



WESTMINSTER

COLORADO

AGENDA

SPECIAL CITY COUNCIL MEETING

MONDAY, JUNE 18, 2007

AT 7:00 P.M.

1. Purpose of Special Council Meeting is to

- A. IGA between the City of Westminster and Adams 12 Five Star Schools for the acquisition and development of real property and facilities located at 128th Avenue and Huron Street

2. Adjournment



WESTMINSTER

June 4, 2007

Linda Yeager, City Clerk
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

City of Westminster
Office of the
Council

4800 West 92nd Avenue
Westminster, Colorado
80031

303-430-2400
FAX 303-430-1809

Nancy McNally
Mayor

Tim Kauffman
Mayor Pro Tem

Chris Dittman
Councillor

Mark Kaiser
Councillor

Mary Lindsey
Councillor

Scott Major
Councillor

Jo Ann Price
Councillor

Dear Linda:

I wish to call a special meeting of the City Council for Monday, June 18, 2007, to begin at 7:00 p.m. and to be held in the Council Chambers of City Hall, 4800 West 92nd Avenue, for the purpose of considering an Intergovernmental Agreement between the City of Westminster and Adams 12 Five Star Schools for the acquisition and development of real property and facilities located at 128th Avenue and Huron.

Sincerely,

Nancy McNally
Mayor

cc: City Councillors
J. Brent McFall, City Manager

June 4, 2007

Linda Yeager, City Clerk
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Dear Linda:

I wish to call a special meeting of the City Council for Monday, June 18, 2007, to begin at 7:00 p.m. and to be held in the Council Chambers of City Hall, 4800 West 92nd Avenue, for the purpose of considering an Intergovernmental Agreement between the City of Westminster and Adams 12 Five Star Schools for the acquisition and development of real property and facilities located at 128th Avenue and Huron.

Sincerely,

Nancy McNally
Mayor

cc: City Councillors
J. Brent McFall, City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

Special City Council Meeting
June 18, 2007



SUBJECT: Intergovernmental Agreement between the City of Westminster and Adams 12 Five Star Schools for the acquisition and development of real property and facilities located at 128th Avenue and Huron Street

Prepared By: John Carpenter, Director of Community Development

Recommended City Council Action

Authorize the City Manager to execute an Intergovernmental Agreement between the City of Westminster and Adams 12 Five Star Schools for acquisition and development of real property and facilities located at 128th Avenue and Huron Street in substantially the form as attached, and authorize the City Manager to execute a Purchase and Sale agreement with Adams 12 Five Star Schools to purchase up to 29.125 acres for open space and 2.167 acres for right-of-way at the southwest corner of I-25 and 128th Avenue for a total of 31.292 acres in substantially the same form as attached to the intergovernmental agreement.

Summary Statement

- On October 24, 2005, City Council authorized the City Manager to execute and Intergovernmental Agreement (IGA) with the Adams 12 Five Star School District related to the then proposed high school (now Mountain Range High School) at 128th Avenue/Huron Street (see attachment). The IGA was not finalized until recently. The current version has significant enough differences that staff believe Council should approve the revised version.
- In addition, City staff and the District staff have negotiated a Purchase and Sale agreement which outlines the terms and conditions for the City to acquire up to 29.125 acres of land for open space and 2.167 acres right-of-way south of 128th Avenue and west of I-25. This purchase was provided for in the draft IGA approved in 2005. The final amount of acreage and the corresponding price may be adjusted slightly downward based on some potential final charges coming from the school district.

Expenditure Required: Approximately \$3,775,164

Source of Funds:

- 1) Tanglewood Creek Open Space (approximately 29.125 acres)

City of Westminster Open Space Fund	\$438,371.10 (not to exceed amount)
Adams County Open Space Grant	<u>\$356,871.10</u>
TOTAL	\$795,242.20
- 2) 128th Avenue and Delaware Street Right of Way (2.167 acres)

North I-25 Westminster Economic Development Authority Bond Proceeds	- \$53,104.87
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- 3) 128th Avenue and Huron Street Improvements - \$1,169,869

New Development Participation Account (already expended and project complete)	
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- 4) One-half of the costs to improve Delaware between 128th Avenue and 124th Avenue

Estimated to be \$375,000. The final accounting of these costs has not taken place.	
North I-25 Westminster Economic Development Authority Bond Proceeds	
- 5) City of Westminster school site dedication cash in lieu fees - \$1,381,948 collected through April 30, 2007

Policy Issues

1. Should the City enter into an IGA with Adams 12 Five Star Schools regarding Mountain Range High School?
2. Should the City purchase 29.125 acres of land for open space and 2.167 acres of land for right-of-way?

Alternative

The City has relied on the previously approved but unexecuted IGA to define the City’s obligations regarding the high school/project and open space acquisition. Based on this, the City has been approved for a matching grant from Adams County Open Space to buy the property for open space. Based on this history, Staff does not believe there are any viable alternatives.

Background Information

On October 24, 2005, City Council authorized the City Manager to execute an Intergovernmental Agreement (IGA) between the City of Westminster and Adams 12 Five Star Schools related to the construction of a high school at the southeast corner of 128th Avenue and Huron Street. Attached is the agenda memorandum for that item from the October 24, 2005 Council meeting. The IGA was never executed and in the ensuing time, the open space acquisition component of “the deal” with the District has changed.

In the original IGA, the City was to acquire approximately 40 acres of land along Tanglewood Creek for open space at a price of \$1,550,000, not including closing costs. Of this amount, half of the funds were to be provided by an Adams County open program grant. Since that time, District staff have redesigned the school/stadium complex to add a soccer practice field on the north side of the stadium as well as expanded the stadium site itself. Also, the land area for the two access drives to the stadium from Delaware Street, which cross Tanglewood Creek, were excluded from the open space acquisition. As a result, the land available for open space purchase has been reduced to 29.125 acres. There are a total of three open space parcels: 1) between 128th Avenue and the north access drive – 19.092 acres; 2) between the north access drive and south access drive – 3.944 acres; and 3) between the south access drive and Willowbrook Park – 6.089 acres. Tanglewood Creek flows across all three parcels.

In addition, the IGA obligates the City to purchase the land east of the Delaware Street center line abutting the City open space between 124th Avenue and 128th Avenue as well as land being acquired along the south side of 128th Avenue to allow for the widening of that street between Delaware Street and I-25. The right of way totals 2.167 acres.

