



## CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
  - A. City Manager's Report
5. City Council Comments
6. Presentations
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. Short-Term Water Lease Agreement with Hyland Hills
  - B. 2012 Asphalt Pavement Rehabilitation Project Change Order
  - C. Pressure Zone 12 Improvements Project Engineering Contract
  - D. Urban Pacific Multi-Housing LLC and Pacific West Communities Inc. Purchase and Sale Agreement
  - E. Second Reading of Councillor's Bill No. 21 re Amend WMC 16-5-36 re United Power Electric Franchise
  - F. Second Reading of Councillor's Bill No. 22 re Concession Agreement with Top One, Inc.
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Councillor's Bill No. 23 re FY2011 Carryover Appropriation into FY2012
  - B. Councillor's Bill No. 24 re Amend Various Sections of Titles I through IV of the Westminster Municipal Code
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
  - A. City Council
  - B. Executive Session – Discuss and provide direction on the proposed acquisition of property for the City's 87th and Wadsworth lift station, pursuant to WMC section 1-11-3 (C)(2), (7) and (8) and CRS 24-6-402 (4)(a), (b) and (e).
13. Adjournment

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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.



# WESTMINSTER Strategic Plan

2011-2016  
Goals and Objectives

## FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

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



## STRONG, BALANCED LOCAL ECONOMY

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



Use

## SAFE AND SECURE COMMUNITY

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



## VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

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



## BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

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



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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, JUNE 25, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of June 11, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that, as the media was publicizing, Governor Hickenlooper had banned open burning and fireworks statewide due to extremely dry conditions. All personal fireworks were illegal throughout the state and the Sheriff's of each county had the authority to allow or ban public firework displays. Law enforcement officers would write citations for any violations. Dry conditions in the mountains were visibly evident from smoke in the air, and the City's open spaces were equally dry. Mr. McFall implored citizens not to use fireworks at all to celebrate Independence Day this year. He urged everyone to attend the City's public fireworks display, known to be one of its premier annual events, at City Park. Food vendors would be set up and open for business at 6 p.m., a concert with Boogieliicious would start at 7 p.m., and the fireworks display would start at 9:15 p.m. Parking at City Park was limited, and shuttles would transport people to and from the celebration from various locations in the community. He encouraged everyone to have a safe and enjoyable July 4<sup>th</sup> holiday.

Following tonight's Council meeting, the Council would hold a post-meeting briefing to discuss proposed carryover fund allocations. The post-meeting was open to the public.

CITY COUNCIL COMMENTS

Councillor Lindsey reported on the Colorado Municipal League (CML) Annual Conference, which had been attended by Mayor McNally, Councillor Briggs, and her. A lot of seminars were held daily on a variety of topics of interest or concern to Colorado municipalities, and the conference offered an opportunity to meet with elected officials from throughout the state to discuss mutual needs and community problems and successes. She congratulated Mayor McNally who had been re-elected to the CML Board of Directors with the highest number of votes cast in Westminster's population category. The Mayor also had been presented with a plaque in recognition of completing 100 hours of training from CML, a feat few had achieved.

Councillor Briggs added that Diane Allen, a Westminster employee who also was an elected official in Lakewood, had served as President of the CML Board this past year and had done a terrific job. Additionally, he reported that a group of Councillors had visited the City's farm property in Strasburg to observe the water and sewer operations taking place there. It was worthwhile to see how the whole operation worked together and to watch Mayor McNally operate a tractor. Saturday evening Council had the opportunity to tour the new clubhouse at Hyland Hills Golf Course. The new, modern facility was a great addition to Hyland Hills' operations and the community.

In acknowledging the tragic death of a Denver Police Officer on June 24, Councillor Major recognized Westminster's Police and Fire Officers in appreciation of their daily commitment to keep the City and its residents safe.

Mayor McNally reported that Diane Allen's service on the CML Board during the past year had been marked with representing CML in some delicate situations throughout the state. The Mayor appreciated everyone on the City Staff who had made certain that Diane could fulfill her responsibilities. Diane had used her general leave to participate when she was needed during work hours, but she could not have served without Staff's cooperation. The Mayor also thanked Ms. Allen's sons for sharing their mom with CML and cities and towns throughout the state.

### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the May 2012 Financial Report; based on the City Manager's recommendation, find that the public interest would be best served by a negotiated contract with a single vendor, Wittman Enterprises, LLC, for the billing and collection service accounts associated with the delivery of emergency medical and/or ambulance services, authorize the City Manager to execute the contract at 4.9% of collections for three 1-year terms, commencing July 10, 2012 and ending July 9, 2015, and automatic renewal for two additional 1-year terms, unless either party terminated the Agreement; authorize the City Manager to execute a \$130,328 contract with AMEC Environmental & Infrastructure, Inc. for digital data conversion services; award the bid to replace one cab with chassis truck in the Utilities Division to Sill-TerHar Motors, Inc. in the amount of \$39,526, authorize the purchase of a Ford F550 based on the 2012 State of Colorado bid and the truck body, air compressor and shelving to O.J. Watson Co., Inc. in the amount of \$41,929 based on the 2012 State of Colorado, Colorado Department of Transportation Class 6 bid, and based on the City Manager's recommendation, find that the public interest would best be served by accepting the sole source proposal from O.J. Watson Co., Inc. in the amount of \$14,571 to purchase and install a Stellar model 5521-2H hydraulic crane; based on the City Manager's recommendation, find that the public interest would be best served by a negotiated contract with a single vendor, BC Services, Inc., for collection services for delinquent accounts associated with the delivery of emergency medical and/or ambulance services, authorize the City Manager to execute the contract in an amount established and agreed upon in the Agreement with the term of this contract being for three 1-year periods, commencing July 10, 2012 and ending July 9, 2015, and automatic renewal for two additional 1-year periods unless either party terminated the Agreement; authorize the City Manager to execute a \$107,356 contract with the low bidder, Brannan Construction Company, to complete a water distribution improvement project, and authorize a 10% contingency of \$10,735 for a total project budget of \$118,091; based upon the City Manager's recommendation, find that the public interest would best be served by accepting the sole bid from Quality Linings and Painting, Inc., authorize the City Manager to execute a \$198,985 contract for the 2012 Bridge Rail and Fence Repainting Project with the sole bidder, Quality Linings and Painting Inc., and authorize a contingency of \$5,000 for a total project budget of \$203,985; authorize the City Manager to enter into a contract amendment, in substantially the same form as distributed in the agenda packet, with Brothers Redevelopment Inc. to continue administering the Minor Home Repair Program; and final passage on second reading of Councillor's Bill No. 17 appropriating monies to be received from the Colorado Department of Transportation for the Sheridan Boulevard Fiber Optic Federal grant.

Councillors removed no items from the Consent Agenda for individual consideration. It was moved by Councillor Major and seconded by Councillor Atchison to approve the Consent Agenda as presented. The motion carried with all Council members voting affirmatively.

### PUBLIC HEARING ON LITTLE DRY CREEK PROPERTY CLUP AMENDMENT, ANNEXATION, ZONING

At 7:10 p.m., the Mayor opened a public hearing to consider the Little Dry Creek Property Comprehensive Land Use (CLUP) amendment, annexation, and zoning. Jana Easley, Principal Planner, entered the agenda memorandum and its attachments into the record, noting that all aspects of required public notice had been satisfied. The property contained 44.197 acres and was located on both sides of the Burlington Northern Santa Fe (BNSF) rail line, between Lowell and Federal Boulevards on the south side and between Federal Boulevard and Clay Street on the north side. Owners of the property were: Westminster Housing Authority, 6.76 acres; the City, 24.56 acres; a portion of BNSF Railroad right-of-way; Colorado Department of Transportation right-of-way on Federal Boulevard; and Adams County rights-of-way on Lowell Boulevard and 68<sup>th</sup> and 69<sup>th</sup> Avenues. Pursuant to a June

16, 2010, Intergovernmental Agreement between the City and Adams County, six parcels that previously had been owned by Adams County for regional detention purposes had to be annexed to the City. Further, an agreement with the Regional Transportation District (RTD) specified that the area had to be annexed to the City for accommodation of a regional drainage and storm water detention/retention facility that would benefit the Westminster Station, the first Northwest Commuter Rail station in Westminster slated to open in 2016. Background information demonstrated that every aspect of this proposal satisfied applicable criteria in the Westminster Municipal Code and the Colorado Revised Statutes for the CLUP amendment, zoning, and annexation of the property.

Mr. McFall responded to questions from Council. The extension of this proposal along the BNSF right-of-way was to address two issues: enhancement of law enforcement capability to deal with existing vagrancy issues along the railroad right-of-way and the Little Dry Creek; and the ability to collect use tax on construction materials. The property involved in this proposal included only public properties. Abutting property of private landowners were eligible to petition the City for annexation if they so desired.

Councillor Major was a Council liaison to the Planning Commission and had attended the meeting where this proposal was considered. Residents at that meeting were very thankful for Staff's work in presenting the proposal to the neighborhood. The absence of any neighborhood protest now evidenced the neighborhood's satisfaction with the proposal, and Councillor Major voiced kudos to Staff.

Hearing no further questions or comments from Council, the Mayor opened the hearing for public comment. There was none.

The Planning Commission hearing on this matter had been held on June 20 and the Commission had voted unanimously to recommend approval.

There were no additional comments. The Mayor closed the hearing at 7:20 p.m.

#### COUNCILLOR'S BILL NO. 18 DESIGNATING THE LITTLE DRY CREEK PROPERTY CLUP

It was moved by Councillor Major and seconded by Councillor Lindsey to pass on first reading Councillor's Bill No. 18 amending the Comprehensive Land Use Plan for the Little Dry Creek property by designating the property as City-Owned Open Space based on 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. On roll call vote, the motion passed unanimously.

#### RESOLUTION NO. 17 MAKING ANNEXATION FINDINGS OF FACT AND CONCLUSION

Upon a motion by Councillor Major, seconded by Councillor Lindsey, the Council voted unanimously on roll call vote to pass Resolution No. 17 setting forth the findings of fact and conclusion regarding the proposed annexation of the Little Dry Creek Property.

#### COUNCILLOR'S BILL NO. 19 ANNEXING THE LITTLE DRY CREEK PROPERTY

It was moved by Councillor Major and seconded by Councillor Lindsey to pass on first reading Councillor's Bill No. 19 annexing the Little Dry Creek property into the City. At roll call, the motion passed unanimously.

