATE OF COLORADO)
COUNTY OF) ss

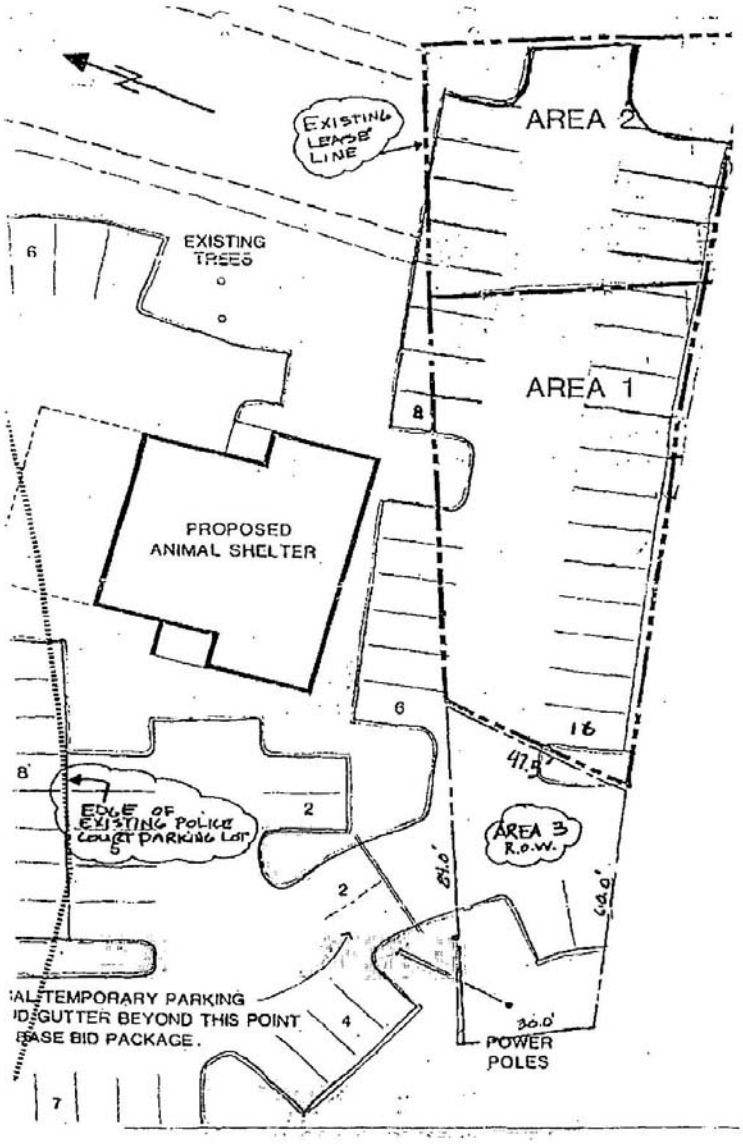
The foregoing instrument was acknowledged before me this 14th day of April, 1982, by William Christopher, City Manager, and Michele Kelley, City Clerk for City of Westminster.

Witness my hand and official seal.

My commission expires

My Commission Expires Nov. 24, 1982
Address: City of Westminster
3031 West 76th Ave.
Westminster, Colorado 80030

Notary Public


EXISTING LEASE LINE
AREA 2
EXISTING TREES
AREA 1
PROPOSED ANIMAL SHELTER
EDGE OF EXISTING POLICE COURT PARKING LOT
AREA 3 R.O.W.
TEMPORARY PARKING
GUTTER BEYOND THIS POINT
BASE BID PACKAGE.
POWER POLES
6
8
2
5
4
7
16
41.5'
84.0'
66.0'
30.0'

COUNTY OF JEFFERSON
STATE OF COLORADO
RECEPTION NO. 2001100B
09/21/00 15:20 15.00

P 030
Boulder Turnpike
Parcel 4
P 11-035-00

AMENDMENT TO LEASE AGREEMENT P 11-035-00 DATED 7-25-77

WHEREAS, the State Department of Highways, Division of Highways, State of Colorado has entered into an agreement with City of Westminster to lease certain property in Jefferson County, Colorado, more particularly described in said lease, and

WHEREAS, City of Westminster and the State Department of Highways have agreed and by this amendment do agree to amend the description to lease agreement by adding Area #4 an also which describes as follows:

A L S O

A tract or parcel of land No. 4 of the State Department of Highways, Division of Highways, State of Colorado, Project No. F 036-1(14) containing 152,463 sq. ft., more or less, in the SE 1/4 of Section 24, Township 2 South, Range 69 West, of the Sixth Principal Meridian, in Jefferson County, Colorado, said tract or parcel being more particularly described as follows:

Beginning at the SE property corner which is N. 89° 42' 39" W. along the south line of the SE 1/4 of Sec. 24, a distance of 400.6 feet and N. 26° 06' 19" W., a distance of 39.49 feet from the SE corner of the SE 1/4 of Sec. 24, T. 2 S., R. 69 W.;

1. Thence N. 26° 06' 19" W., a distance of 529.1 feet;
2. Thence N. 14° 10' 19" W., a distance of 505.6 feet;
3. Thence S. 00° 17' 35" W., a distance of 961.3 feet to the South property line;
4. Thence S. 89° 42' 39" E., along the south property line, a distance of 370.0 feet, more or less, to the point of beginning.

The above described parcel contains 152,463 sq. ft., more or less.

The City must be responsible for the proper construction and maintenance of the storm detention pond, as well as any necessary safety items including erecting and maintaining a security fence. If at any time the land is needed for highway purposes, the City will vacate part or all of the area.

THEREFORE, all other terms and conditions being agreeable to both parties the lease is hereby amended upon addition of the above description.

(Continued)

PETITION NO. 86011082

2

IN WITNESS WHEREOF, the parties hereto have caused this amendment and renewal to be executed by their respective officers on _____, 1985.

STATE DEPARTMENT OF HIGHWAYS
DIVISION OF HIGHWAYS
STATE OF COLORADO, LESSOR

ATTEST:

By: _____
ROBERT L. CLEVENGER,
Chief Engineer

T. A. LARIMER, Chief Clerk

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 1985 by ROBERT L. CLEVENGER, Chief Engineer, and T. A. LARIMER, Chief Clerk, for the State Department of Highways, Division of Highways, State of Colorado.

Witness my hand and official seal.

My commission expires _____.

_____
Notary Public

_____
Address

ATTEST:

CITY OF WESTMINSTER

By William Christopher

STATE OF COLORADO)
) ss
COUNTY OF Adams)

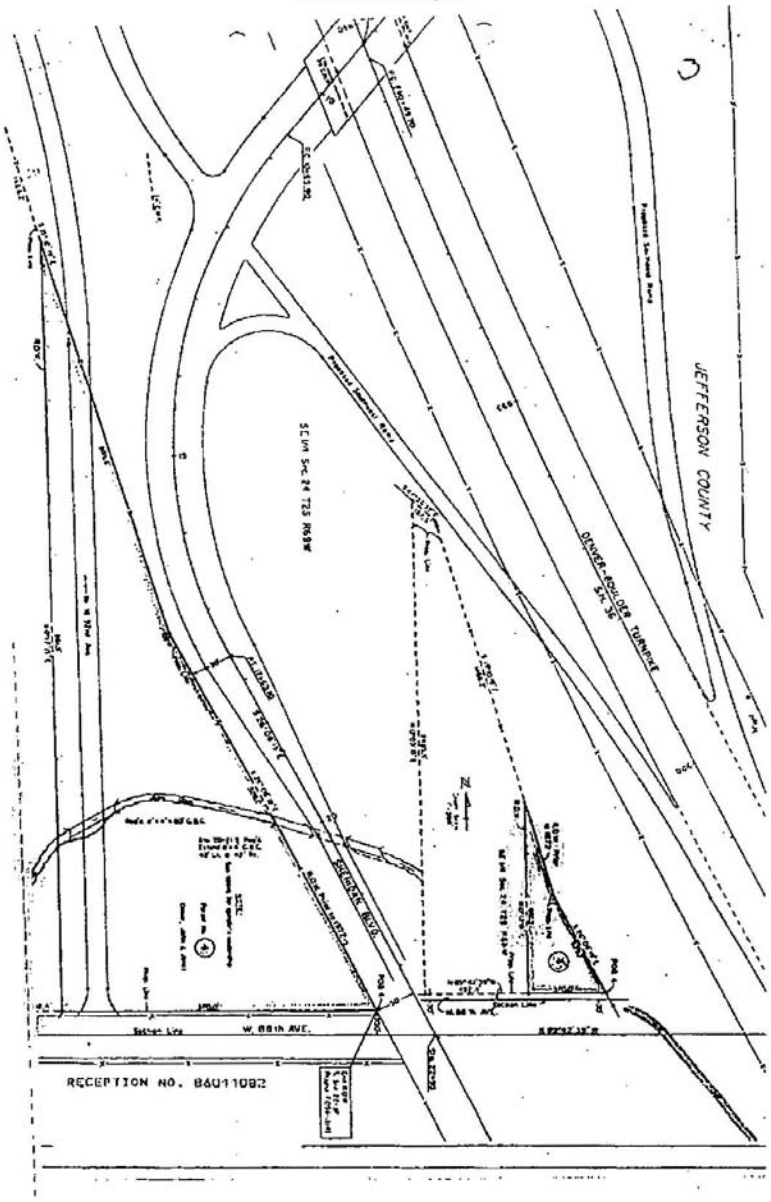
The foregoing instrument was acknowledged before me this 19th day of December, 1985 by William Christopher for City of Westminster.

Witness my hand and official seal.

My commission expires Jan 14, 1988

Tami Lee Lacey
Notary Public

3021 West 76th Avenue
Address
Westminster, CO 80030


JEFFERSON COUNTY
W. 88th AVE.
RECEPTION NO. 86U11082

GR[illegible]N ENGINEERING SCIENCES, INC.
ENGINEERING • SURVEYING
Denver, CO • Colorado Springs, CO
Albuquerque, NM • Kemmerer, WY

SCALE 1" = _____ CHECKED GSL JOB NO 3476102
DATE 10/23/85 BY GSL
NOTES

4

○ STEEL PINS WITH CAPS SET AS SHOWN
+ CROSSES SET AS SHOWN
☑ EXISTING CORNER FOUND

NOTICE - According to Colorado law you must commence any legal action based upon any defect in this survey within six years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

LEGAL DESCRIPTION

A tract of land located in the Southeast quarter of Section 24, Township 2 South, Range 69 West of the Sixth Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the Southeast corner of said Section 24; thence along the South line of said Southeast quarter of Section 24, N89°08'58"W a distance of 608.34 feet; thence N03°51'02"E a distance of 70.00 feet to the Point of Beginning; thence N89°08'58"W a distance of 122.74 feet to a point on a curve; thence along the arc of a curve to the right having a central angle of 69°46'36", a radius of 48.78 feet, a chord bearing of N34°39'22"W, and an arc distance of 59.39 feet; thence N0°13'56"E a distance of 143.67 feet to a point 20.00 feet south of the existing centerline of Allen Ditch; thence along a line 20.00 feet south of and parallel to the existing centerline of Allen Ditch the following three (3) courses; 1) thence N71°50'41"E a distance of 50.78 feet to a point of curvature; 2) thence along the arc of a curve to the right having a central angle of 49°51'44", a radius of 65.00 feet, a chord bearing of S89°13'27"E, and an arc distance of 43.78 feet; 3) thence S64°17'25"E a distance of 92.22 feet; thence S25°05'45"E a distance of 122.88 feet to a point on a curve; thence along the arc of a curve to the right having a central angle of 80°10'53", a radius of 71.17 feet, a chord bearing of S50°45'43"W, and an arc distance of 99.59 feet; more or less to the Point of Beginning. The above described parcel containing 2.875 acres more or less.

I hereby certify that the above/attached was prepared under my direct supervision.

10-23-85
Gary S. Sutes PLS 19611

COLORADO REGISTERED GARY WILLIAM SUTES 19611 PROFESSIONAL LAND SURVEYOR

RECORDED IN
COUNTY OF JEFFERSON
STATE OF COLORADO
RECEPTION NO. 86011082
01/31/86 15:20 15.00

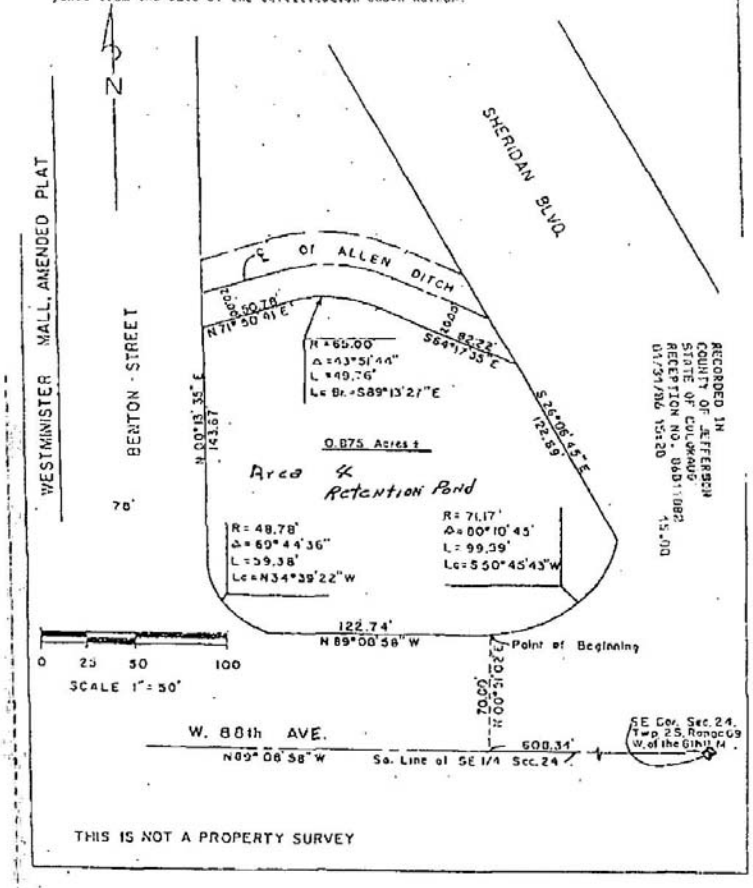
SHEET 2 of 2

GREINER ENGINEERING SCIENCES, INC.
ENGINEERING • SURVEYING
Denver, CO • Colorado Springs, CO
Albuquerque, NM • Kenmerer, WY

5

SCALE 1" 50' CHECKED GWC JOB NO. 217.002
○ STEEL PINS WITH CAPS SET AS SHOWN
+ CROSSES SET AS SHOWN
◎ EXISTING CORNER FOUND
DATE 10/23/89 BY JA
NOTES

NOTICE - According to Colorado law you must commence any legal action based upon any defect in this survey within six years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

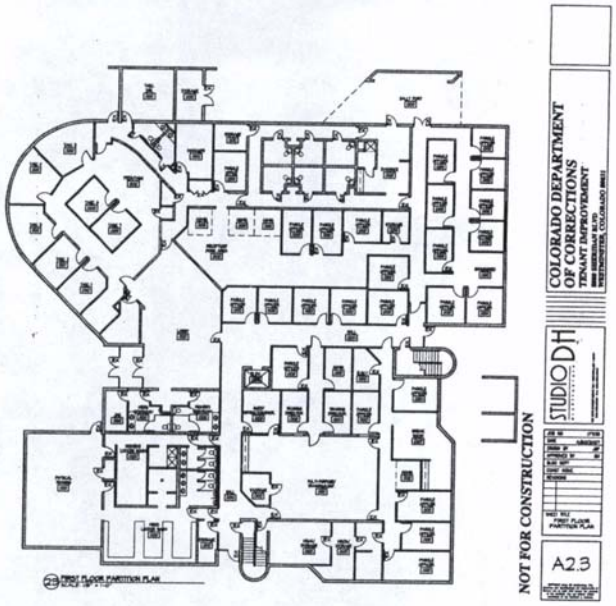


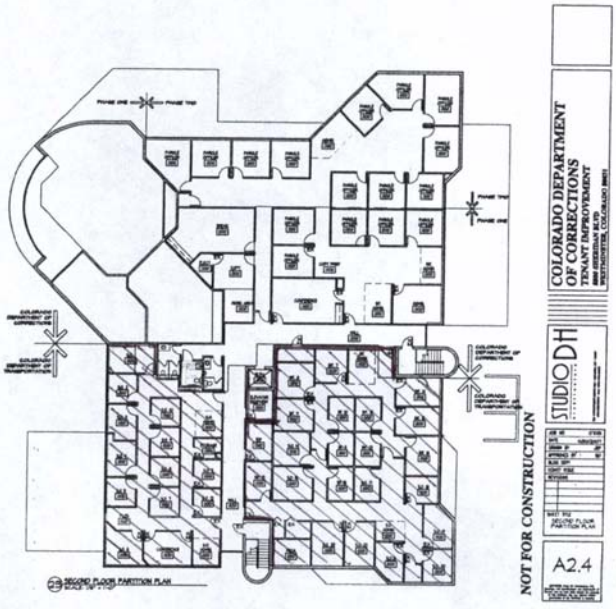
THIS IS NOT A PROPERTY SURVEY

EXHIBIT B


88th Ave
WB Hwy 36
EB Hwy 36
Sheridan Blvd
Turnpike Dr
8800 Sheridan Blvd
60 30 0 60 120 180 240
Feet