At the City’s request, the District staff commissioned an appraiser to determine the value of the land the City is acquiring for open space and street right of way. The appraiser, Clayton and Associates, concluded that the 32.4 acres of land is worth \$794,000 or \$24,506.17 per acre. This was based on the preliminary estimate that the land being acquired totaled 32.4 acres. Subsequently, the final survey determined the total land area being acquired by the City is 31.292 acres. This number is subject to a minor final adjustment based on a change being made by the school district.

In addition, the City agreed to pay for various closing costs and survey costs totaling \$81,500. The Adams County Grant did not propose sharing these closing costs, so these costs are being totally paid by the City Open Space Fund.

As a result, the total acquisition cost for the Tanglewood Creek open space and right-of-way is as follows:

Open Space

29.125 acres x \$24,506.17 per acre =	\$713,742.20
Adams County Share	\$356,871.10
Westminster Share	\$356,871.10
Closing Costs (paid by City)	<u>\$ 81,500.00</u>
TOTAL	\$795,242.20

Right of Way

2.167 acres x \$24,506.17 per acre = \$53,104.87

Total paid to SD#12 for open space and right-of-way - \$848,346.97

Total amount payable to SD#12 for land acquisitions - \$848,347.07. A Purchase and Sale Agreement has been negotiated with District staff related to these transactions.

The remaining original provisions of the IGA are unchanged and as follows:

- 1) The District will:
 - a) Build a new high school (built and open)
 - b) Build a new middle school (built and to open in August 2007)
 - c) Build a new stadium (under construction and to open in August 2007)
 - d) Potentially construct a future elementary school on an existing City owned parcel in the Bradburn development.
 - e) Build 124th Avenue, 125th Avenue and Delaware Street.
 - f) Use reclaimed water for irrigation.

- 2) The City will:
 - a) Construct improvements to 128th Avenue and Huron Street abutting the high school site.
 - b) Donate the Bradburn Elementary School site to the District when the school is to be built.
 - c) Reimburse the District for one half of the cost to construct Delaware Street abutting the proposed City open space.
 - d) Provide school site dedication cash in lieu payments collected from residential projects within School District #12 boundaries valued at \$1,381,948 as of April 30, 2007.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Intergovernmental Agreement
October 24, 2005 Agenda Memorandum regarding the City of Westminster/Adams 12
Five Star Schools

INTERGOVERNMENTAL AGREEMENT

**Between the City of Westminster and Adams 12 Five Star Schools
For the Acquisition, Development of Real Property and Facilities
Located at 128th Avenue and Huron Street
High School #5**

This Intergovernmental Agreement ("Agreement") is made and entered into this _____ day of _____, 2007, by and between the **CITY OF WESTMINSTER**, a Colorado home rule municipality, hereinafter called the "City," and **ADAMS 12 FIVE STAR SCHOOLS**, a Colorado school district, hereinafter called the "School District." The City and School District may be referred to collectively or separately as "Parties" or "Party" or "Jurisdiction."

RECITALS:

WHEREAS, the School District has acquired certain unimproved property located at 128th Avenue and Huron Street, City of Westminster, more particularly described in Exhibit A (hereinafter referred to as the "School Property") attached hereto as Exhibit A and as depicted in Exhibit C; and

WHEREAS, the School District has developed a portion of the School Property as the location for Mountain Range High School (hereinafter referred to as the "High School Site"), as more particularly described in Exhibit B and as depicted in Exhibit C; and

WHEREAS, the City desires to acquire certain land adjacent to the High School Site for use as City of Westminster Open Space, and

WHEREAS, the City supported the School District in its efforts to build the high school, and supports the development of a middle school, stadium, and elementary school in the City and desires to assist the School District in the manner provided in this Agreement; and

WHEREAS, the City and the School District support joint use of facilities and the City and the School District desire to work cooperatively with one another to address present and future school needs of the area of the City serviced by the School District and to address related matters; and

WHEREAS, the School District and the City desire to enter into this Agreement concerning the acquisition, joint development and use of the School Property to facilitate the needs of the School District and the City; and

CITY DRAFT – 5/17/07

WHEREAS, the City has adopted a Land Dedication for Public School Sites Ordinance (City Code 11-6-8 (F) that requires developers to provide land or cash-in-lieu of land when developing any new residential units built in the City; and

WHEREAS, the City and the School District have agreed to enter into a separate Intergovernmental Agreement to address the details of collection and disbursement of cash in lieu funds in accordance with the provisions of City Code 11-6-8 (F); and

WHEREAS, the people of the state of Colorado have encouraged such cooperation and contracting through the adoption of Article XIV, Section 18(2) of the Colorado Constitution; and

WHEREAS, the purpose of Part 2 of Article 1 of Title 29, C.R.S. is to implement the aforesaid provisions of the Colorado Constitution and authorizes the Parties to enter into intergovernmental agreements; and

WHEREAS, Section 29-1-203(1), C.R.S. provides, inter alia, that governmental units may cooperate with one another to provide any function, service or facility lawfully authorized to each of the contracting units, including sharing of costs;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, as well as the mutual agreements made by the Parties set forth herein, the Parties agree and contract as follows:

AGREEMENT:

SECTION 1. SCHOOL PROPERTY ACQUISITION

1.1 Land for School Facilities.

The School District has acquired approximately 138.62 acres of land through purchase or by eminent domain, hereinafter called the "School Property." The legal description of the School Property is set forth on Exhibit A, attached hereto and made a part hereof.

1.2 High School.

The School District has developed 60.0 acres of the School Property as a High School Site. The legal description of the High School Site is set forth in Exhibit B. The School District has constructed the high school and related on-site facilities necessary to accommodate approximately 2,000 students in accordance with the School District's educational specifications and programming requirements. The opening of the school occurred in August of 2006. The layout for the High School Site is shown on the map attached as Exhibit C.

1.3 Future School Improvements.

(a) **Middle School.** The School District plans to build a new middle school on the School Property south of the High School Site, as shown in Exhibit C, (hereinafter referred to as the “Middle School Site”).

(b) **Stadium and/or other facilities.** The School District plans to build additional facilities on the School Property, as shown on Exhibit C.

(c) **Elementary School.** The School District plans to build a new elementary school on the Elementary School Site as contemplated by paragraph 5.1, below (the “Elementary School.”)