#### COUNCILLOR'S BILL NO. 20 ZONING THE LITTLE DRY CREEK PROPERTY

Councillor Major moved to pass on first reading Councillor's Bill No. 20 establishing zoning of Open (O-1) for the Little Dry Creek Property. Councillor Lindsey seconded the motion, and it carried unanimously on roll call vote.

PUBLIC HEARING TO AMEND THE UNITED POWER ELECTRIC FRANCHISE

At 7:23 p.m. Mayor McNally opened a public hearing to consider amending Section 16-5-36 of the Westminster Municipal Code concerning the United Power Electric Franchise. Mr. McFall advised that the City had had an electric power franchise with United Power, Inc. to serve a small portion of the City in the extreme northeast quadrant since 1993. The current franchise had been in effect since 2006, and it would expire on December 31, 2026. The United Power 1 ½% undergrounding fund within the franchise agreement contained approximately \$30,000, but the City did not foresee any undergrounding needs in the franchise area since development of that area had occurred subsequent to the code requirement mandating undergrounding of utility lines. The franchise language appeared to limit the use of the undergrounding fund to conversion of overhead facilities and, as no conversions were needed or anticipated, the City staff and United Power desired to broaden the use of those funds for other capital projects within the franchise area, specifically the installation of LED street lights. The City Charter required that any amendment to the franchise, which was incorporated in the Westminster Municipal Code, must be adopted by ordinance of Council after a public hearing.

The City Council had no questions. When public comment was invited, no one wished to speak. Mayor McNally closed the public hearing at 7:25 p.m.

COUNCILLOR'S BILL NO. 21 AMENDING UNITED POWER ELECTRIC FRANCHISE

It was moved by Mayor Pro Tem Winter and seconded by Councillor Kaiser to pass on first reading Councillor's Bill No. 21 amending the Westminster Municipal Code Section 16-5-36 of the United Power Electric Franchise to allow the undergrounding fund monies to be used for other mutually agreeable capital projects within the franchise area. At roll call, the motion carried unanimously.

RESOLUTION NO. 18 AUTHORIZING IGA WITH ADAMS COUNTY TO RENEW HOME PROGRAM

It was moved by Councillor Atchison, seconded by Councilor Major, to adopt Resolution No. 18 authorizing the Mayor to sign an Intergovernmental Agreement, in substantially the same form as the agreement distributed in the agenda packet, with Adams County to renew the City's participation in the HOME Investment Partnerships Program Consortium for three years. The motion passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 22 APPROVING ICE CENTRE RESTAURANT CONCESSION AGREEMENT

Councillor Briggs moved to pass on first reading Councillor's Bill No. 22 approving a concession agreement between the City of Westminster, Hyland Hills Park and Recreation District and Top One, Inc., doing business as Benders Bar and Grill, to operate a restaurant in the Ice Centre at the Promenade. The motion was seconded by Councillor Major and passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 16 AMENDING TITLE IV, W.M.C., - QUALIFIED HOSPITAL ORGANIZATION

It was moved by Councillor Major, seconded by Councillor Briggs, to pass Councillor's Bill No. 16 on second reading amending Title IV of the Westminster Municipal Code concerning qualified hospital organizations. The motion carried by a 6:1 margin with Mayor Pro Tem Winter casting the dissenting vote for reasons stated.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Mayor Pro Tem Winter and seconded by Councillor Major to adjourn. The motion carried and the meeting adjourned at 7:27 p.m.

ATTEST:

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

\_\_\_\_\_, Mayor



## Agenda Item 8 A

### Agenda Memorandum

City Council Meeting  
July 9, 2012



**SUBJECT:** Short-Term Water Lease Agreement with Hyland Hills

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

### Recommended City Council Action

Authorize the City Manager to enter into a 2012 water lease for Hyland Hills Park and Recreation District in a total amount not to exceed 200 acre-feet.

### Summary Statement

- The City of Westminster and Hyland Hills Park and Recreation District have a long-standing working relationship that enhances the recreation opportunities for their respective residents.
- One specific item on which the City and Hyland Hills have cooperated in the past is water delivery to the Golf Courses at Hyland Hills.
- Despite the low snowpack this past winter, Westminster's account in Standley Lake is essentially full. This means there is water surplus to the City's needs for the remainder of the year.
- Per the lease agreement, the City will deliver up to 200 acre-feet of water to Hyland Hills for irrigation of their golf course.
- The term of the lease is for the 2012 irrigation season and water will be delivered to the Golf Courses at Hyland Hills via the Farmers' High Line Canal.
- The lease rate is \$520 per acre-foot which is the raw water rate charged to the City's parks.
- The Hyland Hills Board of Directors approved the lease agreement at their June 20, 2012 meeting.
- This lease will be subject to the provisions of the City Charter. The City will benefit financially from reimbursement for the leased water.

**Expenditure Required:** \$0

**Source of Funds:** N/A



**Policy Issue**

Should the City lease up to 200 acre-feet of water to Hyland Hills in 2012 for \$520 per acre-foot?

**Alternative**

City Council could decline to lease water to Hyland Hills this year. This alternative is not recommended. By leasing this water, the City will help Hyland Hills maintain one of the City's most attractive golf courses through a dry summer, foster our relationship with Hyland Hills and provide a desirable recreation opportunity for our citizens.

**Background Information**

The City of Westminster and Hyland Hills Park and Recreation District have a history of working together to create and maintain premier recreation facilities for their respective citizens. This partnership has included intergovernmental agreements, cost-sharing for facilities and—to the extent practical—water delivery arrangements. The City values this partnership and the benefits that the residents receive by being given access to Hyland Hills' facilities.

Due to below average water supply conditions, Hyland Hills has requested a temporary water lease agreement with the City for irrigation of the Golf Courses at Hyland Hills. With a desire to work with Hyland Hills for the benefit of both parties' residents, Staff confirmed the ability of the City to lease up to 200 acre-feet of water this year.

This short-term water lease will be subject to the following conditions:

- The term will be for the 2012 irrigation season.
- The lease rate will be \$520 per acre-foot to cover the costs of operation.
- The water will be delivered to Hyland Hills by the Farmers' High Line Canal.
- The City will be able to limit deliveries to prevent a water shortage within the City, as per City Charter Section 14.3.
- The total volume leased will not exceed 200 acre-feet.

Although dry conditions were prevalent this past winter and spring, and the water supply outlook is currently below average, the City's storage account in Standley Lake is essentially full. Due to the seniority of Westminster's water rights on Clear Creek, the City continues to receive water even during a below-average runoff; and currently, the City has excess water available for future growth. For these reasons, the City is able to lease water to Hyland Hills in 2012. At the June 20, 2012, Hyland Hills Board of Directors meeting, the Board approved the lease agreement.

As Council is aware, all water leasing programs are created and offered with the ultimate intention of supporting Council's goal of a "Financially Sustainable City Government Providing Exceptional Services" by securing and developing a long-term water supply. This particular lease also supports Council's goals of a "Beautiful and Environmentally Sensitive City" by maintaining greenspace and by supporting community events.

Respectfully submitted,

J. Brent McFall  
City Manager

## **Water Lease Agreement**

This Water Lease Agreement (“Water Lease Agreement”) is entered into this 20th day of June, 2012 by and between the City of Westminster, a Colorado Home Rule Municipality (“Westminster”) and Hyland Hills Park and Recreation District, (“Lessee”), an irrigator of lands under the Farmers’ High Line Canal, whose address is 1800 West 89<sup>th</sup> Avenue, Federal Heights, Colorado 80260. Westminster and Lessee are also hereinafter referred to as the “parties” or separately as a “party”.

### **1. Recitals.**

1.1 Westminster owns and operates a municipal water supply system and owns various waters that are or will be diverted and stored in conjunction with that system. Westminster has determined that some of its water rights are in excess of its current needs and hence desires to lease certain water delivered via the Farmers’ High Line Canal to Lessee for irrigation on Lessee’s lands during the 2012 irrigation season on the terms and conditions expressed herein.

1.2 Lessee owns and operates the Golf Courses at Hyland Hills, located at 9650 Sheridan Avenue, Westminster, Colorado. Lessee desires to lease from Westminster certain water delivered via the Farmers’ High Line Canal for irrigation of the Golf Courses at Hyland Hills during the 2012 irrigation season pursuant to the terms and conditions set forth herein.

1.3 Pursuant to Section 14.3 of the Westminster City Charter, the City is authorized to lease water subject to subsections (a) and (b) of said Section 14.3. In the judgment of the City, the terms of this Water Lease, and the payments generated thereby, satisfy the requirements of Section 14.3 (a) and (b) of the Westminster City Charter.

2. **Water Lease.** Westminster hereby leases to Lessee certain of Westminster’s water subject to the following terms and conditions:

2.1 **Term of Lease.** The term of this Water Lease Agreement shall be the 2012 irrigation season. Lessee agrees that Lessee shall order, receive, and use all of the leased water during the 2012 irrigation season, and in any event, no later than November 10, 2012.

2.2 **Amount of Water Leased.** Westminster agrees to make available up to a total of 200 acre feet for Lessee during the term of this Water Lease Agreement.

2.3 Delivery. The leased water shall be made available by Westminster in the Farmers' High Line Canal at or above its crossing of City Center Drive ("point of delivery"). Lessee shall take possession of the leased water at the point of delivery.

Lessee will provide notice to Westminster of the desired amount of water for delivery in the coming month at least three (3) days before the beginning of deliveries. The Lessee and Westminster will work together in good faith to coordinate mutually agreeable monthly delivery amounts consistent with an overall irrigation season delivery of up to 200 acre feet. Best efforts will be used by both parties to maintain a constant flow rate for deliveries during the month and the maximum flow rate shall not exceed 1.0 cfs, unless mutually agreed by both parties. Notwithstanding the notice provision set forth above, the parties may mutually agree to revisions to the monthly delivery schedule and rate of flow.

2.4 Source and Quality of Water. The parties acknowledge that the water delivered pursuant to this Water Lease Agreement will be from any source owned by Westminster and legally available to it. Westminster makes no representation or warranty as to the quality of the water leased hereunder.