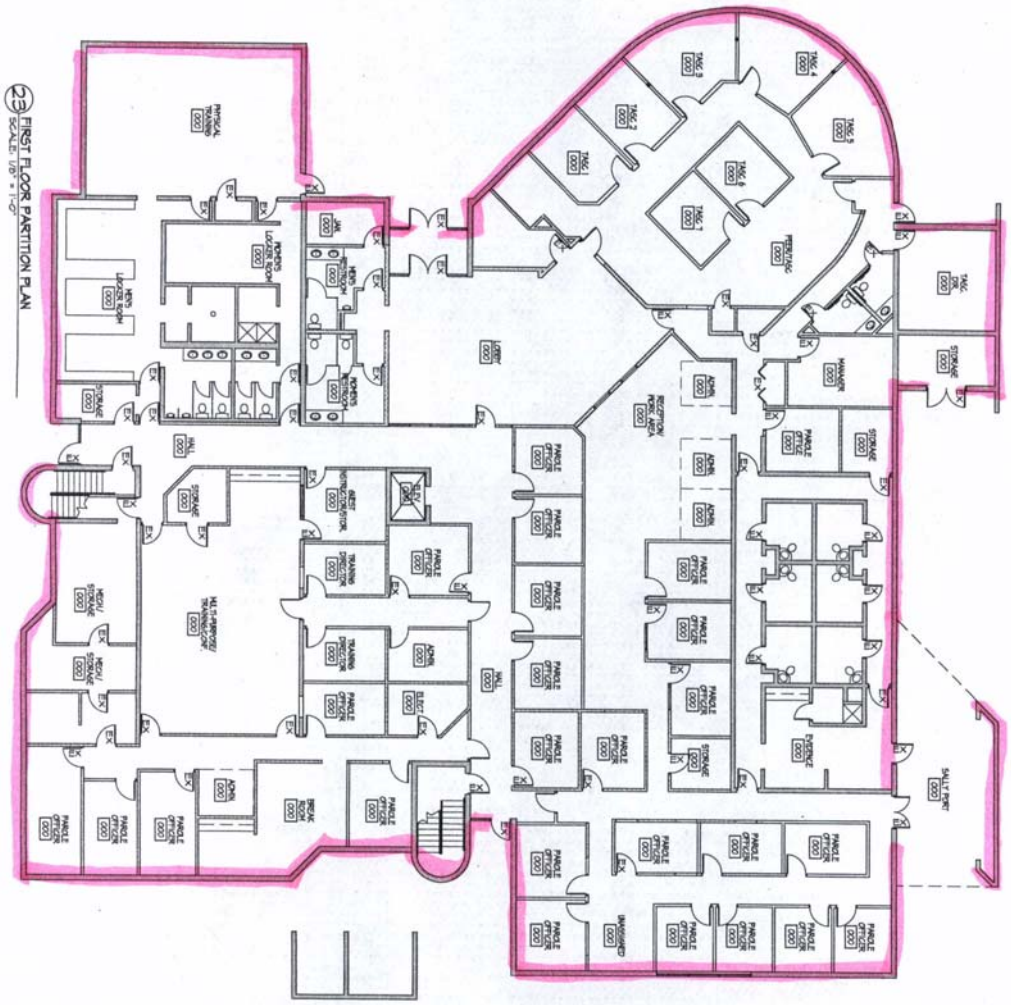
EXHIBIT C
PREMISES





Rev 5/06

EXHIBIT D – Page 1
SPACE PLAN



CDOC PHASE ONE
FIRST FLOOR - ALL

NOT FOR CONSTRUCTION

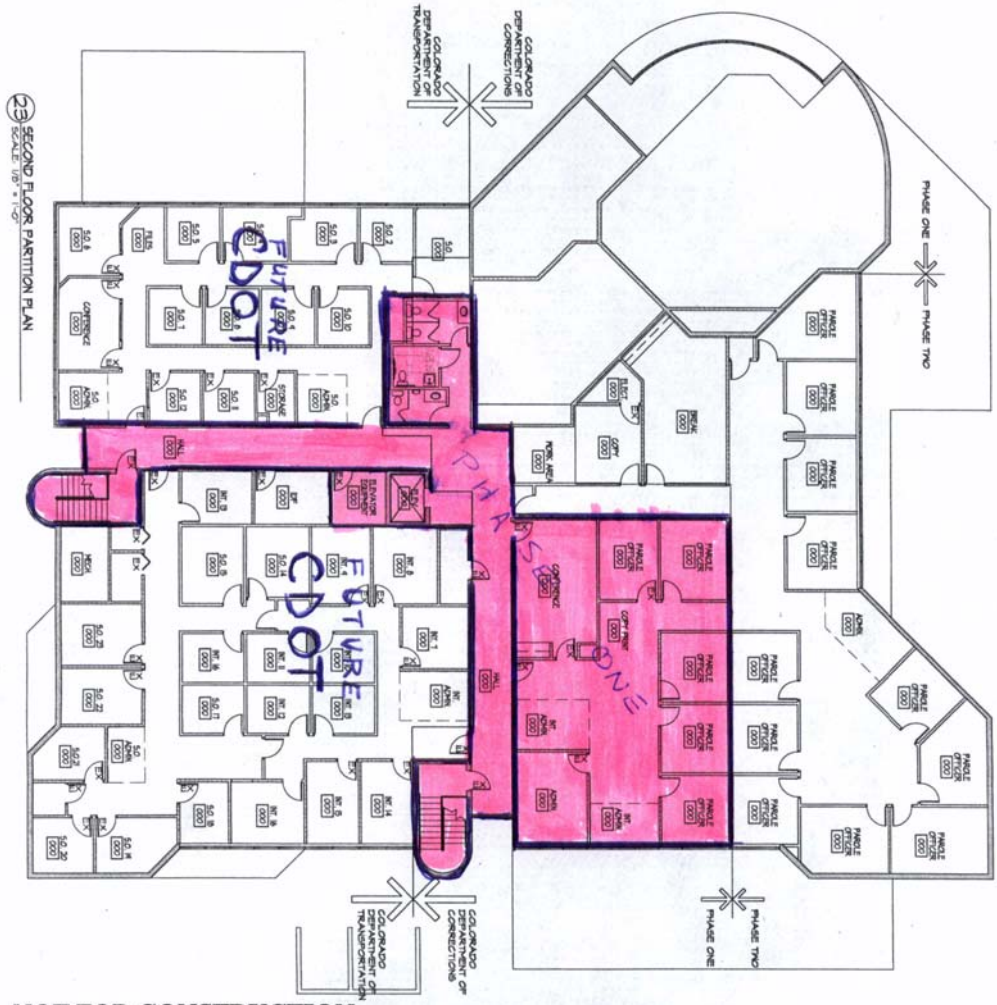
A2.3

SHEET TITLE: FIRST FLOOR PARTITION PLAN

JOB NO. 0709
DATE 4/30/2007
DRAWN BY JEF
APPROVED BY SD
BLDG. DEPT.
CONST. ISSUE
REVISIONS

STUDIO DH architecture

COLORADO DEPARTMENT OF CORRECTIONS
TENANT IMPROVEMENT
8800 SHERIDAN BLVD
WESTMINSTER, COLORADO 80031



NOT FOR CONSTRUCTION

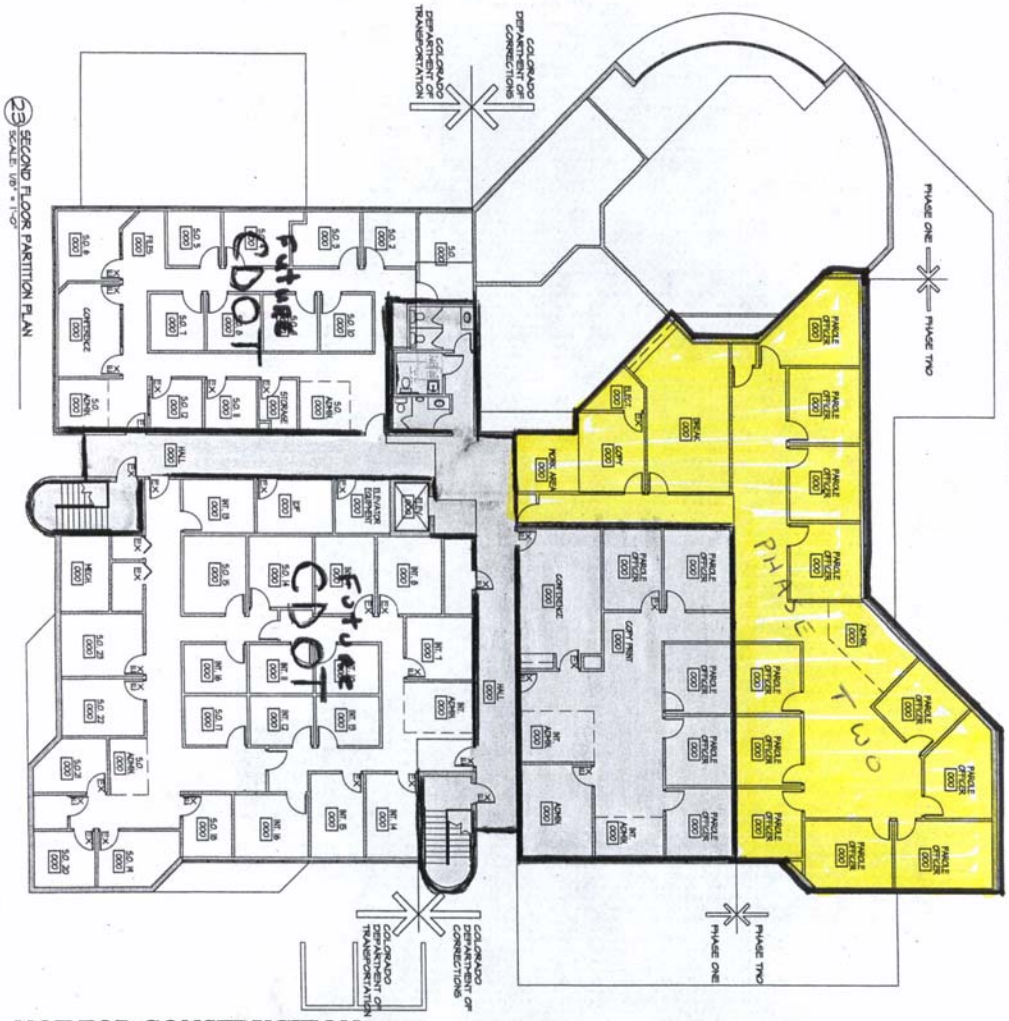
A2.4

SHEET TITLE: SECOND FLOOR PARTITION PLAN

REVISIONS	BLDG. DEPT	CONST. ISSUE
APPROVED	BP	SD
DRAWN	BP	JEP
DATE	4/30/2007	
JOB NO	07005	

STUDIO DH architecture

COLORADO DEPARTMENT OF CORRECTIONS
TENANT IMPROVEMENT
8800 SHERIDAN BLVD
WESTMINSTER, COLORADO 80031



NOT FOR CONSTRUCTION

A2.4

SHEET TITLE: SECOND FLOOR PARTITION PLAN

JOB NO	0705
DATE	4/20/2007
DRAWN BY	JEP
APPROVED BY	SD
BLDG. DEPT.	
CONST. ISSUE	
REVISIONS	

STUDIO DH architecture

COLORADO DEPARTMENT OF CORRECTIONS
TENANT IMPROVEMENT
8800 SHERIDAN BLVD
WESTMINSTER, COLORADO 80031

Rev 5/06

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
DOC-CITY OF WESTMINSTER SUBLEASE AND OPTION TO PURCHASE
8800 Sheridan, Westminster, CO

BASIS:
Revised Estimated Size of Sublease Premises: **23,674**rsf
Rent Schedule:

Months:	1-9	10-21	22-33	34-45	46-60	61-120
Annual Rental Rate ($/rsf):	11.00	12.00	13.00	14.00	15.00	15.88
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67	29592.50	31322.60

Rent allocated for Services: $2.00/rsf, **47,348**/yr [**$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS — Month #	0	(10/1/07) 1	2	3	4	5	6	7	8	9
Monthly Rent Schedule ($)		21701	21701	21701	21701	21701	21701	21701	21701	21701
Rent Applied to Services ($)		3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)		16140	16140	16140	16140	16140	16140	16140	16140	16140
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)		1616	1616	1616	1616	1616	1616	1616	1616	1616
Estimated Annualized Sq. Foot Cost ($/rsf)		11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS										
Building Option Price ($)	2000000	1998384	1996768	1995152	1993536	1991920	1990304	1988688	1987072	1985456
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)	968370	952231	936091	919952	903812	887673	871533	855394	839254	823115
OPTION TO PURCHASE PRICE ($)	2968370	2950615	2932859	2915104	2897348	2879593	2861837	2844082	2826326	2808571

Rev 5/06

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
DOC-CITY OF WESTMINSTER SUBLEASE AND OPTION TO PURCHASE
8800 Sheridan, Westminster, CO

BASIS:
Revised Estimated Size of Sublease Premises: **23,674rsf**
Rent Schedule:

Months:	1-9	10-21	22-33	34-45
Annual Rental Rate ($/rsf):	11.00	12.00	13.00	14.00
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/rsf, **47,348**/yr [**$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	(7/1/08) 10	11	12	13	14	15	16	17	18
Monthly Rent Schedule ($)			23674	23674	23674	23674	23674	23674	23674	23674	23674
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)			16140	16140	16140	16140	16140	16140	16140	16140	16140
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			3589	3589	3589	3589	3589	3589	3589	3589	3589
Estimated Annualized Sq. Foot Cost ($/rsf)			12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS											
Building Option Price ($)		2000000	1981867	1978278	1974690	1971101	1967512	1963923	1960334	1956745	1953157
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370	806975	790836	774696	758557	742417	726278	710138	693999	677859
OPTION TO PURCHASE PRICE ($)		2968370	2788842	2769114	2749386	2729657	2709929	2690201	2670472	2650744	2631016

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
DOC-CITY OF WESTMINSTER SUBLEASE AND OPTION TO PURCHASE
8800 Sheridan, Westminster, CO

BASIS:
Revised Estimated Size of Sublease Premises: **23,674**rsf
Rent Schedule:

Months:	1-9	10-21	22-33	34-45
Annual Rental Rate ($/rsf):	11.00	12.00	13.00	14.00
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/**rsf, 47,348**/yr [**$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	19	20	21	(7/1/09) 22	23	24	25	26	27
Monthly Rent Schedule ($)			23674	23674	23674	25647	25647	25647	25647	25647	25647
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)			16140	16140	16140	16140	16140	16140	16140	16140	16140
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			3589	3589	3589	5562	5562	5562	5562	5562	5562
Estimated Annualized Sq. Foot Cost ($/rsf)			12.00	12.00	12.00	13.00	13.00	13.00	13.00	13.00	13.00
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS											
Building Option Price ($)		2000000	1949568	1945979	1942390	1936828	1931267	1925705	1920143	1914582	1909020
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370	661720	645580	629441	613301	597162	581022	564883	548743	532604
OPTION TO PURCHASE PRICE ($)		2968370	2611287	2591559	2571831	2550129	2528428	2506727	2485026	2463325	2441624

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
DOC-CITY OF WESTMINSTER SUBLEASE AND OPTION TO PURCHASE
8800 Sheridan, Westminster, CO

BASIS:
Revised Estimated Size of Sublease Premises: **23,674rsf**
Rent Schedule:

Months:	1-9	10-21	22-33	34-45
Annual Rental Rate ($/rsf):	11.00	12.00	13.00	14.00
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/rsf, **47,348**/yr [**$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	28	29	30	31	32	33	(7/1/10) 34	35	36
Monthly Rent Schedule ($)			25647	25647	25647	25647	25647	25647	27620	27620	27620
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)			16140	16140	16140	16140	16140	16140	16140	16140	16140
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			5562	5562	5562	5562	5562	5562	7535	7535	7535
Estimated Annualized Sq. Foot Cost ($/rsf)			13.00	13.00	13.00	13.00	13.00	13.00	14.00	14.00	14.00
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS											
Building Option Price ($)		2000000	1903458	1897897	1892335	1886773	1881212	1875650	1868116	1860581	1853047
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370	516464	500325	484185	468046	451906	435767	419627	403488	387348
OPTION TO PURCHASE PRICE ($)		2968370	2419922	2398221	2376520	2354819	2333118	2311417	2287743	2264069	2240395

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
DOC-CITY OF WESTMINSTER SUBLEASE AND OPTION TO PURCHASE
8800 Sheridan, Westminster, CO

BASIS:
Revised Estimated Size of Sublease Premises: **23,674rsf**
Rent Schedule:

Months:	1-9	10-21	22-33	34-45
Annual Rental Rate ($/rsf):	11.00	12.00	13.00	14.00
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/rsf, **47,348**/yr [**$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	37	38	39	40	41	42	43	44	45
Monthly Rent Schedule ($)			27620	27620	27620	27620	27620	27620	27620	27620	27620
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)			16140	16140	16140	16140	16140	16140	16140	16140	16140
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			7535	7535	7535	7535	7535	7535	7535	7535	7535
Estimated Annualized Sq. Foot Cost ($/rsf)			14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS											
Building Option Price ($)		2000000	1845512	1837978	1830443	1822909	1815374	1807840	1800305	1792771	1785236
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370	371209	355069	338930	322790	306651	290511	274372	258232	242093
OPTION TO PURCHASE PRICE ($)		2968370	2216721	2193047	2169373	2145699	2122025	2098351	2074677	2051003	2027329

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
DOC-CITY OF WESTMINSTER SUBLEASE AND OPTION TO PURCHASE
8800 Sheridan, Westminster, CO

BASIS:
Revised Estimated Size of Sublease Premises: **23,674rsf**
Rent Schedule:

Months:	1-9	10-21	22-33	34-45
Annual Rental Rate ($/rsf):	11.00	12.00	13.00	14.00
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/rsf, 47,348/yr [$3,945.67/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS — Month #	0	(7/1/11) 46	47	48	49	50	51	52	53	54
Monthly Rent Schedule ($)		29593	29593	29593	29593	29593	29593	29593	29593	29593
Rent Applied to Services ($)		3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)		16140	16140	16140	16140	16140	16140	16140	16140	16140
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)		9507	9507	9507	9507	9507	9507	9507	9507	9507
Estimated Annualized Sq. Foot Cost ($/rsf)		15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS										
Building Option Price ($)	2000000	1775729	1766221	1756714	1747207	1737699	1728192	1718685	1709177	1699670
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)	968370	225953	209814	193674	177535	161395	145256	129116	112977	96837
OPTION TO PURCHASE PRICE ($)	2968370	2001682	1976035	1950388	1924741	1899094	1873448	1847801	1822154	1796507

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EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
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8800 Sheridan, Westminster, CO

BASIS:
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Rent Schedule:

Months:	1-9	10-21	22-33	34-45
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Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS — Month #	0	55	56	57	(7/1/12) 58	59	60	61	62	63
Monthly Rent Schedule ($)		29593	29593	29593	29593	29593	29593	31323	31323	31323
Rent Applied to Services ($)		3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)		16140	16140	16140	16140	16140	16140			
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)		9507	9507	9507	9507	9507	9507	27377	27377	27377
Estimated Annualized Sq. Foot Cost ($/rsf)		15.00	15.00	15.00	15.00	15.00	15.00	15.88	15.88	15.88
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS										
Building Option Price ($)	2000000	1690163	1680655	1671148	1661641	1652134	1642626	1615249	1587872	1560495
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)	968370	80698	64558	48419	32279	16140	0			
OPTION TO PURCHASE PRICE ($)	2968370	1770860	1745213	1719567	1693920	1668273	1642626	1615249	1587872	1560495

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
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8800 Sheridan, Westminster, CO

BASIS:
Revised Estimated Size of Sublease Premises: **23,674**rsf
Rent Schedule:

Months:	1-9	10-21	22-33	34-45
Annual Rental Rate ($/rsf):	**11.00**	**12.00**	**13.00**	**14.00**
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/rsf, **47,348/yr [$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
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Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	64	65	66	67	68	69	(7/1/13) 70	71	72
Monthly Rent Schedule ($)			31323	31323	31323	31323	31323	31323	31323	31323	31323
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)											
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			27377	27377	27377	27377	27377	27377	27377	27377	27377
Estimated Annualized Sq. Foot Cost ($/rsf)			15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS											
Building Option Price ($)		2000000	1533118	1505742	1478365	1450988	1423611	1396234	1368857	1341480	1314103
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370									
OPTION TO PURCHASE PRICE ($)		2968370	1533118	1505742	1478365	1450988	1423611	1396234	1368857	1341480	1314103

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
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8800 Sheridan, Westminster, CO

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Rent Schedule:

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Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/rsf, **47,348**/yr **[$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	73	74	75	76	77	78	79	80	81
Monthly Rent Schedule ($)			31323	31323	31323	31323	31323	31323	31323	31323	31323
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)											
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			27377	27377	27377	27377	27377	27377	27377	27377	27377
Estimated Annualized Sq. Foot Cost ($/rsf)			15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS											
Building Option Price ($)		2000000	1286726	1259349	1231972	1204595	1177218	1149841	1122465	1095088	1067711
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370									
OPTION TO PURCHASE PRICE ($)		2968370	1286726	1259349	1231972	1204595	1177218	1149841	1122465	1095088	1067711

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
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8800 Sheridan, Westminster, CO

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Revised Estimated Size of Sublease Premises: **23,674**rsf
Rent Schedule:

Months:	1-9	10-21	22-33	34-45
Annual Rental Rate ($/rsf):	11.00	12.00	13.00	14.00
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/rsf, **47,348**/yr [**$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	(7/1/14) 82	83	84	85	86	87	88	89	90	91
Monthly Rent Schedule ($)			31323	31323	31323	31323	31323	31323	31323	31323	31323	31323
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)												
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			27377	27377	27377	27377	27377	27377	27377	27377	27377	27377
Estimated Annualized Sq. Foot Cost ($/rsf)			15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS												
Building Option Price ($)		2000000	1040334	1012957	985580	958203	930826	903449	876072	848695	821318	793941
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370										
OPTION TO PURCHASE PRICE ($)		2968370	1040334	1012957	985580	958203	930826	903449	876072	848695	821318	793941

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
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8800 Sheridan, Westminster, CO

BASIS:
Revised Estimated Size of Sublease Premises: **23,674rsf**
Rent Schedule:

Months:	1-9	10-21	22-33	34-45
Annual Rental Rate ($/rsf):	11.00	12.00	13.00	14.00
Monthly Rent $:	21701.17	23674.00	25646.83	27619.67

Rent allocated for Services: $2.00/rsf, **47,348**/yr [**$3,945.67**/mo]
Estimated City Paid DOC Tenant Improvement plus Architectual Fees: **$910,000.00**
Estimate City Paid Leasing Costs (Commissions): **$118,370.00 ($5.00x23,674rsf)**
TOTAL Estimated City Paid DOC TI and Leasing Costs: **$1,028,370.00**
DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	92	93	(7/1/15) 94	95	96	97	98	99	100	101
Monthly Rent Schedule ($)			31323	31323	31323	31323	31323	31323	31323	31323	31323	31323
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)												
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			27377	27377	27377	27377	27377	27377	27377	27377	27377	27377
Estimated Annualized Sq. Foot Cost ($/rsf)			15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS												
Building Option Price ($)		2000000	766564	739187	711811	684434	657057	629680	602303	574926	547549	520172
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370										
OPTION TO PURCHASE PRICE ($)		2968370	766564	739187	711811	684434	657057	629680	602303	574926	547549	520172

EXHIBIT E

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DOC Partial Reimbursement of Tenant Improvements: **$60,000.00**
Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	102	103	104	105	(7/1/16) 106	107	108	109	110	111
Monthly Rent Schedule ($)			31323	31323	31323	31323	31323	31323	31323	31323	31323	31323
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)												
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			27377	27377	27377	27377	27377	27377	27377	27377	27377	27377
Estimated Annualized Sq. Foot Cost ($/rsf)			15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS												
Building Option Price ($)		2000000	492795	465418	438041	410664	383287	355910	328534	301157	273780	246403
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370										
OPTION TO PURCHASE PRICE ($)		2968370	492795	465418	438041	410664	383287	355910	328534	301157	273780	246403

EXHIBIT E

DOC LEASE-OPTION PAYMENTS FOR FIRST 120 MONTHS OF 15-YEAR TERM
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Balance of DOC TI and Leasing Costs Paid By Rent: **$968,370.00**
DOC Tenant Improvements Payoff: 60 months of Rent Credits per Schedule
Building Option Price: 120 months of Rent Credits per Schedule

RENT AND CREDITS	Month #	0	112	113	114	115	116	117	(7/1/17) 118	119	120
Monthly Rent Schedule ($)			31323	31323	31323	31323	31323	31323	31323	31323	31323
Rent Applied to Services ($)			3946	3946	3946	3946	3946	3946	3946	3946	3946
Portion of Rent Applied as a Credit to Pay off DOC TI + Leasing Costs ($)											
Portion of Rent Applied as a Credit to Reduce Purchase Price ($)			27377	27377	27377	27377	27377	27377	27377	27377	27377
Estimated Annualized Sq. Foot Cost ($/rsf)			15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88	15.88
OPTION TO PURCHASE BUILDING AND PAYOFF TENANT IMPROVEMENTS											
Building Option Price ($)		2000000	219026	191649	164272	136895	109518	82141	54764	27387	10
BALANCE - DOC Tenant Improvement plus Leasing Costs ($)		968370									
OPTION TO PURCHASE PRICE ($)		2968370	219026	191649	164272	136895	109518	82141	54764	27387	10

EXHIBIT F

SUBLESSOR ANNUAL OPERATING EXPENSES

(1) Definitions: In addition to the terms elsewhere defined in this lease, the following terms shall have the following meanings with respect to the provisions of this lease:

(a) "Annual Operating Expenses", as said term is hereinafter defined, shall mean the Sublessor's actual Operating Expenses incurred in the Fiscal Year associated with operating and maintaining the Building, as defined herein.