(d) **School Projects.** For purposes of this Agreement, the High School, Elementary School, Middle School, Stadium, and any other School District facilities involving the School Property shall be collectively referred to as the “School Projects.”

SECTION 2. SCHOOL PROJECTS DEVELOPMENT COSTS

2.1 Subdividing and Platting.

(a) **Administrative Approvals.**

The City has assisted and will continue to assist the School District in obtaining City approval of any required subdividing and platting of the School Property. Any such processes shall be handled administratively, without the necessity of public hearings. The City agrees that the School District may develop and use the School Property for a high school, future middle school and future stadium, and may develop and use the Elementary School site for an elementary school without further action or review by the City’s Planning Commission or City Council.

(b) **Off-Site Impact Studies.** A drainage study, traffic study, and utility study related to the High School project was completed and paid for by the School District. The District agrees to submit similar studies for the School Projects.

(c) **Easements and Rights-of-Way.** The District shall provide at no cost to the City any rights-of-way or easements reasonably required by the City for the construction, operation, and maintenance of any improvement to be constructed by or dedicated to the City in connection with the School Projects, except for Delaware Street where the City is paying one-half of the costs of right-of-way pursuant to paragraphs 2.3(b) and 2.4(a) below.

2.2 Utilities.

(a) **Utilities.** Potable water, reclaimed water and sewer utility lines are located within the Huron Street right of way adjacent to the High School Site and the School

Property. The School District shall be solely responsible for any extensions of City utilities to serve the School Property . The parties acknowledge that the Utility Study dated August 13, 2003 by Drexel Barrel & Co. concludes that there is adequate water and sewer capacity to serve the High School. The School District agrees to construct all necessary sanitary sewer lines and a fully looped water system to serve the School Projects.

(b) **Reclaimed Water.** The City will make available to the School District a reclaimed water tap and reclaimed water for the irrigation of landscaping of the School Property, at a cost that is 20 percent less than potable water, or which represents rates charged to commercial customers for potable water. The City represents that there is an existing reclaimed water line located within the Huron Street right-of-way, directly adjacent to the High School Site. The School District acknowledges that the City has installed a pressure reducing station at the NE corner of 125th and Huron Street on the School Property for School District and City use. The School District agrees to provide a permanent easement for this station and its appurtenances at no cost to the City within ten (10) days of the final execution of this Agreement. Nothing herein shall be construed as prohibiting the City from permitting other connections to this segment of the City's reclaimed system. The School District shall submit such plans as the City may reasonably require to enable the City to apply to the Colorado Department of Public Health and Environment (CDPHE) for permits for the School District's connection(s) to the City's reclaimed system. The School District may connect to the reclaimed system after payment of the reclaimed water tap fee and the receipt of CDPHE's permit(s).

(c) **Potable Water Fees.** The School District has paid the City's normal water and sewer tap fees. The City's water fee for a six-inch irrigation water tap was \$792,110 and the tap fee for a three-inch regular water tap is \$192,710. The City's tap fee for sewer service was \$117,138 for the High School Site. These fees only applied to the High School Site and not other abutting district property. The School District shall not be required to dedicate any water or water shares to the City.

(d) **Standards.** All water, sewer, and reclaimed water lines for the School Projects shall be constructed in conformance with the City of Westminster's Standard Specifications for Public Improvements in effect at the time of construction.

2.3 Street Improvements – High School Site.

The School District has constructed the following street improvements as part of the High School Site. The street extensions will be dedicated to the City upon completion of the survey, currently in progress, of the School Property. The streets, upon final acceptance by the City, shall be maintained by the City at its sole cost and expense.

(a) **125th Avenue.** This 34-foot wide residential street includes a 50-foot right-of-way from Huron Street to Delaware Street along the alignment of 125th Avenue, as shown in Exhibit C.

(b) **Delaware Street (north section)**. This 34-foot wide residential street includes a 50-foot right-of-way from 125th Avenue north to 128th Avenue, as shown in Exhibit C. The City agrees to reimburse the School District 50 percent of the cost of design and construction of the northern section of Delaware Street, including right-of-way costs.

2.4 Street Improvements – Middle School Site.

The School District will construct the following street improvements as part of the Middle School Site, anticipated to be completed by August 1, 2007. The street extensions will be dedicated to the City at the completion of the project and maintained by the City at its sole cost and expense.

(a) **Delaware Street (south section)**. This 34 foot wide residential street shall be built to City standards with 50 foot right-of-way from 125th Avenue south to the southern boundary of the School Property, as shown in Exhibit C. If the City acquires the Tanglewood Creek Open Space, the City agrees to pay 50 percent of the cost of design and construction of the southern portion of Delaware Street, including the right-of-way land costs.

(b) **124th Avenue**. The City and District shall work cooperatively to address the issues relating to the 124th Avenue extension. If this 34 foot wide residential street is constructed, it shall be built to City standards with 50 foot right-of-way from Delaware Street to Huron Street along the alignment of 124th Avenue, as shown in Exhibit C. Consideration shall be given to necessary land section trade offs, rights-of-way, additional roadway (Delaware Street south) realignments, development costs, school facilities and/or use of joint use fields for the Middle School Site to accommodate the potential 124th Avenue extension to Delaware Street. The parties shall commence negotiation pertaining to these issues within 6 months after execution of this Agreement.

2.5 Additional Facilities. In the event any additional water, sewer or reclaimed main lines, or any storm drainage facilities, are or become necessary to service the School Projects, such facilities shall be the sole responsibility of the School Projects.

SECTION 3. OFF-SITE STREET IMPROVEMENTS TO BE CONSTRUCTED BY THE CITY

The parties agree that the following improvements to the roadways, underpasses, sidewalks and related facilities adjacent to the School Property are important to the safety of the schools and the community. The City has constructed the following improvements at its sole cost.

(a) **Huron Street – From 530 Feet South of 125th Avenue Centerline to 128th Avenue**. Improvements to Huron Street adjacent to and serving the High School Site including sidewalks, acceleration and deceleration lanes and underground utility lines.

(b) **128th Avenue. – Huron Street to Eastern Boundary of High School Site.** Improvements to 128th Avenue adjacent to and serving the High School Site including sidewalks, acceleration and deceleration lanes, and underground utility lines.