2.5 Use of Water. Lessee's use of this water shall be for irrigation of the Golf Courses at Hyland Hills lands.

2.6 Lease Payment. Lessee shall pay to Westminster the sum of five hundred twenty dollars (\$520.00) per acre foot leased pursuant to this Water Lease Agreement. In consideration for the water delivered hereunder, Lessee agrees to make a payment to Westminster of up to \$104,000.00 on or before October 31, 2012. Any late payment shall accrue interest at the rate of ten percent (10%) per annum, simple interest. Payment shall be by cash, cashier's check or check, made out to the City of Westminster, and hand-delivered or mailed to:

City of Westminster  
Public Works & Utilities  
Att'n: Paula Johnson  
4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031

In the event the Lease payments are not received by November 30, 2012, Westminster shall be entitled to recover its costs, including attorney's fees, if necessary to recover said Lease payments due.

2.7 The parties hereto acknowledge and agree that Lessee shall be credited with a partial payment of \$16,500.00 consisting of monies previously paid by Lessee to Westminster for leased but not used water.

3. Other.

3.1 In accordance with the requirements of Section 14.3 (a) of the Westminster City Charter, Westminster's obligations to deliver water under this Water Lease Agreement may be curtailed under the following circumstances: If, in Westminster's sole discretion, Westminster adopts mandatory citywide water use restrictions as a result of drought conditions, dam failure, or other catastrophic circumstance limiting Westminster's ability to satisfy the domestic water supply needs of its citizens, Westminster may curtail daily deliveries to Lessee under this lease by an amount consistent with said mandatory citywide water use restrictions. Once any such mandatory citywide water use restrictions expire or are otherwise lifted, Westminster shall immediately thereafter resume full daily deliveries under this Water Lease Agreement.

3.2 No party to this Agreement shall be liable or responsible for any delay or failure to perform under this Agreement due to conditions or events of irresistible force. Irresistible force shall mean any delay or failure of a party to perform its obligations under this agreement caused by events beyond that party's reasonable control, including, without limitation, acts of God, terrorism, explosion, floods, vandalism, earthquakes and tornadoes.

3.3 Lessee shall indemnify and hold harmless Westminster for all claims, causes of action and damages which arise or result from: (1) the conveyance, transport or running of the leased water through any ditch, pipeline, or similar conveyance structure and their appurtenances from and including the point of delivery to the place or irrigation on Lessee's lands, and (2) Lessee's application of the leased water on and to Lessee's lands. However, nothing herein shall be construed to limit or waive the rights and immunities granted to Lessee in accordance with the Colorado Governmental Immunity Act, C.R.S. § 24-10-101. et. seq.

3.4 This Agreement and the rights and obligations recited in it shall be binding upon and inure to the benefit of the Lessee and the City and their heirs, successors and assigns. Lessee may not assign its rights or duties recited in this Agreement without the prior written consent of Westminster. Such consent may be withheld at Westminster's sole discretion.

3.5 The water delivered pursuant to this Water Lease Agreement is provided strictly on a lease basis. Lessee shall not have any right of ownership of the water delivered hereunder.

3.6 This Water Lease Agreement represents the entire agreement of the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the leasing of water contemplated herein.

3.7 This lease may only be amended in writing by the mutual agreement of the undersigned parties, or their successors and assigns.

3.8 All notices required to be given or made under this Water Lease Agreement shall be in writing and sent by United States mail or hand delivery to the following addresses:

To Westminster:           City of Westminster  
                                  Director of Public Works and Utilities  
                                  4800 West 92<sup>nd</sup> Avenue  
                                  Westminster, Colorado 80031  
                                  Facsimile: (303) 706-3927

To Lessee:                 Hyland Hills Park and Recreation District  
                                  Executive Director  
                                  1800 West 89<sup>th</sup> Avenue  
                                  Federal Heights, Colorado 80260

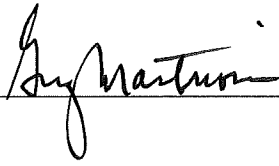
All notices will be deemed effective one (1) day after hand delivery, or if mailed, upon receipt. Either party, by written notice, may change the address to which future notices, billings, or payments shall be sent.

For purposes of this Water Lease Agreement, the parties' respective contact persons for coordination of deliveries and daily operations shall be Josh Nims for Westminster and Kreg Renzelman for Lessee.

3.9 Each of the persons executing this lease on behalf of the parties hereto, covenants and warrants that he or she is fully authorized to execute this lease on behalf of the party he or she represents.

3.10 This agreement may be executed in duplicate original counterparts.

**LESSEE**

  
\_\_\_\_\_

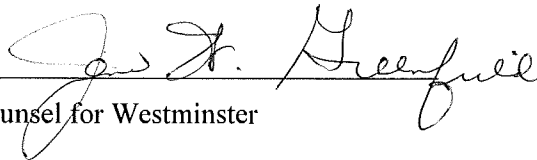
**ATTEST:**

**CITY OF WESTMINSTER**

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

\_\_\_\_\_  
J. Brent McFall  
City Manager  
City of Westminster

**APPROVED AS TO LEGAL FORM:**

By   
Counsel for Westminster



Agenda Memorandum

City Council Meeting  
July 9, 2012



**SUBJECT:** 2012 Asphalt Pavement Rehabilitation Project Change Order

**Prepared By:** Dave Cantu, Street Operations Division Manager  
Phil Jones, Utilities Operations Division Manager

**Recommended City Council Action**

Authorize the City Manager to execute a change order with Asphalt Specialties Company, Inc., in the amount of \$160,000 for additional pavement resurfacing and utility trench patching, to be completed in 2012.

**Summary Statement**

- On April 23, 2012, Council awarded a contract worth \$583,467 for pavement resurfacing and water main replacement trench patching, to Asphalt Specialties Company, Inc.
- Within the original paving contract, the Utilities Field Operations Division included \$197,743 for water line replacement trench patching. Funds are budgeted for water main replacement trench patching in the Utilities Division operations budget. Due to additional street patching requirements for water line replacements this year, the original funding that was approved will not be adequate for projects anticipated to be completed in 2012.
- The increase is due to additional area and pavement thicknesses that were required to adequately replace the pavement in the disturbed areas of work that were not initially anticipated. An additional \$110,000 is being requested to cover these unanticipated charges through this Change Order.
- Also included in this change order are \$50,000 in funds to resurface the intersection of Sheridan Boulevard and West 92<sup>nd</sup> Avenue. This area was originally slated to receive a micro-surface sealcoat in 2012. With the planned Sheridan Boulevard bridge construction scheduled to begin in the fall, staff is recommending the best course of action is to delay the sealcoat until the bridge construction is complete and utilize these funds to eliminate the rutting, potholes and other pavement distresses on Sheridan Boulevard and West 92<sup>nd</sup> Avenue.
- Council approval is required on the change order since this single change order is greater than 5% and the total exceeds \$50,000 per the City's purchasing requirements.
- Adequate funds are budgeted and available for this expense.

**Expenditure Required:** \$ 160,000

**Source of Funds:** General Fund – Street Operations Division Operating Budget - \$50,000  
Utility Fund – Utilities Field Operations Division Budget - \$110,000

## **Policy Issue**

Should Council authorize a Change Order to Asphalt Specialties Company, Inc. for the additional \$160,000 for pavement resurfacing and water line trench repair work?

## **Alternatives**

1. An alternative to the utility trench patching is to curtail in-house water main replacement activities until other methods or funds to restore the pavement become available. This alternative is not recommended, as the water main replacement activities are an essential part of Council's goal of providing well maintained city infrastructure. These replacement activities have resulted in substantial reduction in water main breaks.
2. An alternative to resurfacing the Sheridan Boulevard and West 92<sup>nd</sup> Avenue intersection is to not resurface the pavement at this time and wait until the Sheridan Boulevard and US 36 bridge construction is complete. This alternative is not recommended due to the higher traffic volumes that are expected throughout the US 36 managed lanes project. These high traffic volumes will result in further pavement deterioration and higher repair costs at a later date.

## **Background Information**

The Pavement Rehabilitation Project includes water main replacement trench patching at various planned locations throughout the city. The Utilities Field Operations Division budgets for this cost in their operating budget each year.

The water main replacement trench patching was based on an 8-foot width and 5-inch pavement thickness. The original quantity of pavement to be replaced was 9,800 square yards. Due to the level of deterioration of some of the pavement that was encountered, additional trench width and increased pavement thickness will be required in order to restore the impacted streets to an appropriate condition. Once a replacement water line has been installed, the City must restore the pavement to at least a 'fair' condition. The extent of the additional pavement restoration was not apparent until the actual pavement restorations were reviewed and the actual quantities totaled.

The additional funding of \$110,000 will add 5,327 square yards, allowing for patching of the balance of the water line replacement program to be completed at a 10-foot width. Funds for this additional work are available in the 2012 Utilities Operations Budget.

The City's computerized pavement management program identified Sheridan Boulevard from West 88<sup>th</sup> Place to West 92<sup>nd</sup> Avenue as a high priority for 2012. This section of roadway was slated to receive a micro-surface sealcoat but it was determined that a portion of this road will be affected by the Sheridan Boulevard over US 36 bridge construction project in the fall of 2012. Staff is recommending the best course of action at this time is to postpone the planned sealcoat and use these funds to grind, patch and overlay the intersection of Sheridan Boulevard and West 92<sup>nd</sup> Avenue, in order to eliminate significant rutting and other pavement distresses that have occurred in this intersection. Recommended repair now should prevent a complete removal and replacement of asphalt in the future; this work to be completed prior to commencement of the Sheridan bridge construction. Once the bridge project is complete, the section of Sheridan Boulevard from West 92<sup>nd</sup> Avenue south to the terminus of pavement work associated with the bridge construction will be reevaluated and scheduled for future pavement rehabilitation.