(b) "Rentable Area" shall mean all rentable space available for lease in the Building calculated on the basis set forth in the Building Owners' and Managers' Association Publication #ANSI Z-65.1-1996 full-floor basis. If there is a significant change in the aggregate Rentable Area as a result of an addition to the Building, partial destruction thereof, modification to building design, or similar circumstance which causes a reduction or increase thereto on a permanent basis, Sublessor's Accountants, as said term is hereinafter defined, shall make such adjustments in the computations as shall be necessary to provide for any such change.

(c) "Sublessee's Proportionate Share", shall mean that fraction, the numerator of which is the total number of square feet of the Premises (i.e., 23,674 rentable square feet) and the denominator of which is the Rentable Area (i.e., 29,964 rentable square feet), and is equal to 79.01 %, unless Sublessee [including its servants, agents, contractors, or assigns] is the only occupant in the Building, then Sublessee's Proportionate Share shall be 100%. If CDOT or other entity occupies a portion of the Building, but the Building is not totally occupied, each occupant's Proportionate Share shall be determined by the ratio of the rentable square feet occupied or subleased to the total amount of rentable square feet of the Building that is occupied or subleased to all occupants. At such time, if ever, as any space is added to the Premises, Sublessee's Proportionate Share shall be increased accordingly. Notwithstanding anything contained herein to the contrary, the total number of square feet of the Premises used as the numerator in this subparagraph (1)(c), shall be 23,674 until such time as additional space is added by amendment to this lease, at which time the rentable area of the additional space will be added to the 23,674 to determine Sublessee's Proportionate Share.

(d) "Fiscal Year" shall mean each twelve (12) month period beginning July 1 and ending the next June 30.

(e) "Operating Expenses" shall mean all operating expenses of any kind or nature that are necessary, ordinary, or customarily incurred in connection with the operation and maintenance of the Building as determined by Sublessor's Accountants. Operating expenses shall include the following:

(i) Costs of supplies, including but not limited to the cost of "relamping" all building standard Sublessee lighting as the same may be required from time to time;

(ii) Costs incurred in connection with obtaining and providing energy for the Building, including but not limited to costs of propane, butane, natural gas, steam, electricity, solar energy and fuel oils, coal or other energy sources;

(iii) Costs of water and sanitary and storm drainage services;

(iv) Costs of general maintenance and repairs, including costs under HVAC and other mechanical maintenance contracts; and repairs and replacements of equipment used in connection with such maintenance and repair work (excluding repairs and general maintenance of the roof, foundation and exterior walls of the Building, repairs and general maintenance paid by proceeds of insurance or by Sublessee or other third parties, and alterations attributable solely to Sublessee of the Building other than Sublessee);

(v) Costs of maintenance and replacement of landscaping; and costs of maintenance of parking areas, common areas, plazas and other areas used by Sublessee of the Building, provided such areas are equally accessible to all Sublessee of the Building;

(vi) Insurance premiums, including fire and all-risk coverage, together with loss of rent endorsement; public liability insurance, and any other insurance carried by Sublessor on the Building or any component parts thereof provided said premiums are comparable with fair market rates;

(vii) Labor costs, including wages and other payments, costs to Sublessor for worker's compensation and disability insurance, payroll taxes, welfare fringe benefits and all legal fees and other costs or expenses incurred in resolving any labor disputes, provided such expenses are incurred as a direct result of the operation and maintenance of the Building and provided further that said costs, fees, and expenses inclusive within this subparagraph hereof are exclusive of any costs, fees, or expenses contained in subparagraph (e)(x) herein under;

(viii) Legal, accounting, inspection, and other consultation fees (including within reason, fees charged by consultants retained by Sublessor for services that are expressly designed to reduce and that results in a reduction in Operating Expenses or reasonably improve the operation, maintenance or state of repair of the Building) incurred in the ordinary course of operating the Building;

(ix) The costs of capital improvements and structural repairs and replacements made in or to the Building in order to conform to changes, subsequent to the lease commencement date, in any applicable laws, ordinances, rules, regulations, or orders of any governmental or quasi-governmental authority having jurisdiction over the Building (herein, "Required Capital Improvements"); the costs of any capital improvements and structural repairs and replacements designed expressly to reduce, and that results in the reduction of, Operating Expenses (herein, "Cost Savings Improvements"); and a reasonable annual reserve for all other capital improvements and structural repairs and replacements reasonably necessary to permit Sublessor to maintain the Building as a Class "C" office building. The expenditures for Required Capital Improvements shall be amortized over the useful life of such capital improvements or structural repair or replacement (as determined by Sublessor's Accountants); provided that the amortized amount of any Cost Savings Improvement shall be limited in any year to the reduction of Operating Expenses as a result thereof as reasonably determined by Sublessor; and

(x) Costs incurred by Sublessor's Accountants in engaging experts or other consultants in a reasonable capacity to assist them in making the computations required hereunder;

(f) "Operating Expenses" shall not include:

(i) Cost of repairs or other work occasioned by fire, windstorm or other insured casualty to the extent of insurance proceeds received or by the exercise of eminent domain or any expenditures for which Sublessor is reimbursed from any source;

(ii) Depreciation and amortization except as provided above;

(iii) Expenses in connection with services or other benefits of a type which are not provided Sublessee but which are provided to other Sublessees or occupants;

(iv) Costs incurred due to violation by Sublessor or any Sublessee of the terms and conditions of any lease;

(v) Overhead and profit increment paid to subsidiaries or affiliates of Sublessor for services on or to the real property, to the extent only that the costs of such services exceed competitive costs of such services were they not so rendered by a subsidiary or affiliate;

(vi) Any interest on borrowed money or debt amortization, and rental under any ground or underlying lease or leases;

(vii) Sublessor's general overhead except as it directly relates to the operation and management of the Building;

(viii) All items and services for which Sublessee reimburses Sublessor or pays a third person;

(ix) Any costs, fines or penalties incurred due to violations by Sublessor of any governmental rule or authority;

(x) Wages, salaries, or other compensation paid to any executive employees above the grade of building superintendent/manager;

(xi) Costs incurred in the encapsulation or other treatment or removal of asbestos or other substances considered to be detrimental to the health or the environment of occupants of the Building;

(xii) The value or lost income to Sublessor of any office space in the Building, which is utilized for the management of the Building;

(xiii) Costs incurred by Sublessor to remedy any defects in the design of or materials used in, or the defective installation of the structural steel framing, roof, foundation and underground utility lines forming a part of or servicing the Building or the real property.

(xiv) Costs incurred in compliance with the Americans with Disabilities Act or statutes, laws, regulation or other legislation of similar import.

(g) Sublessor's Accountants" shall mean that the individual or firm employed by Sublessor from time to time to keep the books and records for the Building.

(h) Sublessee's obligation with respect to Sublessee's Proportionate Share of the Operating Expenses shall survive the expiration or early termination of this lease, and subsequent to such expiration or termination Sublessee shall pay Sublessee's Proportionate Share of the actual Operating Expenses for the portion of the final Fiscal Year of the lease during which Sublessee was obligated to pay such expenses. If Sublessee occupies the Premises for less than a full calendar year during the first or last Fiscal Years of the term hereof, Sublessee's Proportionate Share for such partial year shall be prorated based upon the number of calendar months and days during which Sublessee occupied the Premises. Sublessee shall pay, as limited above, Sublessee's Proportionate Share of any such increases within thirty (30) days following the receipt of notice thereof.

EXHIBIT G
CONSENT AGREEMENT

AGREEMENT BETWEEN THE COLORADO DEPARTMENT OF TRANSPORTATION,
THE COLORADO DEPARTMENT OF CORRECTIONS
AND THE CITY OF WESTMINSTER

This Agreement is entered into, on the date subscribed below, by and between to the Colorado Department of Transportation, (hereinafter known and referred to as "CDOT") the City of Westminster (hereinafter known and referred to as "City"), and the Colorado Department of Corrections, Division of Adult Parole and Community Corrections (hereinafter known and referred to as "DOC") for the purposes of setting forth the terms and conditions for (1) CDOT's consent to the City's sublease to the DOC of a portion of the Premises described in that certain Lease, dated July 25, 1977, between the City and CDOT's predecessor in interest and approval of proposed DOC leasehold improvements, and (2) the DOC and City's consent to the termination of the aforementioned Lease upon a date certain, as described below:

RECITALS

A. The Colorado State Department of Highways, Division of Highways, the predecessor agency to the Colorado Department of Transportation, and the City entered into a ground lease agreement dated July 25, 1977, that commenced July 25, 1977 for an initial term of twenty-five (25) years through 12:00 noon July 25, 2002, for the construction and operation of a City police station and municipal court building and for parking related thereto, which construction was approved by CDOT. The City constructed said improvements, including a 31,108 square foot Building (the "Building on a portion of the leased ground"). The parties thereto amended the lease on April 9, 1982 by the addition of a contiguous 2,557.5 sq. ft. parcel of land to the property. The parties thereto amended the lease again on December 19, 1985, to add an additional non-contiguous parcel containing 152,463 sq. ft., more or less (the "detention Pond parcel"). The ground lease as amended is referred to as the "Lease" and the land subject to the Lease as the "Property". The Lease has automatically extended by its own terms for another twenty-five (25) year period. At the termination of the Lease, the City has the option of removing the improvements or leaving the improvements in their entirety, in which case the improvements become the property of CDOT, as successor to the Division of Highways.

B. The Department of Corrections, Division of Adult Parole and Community Corrections, has entered into a Letter of Intent with the City of Westminster to sublease the ground and approximately 23,917 rentable square feet ("Premises") within the Building to be used for a parole office and other corrections functions, either by DOC staff or DOC contractors (the "Sublease"). Upon further evaluation, the amount of space in the Building DOC is expected to sublease is 23,674 rentable square feet. The Sublease is scheduled to commence on or about October 1, 2007 and extend for fifteen (15) years with an option to renew for an additional five (5) years. All leases, subleases and the ground leases shall terminate in July 25, 2027. The DOC intended use requires additional modifications to the Building, which modifications are covered by this Agreement.

C. CDOT's project planning for future expansion of the Highway 36 corridor (the "Project") is not sufficiently defined to provide a timeline for the Project, if a project is approved, but CDOT may desire to use a portion of the Building as its office for preconstruction and construction activities for CDOT Projects and the unused portion of the ground covered by the Lease for placement of temporary office structures and parking associated with such activities. DOC is willing to allow CDOT to collocate CDOT and CDOT consultant and contractor staff in the unused portion of the Building, consisting of approximately 6,290 rentable square feet, and the subleased ground for use as a Project office. CDOT shall have the right to use the parking for the Building as described in Section 2 of the Sublease at no charge throughout the term of the collocation in the Building. The parking ratio allocated for CDOT during this collocation is 4.87 spaces per 1000 rentable square feet leased in the Building.

AGREEMENT

Now, therefore, the City, CDOT and DOC agree as follows:

1. As consideration for leasing the Building and CDOT's consent to the Building modifications, the City will grant DOC and CDOT a joint option to purchase the Building and other City improvements on the subleased ground (the "Option Agreement"). The purchase option price is reduced monthly based on a formula that gives credit for a portion of the DOC rent payments. The Option Agreement restricts DOC's exercise of the option and once the purchase option price falls below $100,000.00, only CDOT or a permitted DOC assign may exercise the option to purchase. CDOT's Option period would commence sixty (60) months after the Commencement Date of the Sublease. The purchase option price at the end of ten (10) years is ten dollars ($10.00) and this price would continue through the end of the 15-year term and the renewal option term. The Sublease with joint Option to Purchase between DOC/CDOT and the City (the "Sublease") is attached as Exhibit A hereto.

2. CDOT acknowledges the need for DOC to use the ground and building for the intended use. By this Agreement, CDOT provides its conditional consent for: 1) the City to modify the Building as provided for in the Sublease, 2) the City to sublease the Building and a portion of the Premises for the sole use and benefit of DOC, as provided for in the Sublease, on condition CDOT may sublease from the City any remaining space in the Building, and 3) DOC to sublease a portion (approximately 3,000-4,000 rentable square feet) of the Premises to a DOC contractor or subcontractor, initially planned to be PEER / TASC and 4) the City to assign the Lease to the DOC, or its assigns, as provided for in the Sublease. DOC is relying on CDOT's consent to make the financial commitment to pay for the improvements to the Building, the cost to terminate existing lease and relocate furniture, equipment, files and staff to the Property.

3. CDOT may terminate the Lease, except as to that portion of the Property described as the Detention Pond parcel and the Sublease if CDOT needs to demolish the Building for the specific purpose to construct Project highway expansion improvements on the ground covered by the Building, but CDOT agrees not to terminate the Lease and the Sublease for a period of sixty (60) months from the Sublease commencement date, anticipated to be October 1, 2007.

4. CDOT agrees to meet at least annually with representatives of the City and DOC to provide a U.S. Highway 36 Expansion Project status report briefing, including the anticipated date the CDOT will need to remove the Building.

5. Subject to the limitations in 3., above, when CDOT needs to demolish the Building for construction of the planned Highway 36 expansion on the ground covered by the Building and the Sublease, CDOT may terminate and cancel the Lease and Sublease prior to the date CDOT will commence demolition of the Building. CDOT will certify by written notice to the DOC and to the City that CDOT will commence demolition of the Building on a specific date, the "Demolition Commencement Date" for the specific purpose of commencing physical construction of the Highway 36 Expansion on the sub-leased ground. CDOT will provide said written notice at least twelve (12) months prior to the Demolition Commencement Date. The parties agree the Sublease and the Lease shall terminate ninety (90) days prior to the Demolition Commencement Date (the "Lease Termination Date.") DOC and the City agree to vacate the Property on or before the Lease Termination Date. If CDOT terminates and cancels the Lease and Sublease and such termination is determined to be an acquisition of property under the threat of eminent domain that may trigger state or federal constitutional or statutory just compensation rights or state or federal relocation requirements to which the City or DOC may be entitled, City and DOC hereby voluntarily waive all such rights and acknowledge that they shall not be entitled to payment by CDOT of any funds associated with such rights or requirements. In the event of such termination, City will be entitled to recognition from CDOT of an in-kind monetary contribution to the U.S. Highway 36 expansion project as contemplated by paragraph 6. below.

6. If the DOC continues to occupy the Subleased Premises and pay all required rent and other obligations under the Sublease until the Lease Termination Date, even though the option to purchase the Building has not been exercised, the City agrees to the mutual cancellation of the Lease with CDOT as of the Lease Termination Date and the waiver of the City's remaining rights under the Lease on the condition that CDOT agrees to recognize as an in-kind contribution from the City to the US Highway 36 Project the amount of the Purchase Option Price, as reflected in the Sublease, on the Lease Termination Date. CDOT shall be responsible for all costs associated with the demolition of the Building. CDOT shall be responsible for any hazardous material mitigation that needs to be performed as part of the demolition process provided however that CDOT may deduct an amount up to $44,450.00 from the Purchase Option Price as the City's contribution towards any mitigation costs associated with asbestos containing materials as part of the building's demolition.

7. CDOT will provide written notice to the City and DOC, if CDOT desires to establish a Project office in the Building prior to the Lease Termination Date. The parties agree to use their best efforts to arrange access for CDOT to use the vacant Building space and to use a portion of the DOC subleased ground for temporary CDOT Project office structures and outside parking that will not interfere or disrupt DOC's use of its subleased space. The City agrees that CDOT may occupy the vacant Building space and pay only for utilities and services at the same rate as provided to DOC under the Sublease, except CDOT will be responsible for the cost of its tenant finish and other alterations to the Building required for its occupancy and CDOT's payment for utilities and services will be prorated to include only the area occupied by CDOT

8. DOC agrees to assign to CDOT its rights under the Option Agreement to purchase the Building and other City improvements thirty (30) days prior to the Lease Termination Date, or the date of DOC early termination of the Sublease, pursuant to terms of the Sublease, if requested to do so by CDOT.

9. DOC and the City shall deliver a fully executed copy of the Sublease and Option Agreement to CDOT.

10. The Sublease and Option Agreement is subject to and subordinate to the Lease, as amended.

11. DOC shall observe and obey all laws, ordinances, rules and regulations of the United States of America, State of Colorado, Adams County and the City of Westminster, which may be applicable to its use and occupancy of the Property that do not conflict with federal or state law and the DOC's governmental or sovereign immunity.

12. This Agreement and consent is binding on the CDOT, DOC and the City, their successors and assigns.

AGREED TO by the parties this ___ day of May 2007

STATEOF COLORADO
Bill Ritter, Governor
Acting by and through
The Colorado Department of Transportation

Pamela Hutton
CHIEF ENGINEER

Dated: 5-31-07

STATE OF COLORADO
Bill Ritter, Governor
Acting by and through
The Colorado Department of Corrections

Aristedes W. Zavaras
For the Executive Director

Dated: May 15, 2007

CITY OF WESTMINSTER

By: _____

Title: _____

Dated: _____

ATTEST (Seal) by:

_____
(City Clerk)

Agenda Item 10 J

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 11, 2007

SUBJECT: Resolution No. 21 re Approval of Selected Documents for WEDA Bond Issue

Prepared by: Tammy Hitchens, Finance Director
Robert Smith, Treasury Manager
Robert Byerhof, Senior Financial Analyst

Recommended City Council Action:
Adopt Resolution No. 21 approving selected documents for the Westminster Economic Development Authority (WEDA) Series 2007 Bonds of up to $8.5 million to which the City is a party, including the Replenishment Resolution, the City Cooperation Agreement with WEDA, and the Letter of Credit Reimbursement Agreement in substantially the same form as those attached.