(c) **Traffic Signals.** Traffic control signals at the intersections of 125th Avenue and Huron Street, and 128th Avenue and Delaware Street. Signal installation was completed in August of 2006. The traffic control improvements provided by the City include the addition of reduced-speed safe school zone flashing light systems to be located on Huron street at locations to be agreed to by the parties. (d) **Huron Street – 128th Avenue to 150th Avenue.** The City has widened Huron Street to a four-lane road with landscaped median from 128th Avenue to 150th Avenue. The segment between 128th Avenue and 136th Avenue was completed in August 2006. In conjunction with the widening of Huron Street, the City has constructed pedestrian trail underpasses at Big Dry Creek (130th Avenue) and at Quail Creek (134th Avenue).

(e) **128th Avenue.** When funds become available, the City will construct a pedestrian underpass under 128th for the proposed Tanglewood Creek Trail and a concrete trail along Tanglewood Creek from the Big Dry Creek Trail to 124th Avenue (approximately one mile in length).

SECTION 4. CITY LAND PURCHASE

4.1 Tanglewood Creek Floodplain

The City and the District agree to execute the Purchase and Sale Agreement for approximately 30 acres of the Tanglewood Creek floodplain area in substantially the same form as attached hereto as Exhibit “D,” and incorporated herein by this reference. The City agrees to accept on that parcel the discharge of the detained storm water draining from the detention pond(s) and water quality controls located on adjacent school sites, in accordance with accepted engineering standards.

SECTION 5. BRADBURN VILLAGE ELEMENTARY SCHOOL SITE

5.1 Dedication of the Elementary School Site in Bradburn Village.

The City agrees to convey, at no cost to the School District, an approximately nine acre elementary school site within the Bradburn Village development, to be located south of 117th Avenue at Tennyson Street (the "Elementary School Site"), the precise boundaries to be mutually agreed upon by the parties. The City shall convey the Elementary School Site to the School District upon 30 days prior written notice that the School District is proceeding to build an Elementary School on the site. The City shall cause to be constructed at no cost to the School District, all roads adjacent to the Elementary School Site. The City shall make available all City utilities required for the Elementary School Site, to the extent such

facilities currently exist. The School District shall construct, at its cost, all water, sewer, and reclaimed water lines needed to provide service to the Elementary School site. The School District is responsible for payment of all utility tap fees, connection fees, and usage charges in effect at the time of connection and service.

5.2 City Park Adjacent to Bradburn Village Elementary School Site.

The City, at no expense to the School District, plans to construct a park, including a playground, on the 10-acre parcel adjacent to the above-referenced Elementary School Site within the Bradburn Village development. The City and the School District shall work together regarding the design of all park improvements and play structures. The City will attempt, depending upon the availability of funds and the construction date of the school, to construct the park concurrently with the school construction so that the park will be available for school use when the school opens.

SECTION 6. JOINT USE OF RECREATIONAL FACILITIES

The School District and the City will negotiate a separate IGA/Master Joint-Use Agreement for the use of School District and City fields and recreational facilities within the City including the fields at the new High School Site as well as the other School District improvements located on the School Property.

SECTION 7. CASH-IN-LIEU REVENUE

The City has adopted a Land Dedication for Public School Sites Ordinance to assist the School District in developing new schools. The School District acknowledges that these fees are intended to reimburse the District for the cost of acquiring the High School Site. The City agrees to pay the District the cash in lieu fees collected through the date of execution of this Agreement within thirty days after execution of this Agreement. Future cash in lieu fees will be paid in accordance with the separate Intergovernmental Agreement to be executed between the parties.

SECTION 8. LIABILITY AND INSURANCE

8.1 Liability.

During the term of this Agreement, each Party hereto shall take all steps necessary to extend coverages under its general liability and other insurance coverages to the real property and improvements subject to this Agreement and owned by that Party, and to that Party's activities on its property or pursuant to this Agreement.

8.2 Insurance.

CITY DRAFT – 5/17/07

The Parties hereto understand and agree that the City, the School District, their officers and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$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 from time-to-time amended, or otherwise available to either Party, their officers or their employees.

SECTION 9. NOTICE

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally delivered or served by facsimile. Notice shall also be sufficient if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when received by the other Party.

City of Westminster
Attention: City Manager
4800 West 92nd Avenue
Westminster, CO 80031
Fax No. 303-430-1809

Adams 12 Five Star Schools
Attention: Robert K. Webber
Assistant Superintendent of Business Services
Educational Support Center
1500 East 128th Avenue
Thornton, CO 80241
Fax No. 720-972-4398

SECTION 10. OTHER AGREEMENT PROVISIONS

10.1 Integration and Amendment

This Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings concerning the subject matter contained herein. Only an instrument in writing signed by the Parties may amend this Agreement. In the event this Agreement conflicts with or is inconsistent in any way with other agreements between the Parties concerning joint use of facilities, the terms of this Agreement shall be controlling.

10.2 Venue

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought only in the County of Adams, State of Colorado.

10.3 Severability

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

10.4 Waiver of Breach

A waiver by any party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

10.5 Non-discrimination

Neither of the Parties hereto shall discriminate on the basis of age, sex, race, religion, ancestry, national origin, physical or mental disability in any policy or practice.

10.6 Compliance with Law

The work and services to be performed hereunder shall be done in compliance with all applicable federal, state and local laws, ordinances, rules and regulations.

10.7. Recording

The School District and the City may record this Agreement, and both Parties shall receive a copy of the recorded Agreement in such event.

10.8 No Third Party Beneficiaries

This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.

10.9 Assignment

This Agreement shall not be assigned by either party without the prior written consent of the other party.

10.10 Interpretation

The Parties represent that this Agreement is the result of negotiations between the parties. In the event of any legal action to interpret any provision of this Agreement, the Agreement shall not be construed in favor of or against the interests of either Party as a result of its participation in drafting the document, and both Parties shall be deemed to have contributed equally to the language contained herein.

10.11 Attorney/Expert Fees

In the event legal action is necessary to enforce any provisions of this Agreement, or to recover damages for the breach hereof, the prevailing party shall recover from the defaulting party all of its costs and reasonable attorney and expert fees.

10.12 Default

Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered, or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance or damages or both.

10.13 TABOR

The City and the School District intend that this Agreement comply with Colorado law and, in particular, with the provisions of Article X, Section 20, of the Constitution of the State of Colorado. To the extent funds have not been irrevocably pledged for any obligation in this Agreement, such obligation shall be contingent on and subject to prior appropriation of funds by the governing body of the obligated party.