The proposed council action supports City Council's goals of Financially Sustainable City Government as well as Vibrant Neighborhoods and Commercial Areas by providing well maintained city infrastructure through timely resurfacing and reconstruction of roadways.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

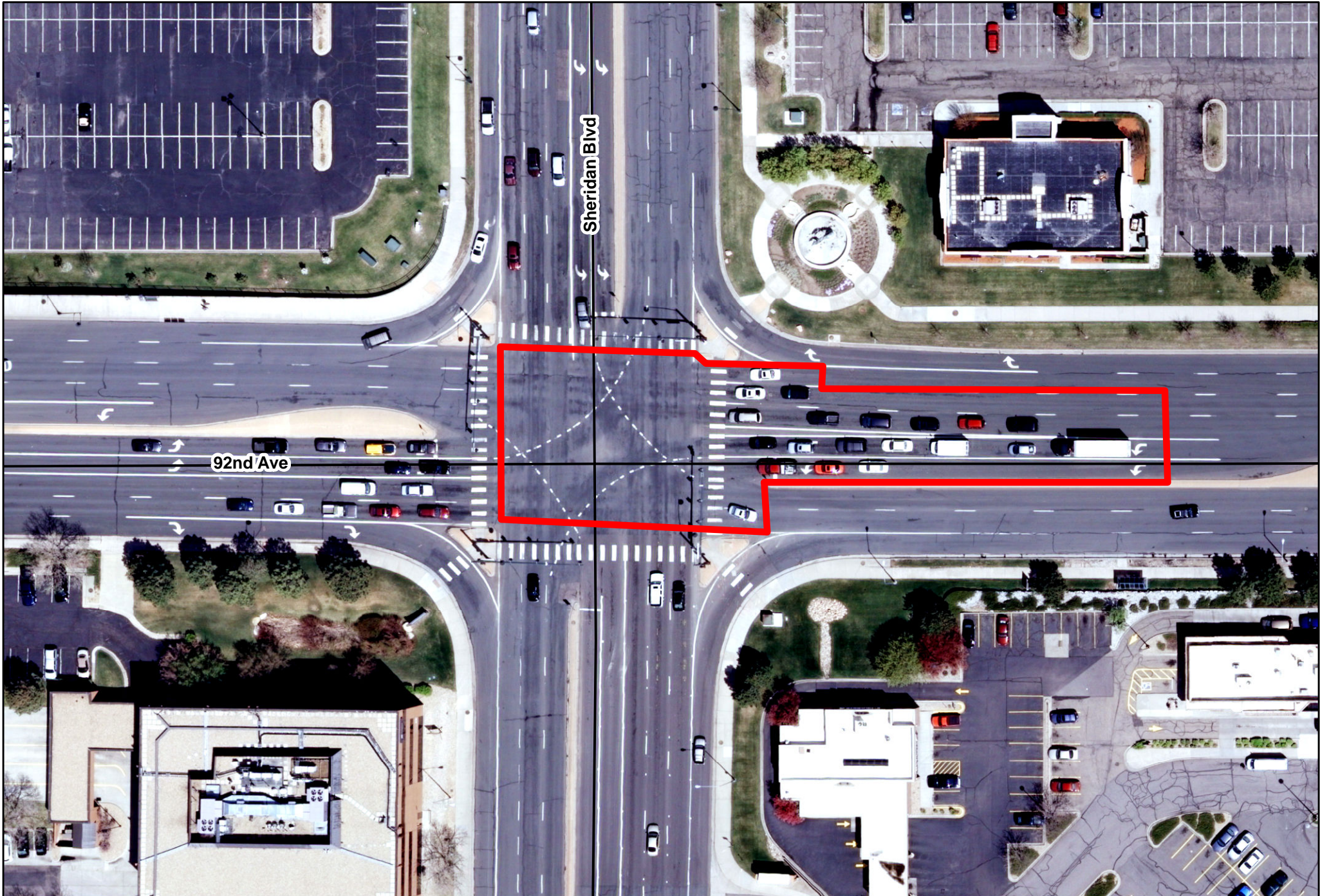
- Location List
- Map

## 2012 Utilities Water Line Replacement List

Location	From - To
101st Avenue	Yates Street east to Wolff Street
101st Place	Wolff Street south / east to 100th Court
112th Place	Eaton Street east to Benton Court
123rd Avenue	East of Huron Street / in Apartments south of 123rd Avenue
Benton Court	Depew Way north to cul-de-sac
Benton Court-cul de sac	112th Place south to cul-de-sac
Chace Court	112th Place south to cul-de-sac
Chase Way	11352 Benton Court north / west to 11477 Depew Way
Depew Court	112th Place south to cul-de-sac
Depew Way	115th Avenue south / east to 11312 Benton Court
Wolff Street	101st Avenue north to 102nd Avenue (include 60' cul-de-sac)



92nd Avenue and Sheridan Boulevard  
Intersection Rutting Area







Agenda Memorandum

City Council Meeting  
July 9, 2012



**SUBJECT:** Pressure Zone 12 Improvements Project Engineering Contract

**Prepared By:** Dan Strietelmeier, Senior Engineer, Utilities Planning and Engineering  
Steve Grooters, Senior Projects Engineer, Utilities Planning and Engineering

**Recommended City Council Action**

Based on the recommendation of the City Manager, find that public interest will best be served by authorizing the City Manager to execute a contract for engineering design services with Burns and McDonnell Engineering Company, Inc. in the amount of \$85,501 for the Pressure Zone 12 Improvements Project and authorize a 10 percent contingency of \$8,550 for a total project budget of \$94,051.

**Summary Statement**

- The area of the City generally north of 112<sup>th</sup> Ave and west of Sheridan Boulevard (see attached map) experiences high water distribution system pressures and these high pressures coupled with corrosive soils have caused numerous waterline breaks over the years.
- This project includes design and construction of a new Pressure Reducing Valve (PRV) on 115<sup>th</sup> Avenue near Harlan Street, design and construction of at least one new temporary PRV at a location to be determined, rehabilitation of three existing PRV's located along Sheridan Boulevard and miscellaneous waterline valve replacement to ensure successful operation of the new PRV's.
- The area will ultimately to be converted to a new Pressure Zone 12 and these initial project improvements will lower water pressures in the area, reducing water breaks and extending the life of the distribution system.
- Of the three proposals received for design services, staff believes Burns and McDonnell Engineering Company, Inc. (Burns and McDonnell) provides the best value to the City.
- Burns and McDonnell has a history of successful projects of similar size and scope, including several water distribution system projects for the City. Burns and McDonnell's experience with Westminster's distribution system and knowledge of the City's specifications will help to streamline the design and result in a quality finished product.
- Staff recommends awarding the contract to Burns and McDonnell based on their competitive pricing, proposed scope of work, familiarity with the City's infrastructure and the successful experience of their proposed project team.
- This contract includes engineering services to be provided through the design and bidding phases. Design is expected to be completed by the end of 2012 with construction beginning in 2013.

**Expenditure Required:** \$94,051

**Source of Funds:** Utility Fund Capital Improvement  
– Pressure Zone 12 Improvements Account

## **Policy Issue**

Should the City execute a contract with Burns & McDonnell for the design services for the Pressure Zone 12 Improvements Project?

## **Alternatives**

The City could choose the following alternatives:

1. City Council could decline to approve the contract and place the project on hold. Staff does not recommend this alternative as the existing distribution system in the area has had multiple breaks in the past five years. Delaying the project could result in increased maintenance and repair expenses, possible service impacts to the residents and/or damage to streets or other infrastructure.
2. City Council could choose to award the contract to one of the other consultants that submitted proposals; however, this is not recommended as Staff believes that Burns and McDonnell provides the best value for this project. They have a familiarity with the City's infrastructure, standards and specifications that will streamline key project tasks.

## **Background Information**

Water distribution system master planning and modeling has recommended a reconfiguration of some pressure zones in the City. Multiple improvements are part of a long term plan for the new Pressure Zone 12 area, and this project represents phase one of the overall improvements. The project goal is to isolate this area, mostly north of 112<sup>th</sup> Avenue and West of Sheridan Boulevard, from Zone 1 high pressures. This will ultimately create a new Pressure Zone 12 that is lower in pressure and prolongs the life of waterlines and distribution system infrastructure that is safer for customers. Pressure Reducing Valves (PRV's) are used throughout the City's water distribution system. These valves allow operations staff to adjust system water pressures.

Some of the phase one improvements may be temporary as the ultimate Zone 12 Improvements will cover a wider area of the City's distribution system, eliminating the need for some of the PRV's. The new permanent PRV on 115<sup>th</sup> Avenue will be placed on a waterline that serves as one water delivery point to the area. At least one additional water delivery point for the new Pressure Zone 12 will be needed at a reduced pressure. The number and location of additional temporary PRV's delivering water to the area needs to be confirmed through distribution modeling, which will be completed as part of the design phase. Higher pressure water delivery points that cannot be reduced will be temporarily isolated with valves as part of this project.

Street improvements are planned for the area in 2012 and the Zone 12 improvements will be coordinated with these street improvements. While Utility Operations construction crews plan to replace a small section of waterlines in the area in 2012, full area waterline replacement is planned for the future.

Due to the specialized nature of this project and the corresponding engineering expertise required, Staff sent a Request for Proposals (RFP) to three engineering firms which specialized in this type of distribution system design. Three proposals were received on May 24, 2012. Burns and McDonnell was selected for this work based on their response to the following criteria as outlined in the RFP:

- Submitted the best proposal, offering ideas on maintaining water quality on dead-end waterlines, PRV calibration and public outreach.
- Project approach that clearly indicates understanding of the project scope and City's goals and expectations.

- Developed the original design for the City's preferred PRV and vault to be used on this project.
- Firm's specialized experience in projects of similar size, scope and complexity.
- Offered the most experience in distribution system projects.
- Firm's reputation with the City and familiarity with City codes, policy, procedures and regulations.
- Provide the best opportunity for a design that will result in overall project cost savings.

The three consultants that submitted proposals and hourly rate ranges for their key staff were as follows:

<b>Consultant</b>	<b>Hourly Rate</b>	<b>Total Bid</b>
J&T Consulting, Inc.	\$ 65 to \$ 95/hr	\$62,400
Lidstone and Associates, Inc.	\$ 75 to \$155/hr	\$87,103
Burns & McDonnell	\$128 to \$193/hr	\$85,501

Of the firms that proposed, the Burns and McDonnell's approach and team experience was the best and most qualified for the project, and their level of effort and fee were competitive for the desired project scope of work. In Staff's opinion, retaining Burns and McDonnell will result in a better finished product.

Burns and McDonnell's proposed fee with contingency is for design services only and accounts for approximately 12% of the estimated project cost of \$800,000 for the improvements. Taking into account the relatively complex predesign, distribution system modeling and utility location phases required for the project, this fee is in line with the effort anticipated for the project. Following successful completion of design, Staff intends to negotiate a subsequent contract for engineering services during construction. Costs for construction management services are estimated to be approximately 10% of the project cost. The design is anticipated to be completed in December 2012 and construction completion by the summer of 2013.