Summary
Replenishment Resolution
Adoption by the City Council of the Replenishment Resolution is required to complete the part of the bonding structure known as the "moral obligation."

- The basis of the resolution is such that if, at any time, the balance in the WEDA Bond Reserve Fund falls below the required amount of $634,411 the City Manager will request that Council budget, appropriate, and transfer to the trustee bank the funds necessary to replenish these bonded reserves. Because the Replenishment Resolution is subject to annual appropriation, it does not constitute a multi-year fiscal obligation, and therefore does not subject the City to TABOR requirements.
- This resolution will assist the Authority in obtaining credit enhancement for its bonds, thus serving to minimize interest costs and improve the marketability of the bonds. Because of the revenues WEDA is expected to realize from tax increment, Staff does not anticipate the need for the City to actually transfer funds at any time.
- Staff also had discussions with the credit rating agencies in the fall of 2004 about the impact on the City's credit of issuing a moral obligation pledge for the WEDA Bonds. Based on current financial performance and exposure, the agencies have told City officials that the City's credit ratings have not been affected.

Cooperation Agreement
In addition, City Council is requested to approve a Cooperation Agreement between the City and the Authority, which provides for the repayment to the City of funds advanced to and on behalf of the Authority with tax increment, if such revenue is available after other debts are paid. This would permit recovery by the City of any amounts paid by the City to replenish the Reserve Fund held by the trustee bank in connection with the Authority's bonds. This is a routine WEDA-City action when WEDA is issuing bonds. Five prior agreements were approved in 1991, 1997, 2003, 2005, and 2006.

Letter of Credit Reimbursement Agreement
Lastly, City Council is requested to approve a three-party Letter of Credit Reimbursement Agreement between DEPFA Bank, plc (WEDA's Letter of Credit Bank), WEDA and the City. This is necessary because the City is referenced in this agreement as a party to the Replenishment Resolution and the bank is desirous of City participation in this agreement. The City Attorney and Bond Counsel have agreed this is in conformance with state and local laws.

Expenditure Required: $0
Source of Funds: N/A

Policy Issues

1. Does the City desire to provide its non-binding moral obligation pledge to replenish the reserve fund on the WEDA bonds in the event it is drawn down to meet debt service requirements?
2. Does the City desire to participate in the WEDA Cooperation Agreement and the Letter of Credit Reimbursement Agreement?

Alternatives

1. Decline or delay approval of the Replenishment Resolution. This is not recommended. Although non-binding, this would not be favorably viewed by the letter of credit bank, the bond investors and the marketplace, and would result in the failure of the bond sale.
2. Decline or delay approval of the Cooperation Agreement and the Letter of Credit Reimbursement Agreement. This is not recommended, as it will result in the failure of the bond sale.

Background Information

Market acceptance of the value of a promise to pay by a local unit of government is a recent phenomenon. Because the City's credit rating is AA/AA+, the word of the City has merit and can and should be used to reduce the costs and improve the marketability of the Authority's (WEDA) bonds. Without the moral obligation WEDA's bonds would not receive as high a credit rating as the City's. The moral obligation is a promise to pay, but is also subject to annual appropriation, and is non-binding and thus does not constitute a multiple fiscal-year obligation.

Staff does not anticipate the need for the City's moral obligation to replenish the reserve fund to be used at any time. The forecasted tax increment revenues for the various commercial developments currently anticipated for the South Sheridan Urban Renewal Area (URA) project are as follows:

- From July 2007 into spring 2009: There will be no significant revenues from development in the URA, and so capitalized interest will be used to make debt service on the bonds. Other bond proceeds will be set aside to pay the letter of credit bank fees and remarketing agent fees for these two years as well.
- Commencing around June 2009, WEDA will need to rely on property and sales tax increment revenues generated within the URA to meet debt service requirements:
  - Sales tax increment is anticipated to commence accruing in August 2008 with approximately $835,871 collected in 2008. The anticipated sales tax generated in 2009 is $1,916,735, which covers the anticipated debt of $457,907 net of interest earnings in the debt reserve refund and capitalized interest nearly 4.19 times or by $1,458,828.
  - In addition to sales tax generated, the estimated property tax increment collected from the center is $75,211 in 2009.
  - The anticipated combined sales and property tax increment revenues are $1,991,946 in 2009 and averages $2,721,753 between 2010 and 2028. Together, these forecast revenues are adequate to meet net debt service requirements.

WEDA will have the ability to change the interest rate mode (term) it will incur on the bonds it issues. Initially the WEDA bonds will be issued on a variable weekly interest rate reset mode.

- The expected average annual debt service over the 22 year term of the bonds will be $604,956. This is based on the assumption that the variable interest rate will average 4.0 % over the 22 years and includes all fees for the bank letter of credit and remarketing agent.
- This level of debt service will leave over $38.0 million in excess sales and property tax increment revenues after deducting other outstanding liabilities.

The Cooperation Agreement is between WEDA and the City and is a continuation of earlier Cooperation Agreements from 1991, 1997, 2005, and 2006 wherein the City agrees to loan funds to WEDA as it needs

to do so and WEDA agrees to pay the City back for funds it has been advanced (for reserve fund replenishment and other loans for staffing time, etc.).

The Letter of Credit Reimbursement Agreement is the central document for providing payments to DEPFA Bank, plc when the Bank makes debt service payments on WEDA's behalf under the letter of credit. It governs how and when WEDA would reimburse DEPFA Bank for the draws on the letter of credit as the Bank pays the bondholders the interest and principal payments due to them. It also describes covenants the City and WEDA make, defines defaults and the remedies. This is a standard document that is executed with each variable rate transaction.

Staff and members of the City's outside Finance Team will attend the City Council meeting to answer City Councillors' questions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Resolution No. 21
2007 Cooperation Agreement
Letter of Credit Reimbursement Agreement

RESOLUTION

RESOLUTION NO. **21** INTRODUCED BY COUNCILLORS
SERIES OF 2007

A RESOLUTION CONCERNING THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND ITS TAX INCREMENT ADJUSTABLE RATE REVENUE BONDS (SOUTH SHERIDAN URBAN RENEWAL PROJECT), SERIES 2007; AUTHORIZING AND DIRECTING ACTIONS BY THE CITY MANAGER WITH RESPECT TO THE PREPARATION OF REQUESTS TO THE CITY COUNCIL FOR APPROPRIATION OF FUNDS FOR THE REPLENISHMENT OF CERTAIN FUNDS PERTAINING THERETO; AUTHORIZING THE 2007 COOPERATION AGREEMENT AND REIMBURSEMENT AGREEMENT; AND OTHER ACTIONS TAKEN BY THE CITY IN CONNECTION THEREWITH.

WHEREAS, the City Council (the "City Council") of the City of Westminster, Colorado (the "City"), by Resolution No. 40, adopted September 14, 1987, created the Westminster Economic Development Authority of the City ("Authority"); and

WHEREAS, pursuant to Resolution No. 21, adopted on March 29, 2004, the City approved the South Sheridan Urban Renewal Plan (the "Plan") pursuant to the Colorado Urban Renewal Law; and

WHEREAS, pursuant to an Indenture of Trust dated as of June 15, 2007 (the "Indenture"), the Authority is issuing its Tax Increment Adjustable Rate Revenue Bonds, Series 2007, in the original aggregate principal amount of not to exceed $8,500,000 (the "2007 Bonds") for the purpose of financing the acquisition, construction and equipping of the project described in the Indenture and the Plan (the "Project"); and

WHEREAS, pursuant to a Cooperation Agreement (the "2007 Cooperation Agreement") between the City and the Authority, the City will agree, subject to conditions specified in the 2007 Cooperation Agreement, to loan funds to the Authority for the Project; and

WHEREAS, there will be created under the Indenture a reserve fund (the "Bond Reserve Fund") which will be funded initially in the amount of the Bond Reserve Requirement (as defined in the Indenture) on the 2007 Bonds, and is required to be maintained at such amount to be used as a reserve against deficiencies in the payment of principal of or interest on the 2007 Bonds and any obligations secured on a parity with the 2007 Bonds and in certain other payments; and

WHEREAS, the Indenture contemplates that if, at any time, the Bond Reserve Fund is not funded at the Bond Reserve Requirement, the Trustee shall notify the City Manager of any deficiency and the City Manager shall request that the City Council advance sufficient funds pursuant to the 2007 Cooperation Agreement to restore the Bond Reserve Fund to the Bond Reserve Requirement immediately thereafter; and

WHEREAS, the City Council wishes to make a non-binding statement of its present intent with respect to the appropriation of funds for the replenishment of the Bond Reserve Fund, and to authorize and direct the City Manager to take certain actions for the purpose of causing requests for such appropriations to be presented to the City Council for consideration; and

WHEREAS, the 2007 Bonds will be supported by an irrevocable, transferable direct pay letter of credit (the "Letter of Credit") issued by DEPFA BANK plc, acting through its New York Branch (the "Bank") pursuant to a Reimbursement Agreement dated as of June 15, 2007, among the Authority, the City and the Bank, as it may be supplemented and amended from time to time (the "Reimbursement Agreement"); and

WHEREAS, forms of the 2007 Cooperation Agreement and Reimbursement Agreement are on file with the City Clerk.

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

Appropriations to Replenish Bond Reserve Fund. The City Manager shall, upon notice from the Trustee that the Bond Reserve Fund is not funded at the Bond Reserve Requirement, prepare and submit to the City Council a request for an appropriation of a sufficient amount to replenish the Bond Reserve Fund to the Bond Reserve Requirement. It is the present intention and expectation of the City Council to appropriate such funds as requested, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Council may determine in its sole discretion, but shall never be required, to make the appropriations so requested. All sums appropriated by the City Council for such purpose shall be deposited by the Authority in the Bond Reserve Fund. Nothing provided in this Section 1 shall create or constitute a debt, liability or multiple fiscal year financial obligation of the City.

Repayment of Amounts Appropriated. In the event that the City Council appropriates funds as contemplated by Section 1 hereof, any amounts actually advanced shall be treated as an obligation under the 2007 Cooperation Agreement and shall be repaid by the Authority, with interest thereon, but shall be payable from and secured solely by the Pledged Revenues of the Authority, as provided in the 2007 Cooperation Agreement, on a basis expressly subordinate and junior to that of the 2007 Bonds and any obligations secured under the Indenture, including, without limitation, Bank Bonds (as defined in the Indenture), Reimbursement Obligations (as defined in the Indenture) and all other obligations owed to the Bank under the Reimbursement Agreement.

Limitation to 2007 Bonds and Other Obligations Originally Secured by Indenture. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the Bond Reserve Fund originally established in connection with the 2007 Bonds and any obligations secured on a parity with the 2007 Bonds, and shall not apply to any other additional obligations issued under the Indenture.

Approval and Authorization of the 2007 Cooperation Agreement and Reimbursement Agreement. The forms of the 2007 Cooperation Agreement and Reimbursement Agreement are hereby approved. The City shall enter into and perform its obligations under the 2007 Cooperation Agreement and Reimbursement Agreement, in the form of such documents as are on file with the City Clerk, with only such changes therein as are not inconsistent herewith. The City Manager is hereby authorized and directed to execute the 2007 Cooperation Agreement and Reimbursement Agreement on behalf of the City, and the City Clerk is hereby authorized to attest to the 2007 Cooperation Agreement and Reimbursement Agreement.

General Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Effectiveness. This Resolution shall take effect immediately upon its passage.

RESOLVED AND PASSED this June 11, 2007.

CITY OF WESTMINSTER, COLORADO

_____
Mayor Pro Temporare

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney

STATE OF COLORADO)
) SS.
CITY OF WESTMINSTER)

I, Linda Yeager, the City Clerk of the City of Westminster, Colorado, do hereby certify that:

The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the City Council (the "Council") at a regular meeting held on June 11, 2007.

The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of June 11, 2007, by an affirmative vote of a majority of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				x
Tim Kauffman				
Chris Dittman				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Jo Ann Price				

The members of the Council were present at such meetings and voted on the passage of such Resolution as set forth above.

The Resolution was approved and authenticated by the signature of the Mayor Pro Temporare of the City, sealed with the City seal, attested by the City Clerk and recorded in the minutes of the Council.

There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Resolution.

Notice of the meeting of June 11, 2007, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed this June 11, 2007.

_____
City Clerk

(SEAL)

WESTMINSTER

COLORADO

Exhibit A

June 11, 2007
7:00 P.M.

CITY COUNCIL AGENDA

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

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

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings**
4. **Report of City Officials**
   A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
   A. American West Little League Recognition
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. Outside Legal Services for Pension Plans
   B. Environmental Services Office Legal Services Agreement with Philip C. Lowe, LLC
   C. Construction Contracts re Sheridan Boulevard and 72nd Avenue Roadway Improvement Project
   D. 2007 Local Sewer and Water Line Replacement Construction Contract Award
   E. Amended IGA with Urban Drainage and Flood Control District for Quail Creek Improvements
   F. West Nile Virus IGA with Jefferson County Department of Health and Environment
   G. IGA re Support of GIS Regional Map for Jefferson and Broomfield Counties
   H. IGA with Jefferson County and Other Participating Municipalities re County-wide Dog License Program
   I. IGA with Crestview Water and Sanitation District
   J. Amendment to IGA with UDFCD for Little Dry Creek Bank Stabilization and Utility Protection Project
   K. Change Order No. 2 re 2007 Wastewater Collection System Improvement Project/Phase I
   L. Change Order re Bornengineering Inc. Property Condition Evaluation and Physical Needs Analysis
   M. Second Reading Councillor's Bill No. 20 re 2006 Final Supplemental Appropriation
   N. Second Reading Councillor's Bill No. 21 re 1st Qtr 2007 Supplemental Appropriation
   O. Second Reading Councillor's Bill No. 22 re Amendment to Syncroness Inc. Economic Development Agreement
   P. Second Reading Councillor's Bill No. 23 re Crosswalk Inc. Economic Development Agreement
   Q. Second Reading Councillor's Bill No. 24 re Shoenberg Farm Commercial Center
   R. Second Reading Councillor's Bill No. 25 re Legacy Ridge Filing No. 17 CLUP Amendment
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
    A. Public Hearing re Boulevard Plaza CLUP Amendment, PDP, and ODP
    B. Councillor's Bill No. 26 re CLUP Amendment for Boulevard Plaza
    C. Fifth Amended Preliminary Development Plan for Boulevard Plaza
    D. Fifth Amended Official Development Plan for Boulevard Plaza
    E. Councillor's Bill No. 27 re Sun Edison Economic Development Agreement
    F. Councillor's Bill No. 28 re TAB Boards International, Inc. Economic Development Agreement
    G. Councillor's Bill No. 29 re Big Dry Creek Park and Cheyenne Ridge Park Supplemental Appropriation
    H. Councillor's Bill No. 30 re Municipal Code Modifications for the Industrial Pretreatment Program
    I. Councillor's Bill No. 32 re Lease for the Former Police Building
    J. Resolution No. 21 re Approval of Selected Documents for WEDA Bond Issue
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session**
    A. City Council
    B. Executive Session – Discuss Strategy and Progress on Potential Sale, Acquisition, Trade or Exchange of Certain Real Property Pursuant to WMC 1-11-3(C)(2), WMC 2-1-6, WMC 2-11-2 and CRS 24-6-402(4)(a) and (e).
13. **Adjournment**

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

2007 COOPERATION AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS COOPERATION AGREEMENT (this "Agreement") dated as of June 15, 2007, is made and entered into between THE CITY OF WESTMINSTER (the "City") and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the "Authority").

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes ("C.R.S.") (the "Urban Renewal Law"); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority South Sheridan Urban Renewal Plan (the "Plan") and the urban renewal project described therein (the "Project"); and

WHEREAS, the Project is being undertaken for the public purpose of enhancing employment opportunities, eliminating existing conditions of blight, and improving the tax base of the City; and

WHEREAS, pursuant to section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Project and carrying out the Plan; and

WHEREAS, the Authority is issuing its Tax Increment Adjustable Rate Revenue Bonds (South Sheridan Urban Renewal Project) Series 2007, in the original aggregate principal amount of not to exceed $8,500,000, for the purpose of financing the acquisition, construction and equipping of the Project; and

WHEREAS, the City Council of the City (the "Council") has adopted its Resolution declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Bond Reserve Fund to the Bond Reserve Requirement (the "Replenishment Resolution") as defined in the Indenture of Trust dated as of June 15, 2007, between the Authority and U.S. Bank National Association, as trustee (the "Trustee"); and

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. **LOAN.** (a) If the Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

(b) The Authority acknowledges that the City Manager, City staff and the City Attorney have provided and will continue to provide substantial administrative and legal services to the Authority in connection with the Plan and the Project. The Authority shall pay to the City, the City's fair and reasonable costs for services rendered to the Authority in connection with the Plan and the Project. The City shall provide written evidence of such costs to the Authority from time to time. To the extent that this annual debt is incurred, this obligation is hereby designated a loan from the City to the Authority to be repaid as provided herein.

(c) Any other amounts advanced or loaned to the Authority by the City or payments made or debts incurred by the City on behalf of the Authority relating to the Plan or the Project may be designated a loan from the City to the Authority to be repaid as provided herein.

2. **PAYMENT**. (a) When Pledged Revenues (as defined in the Indenture) are available pursuant to Section 3.03(b)(vii) of the Indenture, the Authority shall repay the City for all amounts due hereunder to the extent that such moneys are available.

(b) The Authority agrees to pay the City interest in the amount of 5% on the principal balance of any amounts designated as a loan hereunder.

3. **FURTHER COOPERATION**. (a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Plan, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority and the Trustee by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenues for deposit into the Revenue Fund. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenues for the Project.

(c) The City agrees to pay to the Authority any Pledged Property Tax Revenues and any Pledged Sales Tax Revenues when, as and if received by the City, but which are due and owing to the Authority pursuant to the Urban Renewal Plan.

4. **SUBORDINATION**. The Authority's obligations pursuant to this Agreement are subordinate to the Authority's obligations for the repayment of any current or future bonded indebtedness and any obligations owed to any Credit Facility provider (as such term is defined in the Indenture) in support of such bonded indebtedness. For purposes of this Agreement, the term "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the Authority, 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 revenues of the Authority.

5. **GENERAL PROVISIONS**.

(a) Dispute Resolution. If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation prior to filing litigation.

(b) Separate Entities. Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants, or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants, or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations, or liabilities of the other.

(c) Third Parties. Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, other than the Bank (as defined in the Indenture).

(d) Modifications. No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties with the prior written consent of the Bank and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(e) Entire Agreement. This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

(f) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(g) Assignment. Except for pledge under the Indenture, this Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other and of the Bank.

(h) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

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

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY	CITY OF WESTMINSTER, COLORADO
BY_____ Vice Chairperson	BY_____ City Manager
ATTEST:	ATTEST:
_____ Executive Director	_____ City Clerk
APPROVED AS TO LEGAL FORM	APPROVED AS TO LEGAL FORM
BY_____ Authority Attorney	BY_____ City Attorney

REIMBURSEMENT AGREEMENT

Among

DEPFA BANK PLC,
acting through its New York Branch,

CITY OF WESTMINSTER, COLORADO

and

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

Dated as of June 15, 2007

REIMBURSEMENT AGREEMENT

(This Table of Contents is not a part of
this Reimbursement Agreement
and is only for
convenience of reference)

REIMBURSEMENT AGREEMENT

Dated as of June 15, 2007

City of Westminster, Colorado
4800 W. 92nd Avenue 80030
Westminster, Colorado

Westminster Economic Development Authority
4800 West 92nd Avenue
Westminster, Colorado 80030

Ladies and Gentlemen:

The Issuer and the City (each such term and each other capitalized term used herein having the meaning set forth in Article One hereof) desire to secure a source of funds to be devoted exclusively to the payment by the Trustee, when and as due, of the principal of and interest on the Bonds, and in that connection has applied to the Bank for issuance by the Bank of the Letter of Credit in an Original Stated Amount of $_____. Further, the Bank has been requested by the Issuer and the City to provide a liquidity facility in the form of a Liquidity Drawing under the Letter of Credit and to provide such liquidity facility in the following manner

and subject to the following terms and conditions. Accordingly, the Issuer, the City and the Bank hereby agree as follows:

ARTICLE ONE
DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

"*Act*" - means the Colorado Urban Renewal Law, constituting part 1 of Article 25 of title 31, Colorado Revised Statutes, as amended.