10.14 Execution

This Agreement shall not be binding upon any Party hereto unless and until the governing entities of each Party have formally approved this Agreement as required by law and caused the Agreement to be signed in a manner and by authorized persons consistent with applicable statute, policy, ordinance or resolution.

10.15 Additional Documents or Action

The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

10.16 Execution in Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City and the School District have caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed this _____ day of _____, 2007.

ADAMS 12 FIVE STAR SCHOOLS

By: _____

Superintendent of Schools

APPROVED AS TO FORM:

General Counsel for Adams 12 Five Star Schools

**CITY OF WESTMINSTER,
COLORADO**

ATTEST:

Linda Yeager, City Clerk

By: _____
J. Brent McFall, City Manager

APPROVED AS TO FORM:

Martin McCullough, City Attorney

EXHIBIT A

Legal Description of approximately 138 acre "School Property"

EXHIBIT B

Legal Description of approximately 60 acre "High School Site"

EXHIBIT C

Current site plan for the entire 138 acres, showing high school site, future middle school site, and stadium site, and City of Westminster Open Space

EXHIBIT D

Contract to Buy and Sell Real Estate dated June 19, 2007, between the City of Westminster, Colorado, a Colorado home-rule municipality (Buyer) and Adams 12 Five Star Schools, a Colorado school district (Seller).



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 24, 2005



SUBJECT: Intergovernmental Agreement between the City of Westminster and Adams 12 Five Star Schools for the Acquisition and Development of Real Property and Facilities located at 128th Avenue and Huron Street

Prepared By: John Carpenter, Director of Community Development

Recommended City Council Action:

Authorize the City Manager to execute an Intergovernmental Agreement between the City of Westminster and Adams 12 Five Star Schools for the acquisition and development of real property and facilities located at 128th Avenue and Huron Street, in substantially the form as attached.

Summary Statement:

- Staff has negotiated an (IGA) Intergovernmental Agreement with School District #12 staff that is ready for review by City Council regarding the new high school. In 2003, the School District was exploring potential sites for a 5th district high school and asked for proposals by interested municipalities. The Cities of Westminster, Broomfield, and Thornton submitted proposals. Westminster’s proposal included two sites: 1) 120th Avenue/Federal Boulevard – northeast corner; and 2) 128th Avenue/Huron Street – southeast corner. The school board selected the latter site in part based on the City’s proposal.
- The District proceeded to acquire the entire 139 acre parcel through eminent domain after negotiations with the property owners proved fruitless. Construction on the high school began in 2004 and the building will open in August 2006.
- The attached draft IGA includes the key provisions of the City’s original offer. The key points of the IGA are listed in the background section.

Expenditure Required: Approximately \$3,850,000

Source of Funds: Street Improvements-General Improvement Fund – General Fund CIP and New Development Participation (\$1,000,000)

Tanglewood Open Space
City of Westminster Open Space (\$775,000)
Adams County Open Space Funds (\$775,000)

School Site Cash in Lieu Fees - General Capital Improvement Fund
(Approximately \$1,300,000)

Policy Issue

Should the City enter into this proposed agreement with School District #12 regarding school facilities?

Alternative

Do not approve this agreement. Staff does not recommend this since both the City and District have been relying upon the earlier agreements made by the City and the District.

Background Information

The following are the key provisions of the IGA:

1. The District will:
 - a. Build a new high school on a 60 acre site.
 - b. Build a new middle school on a 20 acre site.
 - c. Build a 2nd district stadium on a 20 acre site.
 - d. Construct a new elementary school at the Bradburn development.
 - e. Sell approximately 40 acres to the City of Westminster along Tanglewood Creek for open space.
 - f. Build 124th Avenue, 125th Avenue, and Delaware Street to serve the site. The City will pay ½ of the cost of Delaware Street abutting the open space.
 - g. Use reclaimed water for irrigation.
2. The City will:
 - a. Construct improvement to 128th Avenue and Huron Street abutting the site.
 - b. Donate the Bradburn Elementary school site to the District. This site was acquired at no cost to the City through developer donation.
 - c. Provide school site cash-in-lieu payments collected from residential projects within the School District #12 boundaries to the district valued at over \$1,300,000.

Westminster has a long history of intergovernmental cooperation with School District #12. Most of District 12 Westminster facilities are on sites donated by the City. The City was the first city served by School District #12 to require residential developers to donate sites exclusively for school purposes or pay a fee-in-lieu of donation. To date, the City has collected over \$1.3 million within the boundaries of School District #12, which has not yet been disbursed to the district.

The City Council and staff have long desired that a School District #12 high school be built in Westminster. In October 2002, 1,031 Westminster students attended high school in School District #12. An additional 333 Westminster high school students are projected by build out. In 2000, about 11% of School District #12 residents lived in Westminster and 27% of the District's entire assessed valuation was from Westminster. Of the current high schools, two are in Thornton, one is in Broomfield, and one is in Northglenn. As part of the site selection process for the 5th high school, Westminster, Thornton, and Broomfield submitted proposals. Westminster's proposal for a site at 128th Avenue/Huron Street was ultimately selected based on Westminster's proposal. The high school is under construction and will open in August 2006.

Staff has been in negotiations regarding an IGA to "memorialize" the terms of Westminster's proposal for many months. The IGA is now ready for review by Council.

Staff is still in the process of performing some value engineering on the project. In addition, staff is identifying additional sources of funding as the New Development Capital Improvement Project does not have adequate funds to cover the roadway expenses, but staff anticipates between value engineering and potential additional revenue sources, we will be able to cover the cost of the work.