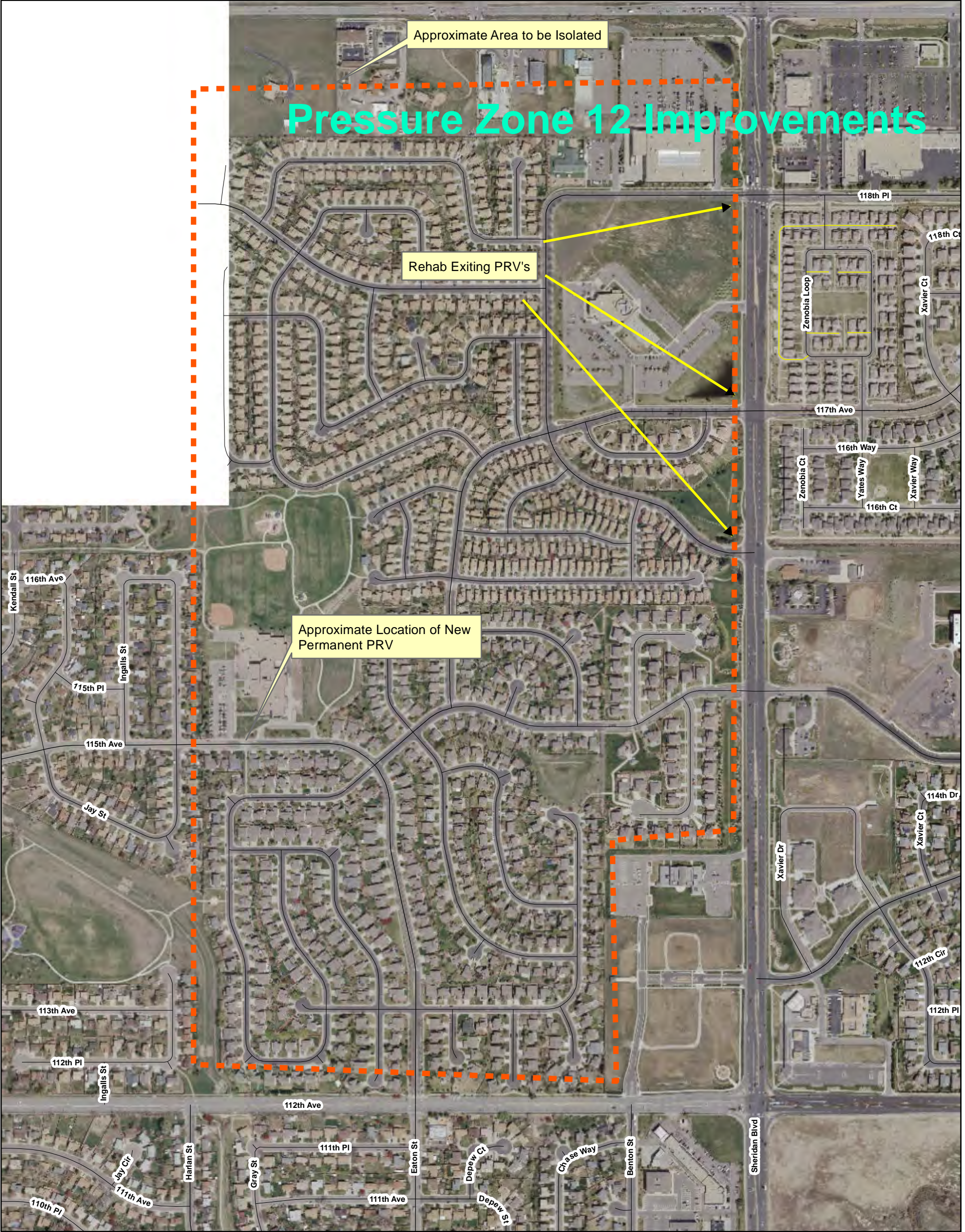
The Pressure Zone 12 Improvements Project helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods In One Livable Community" by contributing to the objectives of well-maintained City infrastructure and facilities and providing water service with reduced risk of system failures.

Respectfully submitted,

J. Brent McFall  
City Manager

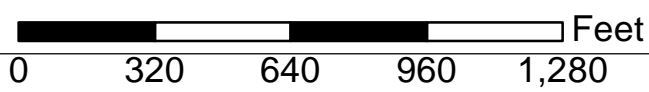
Attachment - Pressure Zone 12 Improvements Location Map





**City of Westminister**

1 in = 452 ft







## Agenda Item 8 D

### Agenda Memorandum

City Council Meeting  
July 9, 2012



**SUBJECT:** Urban Pacific Multi-Housing LLC and Pacific West Communities Inc. Purchase and Sale Agreement

**Prepared By:** Susan F. Grafton, Economic Development Director

### Recommended City Council Action

Authorize the City Manager to execute a Purchase and Sale Agreement in substantially the same form as attached with Urban Pacific Multi-Housing, LLC and Pacific West Communities, Inc.; and to take all actions necessary to close this land sale.

### Summary Statement

- City owns approximately 15.8 acres between The Promenade and Circle Point.
- The joint venture of Urban Pacific Multi-Housing, LLC and Pacific West Communities, Inc. want to acquire the property for a multi-family housing project.
- A Purchase and Sale Agreement has been negotiated and is attached.
- The current sale price is \$6.50/sf or approximately \$4,469,000; however, there are issues concerning mitigation of a small wetland and an existing metro district on a portion of the property which needs to be resolved prior to closing.
- The developers propose building no less than 450 multi-family units on the property, which is in line with the City's vision for this area.

**Expenditure Required:** Approximately \$231,000

**Source of Funds:** Proceeds from Land Sale



**Policy Issue**

Should the City sell the property as proposed?

**Alternatives**

1. Request a higher price: The \$6.50 per square foot is considered at or above market, plus there are issues relative to the property that negatively impact the value. These include a small existing wetland, City's desire for higher density development, and the existence of a Metro District on the north half of the property.
2. Shorten the closing period. Mr. Choppin and his partners actually recommended a closing date that would occur following the receipt of service commitments but prior to having received all of their entitlements. Staff instead requested the closing occur after receiving Official Development Plan approval, which will take the majority of the 180 days.

**Background Information**

The City acquired this property through two transactions in the late 1990's. The actual size of the property is approximately 15.8 acres. The purpose of the assembly was to facilitate a Fry's Electronics store. That project stalled when the retailer decided not to expand into Colorado.

Subsequently the land was put under contract by Urban Pacific Developers of California that is owned by Scott Choppin. All entitlements were obtained for 725 multi-family units. Unfortunately in 2009 the funding crisis for new residential projects hit nationally and stalled the project. Since the funding was unavailable for construction the sale was never consummated; and, the property was put back on the market.

In 2011, the financing market for multi-family product loosened. Staff has discussed the sale of this property with numerous developers. Most did not desire to build to the density and quality that the City was requiring.

On January 19, 2012, we received a letter of intent (LOI) from the joint venture of Urban Pacific Multi-Housing LLC and Pacific West Communities, Inc. The managing member of the joint venture is Scott Choppin with whom the City fell out of contract in 2009. The working relationship previously with Choppin was positive so the possibility of solidifying a deal with him was received positively.

The purchase price is at \$6.50/sf or approximately \$4,469,000. It should be noted however that staff is still working out contract details with the partnership. Prior to closing, the City is required to reach an agreement with the NBC Metropolitan District satisfactory to the Buyer that addresses the District's future public improvement obligations relative to the Buyer's proposed development. The agreement further provides that at closing the Buyer will receive from the City the lesser of \$42,000 or one-half of the cost of wetlands mitigation related to the Buyer's proposed development.

The development of the City's property will be very positive for the City. Visibility of construction activity along US36 will bring attention to The Promenade and Circle Point during the construction phase. The new residential development in the area will bring new customers to The Promenade and The Shops at Walnut Creek. Most significantly the funds received from the sale can be reallocated for use on other major City projects.

Respectfully submitted,

J. Brent McFall  
City Manager

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

**CONTRACT TO BUY AND SELL REAL ESTATE  
(ALL TYPES OF PROPERTIES – CAO REVISED JANUARY 2008)**

Effective Date: [FILL-IN]      2012  
Purchase Price:            \$4,469,931

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

**2. DEFINED TERMS.**

**a. Buyer.** Buyer, \_Urban Pacific Multi-Housing, LLC and The Pacific Companies, will take title to the real property described below as  **Joint Tenants**  **Tenants In Common**  **Other** Limited Liability Company.

**Seller.** Seller is City of Westminster, a Colorado home-rule municipality

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

**c. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 30a	Earnest Money Deadline	10 days from Effective Date
2	§ 5a	Loan Application Deadline	N/A
3	§ 5b	Loan Conditions Deadline	N/A
4	§ 5c	Buyer’s Credit Information Deadline	N/A
5	§ 5c	Disapproval of Buyer’s Credit Information Deadline	N/A
6	§ 5d	Existing Loan Documents Deadline	N/A
7	§ 5d	Existing Loan Documents Objection Deadline	N/A
8	§ 5d	Loan Transfer Approval Deadline	N/A
9	§ 6a(2)	Appraisal Deadline	N/A
10	§ 7a	Title Deadline	30 days from Effective Date
11	§ 8a	Title Objection Deadline	45 days from Effective Date
12	§ 7c	Survey Deadline	30 days from Effective Date
13	§ 8c(2)	Survey Objection Deadline	45 days from Effective Date
14	§ 7b	Document Request Deadline	30 days from Effective Date
15	§ 7d(5)	CIC Documents Objection Deadline	N/A
16	§ 8b	Off-Record Matters Deadline	30 days from Effective Date
17	§ 8b	Off-Record Matters Objection Deadline	60 days from Effective Date
18	§ 8f	Right of First Refusal Deadline	N/A
19	§ 10a	Seller’s Property Disclosure Deadline	N/A
20	§ 10b	Inspection Objection Deadline	90 days from Effective Date
21	§ 10c	Resolution Deadline	120 days from Effective Date
22	§ 10d	Property Insurance Objection Deadline	N/A
23	§ 25e	<b>Approval Deadline</b>	180 days from Effective Date
24	§ 12	<b>Closing Date Deadline</b>	180 days from Effective Date
25	§ 17	Possession Date	Closing Date
26	§ 17	Possession Time	5 p.m. Closing Date
27	§ 30	<b>Acceptance Deadline Date</b>	N/A
28	§ 30	<b>Acceptance Deadline Time</b>	N/A

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

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

**3. INCLUSIONS AND EXCLUSIONS.**

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

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

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

(3) **Other Inclusions.** The Property is vacant land. The Purchase price shall include any fixtures or other appurtenances located at or on the Property as of the date hereof \_\_\_\_\_

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

~~(4) **Trade Fixtures.** With respect to trade fixtures, Seller and Buyer agree as follows:~~

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

~~(5) **Parking and Storage Facilities.**  **Use Only**  **Ownership** of the following parking facilities: N/A; and  **Use Only**  **Ownership** the following storage facilities: \_\_\_\_\_.~~

(6) **Water Rights.** The following legally described water rights: all rights tributary to the Property. Any water rights shall be conveyed by N/A deed or other applicable legal instrument. The Well Permit # is N/A.