"*Additional Bonds*" - shall have the meaning set forth in the Indenture.

"*Agreement*" - means this Reimbursement Agreement, as amended and supplemented.

"*Available Amount*" - shall have the meaning set forth in the Letter of Credit.

"*Bank*" - means DEPFA BANK plc, acting through its New York Branch, and its successors and assigns.

"*Bank Bonds*" shall have the meaning set forth in the Indenture.

"*Bank Rate*" - means the rate of interest per annum with respect to a Liquidity Advance (and the Bank Bond which evidences and secures such Liquidity Advance) equal to (i) from and including the Purchase Date relating to each Liquidity Advance (and the Bank Bond which evidences and secures such Liquidity Advance) through and including the date ninety (90) days thereafter, the Base Rate, (ii) from and including the date ninety-one (91) days following the Purchase Date relating to each Liquidity Advance (and the Bank Bond which evidences and secures such Liquidity Advance) and thereafter, the Base Rate plus 1.25%; *provided, however,* that immediately and automatically upon the occurrence of an Event of Default (and without any notice being given with respect thereto) and during the continuance of such Event of Default, "*Bank Rate*" shall equal the Default Rate.

"*Base Rate*" - means for any day the greater of (i) the Prime Rate, or (ii) the Federal Funds Rate plus 0.50%.

"*Bond Documents*" - means the Indenture, the Bond Purchase Agreement, the Resolution, the Replenishment Resolution, the Cooperation Agreements, the Remarketing Agreement, the Development Agreement, the Official Statement and the Bonds.

"*Bond Purchase Agreement*" - means the Bond Purchase Agreement dated June __, 2007, between the Issuer and the Original Purchaser.

"*Bond Reserve Fund*" - shall have the meaning set forth in the Indenture.

"*Bond Reserve Requirement*" - shall have the meaning set forth in the Indenture.

"*Bonds*" - means the Issuer's Tax Increment Adjustable Rate Revenue Bonds (South Sheridan Urban Renewal Project) Series 2007.

"*Business Day*" - shall have the meaning set forth in the Letter of Credit.

"*Cap Interest Rate*" - shall have the meaning set forth in the Letter of Credit.

"*Capital Lease*" - means any lease of Property by any Person which in accordance with GAAP would be required to be capitalized on the balance sheet of such Person.

"*City*" - means the City of Westminster, Colorado.

"*Closing Date*" - means the date on which the Letter of Credit is issued.

"*Code*" - means the Internal Revenue Code of 1986, as amended, and any successor statute thereto.

"*Cooperation Agreements*" - shall have the meaning set forth in the Indenture.

"*Debt*" - means, for any Person (without duplication), (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all Capital Leases of such Person, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under the letter of credit or other instrument, (g) all Debt of others secured by a Lien on any asset of such Person, including any Guaranties, whether or not such Debt is assumed by such Person, (h) all Debt of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a Guaranty and (i) obligations in respect of interest rate protection programs.

"*Default Rate*" - shall mean a rate of interest per annum determined in accordance with Section 2.10 hereof.

"*Debt Service Requirement*" - shall have the meaning set forth in the Indenture.

"*Developer*" - shall mean Shoenberg Venture, a Colorado joint venture, and/or Village Homes of Colorado, Inc., each as developer pursuant to a Development Agreement.

"*Development Agreement*" - means the Redevelopment Agreement dated as of _____, 200_, by and among the City, the Issuer and Village Homes of Colorado, Inc., as supplemented and amended from time to time, and the Shoenberg Shopping

Center Redevelopment Agreement dated as of _____, 200_ among the Issuer and Shoenberg Venture, as supplemented and amended from time to time.

"*Event of Default*" - has the meaning set forth in Section 6.1 hereof.

"*Federal Funds Rate*" - shall mean, for any day, the rate of interest per annum as determined by the Bank at which overnight Federal Funds are offered to the Bank for such day by major banks in the interbank market, with any change in such rate to become effective as to the Issuer on the date of any change in such rate. Each determination of the Federal Funds Rate by the Bank shall be deemed conclusive and binding on the Issuer absent manifest error.

"*Funds*" - shall have the meaning given such term in Section 4.1(j) hereof.

"*GAAP*" - means generally accepted accounting principles in the United States as in effect from time to time, applied by the Issuer and the City on a basis consistent with the Issuer's and the City's most recent financial statements furnished to the Bank pursuant to Section 4.1(h) and 4.2(g) hereof, respectively.

"*Governmental Approval*" - means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

"*Governmental Authority*" - means any nation or government, any state, department, agency or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

"*Guaranty*" - means, for any Person, any agreement or undertaking pursuant to which such Person guarantees, endorses (other than for collection or deposit in the ordinary course of business) assumes or otherwise becomes secondarily, contingently or otherwise liable for any obligation of any other Person and shall include, without limitation, any agreement to purchase, to provide funds for payment, to supply funds to invest in such other Person or otherwise to assure a creditor of such other Person against loss.

"*Indenture*" - means the Indenture of Trust dated as of the date hereof, between the Issuer and the Trustee, as amended and supplemented through the date hereof, and as further amended and supplemented in accordance with its terms and the terms of this Agreement.

"*Interest Payment Date*" - shall have the meaning given such term in the Indenture.

"*Issuer*" - means the Westminster Economic Development Authority, a public body corporate and politic duly organized and validly existing as an urban renewal authority under the laws of the State of Colorado.

"*Letter of Credit*" - means the irrevocable transferable letter of credit issued by the Bank for the account of the Issuer in favor of the Trustee, in the form of Appendix I hereto with appropriate insertions, as amended.

"*L/C Fee Rate*" - is defined in Section 2.5(a) hereof.

"*Lien*" - means any mortgage, deed of trust, lien, security interest, assignment, pledge, charge, hypothecation or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

"*Liquidity Advance*" - has the meaning set forth in Section 2.3 hereof.

"*Liquidity Drawing*" - means a drawing under the Letter of Credit resulting from the presentation of a certificate in the form of Exhibit E to the Letter of Credit.

"*Maximum Rate*" - means the maximum non-usurious lawful rate of interest permitted by applicable law.

"*Moody's*" - means Moody's Investors Service, Inc. and its successors and assigns.

"*Obligations*" - means the Reimbursement Obligations, the letter of credit fees payable pursuant to Section 2.5(a) hereof, the Bank Bonds and all other obligations of the Issuer owed to the Bank arising under or in relation to this Agreement.

"*Official Statement*" - means the Official Statement dated _____, 2007, relating to the Bonds.

"*Original Purchaser*" - shall have the meaning set forth in the Indenture.

"*Original Stated Amount*" - shall mean, with respect to the Letter of Credit, the original stated amount thereof as provided in Section 2.1 hereof.

"*Permitted Investments*" - shall have the meaning set forth in the Indenture.

"*Person*" - means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

"*Pledged Revenues*" - shall have the meaning set forth in the Indenture.

"*Potential Default*" - means an event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"*Prime Rate*" - for any day shall mean the per annum rate of interest for such day announced by the Bank from time to time as its prime commercial rate or equivalent rate for United States dollar denominated loans, with any change in such prime rate or

equivalent to be effective on the date of such change, it being understood that such rate may not be the best or lowest rate offered by the Bank.

"*Property*" - means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

"*Purchase Date*" - shall have the meaning set forth in Section 2.3(a) hereof.

"*Quarterly Date*" - means the first day of each May, August, November and February.

"*Rating Agency*" - means Moody's or S&P, individually, or Moody's and S&P, collectively, as the context requires.

"*Reimbursement Obligations*" - means any and all obligations of the Issuer to reimburse the Bank for any drawings under the Letter of Credit and all obligations to repay the Bank for any Liquidity Advance or Term Loan, including in each instance all interest accrued thereon (each of which shall be evidenced and secured by the related Bank Bonds).

"*Related Documents*" - means this Agreement, the Letter of Credit and the Bond Documents.

"*Remarketing Agent*" - means, initially, Stifel, Nicolaus & Company, Incorporated and its successors and assigns, or any successor remarketing agent appointed in accordance with the terms of the Indenture.

"*Remarketing Agreement*" - means the remarketing agreement entered into between a Remarketing Agent and the Issuer.

"*Replenishment Resolution*" shall have the meaning set forth in the Indenture.

"*Resolution*" - means the Resolution authorizing the issuance of the Bonds adopted by the Issuer on _____, 2007.

"*S&P*" - means Standard & Poor's Ratings Group, a Division of The McGraw-Hill Companies, Inc. and its successors and assigns

"*Stated Amount*" - means the Original Stated Amount less the amount of any Redemption or Stated Maturity Drawings (as defined in the Letter of Credit).

"*Stated Expiration Date*" - shall have the meaning set forth in the Letter of Credit.

"*Subordinate Debt*" - shall have the meaning given such term in the Indenture.

"*Substitute Credit Facility*" - shall have the meaning given such term in the Indenture.

"*Termination Date*" - shall have the meaning set forth in the Letter of Credit.

"*Term Loan*" is defined in Section 2.3(b) hereof.

"*Term Loan Commencement Date*" means, subject to the satisfaction of the conditions precedent set forth in Section 3.2(b) hereof, the earlier to occur of (i) the Termination Date and (ii) the ninety-first (91st) day following the date on which the Bank makes available to the Issuer any Liquidity Advance.

"*Term Loan Maturity Date*" means the date which is the tenth anniversary of the Term Loan Commencement Date.

"*Trustee*" - means U.S. Bank National Association, as trustee under the Indenture, and any successor trustee thereunder.

"*Trust Estate*" - shall have the meaning set forth in the Indenture.

"*Urban Renewal Plan*" - shall have the meaning set forth in the Indenture.

"*Urban Renewal Project*" - shall have the meaning set forth in the Indenture.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein shall have the same meanings herein as in the Indenture. All references in this Agreement to times of day shall be references to New York time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

ARTICLE TWO
LETTER OF CREDIT

Section 2.1. Issuance of Letter of Credit. Upon the terms, subject to the conditions and relying upon the representations and warranties set forth in this Agreement or incorporated herein by reference, the Bank agrees to issue the Letter of Credit to the Trustee for the account of the Issuer. The Letter of Credit shall be in the Original Stated Amount of $_____, which is the sum of (i) the principal amount of the Bonds outstanding on the Closing Date, plus (ii) interest thereon at the Cap Interest Rate for a period of forty-six (46) days (calculated on the basis of a 365-day year for the actual number of days elapsed).

Section 2.2. Letter of Credit Drawings. The Trustee is authorized to make drawings under the Letter of Credit in accordance with its terms. The Issuer hereby directs the Bank to make payments under the Letter of Credit in the manner therein provided. The Issuer hereby irrevocably approves reductions and reinstatements of the Available Amount with respect to the Letter of Credit as provided in the Letter of Credit.

Section 2.3. Liquidity Drawings; Term Loans.

(a) *Liquidity Drawings.* If the conditions precedent in Section 3.2(a) hereof are satisfied at the time of payment by the Bank of any Liquidity Drawing, each Liquidity Drawing made under the Letter of Credit shall constitute an advance (a *"Liquidity Advance"*) to the Issuer. The Issuer promises to pay to the Bank each Liquidity Advance on the earliest to occur of (i) the date on which any Bonds purchased with funds disbursed under the Letter of Credit in connection with such Liquidity Drawing (the *"Purchase Date"*) are redeemed or cancelled pursuant to the Indenture, (ii) the date on which any such Bonds are remarketed pursuant to the Indenture, (iii) the date on which the Letter of Credit is replaced with a Substitute Credit Facility pursuant to the terms of the Indenture and (iv) the Term Loan Commencement Date. The Issuer's obligation to repay each Liquidity Advance and to pay interest thereon as hereinafter provided shall be evidenced and secured by the related Bank Bonds.

(b) *Term Loans.* If the conditions precedent in Section 3.2(b) hereof are satisfied on the Term Loan Commencement Date, each Liquidity Advance shall be converted to a term loan (a *"Term Loan"*) to the Issuer. The Issuer promises to repay to the Bank each Term Loan on the earliest to occur of (i) the date on which the Bonds purchased under the Letter of Credit in connection with the related Liquidity Drawing are redeemed, cancelled or remarketed pursuant to the Indenture, (ii) the date on which the Letter of Credit is replaced with a Substitute Credit Facility pursuant to the terms of the Indenture and (iii) the Term Loan Maturity Date. The Issuer shall pay to the Bank the principal amount of the Term Loan in equal (as nearly as possible) quarterly installments commencing on the first Quarterly Date to occur immediately succeeding the Term Loan Commencement Date and on each Quarterly Date thereafter, with the outstanding principal amount to be paid in full on the Term Loan Maturity Date. The Issuer's obligation to repay each Term Loan and to pay interest thereon as hereinafter provided shall be evidenced and secured by the related Bank Bonds.

(c) Upon the Bank's honoring any Liquidity Drawing and continuing upon the conversion of any Liquidity Advance to a Term Loan, the Bank shall be deemed to have purchased the Bank Bonds in respect of which such Drawing is made, and the Issuer shall cause the Trustee to hold such Bank Bonds for the benefit of the Bank and register such Bank Bonds in the name of the Bank or its nominee, or to otherwise deliver such Bank Bonds as directed by the Bank pursuant to the Indenture. During such time as the Bank is the owner of any Bonds, the Bank shall have all the rights granted to a Bondholder under the Indenture and such additional rights as may be granted to the Bank hereunder. To the extent that the Bank actually receives payment with respect to principal of or interest on the Bank Bond held by the Bank, the Liquidity Advance or Term Loans, as applicable, made in connection with the purchase of such Bank Bond shall be deemed to have been reduced *pro tanto*, with the Bank crediting any payment on such Bank Bond received, first to the payment of any outstanding interest accrued on the related Liquidity Advance or Term Loans, as applicable, and second to the payment of the principal of such Liquidity Advance or Term Loans, as applicable. Any such payment or prepayment to be applied to principal of Liquidity Advances or Term Loans, as applicable, hereunder shall be applied to the prepayment of related Liquidity Advances or Term Loans, as applicable, in chronological order of their issuance hereunder, and within each Liquidity Advance or Term Loans, as applicable, in inverse order of the principal installments payable thereon.

Following the occurrence of an Event of Default, any payments received by the Bank hereunder shall be applied by the Bank to the payment of the Obligations in such order as the Bank shall in its sole discretion determine.

(d) *Interest on Liquidity Advances and Term Loans*. Subject to Section 2.10 hereof, the Issuer also promises to pay to the Bank interest on the unpaid principal amount of each Liquidity Advance and Term Loan (which are evidenced and secured by the related Bank Bonds) from the date such Liquidity Advance or Term Loan is made until it is paid in full as provided herein, at a rate per annum equal to the Bank Rate from time to time in effect, payable quarterly in arrears on the first Business Day of each month (commencing on the first such date to occur after the date of such Liquidity Advance) and on the date that the final principal installment of each such Liquidity Advance or Term Loan is payable as herein provided.

Section 2.4. Reimbursement of Drawings Other Than Liquidity Drawings Under the Letter of Credit. The Issuer agrees to reimburse the Bank or cause the Bank to be reimbursed for the full amount of all drawings (other than Liquidity Drawings where the conditions precedent set forth in Section 3.2(a) hereof are satisfied) made under the Letter of Credit immediately upon payment by the Bank of each such drawing and on the date of each such payment. If the Issuer does not make such reimbursement on such date, such Reimbursement Obligation shall bear interest at the rate per annum specified in Section 2.10 hereof.

Section 2.5. Fees. The Issuer hereby agrees to pay, or cause to be paid, to the Bank:

(a) On _____, 2007, for the period commencing on the Closing Date and ending on _____ __, 2007, and in arrears on each Quarterly Date occurring thereafter to the Termination Date and on the Termination Date, a non-refundable letter of credit fee on the Available Amount of the Letter of Credit (without regard to any temporary reductions of the Available Amount of the Letter of Credit) at a rate per annum specified below during each related period (the "*L/C Fee Rate*").

LEVEL	MOODY'S RATING	S&P RATING	L/C FEE RATE
Level 1	Aa3 or above	AA- or above	0.38%
Level 2	A1	A+	0.405%
Level 3	A2	A	0.43%
Level 4	A3	A-	0.455%
Level 5	Baa1	BBB+	0.505%
Level 6	Baa2	BBB	0.555%
Level 7	Baa3	BBB-	0.605%
Level 8	Below Baa3	Below BBB-	1.605%

In the event that a Rating (as defined below) is suspended or otherwise unavailable from any of the Rating Agencies (for credit related reasons only), the L/C Fee Rate shall be that set forth in Level 8 above. The term *"Rating"* as used above shall mean the long-term unenhanced debt rating assigned by each of Moody's and S&P to the general obligation debt of the City. In the event of a split Rating (i.e., one of the

foregoing Rating Agency's Ratings is at a different level than the Rating of the other Rating Agency), the L/C Fee Rate shall be based upon the level in which the lower rating appears. Any change in the L/C Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the Ratings from the agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The Issuer acknowledges, and the Bank agrees, that as of the Closing Date the L/C Fee Rate is that specified above for Level 1. The letter of credit fees shall be payable quarterly in arrears, together with interest on the letter of credit fees from the date payment is due until payment in full at the Default Rate.

(b) on the date of each drawing under the Letter of Credit, a draw fee equal to $250;

(c) on the date of each amendment to this Agreement or the Letter of Credit, an amendment fee, of $2,500; and

(d) on the date of each transfer of the Letter of Credit, a transfer fee of $2,500.

Section 2.6. Method of Payment; Etc. All payments to be made by the Issuer under this Agreement shall be made to the Bank not later than 3:00 p.m. on the date when due and shall be made in lawful money of the United States of America in freely transferable and immediately available funds. Payments received by the Bank on any day after 3:00 p.m. shall be deemed to be made on the next succeeding Business Day.

Section 2.7. Termination of Letter of Credit by the Issuer. Notwithstanding any provisions of this Agreement, the Letter of Credit or any Related Document to the contrary, the Issuer agrees not to terminate, replace or substitute the Letter of Credit prior to the first anniversary of the Closing Date unless (a) if the Bonds are then rated by Moody's, Moody's shall have lowered or withdrawn either (i) the long-term rating on the Bonds backed by the Letter of Credit below *"A2"* or (ii) the short-term rating on the Bonds backed by the Letter of Credit below *"VMIG1,"* (b) if the Bonds are then rated by S&P, S&P shall have lowered or withdrawn either (i) the long-term rating on the Bonds backed by the Letter of Credit below *"A"* or (ii) the short-term rating on the Bonds backed by the Letter of Credit below *"A-1,"* (c) the Bank seeks recovery of amounts described in Section 7.1 hereof, or (d) the Issuer pays to the Bank a termination fee in an amount equal to the letter of credit fees payable pursuant to Section 2.5(a) hereof (based upon the Original Stated Amount) for one full calendar year at the L/C Fee Rate in effect as of the date of such termination, less the actual amount of letter of credit fees the Issuer has previously paid to the Bank pursuant to Section 2.5(a) hereof. The Issuer agrees that it will pay in connection with any termination of the Letter of Credit pursuant to the terms hereof to the Bank all fees, expenses and other Obligations payable hereunder, including, without limitation, all principal and accrued interest owing on any Liquidity Advances and Term Loans. All payments from the Issuer to the Bank referred to in this Section 2.7 shall be made with immediately available funds. Upon satisfaction of the conditions set forth in the first three sentences of this Section 2.7, or at any time after the first anniversary of the Closing Date, the

Issuer may, upon thirty (30) days' written notice to the Bank, to the extent such termination is permitted by the Related Documents, terminate the Letter of Credit.

Section 2.8. Computation of Interest and Fees. All computations of interest and fees payable by the Issuer under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. Interest and fees shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof.

Section 2.9. Payment Due on Non-Business Day to Be Made on Next Business Day. If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall not be included in the computation of interest and fees.

Section 2.10. Default Rate. If the principal amount of any Obligation is not paid when due or if any Event of Default shall have occurred and be continuing, all Obligations shall bear interest until paid in full at a rate per annum equal to the Base Rate plus 3%.

Section 2.11. Source of Funds. All payments made by the Bank pursuant to the Letter of Credit shall be made from funds of the Bank, and not from the funds of any other Person.

Section 2.12. Collateral Security. As security for the payment of the Obligations of the Issuer, the Issuer has, pursuant to the Indenture, pledged, and pursuant hereto hereby pledges to the Bank all of the Issuer's right, title and interest in and to the Trust Estate, including without limitation, the Pledged Revenues and all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution.