Staff believes that the IGA has many desirable aspects for Westminster residents:

- The high school and middle school will provide top notch educational facilities.
- The high school will provide facilities available to the general public such as a state-of-the-art theater.
- School District #12 is planning an aquatics center on the high school site that will feature a 50 meter swimming pool designed to attract statewide swimming competitions. Per district representatives, the center will open by August 2007.
- The Bradburn Elementary School will greatly enhance the desirability of that neighborhood.
- Staff is negotiating to have access to the middle school gym and ball fields for City programs similar to the Wayne Carle Middle School project.
- Improvements to Huron Street and 128th Avenue will enhance traffic flow in the area.
- The proposed Tanglewood Creek Open Space will provide land on which to build the proposed Tanglewood Creek Trail, preserve a beautiful natural area and protect a mountain view corridor from I-25. The Adams County Open Space Advisory Board is recommending a grant to the City for \$775,000 to pay ½ of the estimated cost of this purchase.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Intergovernmental Agreement

INTERGOVERNMENTAL AGREEMENT

Between the City of Westminster and Adams 12 Five Star Schools For the Acquisition, Development of Real Property and Facilities Located at 128th Avenue and Huron Street High School #5

This Intergovernmental Agreement ("Agreement") is made and entered into this _____ day of _____, 2005, by and between the **CITY OF WESTMINSTER**, a Colorado home rule municipality, hereinafter called the "City," and **ADAMS 12 FIVE STAR SCHOOLS**, a Colorado school district, hereinafter called the "School District." The City and School District may be referred to collectively or separately as "Parties" or "Party" or "Jurisdiction."

RECITALS:

WHEREAS, the School District intends to acquire certain unimproved property located at 128th Avenue and Huron Street, City of Westminster, more particularly described in Exhibit A (hereinafter referred to as the "School Property") attached hereto as Exhibit A and as depicted in Exhibit C; and

WHEREAS, the School District will develop a portion of the School Property as the location for High School #5 (hereinafter referred to as the "High School Site"), as more particularly described in Exhibit B and as depicted in Exhibit C; and

WHEREAS, the City desires to acquire certain land adjacent to the High School Site for use as City of Westminster Open Space, as depicted in Exhibit C, and

WHEREAS, the City strongly supports the School District in its efforts to build the high school, as well as provide for development of a future middle school, stadium, and elementary school in the City and desires to assist the School District in the manner provided in this Agreement; and

WHEREAS, the City and the School District support joint use of facilities and the City and the School District desire to work cooperatively with one another to address present and future school needs of the area of the City serviced by the School District and to address related matters; and

WHEREAS, the School District and the City desire to enter into an agreement for the acquisition, joint development and use of the School Property to facilitate the needs of the School District and the City; and

WHEREAS, the City has adopted a Land Dedication for Public School Sites Ordinance (City Code 11-6-8 (F)) that requires developers to provide land or cash-in-lieu of land when developing any new residential units built in the City; and

WHEREAS; The City and the School District have agreed to enter into a separate Intergovernmental Agreement to address the details of collection and disbursement of cash in lieu funds in accordance with the provisions of City Code 11-6-8 (F); and WHEREAS, the people of the state of Colorado have encouraged such cooperation and contracting through the adoption of Article XIV, Section 18(2) of the Colorado Constitution; and

WHEREAS, the purpose of Part 2 of Article 1 of Title 29, C.R.S. is to implement the aforesaid provisions of the Colorado Constitution and authorizes the Parties to enter into intergovernmental agreements; and

WHEREAS, Section 29-1-203(1), C.R.S. provides, inter alia, that governmental units may cooperate with one another to provide any function, service or facility lawfully authorized to each of the contracting units, including sharing of costs;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, as well as the mutual agreements made by the Parties set forth herein, the Parties agree and contract as follows:

AGREEMENT:

SECTION 1. SCHOOL PROPERTY ACQUISITION

1.1 Land for School Facilities.

The School District will acquire approximately 138.62 acres of land through purchase or by eminent domain, hereinafter called the "School Property". The legal description of the School Property is set forth on Exhibit A, attached hereto and made a part hereof.

1.2 High School.

The School District will develop 60.0 acres of the School Property as a High School Site; the legal description of the High School Site is set forth in Exhibit B. (The School District will construct the high school and the related on-site facilities necessary to accommodate approximately 2,000 students in accordance with the School District's educational specifications and programming requirements. The estimated opening of the school will be August 1, 2006. The layout for the High School Site is shown on the map

attached as Exhibit C. The parties recognize that the layout is subject to changes by the School District. As provided in Section 2.1 below, the City will not assert the provisions of C.R.S. § 22-32-124 as grounds for the City to delay or in any way modify construction of the High School Site on the School Property.

1.3 Future School Improvements.

(a) **Middle School.** The School District plans to build a new middle school on the School Property south of the High School Site, as shown in Exhibit C, (hereinafter referred to as the "Middle School Site").

(b) **Stadium and/or other facilities.** The School District plans to build additional facilities on the School Property, as shown on Exhibit C.

SECTION 2. SCHOOL PROPERTY DEVELOPMENT COSTS

2.1 Subdividing and Platting.

The City will assist the School District in obtaining City approval of any required subdividing and platting of the School Property. Any such processes shall be handled administratively, without the necessity of public hearings. The City agrees that the School District may develop and use the School Property for a high school, future middle school and future stadium without further action or review by the City, the City's planning commission, City Council or any other group organized by or reporting to the City, and without the payment of any fees except water and sewer utility fees as provided for in Section 2.2(c) below or any dedication or contribution requirements. A drainage study related to the use of the School Property shall be completed and paid for by the School District.

2.2 Utilities.

(a) **Utilities.** Potable water, reclaimed water and sewer utility lines are located within the Huron Street right of way adjacent to the High School Site and the School Property. The School District shall be solely responsible for any extensions of City utilities onto the School Property to serve the proposed high school, middle school and district stadium. The parties acknowledge that the Utility Study dated August 13, 2003 by Drexel Barrel & Co. concludes that there is adequate water and sewer capacity to serve the High School.

(b) **Reclaimed Water.** The City will make available to the School District a reclaimed water tap and reclaimed water for the irrigation of landscaping of the School Property, at a cost that is 20 percent less than potable water, or which represents rates charged to commercial customers for potable water. The City represents that there is an

existing reclaimed water line located within the Huron Street right-of-way, directly adjacent to the High School Site. City of Westminster shall install a pressure reducing station in the right-of-way at the NE corner of 125th and Huron Street for District use by May 1, 2005.

(c) **Potable Water Fees.** The School District shall pay the City's normal water and sewer tap fees as set forth in this paragraph. The City's current water fee for a six-inch irrigation water tap is \$792,110 and the current tap fee for a three-inch regular water tap is \$192,710.. The City's current tap fee for sewer service is \$117,138 for the High School Site. The School District shall not be required to dedicate any water or water shares to the City. These fees only apply to the High School Site and not other abutting district property. The City shall permit the District to proceed with the connections to the City's water and sanitary sewer system immediately following the District's payment of said fees.