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

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

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

Item No.	Reference	Item	Amount	Amount
1	§ 4	Purchase Price	\$ 4,469,931	
2	§ 4a	Earnest Money Installments		\$ 100,000
3	§ 4d(1)	New First Loan		-0-
4	§ 4d(2)	New Second Loan		-0-
5	§ 4e	Assumption Balance		-0-
6	§ 4f	Seller or Private Financing		-0-
7				
8				
9	§ 4b	Cash at Closing		4,369,931
10		<b>TOTAL</b>	\$ 4,469,931	\$ 4,469,931

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

**a. Earnest Money.** The Earnest Money set forth in this section, in the form of Good Funds is part payment of the Purchase Price and shall be payable to and held by Fidelity National Title Company (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. Earnest Money Holder shall deposit the Earnest Money in an interest bearing account in a FDIC-insured institution. All interest earned shall become part of the Earnest Money.

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

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

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

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

82  **Conventional**  **FHA**  **VA**  **Other** \_\_\_\_\_  
83 This loan will be secured by a \_\_\_\_\_ (1st, 2nd, etc.) deed of trust.  
84 The loan may be increased to add the cost of mortgage insurance, VA funding fee and other items for a total loan  
85 amount, not in excess of \$ \_\_\_\_\_, which shall be amortized over a period of \_\_\_\_\_  **Years**  **Months** at  
86 approximately \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and interest not to exceed \_\_\_\_\_%  
87 per annum, plus, if required by Buyer's lender, a deposit of \_\_\_\_\_ of the estimated annual real estate taxes,  
88 property insurance premium, and mortgage insurance premium. If the loan is an adjustable interest rate or graduated  
89 payment loan, the payments and interest rate initially shall not exceed the figures set forth above.

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

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

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

97 This loan will be secured by a \_\_\_\_\_ (2nd, etc.) deed of trust.  
98 The total loan amount, not in excess of \$ \_\_\_\_\_, shall be amortized over a period of \_\_\_\_\_  
99  **Years**  **Months** at approximately \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and  
100 interest not to exceed \_\_\_\_\_% per annum. If the loan is an adjustable interest rate or graduated payment loan, the  
101 payments and interest rate initially shall not exceed the figures set forth above.

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

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

106 **e. Assumption. N/A** Buyer agrees to assume and pay an existing loan in the approximate amount of the  
107 Assumption Balance set forth in this section, presently payable at \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and  
108 interest presently at \_\_\_\_\_% per annum, and also including escrow for the following as indicated:  **Real Estate Taxes**  
109  **Property Insurance Premium**  **Mortgage Insurance Premium** and  \_\_\_\_\_.

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

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

120 **f. Seller or Private Financing. N/A** Buyer agrees to execute a promissory note payable to: \_\_\_\_\_  
121 \_\_\_\_\_, as  **Joint Tenants**  **Tenants in Common**  
122  **Other** \_\_\_\_\_, on the note form as indicated:  
123  **(Default Rate) NTD 81 10 06**  **Other** \_\_\_\_\_ secured by a \_\_\_\_\_  
124 (1st, 2nd, etc.) deed of trust encumbering the Property, using the form as indicated:  **Strict Due On Sale** (TD 72 10 06)  
125  **Creditworthy** (TD 73 10 06)  **Assumable - Not Due On Sale** (TD 74 10 06)  
126  **Other** \_\_\_\_\_.

127 The promissory note shall be amortized on the basis of \_\_\_\_\_  **Years**  **Months**, payable at \$ \_\_\_\_\_  
128 per \_\_\_\_\_ including principal and interest at the rate of \_\_\_\_\_% per annum. Payments shall commence  
129 \_\_\_\_\_ and shall be due on the \_\_\_\_\_ day of each succeeding \_\_\_\_\_.

130 If not sooner paid, the balance of principal and accrued interest shall be due and payable \_\_\_\_\_ after Closing.  
131 Payments  Shall  Shall Not be increased by \_\_\_\_\_ of estimated annual real estate taxes, and  Shall  Shall  
132 Not be increased by \_\_\_\_\_ of estimated annual property insurance premium. The loan shall also contain the following  
133 terms: (1) if any payment is not received within \_\_\_\_\_ calendar days after its due date, a late charge of \_\_\_\_\_% of  
134 such payment shall be due, (2) interest on lender disbursements under the deed of trust shall be \_\_\_\_\_% per annum,  
135 (3) default interest rate shall be \_\_\_\_\_% per annum, (4) Buyer may prepay without a penalty except \_\_\_\_\_  
136 \_\_\_\_\_, and (5) Buyer  Shall  Shall Not execute and deliver, at  
137 Closing, a Security Agreement and UCC 1 Financing Statement granting the holder of the promissory note a \_\_\_\_\_ (1st,  
138 2nd, etc.) lien on the personal property included in this sale.  
139 \_\_\_\_\_ Buyer  Shall  Shall Not provide a mortgagee's title insurance policy, at Buyer's expense.  
140

141 **5. FINANCING CONDITIONS AND OBLIGATIONS. N/A**

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

151 **b. Loan Conditions.** If Buyer is to pay all or part of the Purchase Price by obtaining a new loan as specified in  
152 § 4b, this Contract is conditional upon Buyer's approval of the availability, terms, conditions and cost for the new loan.  
153 This condition is for the benefit of Buyer and shall be deemed waived unless Seller receives from Buyer, no later than **Loan**  
154 **Conditions Deadline** (§ 2c), written notice of Buyer's election to terminate this Contract as such loan was not satisfactory  
155 to Buyer, Buyer shall not have the right to terminate under this § 5b based on the terms or conditions of any loan that is the  
156 same as set forth in § 4. If Buyer so notifies Seller, this Contract shall terminate. **IF SELLER DOES NOT RECEIVE**  
157 **WRITTEN NOTICE TO TERMINATE AND BUYER DOES NOT CLOSE, BUYER SHALL BE IN DEFAULT.**

158 **c. Credit Information and Buyer's New Senior Loan.** If Buyer is to pay all or part of the Purchase Price by  
159 executing a promissory note in favor of Seller, or if an existing loan is not to be released at Closing, this Contract is  
160 conditional (for the benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which  
161 approval shall be at Seller's sole and absolute discretion. In such case: (1) Buyer shall supply to Seller by **Buyer's Credit**  
162 **Information Deadline** (§ 2c), at Buyer's expense, information and documents (including a current credit report)  
163 concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer's financial  
164 ability and creditworthiness; (3) any such information and documents received by Seller shall be held by Seller in  
165 confidence, and not released to others except to protect Seller's interest in this transaction; (4) in the event Buyer is to  
166 execute a promissory note secured by a deed of trust in favor of Seller, this Contract, for the benefit of Seller, is conditional  
167 upon Seller's approval of the terms and conditions of any new loan to be obtained by Buyer if the deed of trust to Seller is  
168 to be subordinate to Buyer's new loan (**Buyer's New Senior Loan**); Seller shall not have the right to terminate under this  
169 § 5c for any loan when all such specific terms and provisions (e.g., interest rate, principal, payments, prepayment penalties,  
170 due date, etc.) are met as set forth in § 4 or elsewhere in this Contract; and (5) if Seller does not deliver written notice of  
171 Seller's disapproval of Buyer's financial ability and creditworthiness or of **Buyer's New Senior Loan** to Buyer by  
172 **Disapproval of Buyer's Credit Information Deadline** (§ 2c), then Seller waives the conditions set forth in this section. If  
173 Seller does deliver written notice of disapproval to Buyer on or before said date, this Contract shall terminate.

174 **d. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller shall deliver copies of the  
175 loan documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline** (§  
176 2c). For the benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan  
177 documents. If written notice of objection to such loan documents, signed by Buyer, is not received by Seller by **Existing**  
178 **Loan Documents Objection Deadline** (§ 2c), Buyer accepts the terms and conditions of the documents. If the lender's  
179 approval of a transfer of the Property is required, this Contract is conditional upon Buyer's obtaining such approval without  
180 change in the terms of such loan, except as set forth in § 4e. If lender's approval is not obtained by **Loan Transfer**  
181 **Approval Deadline** (§ 2c), this Contract shall terminate on such date. If Seller is to be released from liability under such  
182 existing loan and Buyer does not obtain such compliance as set forth in § 4e, this Contract may be terminated at Seller's  
183 option.  
184

185 **6. APPRAISAL PROVISIONS.**

186 **a. Appraisal Condition.**

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

188  (2) **Conventional.** Buyer shall have the sole option and election to terminate this Contract if the Purchase  
189 Price exceeds the Property's valuation determined by an appraiser engaged by \_\_\_\_\_.  
190 This Contract shall terminate by Buyer delivering to Seller written notice of termination and either a copy of such appraisal  
191 or written notice from lender that confirms the Property's valuation is less than the Purchase Price, received on or before  
192 **Appraisal Deadline** (§ 2c). If Seller does not receive such written notice of termination on or before **Appraisal Deadline**  
193 (§ 2c), Buyer waives any right to terminate under this subsection.

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

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

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

## 212 7. EVIDENCE OF TITLE.

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

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

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

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

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

241 **d. Common Interest Community Documents.**

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

243 (2) **Common Interest Community Disclosure.** THE PROPERTY IS LOCATED WITHIN A COMMON  
244 INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER  
245 OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE

246 COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE  
247 ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL  
248 OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY  
249 ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE  
250 ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE  
251 DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE  
252 OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE  
253 ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION.  
254 PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE  
255 FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY  
256 READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF  
257 THE ASSOCIATION.

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

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

266  (a) **Seller to Provide CIC Documents.** Seller shall cause the CIC Documents to be provided to  
267 Buyer, at Seller's expense, on or before **Title Deadline** (§ 2c).

268  (b) **Seller Authorizes Association.** Seller authorizes the Association to provide the CIC Documents  
269 to Buyer, at Seller's expense.

270 (c) **Seller's Obligation.** Seller's obligation to provide the CIC Documents shall be fulfilled upon  
271 Buyer's receipt of the CIC Documents, regardless of who provides such documents.