Section 2.13. Maximum Rate; Payment of Fee. If the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (a) interest at the Maximum Rate shall be due and payable with respect to such interest period, and (b) interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof and (ii) the Maximum Rate (the "*Excess Interest*"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time the Issuer shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. To the extent permitted by law, upon the date all Reimbursement Obligations are payable hereunder following the termination of the Letter of Credit, in consideration for the limitation of the rate of interest otherwise payable hereunder, the Issuer shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest.

ARTICLE THREE
CONDITIONS PRECEDENT

Section 3.1. Conditions Precedent to Issuance of Letter of Credit. As conditions precedent to the obligation of the Bank to issue the Letter of Credit, (a) the Issuer and the City

shall provide to the Bank on the Closing Date, in form and substance satisfactory to the Bank and its counsel, Chapman and Cutler LLP (hereinafter, *"Bank's counsel"*):

(i) the written opinion of Sherman & Howard LLC, bond counsel, dated the Closing Date and addressed to the Bank;

(ii) the written opinion of the City attorney, acting counsel to the Issuer, dated the Closing Date and addressed to the Bank;

(iii) the written opinion of counsel to the City, dated the Closing Date and addressed to the Bank;

(iv) a certificate signed by a duly authorized officer of each of the Issuer and the City, dated the Closing Date and stating that:

(A) the representations and warranties contained in Article Four of this Agreement are true and correct on and as of the Closing Date as though made on such date; and

(B) no Event of Default or Potential Default has occurred and is continuing, or would result from the issuance of the Letter of Credit or the execution, delivery or performance of this Agreement or any Related Document to which the Issuer or the City is a party;

(v) a copy of the Resolution and the Replenishment Resolution, and all other necessary approvals, if any, of the Issuer and the City certified as of the Closing Date by the Secretary of the Issuer and the City Clerk, as applicable, authorizing, among other things, the execution, delivery and performance by the Issuer and the City of the Related Documents to which either is a party;

(vi) certificates of appropriate officials of the Issuer and the City certifying the names and true signatures of the officials of the Issuer and the City authorized to execute on behalf of the Issuer, and the City, as applicable, this Agreement and the other Related Documents to which either is a party;

(vii) true and correct copies of all approvals necessary for the Issuer and the City to execute, deliver and perform the Related Documents to which either is a party;

(viii) evidence of the power and authority of the Trustee and the Remarketing Agent to accept and execute their respective responsibilities under the Indenture and the Remarketing Agreement; and certificates of the Trustee and the Remarketing Agent, in each case, as to such matters incident to this Agreement and the transactions contemplated hereby and thereby as the Bank shall have reasonably requested;

(ix) an executed or certified copy of each document, instrument, certificate and opinion delivered pursuant to the Indenture, the Bond Purchase Agreement and the other Related Documents in connection with the issuance and delivery of the Bonds;

(x) evidence that the Issuer shall have duly executed, issued and delivered the Bonds to the Trustee and the bond registrar shall have duly authenticated the Bonds and delivered the bonds against payment;

(xi) executed originals of each of the Related Documents (other than the Letter of Credit and the Bonds) and such other documents, certificates and opinions as the Bank or Bank's counsel may reasonably request.

(b) no law, regulation, ruling or other action of the United States, the State of New York or the State of Colorado or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Bank from fulfilling its obligations under this Agreement or the Letter of Credit; and

(c) all legal requirements provided herein incident to the execution, delivery and performance of the Related Documents and the transactions contemplated thereby, shall be reasonably satisfactory to the Bank and Bank's counsel.

Section 3.2. Conditions Precedent to Liquidity Advances; Conditions Precedent to Term Loans. (a) Following any payment by the Bank under the Letter of Credit pursuant to a Liquidity Drawing, a Liquidity Advance shall be made available to the Issuer *only if* on the date of payment of such Liquidity Drawing by the Bank (i) the representations and warranties contained in Article Four of this Agreement are true and correct as of such date and (ii) no event has occurred and is continuing which constitutes a Potential Default or an Event of Default.

Unless the Issuer and the City shall have previously advised the Bank in writing that the above statements are no longer true, the Issuer and the City shall be deemed to have represented and warranted on the date of such payment that the above statements are true and correct.

(b) On the Term Loan Commencement Date, a Term Loan shall be made available to the Issuer *only if* (i) the representations and warranties contained in Article Four of this Agreement are true and correct as of such date and (ii) no event has occurred and is continuing which constitutes a Potential Default or an Event of Default.

Unless the Issuer and the City shall have previously advised the Bank in writing that the above statements are no longer true, the Issuer and the City shall be deemed to have represented and warranted on the date of such payment that the above statements are true and correct.

ARTICLE FOUR
REPRESENTATIONS AND WARRANTIES

Section 4.1. Representations and Warranties of the Issuer. In order to induce the Bank to enter into this Agreement, the Issuer represents and warrants to the Bank as follows:

(a) *Organization; Power and Authority*. The Issuer is duly organized and validly existing as a public body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado. The Issuer has full right and authority to enter into this Agreement and the other Related Documents to which it is

a party and to perform each and all of the matters and things herein and therein provided for.

(b) *Due Authorization; No Violation.* The execution, delivery and performance by the Issuer of this Agreement, the Indenture and the other Related Documents and the issuance, execution and delivery of the Bonds have been duly authorized by all necessary action, and do not and will not violate any constitutional provisions or any law or any regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the Issuer, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than the Lien of the Indenture) upon any of the assets of the Issuer pursuant to the terms of, any resolution, ordinance, mortgage, indenture, agreement or instrument to which the Issuer is a party or by which it or any of its properties is bound.

(c) *Enforceability.* This Agreement and the other Related Documents to which it is a party constitute the legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as such enforceability may be limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Bonds, when issued and delivered against payment therefor as contemplated by the Bond Purchase Agreement, will have been duly issued, executed and delivered in conformity with the Indenture and will constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their terms, except as such enforceability may be limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and entitled to the benefit and security of the Indenture.

(d) *Status*. As of the Closing Date, no other Debt of the Issuer other than the Bonds is secured by a Lien on the Pledged Revenues. Under the terms of the Indenture, the Pledged Revenues cannot secure any Debt of the Issuer other than the Bonds, Additional Bonds, Subordinate Debt and the Obligations.

(e) *Disclosure.* No representation, warranty or other statement made by the Issuer in or pursuant to this Agreement or any Related Document or any other document or financial statement provided by the Issuer to the Bank in connection with this Agreement or any other Related Document, contains any untrue statement of a material fact or omits (as of the date made or furnished) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they are made. There is no fact known to the Issuer which the Issuer has not disclosed to the Bank in writing and which materially adversely affects or is likely to materially adversely affect the ability (financial or otherwise) of the Issuer to perform it obligations hereunder or under the Related Documents.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened against

or affecting the Issuer wherein an unfavorable decision, ruling or finding would have a material adverse effect on the properties, business, condition (financial or otherwise), results of operations or prospects of the Issuer or the transactions contemplated by this Agreement or the Related Documents to which it is a party, or which would adversely affect the validity or enforceability of, or the authority or ability of the Issuer to perform its obligations under, this Agreement, the Indenture or the other Related Documents to which it is a party, or the Pledged Revenues or the pledge of the Pledged Revenues pursuant to the terms of this Agreement and the Related Documents.

(g) *Other Agreements.* The Issuer is not in default under (i) any order, writ, injunction or decree of any court or governmental body, agency or other instrumentality, or (ii) any law or regulation, or (iii) any other Debt of the Issuer payable from or secured by the Pledged Revenues, or other funds in the Trust Estate, or (iv) any contract, agreement or instrument to which the Issuer is a party or by which it or its property is bound, which default would have a material adverse effect on the properties, business, condition (financial or otherwise), results of operations or prospects of the Issuer or the transactions contemplated by this Agreement or the Related Documents, or which would have a material adverse effect on the validity or enforceability of, or the authority or ability of the Issuer to perform its obligations under this Agreement, the Indenture or the other Related Documents to which it is a party; and no event has occurred which with the giving of notice or the passage of time or both would constitute such a default.

(h) *Financial Statements and Condition.* The most recent financial reports of the Issuer as of December 31, 2005, copies of which have been delivered to the Bank, are complete and correct and fairly present the financial condition of the Issuer as at such date, for the periods covered by such statements, all in conformity with GAAP. Since December 31, 2005, there has been no material adverse change in the condition (financial or otherwise), business or operations of the Issuer.

(i) *Consents.* No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any court or governmental body, agency or other instrumentality is required for the valid execution, delivery or performance by the Issuer of this Agreement or any other Related Document to which it is a party or the issuance, execution and delivery and performance of the Bonds, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(j) *Security.* The Indenture creates, for the benefit and security of the Bonds and the Obligations (including, without limitation, Bank Bonds), the legally valid and binding Lien on and pledge of the Trust Estate, including, without limitation, the Pledged Revenues, all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution and the funds (the *"Funds"*) in which they are from time to time on deposit. There is no Lien on the Pledged Revenues, all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution or the Funds other than the Lien created by the Indenture and this Agreement. The Indenture does not permit the issuance of any Debt secured by the Pledged Revenues, all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution or the Funds to rank senior to the Bonds or the Obligations (including, without limitation, Bank Bonds). The payment of the Obligations (including, without limitation, Bank Bonds) constitutes an

obligation of the Issuer payable on a parity with all other Additional Bonds issued under the Indenture and senior to all Subordinate Debt. No filing, registering, recording or publication of the Indenture or any other instrument is required to establish the pledge under the Indenture or to perfect, protect or maintain the Lien created thereby on the Pledged Revenues, all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution or the Funds and the Trust Estate.

(k) *Related Documents.* The Issuer makes each of the representations, warranties and covenants contained in the Related Documents to which it is a party to, and for the benefit of, the Bank as if the same were set forth at length herein, together with all applicable definitions thereto. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in any Related Document to which the Issuer is a party shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank.

(l) *No Proposed Legal Changes.* There is no amendment, or to the knowledge of the Issuer, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of Colorado or any published administrative interpretation of the Constitution of Colorado or any State of Colorado law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the Bonds, or any holder thereof in its capacity as such, or the ability of the Issuer to perform its obligations under this Agreement or the other Related Documents.

(m) *Environmental Matters.* The Issuer does not have knowledge that the operations of the Urban Renewal Project are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Property, business or operations of the Issuer or the Urban Renewal Project.

(n) *Immunity.* Except for actions which lie or could lie in tort, the Issuer has no immunity from jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Issuer under this Agreement or the Related Documents. In the event the Issuer acquires such immunity subsequent to the execution and delivery hereof, the Issuer agrees to waive any such immunity to the fullest extent permitted by law.

(o) *Limitation on Interest Rate.* The maximum interest rate payable on the Bank Bonds or the Issuer's Obligations to the Bank hereunder under the laws or Constitution of the State of Colorado is 45% per annum.

(p) *Approvals.* No authorization, consent, license, exemption, filing or registration with any court or Governmental Authority or any approval or consent of any other Person that has not been obtained, is or will be necessary to the valid execution, delivery or performance by the Issuer of any Related Document to which it is a party.

(q) *No Defaults*. No Event of Default or Potential Default has occurred and is continuing.

Section 4.2. Representations and Warranties of the City. In order to induce the Bank to enter into this Agreement, the City represents and warrants to the Bank as follows:

(a) *Organization; Power and Authority*. The City is duly organized and validly existing as a home rule municipality under the laws of the State of Colorado. The City has full right and authority to enter into this Agreement and the other Related Documents to which it is a party and to perform each and all of the matters and things herein and therein provided for.

(b) *Due Authorization; No Violation.* The execution, delivery and performance by the City of this Agreement and the other Related Documents to which it is a party have been duly authorized by all necessary action, and do not and will not violate any constitutional provisions or any law or any regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the City, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than the Lien of the Indenture) upon any of the assets of the City pursuant to the terms of, any resolution, ordinance, mortgage, indenture, agreement or instrument to which the Issuer is a party or by which it or any of its properties is bound.

(c) *Enforceability.* This Agreement and the other Related Documents to which it is a party constitute the legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforceability may be limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) *Disclosure.* No representation, warranty or other statement made by the City in or pursuant to this Agreement or any Related Document to which it is a party or any other document or financial statement provided by the City to the Bank in connection with this Agreement or any other Related Document, contains any untrue statement of a material fact or omits (as of the date made or furnished) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they are made. There is no fact known to the City which the City has not disclosed to the Bank in writing and which materially adversely affects or is likely to materially adversely affect the ability (financial or otherwise) of the City to perform it obligations hereunder or under the Related Documents to which it is a party.

(e) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened against or affecting the City wherein an unfavorable decision, ruling or finding would have a material adverse effect on the properties, business, condition (financial or otherwise), results of operations or prospects of the City or the transactions contemplated by this Agreement or the other Related Documents to which it is a party, or which would adversely affect the validity or enforceability of, or the authority or ability of the City to

perform its obligations under, this Agreement or the other Related Documents to which it is a party.

(f) *Other Agreements.* The City is not in default under (i) any order, writ, injunction or decree of any court or governmental body, agency or other instrumentality, or (ii) any law or regulation, or (iii) any other Debt of the City subject to appropriation by the City Council of the City, or (iv) any contract, agreement or instrument to which the City is a party or by which it or its property is bound, which default would have a material adverse effect on the properties, business, condition (financial or otherwise), results of operations or prospects of the City or the transactions contemplated by this Agreement or the Related Documents, or which would have a material adverse effect on the validity or enforceability of, or the authority or ability of the City to perform its obligations under this Agreement or the other Related Documents to which it is a party; and no event has occurred which with the giving of notice or the passage of time or both would constitute such a default.

(g) *Financial Statements and Condition.* The most recent financial reports of the City as of December 31, 2005, copies of which have been delivered to the Bank, are complete and correct and fairly present the financial condition of the City as at such date, for the periods covered by such statements, all in conformity with GAAP. Since December 31, 2005, there has been no material adverse change in the condition (financial or otherwise), business or operations of the City.

(h) *Consents.* No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any court or governmental body, agency or other instrumentality is required for the valid execution, delivery or performance by the City of this Agreement or any other Related Document to which it is a party, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(i) *Related Documents.* The City makes each of the representations, warranties and covenants contained in the Related Documents to which it is a party to, and for the benefit of, the Bank as if the same were set forth at length herein, together with all applicable definitions thereto. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in any Related Document to which it is a party shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank.

(j) *No Proposed Legal Changes.* There is no amendment, or to the knowledge of the City, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of Colorado or any published administrative interpretation of the Constitution of Colorado or any State of Colorado law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the Bonds, or any holder thereof in its capacity as such, or the ability of the City to perform its obligations under this Agreement or the other Related Documents to which it is a party.

(k) *Environmental Matters.* The City does not have knowledge that the operations of the Urban Renewal Project are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Property, business or operations of the City or the Urban Renewal Project.

(l) *Immunity*. Except for actions which lie or could lie in tort, the City has no immunity from jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the City under this Agreement or the other Related Documents to which it is a party. In the event the City acquires such immunity subsequent to the execution and delivery hereof, the City agrees to waive any such immunity to the fullest extent permitted by law.

(m) *Limitation on Interest Rate.* The maximum interest rate payable on the Bonds or the Issuer's Obligations to the Bank hereunder under the laws or Constitution of the State of Colorado is 45% per annum.

(n) *Approvals*. No authorization, consent, license, exemption, filing or registration with any court or Governmental Authority or any approval or consent of any other Person that has not been obtained, is or will be necessary to the valid execution, delivery or performance by the City of this Agreement or any other Related Document to which it is a party.

ARTICLE FIVE
COVENANTS

Section 5.1. Covenants of the Issuer. The Issuer will do the following so long as any amounts may be drawn under the Letter of Credit or any Obligations remain outstanding under this Agreement, unless the Bank shall otherwise consent in writing:

(a) *Performance of This and Other Agreements; Compliance with Laws, Etc.* The Issuer shall punctually pay or cause to be paid all amounts payable under this Agreement and the other Related Documents and observe and perform all of the conditions, covenants and requirements of this Agreement and the other Related Documents. The Issuer shall comply with all material applicable laws and orders of any governmental entity (including, without limitation, compliance with environmental laws, ERISA and the rules and regulations thereunder and state securities and blue sky laws in connection with the offering, sale and delivery of the Bonds) and shall promptly notify the Bank of any legislation enacted which would have a material adverse effect on the ability of the Issuer to pay the Obligations hereunder.

(b) *Further Assurances.* The Issuer shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Bank, all such instruments and

documents as in the opinion of the Bank are necessary or advisable to carry out the intent and purpose of this Agreement and the Related Documents.

(c) *Books and Records; Inspection Rights.* The Issuer shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the Issuer; and at any reasonable time and from time to time, permit the Bank or any agents or representatives thereof, at the expense of the Bank, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Issuer and to discuss the affairs, finances and accounts of the Issuer with any of the Issuer's officers, trustees and independent auditors (and by this provision the Issuer authorizes said auditors to discuss with the Bank or its agents or representatives, the affairs, finances and accounts of the Issuer).

(d) *Reporting Requirements.* The Issuer shall furnish or cause to be furnished to the Bank:

(i) as soon as available and in any event (i) within 210 days after the end of each fiscal year, the unaudited financial statements for the Urban Renewal Project for such fiscal year, which unaudited financial statements shall include the results of certain operations of the Urban Renewal Project and (ii) within 45 days of each fiscal quarter, the quarterly financial statements of the Urban Renewal Project;

(ii) concurrently with each delivery of the financial statements referred to in clause (a) above, a certificate of the Issuer's chief financial officer stating that (i) he or she has reviewed this Agreement and the Indenture and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of the Issuer and the Urban Renewal Area during the accounting period covered by such financial statements, (ii) based on such review, the Issuer has observed or performed all of its covenants and agreements, and satisfied every condition contained in this Agreement and the Indenture to be observed, performed or satisfied by it, (iii) such review has not disclosed the existence during or at the end of such accounting period, and he or she does not have knowledge of the existence as at the date of the certificate, of any Potential Default or Event of Default or, if he or she has any knowledge of any Potential Default or Event of Default, specifying the same and what action the Issuer is taking or proposes to take with respect thereto and (iv) that the Issuer is in compliance with Section 5.1(p) hereof;

(iii) as soon as possible and in any event within ten days after the adoption thereof, the annual budget of the Issuer, containing estimates of expenditures and anticipated Pledged Revenues for the fiscal year covered thereby;

(iv) as soon as possible and in any event within ten days after the same shall have been requested by the Bank, copies of (i) all final feasibility studies that have been prepared by the Issuer with respect to the Issuer in connection with the issuance of Debt by the Issuer relating to the Urban Renewal Project, and (ii)

all final official statements or other final disclosure statement prepared with respect to any Additional Bonds or Subordinate Debt;

(v) as soon as possible and in any event within ten days after an official of the Issuer has knowledge thereof, notice of any action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened which is of the nature described in Section 4.1(f) of this Agreement;

(vi) as soon as possible and in any event within five days after the occurrence of each Event of Default or Potential Default of which the chief financial officer or any responsible officer of the Issuer has knowledge, continuing on the date of such statement, a statement of the Issuer's chief financial officer setting forth details of such Event of Default or Potential Default and the action which the Issuer is taking or proposes to take with respect thereto;

(vii) promptly after the receipt or giving thereof, copies of all notices of resignation by or removal of the Trustee, the Remarketing Agent which are received and/or given by the Issuer;

(viii) the unaudited quarterly reports prepared by the Trustee, as and when available, setting forth the amount of funds on deposit in each fund and account established under the Indenture;

(ix) a report, prepared by the Issuer, detailing receipt by the Issuer of Pledged Revenues, beginning October 31, 2007 (for the period from and including the Closing Date to and including October 31, 2007), and on each October 31, and April 30 occurring thereafter;

(x) as soon as available and in any event within thirty (30) days of the end of each fiscal quarter, sales tax return figures for the Urban Renewal Project for such period; and

(xi) as soon as available, all reports, budgets and financial documentation submitted by the Developer to the Issuer pursuant to either Development Agreement;

(xii) from time to time such additional information regarding the financial position or business of the Issuer as the Bank may reasonably request.