2.3 Street Improvements – High School Site.

The School District will construct the following street improvements as part of the High School Site, to be completed by August 1, 2006. The street extensions will be dedicated to the City at the completion of the project and maintained by the City at its sole cost and expense.

(a) **125th Avenue.** This 34 foot wide residential street shall be built to City standards with 50 foot right-of-way from Huron Street to Delaware Street along the alignment of 125th Avenue, as shown in Exhibit C.

(b) **Delaware Street (north section).** This 34 foot wide residential street shall be built to City standards with 50 foot right-of-way from 125th Avenue north to 128th Avenue, as shown in Exhibit C. If the City acquires the Tanglewood Creek Open Space, the City agrees to reimburse the School District 50 percent of the cost of design and construction of the northern section of Delaware Street, including right-of-way costs.

2.4 Street Improvements – Middle School Site.

The School District will construct the following street improvements as part of the Middle School Site, anticipated to be completed by August 1, 2007. The street extensions will be dedicated to the City at the completion of the project and maintained by the City at its sole cost and expense

(a) **Delaware Street (south section).** This 34 foot wide residential street shall be built to City standards with 50 foot right-of-way from 125th Avenue south to the southern boundary of the School Property, as shown in Exhibit C. If the City acquires the Tanglewood Creek Open Space, the City agrees to pay 50 percent of the cost of design and construction of the southern portion of Delaware Street, including the right-of-way land costs .

(b) **124th Avenue.** The City and District shall work cooperatively to address the issues relating to the 124th Avenue extension. If this 34 foot wide residential street is constructed, it shall be built to City standards with 50 foot right-of-way from Delaware Street to Huron Street along the alignment of 124th Avenue, as shown in Exhibit C. Consideration shall be given to necessary land section trade offs, rights-of-way, additional roadway (Delaware Street south) realignments, development costs, school facilities and/or use of joint use fields for the Middle School Site to accommodate the potential 124th Avenue extension to Delaware Street. The parties shall commence negotiation pertaining to these issues approximately 6 months after execution of this Agreement.

SECTION 3. OFF-SITE STREET IMPROVEMENTS TO BE CONSTRUCTED BY THE CITY

The parties agree that the following improvements to the roadways, underpasses, sidewalks and related facilities adjacent to the School Property are important to the safety of the schools and the community and should be completed in conjunction with the development of the High School Site. The City agrees to construct said improvements at its sole cost. Except as otherwise provided below, such improvements shall be completed prior to the opening of the High School.

(a) **Huron Street – 124th Avenue to 128th Avenue.** The City will construct improvements to Huron Street adjacent to or serving the School Site including sidewalks, acceleration and deceleration lanes and underground utility lines.

(b) **128th Avenue. – Huron Street to Eastern Boundary of High School Site.** The City will construct improvements to 128th Avenue adjacent to or serving the High School Site including sidewalks, acceleration and deceleration lanes, landscaping and underground utility lines.

(c) **Traffic Signals.** The City agrees to provide and install traffic control signals at the intersections of 125th Avenue and Huron Street, and 128th Avenue and Delaware Street. Work will be coordinated with other street improvements on or adjacent to the High School Site. Signal installation shall be completed by August 1, 2006. The traffic control improvements provided by the City shall include the addition of reduced speed safe school zone flashing light systems to be located on Huron street at locations to be agreed to by the parties and at recommended distances from District property.

(d) **Huron Street – 128th Avenue to 150th Avenue.** The City agrees to widen Huron Street to a four-lane road with landscaped median from 128th Avenue to 150th Avenue, beginning in 2004, with the segment between 128th Avenue and 136th Avenue to be completed by no later than August 1, 2006. In conjunction with the widening of Huron Street, The City will also construct pedestrian trail underpasses at Big Dry Creek (130th Avenue) and at Quail Creek (134th Avenue) which shall be completed by August 1, 2006.

(e) Tanglewood Creek Trail. When funds become available, the City will construct the proposed Tanglewood Creek Trail from the Big Dry Creek Trail to 124th Avenue (approximately one mile in length).

SECTION 4. CITY LAND PURCHASE

4.1 Tanglewood Creek Floodplain

The City has the option but not the obligation to purchase from the School District approximately 40 acres of the Tanglewood Creek floodplain area and abutting property, as shown on the map attached as Exhibit C as the Westminster Open Space, within one year after the property is acquired by the School District or January, 2007, whichever is later. The purchase price will be equal to the actual appraised value per acre of the parcels to be acquired by the City as prepared for the School District by Kevin Shay of the Peterson Company and used to determine the price paid by the School District for said parcels. If the City purchases the approximately 40 acre parcel, the City agrees to accept on that parcel the discharge of the detained storm water draining from the detention pond(s) and water quality controls located on adjacent school sites, in accordance with accepted engineering standards.

SECTION 5. BRADUBRN VILLAGE ELEMENTARY SCHOOL SITE

5.1 Dedication of the Elementary School Site in Bradburn Village

The City agrees to convey, at no cost to the School District, an approximately nine acre elementary school site within the Bradburn Village development, to be located south of 117th Avenue at Tennyson Street (the "Elementary School Site"), the precise boundaries to be mutually agreed upon by the parties. The City shall convey the Elementary School Site to the School District upon 30 days prior written notice that the School District is proceeding to build an Elementary School on the site. The City shall cause to be constructed at no cost to the School District, all roads adjacent to the Elementary School Site and shall provide for all utilities required for the Elementary School Site to be stubbed to and serving the site. City reclaimed water may not be available at the site. The School District is responsible for payment of all utility tap and connection fees.

5.2 City Park Adjacent to Bradburn Village Elementary School Site

The City, at no expense to the School District, plans to construct a park, including a playground, on the 10-acre parcel adjacent to the above-referenced Elementary School Site within the Bradburn Village development. The City and the School District shall work together regarding the design of all park improvements and play structures. The City will attempt, depending upon the availability of funds and the construction date of the school, to construct the park concurrently with the school construction so that the park will be available for school use when the school opens.

SECTION 6. JOINT USE OF RECREATIONAL FACILITIES

The School District and the City will negotiate a separate IGA/Master Joint-Use Agreement for the use and maintenance of School District and City fields and recreational facilities within the City including the fields at the new High School Site as well as the other School District improvements located on the School Property. The parties shall commence negotiation on such separate IGA approximately 24 months before the projected completion of the High School and shall use their best efforts to complete such negotiations approximately 6 months before such facilities are available for use.