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

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

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

## 284 8. TITLE AND SURVEY REVIEW.

285 a. **Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of  
286 unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the  
287 Title Documents, notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Title**  
288 **Objection Deadline** (§ 2c), or within five calendar days after receipt by Buyer of any change to the Title Documents or  
289 endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller  
290 does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title  
291 Documents as satisfactory.

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

302 c. **Survey Review.**

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

305  (2) **Conditional on Survey.** If the box in this subsection 8c(2) is checked, Buyer shall have the right to  
306 inspect the Survey. If written notice by or on behalf of Buyer of any unsatisfactory condition shown by the Survey,  
307 notwithstanding § 8b or § 13, is received by Seller on or before **Survey Objection Deadline** (§ 2c) then such objection  
308 shall be deemed an unsatisfactory title condition. If Seller does not receive Buyer's notice by **Survey Objection Deadline**  
309 (§ 2c), Buyer accepts the Survey as satisfactory.

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

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

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

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

332 **g. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be  
333 reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use  
334 of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and  
335 claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning  
336 land use, development and environmental matters. **The surface estate may be owned separately from the underlying**  
337 **mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water**  
338 **rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the**  
339 **Property, which interests may give them rights to enter and use the Property.** Such matters may be excluded from or  
340 not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as  
341 there are strict time limits provided in this Contract (e.g., **Title Objection Deadline** [§ 2c] and **Off-Record Matters**  
342 **Objection Deadline** [§ 2c]).

343  
344 ~~9. **LEAD-BASED PAINT.** Unless exempt, if the improvements on the Property include one or more residential~~  
345 ~~dwellings for which a building permit was issued prior to January 1, 1978, this Contract shall be void unless a completed~~  
346 ~~Lead Based Paint Disclosure (Sales) form is signed by Seller and the required real estate licensees, which must occur prior~~  
347 ~~to the parties signing this Contract. Buyer acknowledges timely receipt of a completed Lead Based Paint Disclosure (Sales)~~  
348 ~~form signed by Seller and the real estate licensees.~~

349  
350 **10. PROPERTY DISCLOSURE, INSPECTION, INSURABILITY AND BUYER DISCLOSURE.**

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

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

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

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



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

366 d. **Insurability.** Intentionally omitted.

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

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

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

378  
379 **11. METHAMPHETAMINE LABORATORY DISCLOSURE.** The parties acknowledge that Seller is required to  
380 disclose whether Seller knows that the Property was previously used as a methamphetamine laboratory. No disclosure is  
381 required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to §  
382 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial  
383 hygienist to test whether the Property has ever been used as a methamphetamine laboratory. In the event that the Property  
384 has been used as a methamphetamine laboratory, Buyer may deliver written notice to Seller, on or before Closing, to  
385 terminate this Contract.

386  
387 **12. CLOSING.** Delivery of deed from Seller to Buyer shall be at closing (Closing). Subject to the provisions of § 25e  
388 the Closing shall occur on or before the **Closing Date Deadline** (§ 2c). The hour and place of Closing shall be by mutual  
389 agreement as designated by \_\_\_\_\_ Buyer \_\_\_\_\_ Seller.

390  
391 **13. TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with  
392 the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient special warranty deed to Buyer,  
393 at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as  
394 provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special  
395 improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject  
396 to:

397 a. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents  
398 accepted by Buyer in accordance with § 8a (Title Review),

399 b. distribution utility easements (including cable TV),

400 c. those specifically described rights of third parties not shown by the public records of which Buyer has actual  
401 knowledge and which were accepted by Buyer in accordance with § 8b (Matters Not Shown by the Public Records) and §  
402 8c (Survey Review),

403 d. inclusion of the Property within any special taxing district,

404 e. the benefits and burdens of any recorded declaration and party wall agreements, if any, and

405 f. other. None.

406  
407 **14. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before Closing from  
408 the proceeds of this transaction or from any other source.

409  
410 **15. CLOSING COSTS, DOCUMENTS AND SERVICES.**

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

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

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

417 d. **Status Letter and Transfer Fees.** Any fees incident to the issuance of Association's statement of  
418 assessments (Status Letter) shall be paid by  **Buyer**  **Seller**  **One-Half by Buyer and One-Half by Seller.** Any

419 fees incident to the transfer from Seller to Buyer assessed by the Association (Association's Transfer Fee) shall be paid by  
420  Buyer  Seller  One-Half by Buyer and One-Half by Seller. N/A.  
421 e. Local Transfer Tax. The local transfer tax of \_\_\_\_\_% of the Purchase Price shall be paid at Closing by  
422  Buyer  Seller  One-Half by Buyer and One-Half by Seller. N/A.  
423 f. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction shall be paid when due  
424 by  Buyer  Seller  One-Half by Buyer and One-Half by Seller. N/A  
425

426 **16. PRORATIONS.** The following shall be prorated to **Closing Date** (§ 2c), except as otherwise provided:  
427 a. Taxes. Personal property taxes, if any, and general real estate taxes for the year of Closing, based on   
428 Taxes for the Calendar Year Immediately Preceding Closing  Most Recent Mill Levy and Most Recent Assessed  
429 Valuation  Other \_\_\_\_\_.  
430 b. Rents. Rents based on  Rents Actually Received  Accrued. Security deposits held by Seller shall be  
431 credited to Buyer. Seller shall assign all leases to Buyer and Buyer shall assume such leases. N/A  
432 c. Association Assessments. Current regular Association assessments and Association dues (Association  
433 Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular Association  
434 Assessments for deferred maintenance by the Association shall not be credited to Seller except as may be otherwise  
435 provided by the Governing Documents. Any special assessment by the Association for improvements that have been  
436 installed as of the date of Buyer's signature hereon shall be the obligation of Seller. Any other special assessment assessed  
437 prior to **Closing Date** (§ 2c) by the Association shall be the obligation of  Buyer  Seller. Seller represents that the  
438 amount of the Association Assessments is currently payable at \$\_\_\_\_\_ per \_\_\_\_\_ and that there are no unpaid  
439 regular or special assessments against the Property except the current regular assessments and except \_\_\_\_\_  
440 \_\_\_\_\_ Such assessments are subject to change as  
441 provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing**  
442 **Date** (§ 2c) a current Status Letter. N/A.  
443 d. Other Prorations. None.  
444 e. Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.  
445

446 **17. POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession Date** at **Possession Time** (§  
447 2c), subject to the following leases or tenancies:  
448  
449 If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be  
450 additionally liable to Buyer for payment of \$100 per day (or any part of a day) from the **Possession Date** and **Possession**  
451 **Time** (§ 2c) until possession is delivered.

452 Buyer  Does  Does Not represent that Buyer will occupy the Property as Buyer's principal residence.  
453

454 **18. ASSIGNABILITY.** This Contract  Shall  Shall Not be assignable by Buyer without Seller's prior written  
455 consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal  
456 representatives, successors and assigns of the parties.  
457

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

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

471 b. **Damage, Inclusions and Services.** Should any Inclusion or service (including systems and components of  
472 the Property, e.g. heating, plumbing, etc.) fail or be damaged between the date of this Contract and Closing or possession,  
473 whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion or service with a unit of  
474 similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such  
475 Inclusion, service or fixture is not the responsibility of the Association, if any, less any insurance proceeds received by  
476 Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty  
CONTRACT TO BUY AND SELL REAL ESTATE (ALL TYPES OF PROPERTIES)

477 programs that may be purchased and may cover the repair or replacement of such Inclusions. The risk of loss for damage to  
478 growing crops by fire or other casualty shall be borne by the party entitled to the growing crops as provided in subsection  
479 3a(7) and such party shall be entitled to such insurance proceeds or benefits for the growing crops.

480 **c. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, shall have the right to walk  
481 through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this  
482 Contract.  
483

484 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Buyer and Seller  
485 acknowledge that the respective broker has advised that this document has important legal consequences and has  
486 recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.  
487

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

491 **a. If Buyer is in Default:**

492  (1) **Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest  
493 Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller and retained by Seller; and Seller may  
494 recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect and Seller  
495 shall have the right to specific performance or damages, or both.

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

502 **b. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money  
503 received hereunder shall be returned to Buyer, or Buyer may elect to treat this Contract as being in full force and effect and  
504 Buyer shall have the right to specific performance but not damages.

505 **c. Cost and Expenses.** In the event of any arbitration or litigation relating to this Contract, the arbitrator or  
506 court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.  
507

508 **22. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties  
509 shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an  
510 impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions.  
511 The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable  
512 mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the  
513 event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered  
514 by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless  
515 otherwise agreed.  
516

517 **23. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder shall release the  
518 Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy  
519 regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be  
520 required to take any action. Earnest Money Holder, at its option and sole discretion, may (a) await any proceeding, (b)  
521 interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and  
522 reasonable attorney and legal fees, or (c) deliver written notice to Buyer and Seller that unless Earnest Money Holder  
523 receives a copy of the Summons and Complaint or Claim (between Buyer and Seller), containing the case number of the  
524 lawsuit (Lawsuit) within 120 calendar days of Earnest Money Holder's written notice is delivered to the parties, Earnest  
525 Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a  
526 copy of the Lawsuit, and has not interpleaded the monies at the time of any Order, Earnest Money Holder shall disburse the  
527 Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of Mediation (§ 22).  
528

529 **24. TERMINATION.** In the event this Contract is terminated, all Earnest Money received hereunder shall be returned  
530 and the parties shall be relieved of all obligations hereunder, subject to §§ 10e, 22 and 23.  
531

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

534           **a. Broker Commissions.** Other than William Jenkins of the Laramie Company, Buyer warrants to Seller that it  
535 has not dealt with any real estate brokers in connection with this transaction and shall not be liable for the payment of any  
536 brokerage commission. Seller shall indemnify and hold Buyer harmless from any brokerage or other commissions that may  
537 be payable in connection with this or any other transfer of the Property or any part thereof, unless such claims arise through  
538 the Buyer.  
539

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

542           (1) Seller is not a “foreign Person” but is a “United States person” as such terms are defined in Section 1445 and  
543 7701 of the Internal Revenue Code of 1986 as amended.