(e) *Special Remedies.* Notwithstanding anything in this Agreement or in any Related Document to the contrary, to the extent the holder of any Additional Bonds or Subordinate Debt, or any other Person, is permitted to accelerate or otherwise cause the maturity of Debt secured by the Pledged Revenues to become due prior to its scheduled terms upon the occurrence of an Event of Default hereunder, the Bank may immediately declare all Obligations to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer, and upon the occurrence of an Event of Default under Section 6.1(i) hereof, such acceleration shall automatically occur (unless such automatic acceleration is waived by Bank in writing).

(f) *Preservation of Lien.* The Issuer shall take all necessary action to maintain and preserve the Lien on the Pledged Revenues and the Trust Estate to secure the Obligations and the Bonds on a parity with all Additional Bonds.

(g) *Permitted Investments.* The Issuer shall not permit the Pledged Revenues or any monies in the Trust Estate to be invested in anything other than Permitted Investments.

(h) *Debt*. The Issuer will not issue, incur, assume, create or have outstanding any Debt payable from the Pledged Revenues or the Trust Estate other than as expressly permitted in the Indenture, as in effect as of the Closing Date.

(i) *Liens*. The Issuer will not create, incur or permit to exist any Lien of any kind on the Pledged Revenues or the Trust Estate, other than as expressly provided in the Indenture, as in effect as of the Closing Date.

(j) *Related Documents.* The Issuer shall not (i) modify, amend or supplement any of the Related Documents, (ii) give any consent to any modification, amendment or supplement of any of the Related Documents, or (iii) make any waiver with respect to any of the Related Documents. The Issuer will supply the Bank with one fully executed copy of any modification, amendment, supplement or waiver of any of the Related Documents within five days after the execution thereof.

(k) *Optional Redemption of Bonds*. The Issuer will not permit an optional redemption or purchase of the Bonds under the Indenture without the prior written consent of the Bank; *provided, however,* that if the Issuer has deposited with the Bank or the Trustee an amount equal to the principal amount of Bonds to be redeemed pursuant to the Indenture, the Bank shall be deemed to have consented to such optional redemption to the extent of the amounts so deposited.

(l) *Substitution*. The Issuer will not provide or permit to be provided credit enhancement for the Bonds provided by a third party other than the Letter of Credit unless the Letter of Credit shall have been returned to the Bank for cancellation and all Obligations shall have been paid in full.

(m) *Inspection*. The Issuer shall permit the Bank and its duly authorized representatives and agents to visit and inspect the Urban Renewal Project, any of its books and records relating thereto, to examine and make copies of such books and records, and to discuss the finances of the Urban Renewal Project and the Pledged Taxes with the Issuer's officers, independent public accountants (and by this provision the Issuer authorizes such accountants to discuss with the Bank the finances and affairs of the Issuer) at such reasonable times and reasonable hours as the Bank may designate.

(n) *No Priority*. No Debt of the Issuer shall be issued having any priority over payment of the Obligations from the Pledged Revenues or the Funds.

(o) *Additional Bonds or Debt Secured by Pledged Revenues*. The Issuer shall not issue Additional Bonds or other Debt secured by Pledged Revenues except as expressly provided in the Indenture.

(p) *Debt Service Coverage Ratio*. The Issuer shall not take any action which would cause the Pledged Revenues for any calendar year to be less than 110% of the Debt Service Requirement of the Bonds and all other Debt secured by the Pledged Revenues for such year.

(q) *Compliance with Act; Payment of Obligations*. The Issuer will comply with the Act and collection procedures for collection of the taxes making up a portion of the Pledged Revenues. The Issuer agrees, to the fullest extent permitted by law, to take such actions, make such filings, prepare such budgets, reports or estimates or do such other things as may be desirable, necessary or appropriate in order to insure at all times that the Obligations are paid in full as the same are due and payable.

(r) *Compliance with other Covenants.* From and after the date hereof and so long as this Agreement is in effect, except to the extent compliance in any case or cases is waived in writing by the Bank, the Issuer agrees that it will, for the benefit of the Bank, comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings contained in the provisions of the Indenture and in the other Related Documents to which it is party, regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, are incorporated herein by reference, *mutatis mutandis*, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and without regard or giving effect to any amendment or modification of any provisions of any of the Indenture or any Related Document to which the Issuer is a party or any waiver of compliance therewith, no such amendment, modification or waiver to in any manner constitute an amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Bank.

Section 5.2. Covenants of the City. The City will do the following so long as any amounts may be drawn under the Letter of Credit or any Obligations remain outstanding under this Agreement, unless the Bank shall otherwise consent in writing:

(a) *Performance of This and Other Agreements; Compliance with Laws, Etc*. The City shall punctually pay or cause to be paid all amounts payable under this Agreement and the other Related Documents to which it is a party and observe and perform all of the conditions, covenants and requirements of this Agreement and the other Related Documents to which it is a party. The City shall comply with all material applicable laws and orders of any governmental entity (including, without limitation, compliance with environmental laws, ERISA and the rules and regulations thereunder and state securities and blue sky laws in connection with the offering, sale and delivery of the Bonds) and shall promptly notify the Bank of any legislation enacted which would have a material adverse effect on the ability of the City to pay the Obligations hereunder.

(b) *Further Assurances.* The City shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Bank, all such instruments and documents as in the opinion of the Bank are necessary or advisable to carry out the intent and purpose of this Agreement and the Related Documents.

(c) *Books and Records; Inspection Rights.* The City shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the City; and at any reasonable time and from time to time, permit the Bank or any agents or representatives thereof, at the expense of the Bank, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the City and to discuss the affairs, finances and accounts of the City with any of the City's officers, trustees and independent auditors (and by this provision the City authorizes said auditors to discuss with the Bank or its agents or representatives, the affairs, finances and accounts of the City).

(d) *Reporting Requirements.* The City shall furnish our cause to be furnished to the Bank:

(i) as soon as available and in any event (i) within 210 days after the end of each fiscal year, the audited financial statements for the City for such fiscal year, City and (ii) within 60 days of each fiscal quarter, the quarterly unaudited financial statements of the City;

(ii) concurrently with each delivery of the financial statements referred to in clause (a) above, a certificate of the City's chief financial officer stating that (i) he or she has reviewed this Agreement and the Indenture and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of the City during the accounting period covered by such financial statements, (ii) based on such review, the City has observed or performed all of its covenants and agreements, and satisfied every condition contained in this Agreement and the Indenture to be observed, performed or satisfied by it, and (iii) such review has not disclosed the existence during or at the end of such accounting period, and he or she does not have knowledge of the existence as at the date of the certificate, of any Potential Default or Event of Default or, if he or she has any knowledge of any Potential Default or Event of Default, specifying the same and what action the City is taking or proposes to take with respect thereto;

(iii) as soon as possible and in any event within ten days after the adoption thereof, the annual budget of the City, containing estimates of expenditures and any anticipated appropriations required to pay the principal of and interest on the Bonds and the Obligations for the fiscal year covered thereby;

(iv) as soon as possible and in any event within ten days after the same shall have been requested by the Bank, copies of (i) all final feasibility studies that have been prepared by the City with respect to the City in connection with the issuance of Debt by the Issuer relating to the Urban Renewal Project, and (ii) all final official statements or other final disclosure statement prepared with respect to any Additional Bonds or Subordinate Debt;

(v) as soon as possible and in any event within ten days after an official of the City has knowledge thereof, notice of any action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened which is of the nature described in Section 4.2(e) of this Agreement;

(vi) as soon as possible and in any event within five days after the occurrence of each Event of Default or Potential Default, continuing on the date of such statement, a statement of the City's chief financial officer setting forth details of such Event of Default or Potential Default and the action which the Issuer is taking or proposes to take with respect thereto; and

(vii) from time to time such additional information regarding the financial position or business of the City as the Bank may reasonably request.

(e) *Related Documents.* The City shall not (i) modify, amend or supplement any of the Related Documents to which it is a party, (ii) give any consent to any modification, amendment or supplement of any of the Related Documents to which it is a party, or (iii) make any waiver with respect to any of the Related Documents to which it is a party. The City will supply the Bank with one fully executed copy of any modification, amendment, supplement or waiver of any of the Related Documents to which it is a party within five days after the execution thereof.

(f) *Activities of City*. The City will preserve, renew and maintain all material licenses, approvals, authorizations, permits, rights, privileges and franchises necessary or desirable in the ordinary conduct of its business.

(g) *Urban Renewal Area.* The City will not dissolve the Urban Renewal Area prior to repayment of all Obligations and expiration or termination of the Letter of Credit.

(h) *Compliance with other Covenants.* From and after the date hereof and so long as this Agreement is in effect, except to the extent compliance in any case or cases is waived in writing by the Bank, the City agrees that it will, for the benefit of the Bank, comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings contained in the Related Documents to which it is party, regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, are incorporated herein by reference, *mutatis mutandis*, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and without regard or giving effect to any amendment or modification of any provisions of any Related Document to which the City is a party or any waiver of compliance therewith, no such amendment, modification or waiver to in any manner constitute an amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Bank.

(i) *Covenant to Appropriate*. The City hereby covenants and agrees, from time to time, to consider any request from the City Manager for appropriations to the Bond Reserve Fund in the event that the Bond Reserve Fund is not funded at the Bond Reserve Requirement subject to the terms, provisions and limitations set forth in the Replenishment Resolution.

ARTICLE SIX
DEFAULTS

Section 6.1. Events of Default and Remedies. If any of the following events shall occur, each such event shall be an "*Event of Default*":

(a) any material representation or warranty made by the Issuer or the City in this Agreement (or incorporated herein by reference) or any material representation or warranty made by the Issuer or the City in any of the other Related Documents or in any certificate, document, instrument, opinion or financial or other statement contemplated by or made or delivered pursuant to or in connection with this Agreement or with any of the other Related Documents, shall prove to have been incorrect, incomplete or misleading in any material respect;

(b) any "*event of default*" shall have occurred under any of the Related Documents (as defined respectively therein);

(c) failure to pay to the Bank any Obligations when and as due;

(d) default in the due observance or performance by the Issuer of any covenant set forth in the Indenture or in Section 5.1 hereof;

(e) default in the due observance or performance by the City of any covenant set forth in Section 5.2 hereof;

(f) default in the due observance or performance by the Issuer or the City of any other term, covenant or agreement set forth in this Agreement and the continuance of such default for 30 days after the occurrence thereof;

(g) any material provision of this Agreement or any of the Related Documents shall cease to be valid and binding, or the Issuer or the City shall contest any such provision, or the Issuer or the City or any agent or trustee on behalf of the Issuer or the City shall deny that it has any or further liability under this Agreement or any of the Related Documents;

(h) the Issuer shall fail to pay any Additional Bonds or Subordinate Debt or any other Debt payable from Pledged Revenues or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise);

(i) the City shall fail to pay any Debt subject to appropriation by the City Council of City or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise);

(j) one or more judgments against the Issuer or the City for the payment of money payable out of Pledged Revenues, or attachments against the property of the Urban Renewal Area or the funds on deposit in the funds estimated under the Indenture shall remain unpaid, unstayed, undischarged, unbonded or undismissed for a period of 30 days;

(k) the occurrence of any one or more of the following events: (i) the Issuer or the City shall generally not pay, or shall be unable to pay, or shall admit in writing its inability to pay it Debts as such Debts become due; (ii) the Issuer or the City shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or for a substantial part of its assets; (iii) the Issuer or the City shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (iv) the Issuer or the City shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and such order, adjudication or appointment shall remain in effect and not be stayed, revoked or dismissed within 30 days after its occurrence; (v) the Issuer or the City shall take any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties; (vi) the Issuer or the City shall suffer any such custodianship, receivership, or trusteeship to continue undischarged; or (vii) the taking of any action by the Issuer or the City for the purpose of effecting any of the acts set forth in clauses (i) through (vi) hereof;

(l) this Agreement, the Indenture, the Resolution, or any material provision thereof or hereof, at any time after its execution and delivery, shall, for any reason, cease to be valid and binding on the Issuer or the City or in full force or effect or shall be declared to be null and void by a court of competent jurisdiction, or the validity or enforceability of this Agreement or any of the Related Documents shall be contested by the Issuer, the City or by any Governmental Authority having jurisdiction over the Issuer or the City; or the Issuer or the City shall deny that it has any further liability under this Agreement or the Related Documents;

(m) any pledge or security interest created under any Related Document to secure any Bonds or any amounts due under this Agreement shall fail to be fully enforceable with the priority required under such Related Document by reason of the enactment of or the repeal or amendment of any law applicable to the Issuer or by reason of a judgment of a court of competent jurisdiction;

(n) dissolution or termination of the existence of the Issuer or the Urban Renewal Area;

(o) Moody's or S&P shall have downgraded its rating on the long-term general obligation indebtedness of the City (without regard to any form of credit enhancement) to below "Baa1" (or its equivalent) or "BBB+" (or its equivalent), respectively, or either Rating Agency shall have suspended or withdrawn its rating of the same; or

(p) the occurrence of any action affecting the zoning for the Urban Renewal Area which would have a material adverse effect upon the Issuer's ability to perform its obligations under this Agreement or to repay any indebtedness secured by the Pledged Revenues or the rights and remedies of the Bank under the Related Documents.

Section 6.2. Remedies. Upon the occurrence of any Event of Default the Bank may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) give notice of the occurrence of any Event of Default to the Trustee, directing the Trustee to cause a mandatory tender of the Bonds, thereby causing the Letter of Credit to expire 15 days thereafter;

(b) give notice of the occurrence of any Event of Default to the Trustee, directing the Trustee to cause an acceleration of the Bonds, thereby causing the Letter of Credit to expire 15 days thereafter;

(c) by written notice to the Issuer require that the Issuer immediately prepay to the Bank in immediately available funds an amount equal to the Available Amount (such amounts to be held as collateral security for the Obligations), *provided, however*, that in the case of an Event of Default under Section 6.1(k) hereof, such prepayment Obligations shall automatically become immediately due and payable without any notice (unless the coming due of such Obligations is waived in writing by the Bank);

(d) by notice to the Issuer, declare all Obligations to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest of other notice of any kind, all of which are hereby waived by the Issuer, provided that upon the occurrence of an Event of Default under Section 6.1(k) hereof, such acceleration shall automatically occur (unless automatic acceleration is waived by the Bank in writing);

(e) pursue any rights and remedies it may have under the Related Documents;

(f) pursue any other action available at law or in equity.

ARTICLE SEVEN
MISCELLANEOUS

Section 7.1. No Deductions; Increased Costs. (a) Except as otherwise required by law, each payment by the Issuer to the Bank under this Agreement or any other Related Document shall be made without setoff or counterclaim and without withholding for or on account of any present or future taxes (other than overall net income taxes on the recipient imposed by any jurisdiction having control of such recipient) imposed by or within the jurisdiction in which the Issuer is domiciled, any jurisdiction from which the Issuer makes any payment hereunder, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the Issuer shall make the withholding, pay the amount withheld to the appropriate Governmental Authority before penalties attach thereto or interest accrues thereon and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by the Bank free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which the Bank would have received had such withholding not been made. If the Bank pays any amount in respect of any such taxes, penalties or interest, the Issuer shall reimburse the Bank for that payment on demand in the currency in which such payment was made. If the Issuer pays any such taxes, penalties or interest, it shall

deliver official tax receipts evidencing that payment or certified copies thereof to the Bank on or before the thirtieth day after payment.

(b) If the Code or any newly adopted law, treaty, regulation, guideline or directive, or any change in any, law, treaty, regulation, guideline or directive or any new or modified interpretation of any of the foregoing by any authority or agency charged with the administration or interpretation thereof or any central bank or other fiscal, monetary or other authority having jurisdiction over the Bank or the transactions contemplated by this Agreement (whether or not having the force of law) shall:

(i) limit the deductibility of interest on funds obtained by the Bank to pay any of its liabilities or subject the Bank to any tax, duty, charge, deduction or withholding on or with respect to payments relating to the Bonds, the Letter of Credit or this Agreement, or any amount paid or to be paid by the Bank as the issuer of the Letter of Credit (other than any tax measured by or based upon the overall net income of the Bank imposed by any jurisdiction having control over the Bank);

(ii) impose, modify, require, make or deem applicable to the Bank any reserve requirement, capital requirement, special deposit requirement, insurance assessment or similar requirement against any assets held by, deposits with or for the account of, or loans, letters of credit or commitments by, an office of the Bank;

(iii) change the basis of taxation of payments due the Bank under this Agreement or the Bonds (other than by a change in taxation of the overall net income of the Bank);

(iv) cause or deem letters of credit to be assets held by the Bank and/or as deposits on its books; or

(v) impose upon the Bank any other condition with respect to any amount paid or payable to or by the Bank or with respect to this Agreement or any of the other Related Documents;

and the result of any of the foregoing is to increase the cost to the Bank of making any payment or maintaining the Letter of Credit, or to reduce the amount of any payment (whether of principal, interest or otherwise) receivable by the Bank, or to reduce the rate of return on the capital of the Bank or to require the Bank to make any payment on or calculated by reference to the gross amount of any sum received by it, in each case by an amount which the Bank in its reasonable judgment deems material, then:

(1) the Bank shall promptly notify the Issuer in writing of such event;

(2) the Bank shall promptly deliver to the Issuer a certificate stating the change which has occurred or the reserve requirements or other costs or conditions which have been imposed on the Bank or the request, direction or requirement with which it has complied, together with the date thereof, the amount of such increased cost, reduction or payment and a reasonably detailed description of the way in which such amount has been calculated, and the Bank's determination of such amounts, absent fraud or manifest error, shall be conclusive; and

(3) the Issuer shall pay to the Bank, from time to time as specified by the Bank, such an amount or amounts as will compensate the Bank for such additional cost, reduction or payment.

(c) The protection of Section 7.1(b) hereof shall be available to the Bank regardless of any possible contention of invalidity or inapplicability of the law, regulation or condition which has been imposed; *provided, however*, that if it shall be later determined that any amount so paid by the Issuer pursuant to Section 7.1(b) hereof is in excess of the amount payable under the provisions hereof, the Bank shall refund such excess amount to the Issuer as soon as practicable.

Section 7.2. Right of Setoff; Other Collateral. (a) Upon the occurrence and during the continuance of an Event of Default, the Bank is hereby authorized at any time and from time to time without notice to the Issuer (any such notice being expressly waived by the Issuer), and to the fullest extent permitted by law, to setoff, to exercise any banker's lien or any right of attachment and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by the Bank which such balances, credits, deposits, accounts or monies constitute Pledged Revenues to or for the account of the Issuer (irrespective of the currency in which such accounts, monies or indebtedness may be denominated and the Bank is authorized to convert such accounts, monies and indebtedness into United States dollars) against any and all of the Obligations of the Issuer, whether or not the Bank shall have made any demand for any amount owing to the Bank by the Issuer.

(b) The rights of the Bank under this Section 7.2 are in addition to, in augmentation of, and, except as specifically provided in this Section 7.2, do not derogate from or impair other rights and remedies (including, without limitation, other rights of setoff) which the Bank may have.

Section 7.3. Reimbursement. The Issuer agrees, to the extent permitted by law, to reimburse and hold the Bank harmless from and against, and to pay on demand, any and all claims, damages, losses, liabilities, costs and expenses whatsoever which the Bank may incur or suffer by reason of or in connection with the execution and delivery of this Agreement or the Letter of Credit, or any other documents which may be delivered in connection with this Agreement or the Letter of Credit, or in connection with any payment under the Letter of Credit, including, without limitation, the reasonable fees and expenses of counsel for the Bank with respect thereto and with respect to advising the Bank as to its rights and responsibilities under this Agreement and the Letter of Credit and all reasonable fees and expenses, if any, in connection with the enforcement or defense of the rights of the Bank in connection with this Agreement or the Letter of Credit, or the collection of any monies due under this Agreement or such other documents which may be delivered in connection with this Agreement or the Letter of Credit; except, only if, and to the extent that any such claim, damage, loss, liability, cost or expense shall be caused by the willful misconduct or gross negligence of the Bank in performing its obligations under this Agreement or in making payment against a drawing presented under the Letter of Credit which does not comply with the terms thereof (it being understood and agreed by the parties hereto that in making such payment the Bank's exclusive reliance on the documents presented to the Bank in accordance with the terms of the Letter of Credit as to any and all matters set forth therein, whether or not any statement or any document presented pursuant to the Letter of Credit proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein proves to be untrue or inaccurate in any respect whatsoever shall not be

deemed willful misconduct or gross negligence of the Bank). The Issuer, upon demand by the Bank at any time, shall reimburse the Bank for any legal or other expenses incurred in connection with investigating or defending against any of the foregoing except if the same is directly due to the Bank's gross negligence or willful misconduct. Promptly after receipt by the Bank of notice of the commencement, or threatened commencement, of any action subject to the indemnities contained in this Section 7.3, the Bank shall promptly notify the Issuer thereof; *provided, however*, that the failure of the Bank so to notify the Issuer will not affect the obligation of the Issuer to reimburse the Bank with respect to such action or any other action pursuant to this Section 7.3. The obligations of the Issuer under this Section 7.3 shall survive payment of any funds due under this Agreement or the expiration of the Letter of Credit.