SECTION 7. CASH-IN-LIEU REVENUE

The City has adopted a Land Dedication for Public School Sites Ordinance to assist the School District in developing new schools. The School District acknowledges that these fees are intended to reimburse the District for the cost of acquiring the High School Site. The City agrees to pay the District the cash in lieu fees collected through the date of execution of this Agreement within thirty days after execution of this Agreement. Future cash in lieu fees will be paid in accordance with the separate Intergovernmental Agreement to be executed between the parties.

SECTION 8. LIABILITY AND INSURANCE

8.1 Liability.

During the term of this Agreement, each Party hereto shall take all steps necessary to extend coverages under its general liability and other insurance coverages to the real property and improvements subject to this Agreement and owned by that Party, and to that Party's activities on its property or pursuant to this Agreement.

Insurance.

The Parties hereto understand and agree that the City, the School District, their officers and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$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 from time-to-time amended, or otherwise available to either Party, their officers or their employees.

SECTION 9. NOTICE

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally delivered or served by facsimile. Notice shall also be sufficient if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when received by the other Party.

City of Westminster
Attention: City Manager
4800 West 92nd Avenue
Westminster, CO 80031
Fax No. 303-430-1809

Adams 12 Five Star Schools
Attention: Robert K. Webber
Assistant Superintendent of Business Services
Educational Support Center
1500 East 128th Avenue
Thornton, CO 80241
Fax No. 720-972-4398

SECTION 10. OTHER AGREEMENT PROVISIONS

10.1 Integration and Amendment

This Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings concerning the subject matter contained herein. Only an instrument in writing signed by the Parties may amend this Agreement. In the event this Agreement conflicts with or is inconsistent in any way with other agreements between the Parties concerning joint use of facilities, the terms of this Agreement shall be controlling.

10.2 Venue

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought only in the County of Adams, State of Colorado.

10.3 Severability

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

10.4 Waiver of Breach

A waiver by any party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

10.5 Non-discrimination

Neither of the Parties hereto shall discriminate on the basis of age, sex, race, religion, ancestry, national origin, physical or mental disability in any policy or practice.

10.6 Compliance with Law

The work and services to be performed hereunder shall be done in compliance with all applicable federal, state and local laws, ordinances, rules and regulations.

10.7. Recording

The School District and the City may record this Agreement, and both Parties shall receive a copy of the recorded Agreement in such event.

10.8 No Third Party Beneficiaries

This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.

10.9 Assignment

This Agreement shall not be assigned by either party without the prior written consent of the other party.

10.10 Interpretation

The Parties represent that this Agreement is the result of negotiations between the parties. In the event of any legal action to interpret any provision of this Agreement, the Agreement shall not be construed in favor of or against the interests of either Party as a result of its participation in drafting the document, and both Parties shall be deemed to have contributed equally to the language contained herein.

10.11 Attorney/Expert Fees

In the event legal action is necessary to enforce any provisions of this Agreement, or to recover damages for the breach hereof, the prevailing party shall recover from the defaulting party all of its costs and reasonable attorney and expert fees.

10.12 Default

Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered, or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance or damages or both.

10.13 TABOR

The City and the School District intend that this Agreement comply with Colorado law and, in particular, with the provisions of Article X, Section 20, of the Constitution of the State of Colorado. To the extent funds have not been irrevocably pledged for any obligation in this Agreement, such obligation shall be contingent on and subject to prior appropriation of funds by the governing body of the obligated party.

10.14 Execution

This Agreement shall not be binding upon any Party hereto unless and until the governing entities of each Party have formally approved this Agreement as required by law and caused the Agreement to be signed in a manner and by authorized persons consistent with applicable statute, policy, ordinance or resolution.

10.15 Additional Documents or Action

The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

10.16 Execution in Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City and the School District have caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed this _____ day of _____, 2005.

ADAMS 12 FIVE STAR SCHOOLS

By: Robert K. Webber
Robert K. Webber
Assistant Superintendent of Business Services

APPROVED AS TO FORM:

Linnea M. Simons
Linnea M. Simons
Caplan and Earnest, LLC
General Counsel for Adams 12 Five Star Schools

CITY OF WESTMINSTER, COLORADO

ATTEST:

Michele Kelley, City Clerk By: Brent McFall, City Manager

APPROVED AS TO FORM:

Martin McCullough, City Attorney

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE SPECIAL CITY COUNCIL MEETING
HELD ON MONDAY, JUNE 18, 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, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

IGA WITH ADAMS 12 FIVE STAR SCHOOLS RE PROPERTY AT 128TH AVENUE & HURON STREET

Councillor Dittman moved, seconded by Kaiser, to authorize the City Manager to execute an Intergovernmental Agreement between the City and Adams 12 Five Star Schools for acquisition and development of real property and facilities located at 128th Avenue and Huron Street, in substantially the form distributed with the agenda packet, and to authorize the City Manager to execute a Purchase and Sale agreement with Adams 12 Five Star Schools to purchase up to 29.125 acres for open space and 2.167 acres for right-of-way at the southwest corner of I-25 and 128th Avenue for a total of 31.292 acres in substantially the same form attached to the Intergovernmental Agreement.

Following comments from Mr. McFall, Mike Paskewicz, Superintendent of Adams 12 Five Star Schools, and Mayor McNally, the Council voted unanimously to approve the motion.

ADJOURNMENT

It was moved by Councillor Major and seconded by Councillor Price to adjourn. The vote was unanimous and the meeting adjourned at 7:05 p.m.

ATTEST:

Mayor

City Clerk

Summary of Proceedings

Summary of proceedings of the special meeting of the Westminster City Council held Monday, June 18, 2007. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

Pursuant to the call for this special meeting, Council approved an Intergovernmental Agreement between the City of Westminster and Adams 12 Five Star Schools for the acquisition and development of real property and facilities located at 128th Avenue and Huron Street

The meeting adjourned at 7:05 p.m.

By Order of the Westminster City Council

Linda Yeager, City Clerk

Published in the Westminster Window on June 28, 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	<u>4,920,000</u>
Total	<u>\$6,670,116</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

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

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 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	<u>3,592</u>
Total	<u>\$2,629,153</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

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

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 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 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.

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 angle 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.

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 OF THE 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.