Section 7.4. Obligations Absolute. The obligations of the Issuer and the City under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances.

Section 7.5. Liability of the Bank. The Issuer assumes all risks of the acts or omissions of the Trustee, the Remarketing Agent or any other agent of the Trustee and any transferee of the Letter of Credit with respect to its use of the Letter of Credit. Neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Trustee and any transferee in connection therewith; (b) the validity or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit; *provided, however*, that the Issuer shall have a claim against the Bank, and the Bank shall be liable to the Issuer, to the extent of any direct, as opposed to consequential, damages suffered by the Issuer which the Issuer proves were caused by (i) the Bank's willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit comply with the terms of the Letter of Credit or (ii) the Bank's willful or grossly negligent failure to make lawful payment under the Letter of Credit after the presentation to the Bank by the Trustee or a successor trustee under the Indenture of a draft and certificate strictly complying with the terms and conditions of the Letter of Credit (it being understood that in making such payment the Bank's exclusive reliance on the documents presented to the Bank in accordance with the terms of the Letter of Credit as to any and all matters set forth therein, whether or not any statement or any document presented pursuant to the Letter of Credit proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein proves to be untrue or inaccurate in any respect whatsoever, shall not be deemed willful misconduct or gross negligence of the Bank). The Bank is hereby expressly authorized and directed to honor any demand for payment which is made under the Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Issuer, the Remarketing Agent, the Trustee or any other person or the respective rights, duties or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true and correct.

Section 7.6. Participants. The Bank shall have the right to grant participations in the Letter of Credit to one or more other banking institutions, and such participants shall be entitled to the benefits of this Agreement, including, without limitation, Sections 7.1, 7.3 and 7.14 hereof, to the same extent as if they were a direct party hereto; *provided, however*, that no such

participation by any such participant shall in any way affect the obligation of the Bank under the Letter of Credit; and *provided further* that no such participant shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Bank not granted a participation to such participant. Notwithstanding the foregoing, the Issuer and the City may look solely to the Bank as the entity to whom performance of any of its obligations hereunder are owed.

Section 7.7. Survival of this Agreement. All covenants, agreements, representations and warranties made in this Agreement shall survive the issuance by the Bank of the Letter of Credit and shall continue in full force and effect so long as the Letter of Credit shall be unexpired or any Obligations shall be outstanding and unpaid. The obligations of the Issuer to reimburse the Bank pursuant to Sections 7.1, 7.3 and 7.14 hereof shall survive the payment of the Bonds and termination of this Agreement.

Section 7.8. Modification of this Agreement. No amendment, modification or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Bank and no amendment, modification or waiver of any provision of the Letter of Credit, and no consent to any departure by the Issuer or the City therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Issuer in any case shall entitle the Issuer to any other or further notice or demand in the same, similar or other circumstances.

Section 7.9. Waiver of Rights by the Bank. No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Letter of Credit or this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank under the Letter of Credit and the rights of the Bank under this Agreement are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have.

Section 7.10. Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to conflict of law principles *provided* that the obligations of the Issuer and the City hereunder shall be governed by, and construed in accordance with, the laws of the State of Colorado.

Section 7.12. Notices. All notices hereunder shall be given by United States certified or registered mail or by telecommunication device capable of creating written record of such notice and its receipt. Notices hereunder shall be effective when received and shall be addressed:

If to the Bank, to:	DEPFA BANK plc 623 Fifth Avenue, 22nd Floor New York, NY 10022 Attention: General Manager Telephone: (212) 796-9170 Telecopier: (212) 796-9217
With a copy to:	DEPFA BANK plc 30 North LaSalle Street Chicago, Illinois 60602 Attention: Marnin Lebovits Telephone: (312) 332-9100 Facsimile: (312) 332-9192
If to the City, to:	City of Westminster, Colorado 4800 West 92nd Avenue Westminster, Colorado 80030-6399 Attention: Finance Director **[Telephone: (303) 430-2400 ext. 2036** **Telecopier: (303) 429-3950]***
If to the Issuer, to:	Westminster Economic Development Authority 4800 W. 92nd Avenue Westminster, Colorado 80030 Attention: Executive Director Telephone: (303) 430-2400 ext. 2010 Telecopier: (303) 430-1809
If to the Trustee, to:	U.S. Bank National Association 950 17th Street, Suite 300 Denver, Colorado 80202 Attention: Corporate Trust Department Telephone: (303) 585-4595 Telecopier: (303) 585-6865

Section 7.13. Successors and Assigns. Whenever in this Agreement the Bank is referred to, such reference shall be deemed to include the successors and assigns of the Bank and all covenants, promises and agreements by or on behalf of the Issuer which are contained in this Agreement shall inure to the benefit of such successors and assigns; *provided, however,* that any assignment by the Bank to any other Person of its obligations under the Letter of Credit shall constitute the delivery of a Substitute Credit Facility for purposes of the Indenture. The rights and duties of the Issuer and the City hereunder, however, may not be assigned or transferred, except as specifically provided in this Agreement or with the prior written consent of the Bank, and all obligations of the Issuer and the City hereunder shall continue in full force and effect notwithstanding any assignment by the Issuer of any of its rights or obligations under any of the Related Documents or any entering into, or consent by the Issuer and the City to, any supplement or amendment to any of the Related Documents.

* City to provide correct numbers.

Section 7.14. Taxes and Expenses. The Issuer and the City agree to pay to the Bank (i) on the Closing Date, all reasonable costs and expenses incurred by the Bank and its counsel in connection with the preparation, execution and delivery of this Agreement and any other documents and instruments that may be delivered or required in connection therewith (including fees and expenses in an amount not to exceed $25,000 of Chapman and Cutler LLP, counsel for the Bank) (ii) all costs and expenses incurred by the Bank, including reasonable fees and out-of-pocket expenses of counsel for the Bank, otherwise arising in connection with this Agreement and the Related Documents, including, without limitation, in connection with any amendment hereto or thereto, the enforcement hereof or thereof or the protection of the rights of the Bank hereunder or thereunder, and (iii) any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution and delivery of this Agreement and any other documents or instruments that may be delivered in connection herewith. Any taxes (other than any tax measured by or based upon the overall net income of the Bank imposed by any jurisdiction having control over the Bank) payable or ruled payable by any Governmental Authority in respect of this Agreement, the Letter of Credit or the Bonds shall be paid by the Issuer and the City, together with interest and penalties, if any; *provided, however*, that the Issuer and the City may conduct a reasonable contest of any such taxes with the prior written consent of the Bank.

Section 7.15. Headings. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

Section 7.16. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument.

Section 7.17. Entire Agreement This Agreement constitutes the entire understanding of the parties with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

Please signify your agreement and acceptance of the foregoing by executing this Agreement in the space provided below.

Very truly yours,

DEPFA BANK plc, acting through its New York Branch

By:_____
_____ Its:

By:_____
_____ Its:

Accepted and agreed to:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Its: Vice Chairperson

CITY OF WESTMINSTER, COLORADO

By: _____
Its: City Manager

Attest:

By: _____
Its: City Clerk

Summary of Proceedings

Summary of proceedings of the regular meeting of the Westminster City Council held Monday, June 11, 2007. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

The minutes of the May 28, 2007 regular meeting were approved.

Council proclaimed June 16 to be American West Little League Day in celebration of the League's 25th Anniversary and in recognition of the Senior Boys' team that had won the 2006 State Championship.

Council approved the following: outside legal services for pension plans; Environmental Services Office legal services agreement with Philip C. Lowe, LLC; construction contracts re Sheridan Boulevard/72nd Avenue Roadway Improvement Project; 2007 Local Sewer and Water Line Replacement construction contract award; Amended IGA with UDFCD for Quail Creek improvements; West Nile Virus IGA with Jefferson County Department of Health and Environment; IGA re Support of GIS Regional Map for Jefferson and Broomfield Counties; IGA with Jefferson County and Other Participating Municipalities re County-wide Dog License Program; IGA with Crestview Water and Sanitation District; Amendment to IGA with UDFCD for Little Dry Creek Bank Stabilization and Utility Protection Project; Change Order No. 2 re 2007 Wastewater Collection System Improvement Project/Phase I; Change Order re Bornengineering Inc. Property Condition Evaluation and Physical Needs Analysis; 5th Amended PDP for Boulevard Plaza; 5th Amended ODP for Boulevard Plaza; final passage of CB No. 20 re 2006 Final Supplemental Appropriation; final passage CB No. 21 re 1st Qtr 2007 Supplemental Appropriation; final passage CB No. 22 re Amendment to Syncroness Inc. EDA; final passage CB No. 23 re Crosswalk Inc. EDA; final passage CB No. 24 re Shoenberg Farm Commercial Center; and final passage CB No. 25 re Legacy Ridge Filing No. 17 CLUP Amendment.

Council adopted Res. No. 21 approval selected documents for WEDA Bond Issue.

Council conducted a public hearing to consider the Boulevard Plaza CLUP amendment, PDP, and ODP.

Council passed the following Councillors' Bills on first reading:

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN. Purpose: change the land use designation from Industrial to Retail Commercial.

A BILL FOR AN ORDINANCE AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT WITH SUN EDISON TO AID IN THEIR LOCATION IN LAKE ARBOR BUSINESS CENTER. Purpose: Sun Edison Economic Development Agreement.

A BILL FOR AN ORDINANCE AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT WITH TAB BOARDS INTERNATIONAL, INC. FOR THE LOCATION OF THE CORPORATE OFFICES IN WESTMINSTER, COLORADO. Purpose: TAB Boards International, Inc. Economic Development Agreement.

A BILL FOR AN ORDINANCE INCREASING THE 2007 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2007 ESTIMATED REVENUES IN THIS FUND. Purpose: Supplemental Appropriation of grant funds for Big Dry Creek and Cheyenne Ridge Parks.

A BILL FOR AN ORDINANCE AMENDING SECTIONS 8-8-4 AND 8-8-7 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING USE OF THE SANITARY SEWERS AND REPEALING AND REENACTING CHAPTER 10 OF TITLE VIII OF THE WESTMINSTER MUNICIPAL CODE CONCERNING INDUSTRIAL PRETREATMENT OF WASTEWATER. Purpose: modification of Industrial Pretreatment Program in WMC.

Council adopted the following Councillor's Bill as an emergency:

A BILL FOR AN ORDINANCE APPROVING A SUBLEASE AND OPTION AGREEMENT WITH THE COLORADO DEPARTMENT OF CORRECTIONS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE LEASE OF A PORTION OFTHE FORMER CITY OF WESTMINSTER POLICE DEPARTMENT BUILDING AND ITS ATTENDANT PARKING, AND AN OPTION TO PURCHASE THE SAME. Purpose: Lease of the Former Police Building to CDOC.

The meeting adjourned at 8:03 p.m.

By Order of the Westminster City Council
Linda Yeager, City Clerk
Published in the Westminster Window on June 21, 2007

ORDINANCE NO. **3349**
SERIES OF 2007

COUNCILLOR'S BILL NO. **20**
INTRODUCED BY COUNCILLORS
Dittman - Price

A BILL FOR AN ORDINANCE AMENDING THE 2006 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, AND PARKS AND OPEN SPACE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2006 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2006 appropriation for the General, General Capital Improvement and Parks and Open Space Funds, initially appropriated by Ordinance No. 3162 are hereby increased in aggregate by $6,670,116. This appropriation is due to the receipt of lease proceeds, a grant, and a reimbursement.

Section 2. The $6,670,116 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10D dated May 14, 2007 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	$125,733
General Capital Improvement Fund	1,624,383
Parks and Open Space Fund	4,920,000
Total	$6,670,116

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 14th day of May, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ORDINANCE NO. **3350**
SERIES OF 2007

COUNCILLOR'S BILL NO. **21**
INTRODUCED BY COUNCILLORS
Major - Dittman

A BILL FOR AN ORDINANCE AMENDING THE 2007 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, GENERAL OUTLAY REPLACEMENT AND STORM DRAINAGE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2007 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2007 appropriation for the General, General Capital Improvement, General Capital Outlay Replacement, and Storm Drainage Funds, initially appropriated by Ordinance No. 3316 are hereby increased in aggregate by $2,629,153. This appropriation is due to the receipt of grants, reimbursements, program revenues, participation awards, funds transfer, and lease proceeds.

Section 2. The $2,629,153 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 E&F dated May 14, 2007 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	$15,629
General Capital Improvement Fund	2,204,915
General Capital Outlay Replacement Fund	405,017
Storm Drainage	3,592
Total	$2,629,153

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 14th day of May, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ORDINANCE NO. **3351**
SERIES OF 2007

COUNCILLOR'S BILL NO. **22**
INTRODUCED BY COUNCILLORS
Kauffman - Major

A BILL FOR AN ORDINANCE AUTHORIZING THE AMENDMENT OF THE BUSINESS ASSISTANCE PACKAGE WITH SYNCRONESS, INC. TO AID IN THEIR EXPANSION IN WALNUT CREEK BUSINESS CENTER

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

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

WHEREAS, Syncroness, Inc. plans to acquire an additional 6,000 square feet in Walnut Creek Business Center in Westminster, and

WHEREAS, Council approved an assistance package for Syncroness, Inc. in April 2004; and

WHEREAS, a proposed Amendment to that Assistance Agreement between the City and Syncroness, Inc. is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Amendment to the Assistance Agreement with Syncroness, Inc. 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 14th day of May 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ORDINANCE NO. **3352**
SERIES OF 2007

COUNCILLOR'S BILL NO. **23**
INTRODUCED BY COUNCILLORS
Dittman - Price

A BILLFOR AN ORDINANCE AUTHORIZING A ECONOMIC DEVELOPMENT AGREEMENTWITH CROSSWALK, INC. TO AID IN THEIR RELOCATION AND EXPANSION IN CHURCH RANCH CORPORATE CENTER

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

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

WHEREAS, Crosswalk, Inc. plans to purchase 34,000 s.f. feet in Church Ranch Corporate Center in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and Crosswalk, Inc. is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Crosswalk, Inc. 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 14th day of May, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ORDINANCE NO. **3353** COUNCILLOR'S BILL NO. **24**
SERIES OF 2007 INTRODUCED BY COUNCILLORS
KAUFFMAN - MAJOR

A BILLFOR AN ORDINANCE AMENDING THE WESTMINSTERCOMPREHENSIVE LAND USE PLAN

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owner(s) of the properties described below, incorporated herein by reference, requesting a change in the land use designations from "R-8 Residential" to "Retail Commercial" for the Shoenberg Farm Commercial Center, that portion north of 73rd Avenue.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on May 8, 2007, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C.§ 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C.§11-4-16(D).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly Goal A2, which states "Retain areas for commercial .and industrial developments as significant revenue or employment generators on the remaining developable land."

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designation of the property more particularly described as follows to "Retail Commercial", also depicted on the map attached as Exhibit A:

A parcel of land within the southeast quarter of the southeast quarter of Section 36, Township 2 South, Range 69 West of the Sixth Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, said parcel being more particularly described as follows:

Commencing at the northeast corner of said southeast quarter of the southeast quarter of Section 36, whence the southeast corner of said Section 36 bears South 00˚10'37" East and all bearings are made as a reference hereon;

Thence westerly along the northerly line of said southeast quarter of the southeast quarter of Section 36, South 89˚41'00" West 53.91 feet to the point of beginning;

Thence departing said northerly line, South 03˚13'50" West 216.56 feet;

Thence South 07˚23'25" West 165.44 feet;

Thence South 03˚13'50" West 186.59 feet;

Thence South 01˚00'04" West 109.82 feet;

Thence North 86˚11'41" West 0.37 feet;

Thence South 00˚55'52" West 30.04 feet;

Thence North 86˚11'41" West 25.43 feet to the beginning of a tangent curve concave northeasterly having a radius of 175.00 feet;

Thence Northwesterly 63.85 feet along said curve through a central angle of 20˚54'22";

Thence tangent to said curve North 65˚17'19" West 130.03 feet to the beginning of a tangent curve concave southwesterly having a radius of 180.00 feet;

Thence northwesterly 73.42 feet along said curve through a central angle of 23˚22'10";

Thence non-tangent to said curve North 00˚24'22" East 30.00 feet;

Thence North 14˚37'54" East 21.36 feet to the beginning of a tangent curve concave westerly having a radius of 134.50 feet;

Thence northerly 33.39 feet along said curve through a central angel of 14˚13'32";

Thence tangent to said curve North 00˚24'22" East 390.08 feet to the beginning of a tangent curve concave southeasterly having a radius of 80.50 feet;
Thence northeasterly 61.24 feet along said curve through a central angle of 43˚35'09";
Thence non-tangent to said curve South 89˚35'38" East 88.99 feet;
Thence North 00˚19'00" West 88.71 feet to said northerly line of the southeast quarter of the southeast quarter of Section 36;
Thence easterly along said northerly line North 89˚41'00" East 199.04 feet to the point of beginning.
Containing 4.150 acres (180,772 sq. ft.), more or less.

Section 3. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. 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 21st of May, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of June, 2007.

ORDINANCE NO.**3354** COUNCILLOR'S BILL NO. **25**
SERIES OF 2007 INTRODUCED BY COUNCILLORS
MAJOR - PRICE

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owner(s) of the properties described in Exhibit A, incorporated herein by reference, requesting a change in the land use designations from "Retail Commercial" to "R-18 Residential" for the 7.86 acre Legacy Ridge Filing 17 parcel at the southwest corner of 112th Avenue and Federal Boulevard.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on May 8, 2007, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C.§ 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C.§11-4-16(D).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly compatibility with existing and surrounding land uses.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designation of the property more particularly described on attached Exhibit A to "R-18 Residential", as depicted on the map attached as Exhibit B.

Section 3. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 4. This ordinance shall take effect upon its passage after second reading.

Section 5. 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 21st day of May, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11 day of June, 2007.

ORDINANCE NO. **3355** COUNCILLOR'S BILL NO. **31**

SERIES OF 2007 INTRODUCED BY COUNCILLORS
Lindsey - Kaiser

A BILL FOR AN ORDINANCE APPROVING A SUBLEASE AND OPTION AGREEMENT WITH THE COLORADO DEPARTMENT OF CORRECTIONS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE LEASE OF A PORTION OFTHE FORMER CITY OF WESTMINSTER POLICE DEPARTMENT BUILDING AND ITS ATTENDANT PARKING, AND AN OPTION TO PURCHASE THE SAME

WHEREAS, the City of Westminster ("City") is the owner of the building at 8800 Sheridan Boulevard, Westminster, Colorado (the "Property"); and

WHEREAS, the Property was formerly used for municipal court and police administration; and

WHEREAS, the City desires to lease portions of the Property to the State for office use; and

WHEREAS, the City is willing to give an option to the State to purchase the building as well; and

WHEREAS, the final form of the building 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 Colorado Department of Corrections and Colorado Department of Transportation for the lease of approximately 23,674 square feet of the building and its attendant parking located at 8800 Sheridan Boulevard, Westminster, Colorado, is approved in substantially the same form as the Sublease and Option Agreement attached as Exhibit "1" hereto, and the City Manager is authorized to execute all documents related thereto.

Section 2. As a result of the needs of the State Department of Corrections to finalize the lease of office space and commence the renovation of the building by receiving certain invoices for its renovation and paying the same before the end of their fiscal year on June 30, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on June 11, 2007, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 3. This ordinance shall be published within ten days after its enactment, and a full copy of Exhibit 1 hereto shall be available for inspection by the public in the Office of the City Clerk.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 11th day of June 2007.

Exhibit 1 is available for public inspection in the City Clerk's Office, 4800 West 92nd Avenue, Westminster, CO 80031.