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

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

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

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

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

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

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

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

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

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

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

577           (iv) To the best of Seller’s actual knowledge, no notices of any violation of any of the matters  
578 referred to in the foregoing subsections relating to the Property or its use have been received by Seller and there are no  
579 writs, injunctions, decrees, orders or judgments outstanding, no lawsuits, claims, proceedings or investigations pending or  
580 threatened, relating to the ownership, use, maintenance or operation of the Property, nor, is there any basis for any such  
581 lawsuit, claim, proceeding or investigation being instituted or filed.  
582

583           The representations and warranties set forth in this Section 25(b) shall be continuing and shall be true and correct  
584 on and as of the Closing Date with the same force and effect as if made at that time. Seller shall not be responsible for any  
585 liabilities assumed by the title company under the title policy to be issued to Buyer, nor shall Seller be liable for any  
586 indirect or consequential damages in the event of a breach of any of the foregoing representations and warranties. In the  
587 event of such breach by Seller, Seller’s liability shall be limited to the actual cost of remedying the breach.  
588

589           **c. Time of Performance.** If any date for performance falls on a Saturday, Sunday or legal holiday, then the date  
590 for performance shall be extended to the next day which is not a Saturday, Sunday or holiday.  
591

592 **d. Authorization.** Buyer and Seller represent to each other that all necessary steps have been taken to authorize  
593 this Contract and that each has the requisite authority to enter into and perform this Contract in accordance with its terms.  
594

595 **e. Development Approvals. This paragraph 25e.**  shall \_\_\_\_ shall not apply. Seller shall have until the  
596 **Approval Deadline** (§ 2c) to (i) Approve Buyer’s application for Water Tap Service Commitments sufficient to build at  
597 least 450 multi-family units on the Property, which Buyer has submitted; (ii) Approve an Official Development Plan  
598 (“ODP”) for Buyer’s intended development and use of the Property (collectively, the “Approvals”) provided, however,  
599 Seller agrees to not unduly delay its review of Buyer’s applications and requests for Approvals, and provided further that  
600 Seller shall not be required to perform acts or expend funds that are not in conformance with the laws, rules, or regulations  
601 of the City of Westminster, Colorado; and (iii) Enter into a written agreement with the NBC Metropolitan District,  
602 satisfactory to Buyer, addressing the respective obligations of the Buyer, Seller and District concerning the public  
603 improvements related to Buyer’s intended development (“Special District Agreement”). Should Buyer not obtain such  
604 Service Commitments or Approvals or Special District Agreement prior to the **Approval Deadline**, Buyer may terminate  
605 this Contract by notifying Seller prior to the **Approval Deadline**. In the event Buyer terminates prior to or on the  
606 **Approval Deadline**, the Earnest Money shall be returned to Buyer. Provided that all other terms and conditions of this  
607 Contract have been satisfied by the Seller, and subject to the provisions of § 30b below, Buyer agrees to close this  
608 agreement within 30 days following the Seller’s satisfaction of the provisions of this § 25e.  
609

610 **f. Tax Deferred Exchange. This paragraph 25f.** \_\_\_\_ shall  shall not apply. Following the Closing of  
611 this Contract, Seller agrees to cooperate with any tax deferred exchange (whether a 1031 or 1033) that Buyer desires to  
612 complete with respect to this transaction, provided there is no expense to Seller.  
613

614 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL.** This agreement constitutes the entire Contract  
615 between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have  
616 been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be  
617 valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this  
618 Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.  
619

620 **27. FACSIMILE.** Signatures  may \_\_\_\_ may not be evidenced by facsimile. Documents with original signatures  
621 shall be provided to the other party at Closing, or earlier upon request of any party.  
622

623 **28. FORECLOSURE DISCLOSURE AND PROTECTION.** Seller acknowledges that, to Seller’s current actual  
624 knowledge, the Property  IS  IS NOT in foreclosure. In the event this transaction is subject to the provisions of the  
625 Colorado Foreclosure Protection Act (the Act) (i.e., generally the Act requires that the Property is residential, in foreclosure,  
626 and Buyer does not reside in it for at least 1 year), a different contract that complies with the provisions of the Act is  
627 required, and this Contract shall be void and of no effect unless the Foreclosure Property Addendum is executed by all  
628 parties concurrent with the signing of this Contract. The parties are further advised to consult with their own attorney.  
629

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

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

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

638 **c. Choice of Law.** This Contract and all disputes arising hereunder shall be governed by and construed in  
639 accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this  
640 state for property located in Colorado.  
641

642 **30. SPECIAL CONDITIONS.**

643 **a.** Buyer shall deliver the **Earnest Money** to the Title Company in one (1) installment as follows: (i) \$100,000  
644 within ten (10) days of mutual execution of this Contract. Buyer’s Earnest Money deposit shall be refundable to the Buyer,  
645 except in the event of a breach of this Contract by Buyer.  
646

647 **b.** Seller agrees to extend the Closing Date Deadline with three (3) thirty (30) day extensions upon payment by  
648 Buyer of a payment of Twenty Five Thousand Dollars (\$25,000) for each exercised extension (“Extension Payments”).  
649

650 The first two extensions are non-refundable but applicable to the sales price. The Third extension is non-refundable and  
651 non-applicable to the sales price. Any such Extension Payments shall be immediately released to the Seller.  
652

653 c. Buyer agrees to aggressively proceed with the Official Development Plan approval process to encompass at  
654 least 150 multi-family units as part of a Phase I of the proposed project. Further concerted efforts will commence with  
655 future development plans to potentially include podium type construction to accommodate parking and increased densities.  
656 Seller understands that the developer is not committing to podium parking on any portion of the property  
657

658 d. Buyer agrees that it shall make all commercially reasonable best efforts to begin construction of Phase I of the  
659 project within 12 months of Seller's final ODP approval.  
660

661 e. Buyer intends to develop an urban style, high quality finish, urban style, market rate multi-family project of  
662 450 units (the number of units is subject to final ODP approval, but shall be no less than 450 units). .  
663

664 f. At closing, the Buyer shall receive from the City the lesser of \$42,000 or one-half the cost of wetlands  
665 mitigation related to the Buyer's proposed development, to be determined in good faith by agreement of the Buyer and  
666 Seller at least fifteen (15) days prior to closing.  
667

668 **31. COUNTERPARTS.** A copy of this document may be executed by each party, separately, and when each party has  
669 executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.  
670

671	Date: _____	Date: _____
672	Buyer: The Pacific Companies	Buyer: Urban Pacific Multi-Housing, LLC
673		
674	Address: <u>430 E. State Street, Ste. 100, Eagle, ID 83616</u>	Address: <u>5318 E. 2<sup>nd</sup> Street, Ste. 644, Long Beach, CA 90803</u>
675	Phone No.: <u>(208) 461-0022</u>	Phone No.: <u>(562) 552-1777</u>
676	Fax No.: <u>(208) 461-3267</u>	Fax No.: <u>N/A (email to: choppin@urbanpacific.com)</u>
677	Email Address: <u>calebr@tpchousing.com</u>	Email Address: <u>choppin@urbanpacific.com</u>

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

683	Date: _____	Date: _____
684	_____	_____
685	Seller	Seller: City of Westminster
686		
687	Address: _____	Address: <u>4800 W. 92<sup>nd</sup> Avenue, Westminster, CO 80031</u>
688	_____	_____
689	Phone No.: _____	Phone No.: <u>303-658-2400</u>
690	Fax No.: _____	Fax No.: <u>303-706-3920</u>
691	Email Address: _____	Email Address: _____

695 ~~COUNTER; REJECTION.~~ This offer is  ~~Countered~~  ~~Rejected.~~  
696 ~~Initials only of party (Buyer or Seller) who countered or rejected offer \_\_\_\_\_~~

697 **END OF CONTRACT**

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

698  
699  
700 **SELLING BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

701 (To be completed by Selling Broker)

702  
703 Selling Broker  **Does**  **Does Not** acknowledge delivery of Earnest Money deposit specified in § 4 and, while not a  
704 party to the Contract, agrees to cooperate upon request with any mediation concluded under § 22.

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

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

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

Selling Brokerage Firm's Name: The Laramie Company, LLC-

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

Address: 730 17<sup>th</sup> Street, Suite 840, Denver, CO 80202  
Phone No.: 303-573-5007 Fax No.: 303 573 5002  
Email Address: Bill@Laramiecompany.com

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

(To be completed by Listing Broker)

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

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

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

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

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

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

Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_  
Email Address: \_\_\_\_\_



**Agenda Memorandum**

City Council Meeting  
July 16, 2012



**SUBJECT:** Second Reading of Councillor's Bill No. 21 re Amending §16-5-36, W.M.C. re United Power Electric Franchise

**Prepared By:** Ben Goldstein, Management Analyst  
Jane W. Greenfield, Assistant City Attorney

**Recommended City Council Action:**

Pass Councillor's Bill No. 21 on second reading amending the Westminster Municipal Code Section 16-5-36 of the United Power Electric Franchise to allow the undergrounding fund monies to be used for other mutually agreeable capital projects within the franchise area.

**Summary Statement**

- The City has had a franchise for electric power with United Power, Inc., to serve a small portion of the City in the extreme northeast quadrant since 1993. The current franchise has been in effect since 2006, and it expires on December 31, 2026.
- The United Power 1 ½% undergrounding fund contains approximately \$30,000, but the City does not foresee any undergrounding needs in the franchise area since the development of that area has occurred subsequent to the City's code requirement mandating undergrounding of utility lines.
- The franchise language appears to limit the use of the undergrounding fund to conversion of overhead facilities and, as no conversions are needed or anticipated, the City staff and United Power desire to broaden the use of those funds for other capital projects within the franchise area.
- The City's Charter requires that any amendment to the franchise, which is also incorporated in the Westminster Municipal Code, must be adopted by ordinance of Council after a public hearing.
- This Councillor's Bill was passed on first reading on June 25, 2012.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Ordinance



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **21**

SERIES OF 2012

INTRODUCED BY COUNCILLORS  
**Winter - Kaiser**

**A BILL**

**FOR AN ORDINANCE AMENDING SUBSECTION 16-5-36(H), W.M.C., CONCERNING THE  
USE OF THE UNITED POWER UNDERGROUNDING FUND**

WHEREAS, the City has received an application from its franchisee, United Power, Inc. to amend a portion of its existing franchise to permit the undergrounding fund monies to be utilized for mutually agreed to utility projects in addition to undergrounding projects; and

WHEREAS, the City has determined it is in the best interests of the citizens of Westminster to amend the existing franchise with United Power, Inc.;

NOW, THEREFORE,

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 16-5-36, W.M.C., is hereby AMENDED as follows:

**16-5-36: OVERHEAD CONVERSION AT EXPENSE OF COMPANY:**

(A) As and when requested by the City, the Company shall spend one and one-half percent (1½ %) of the preceding calendar year's electric revenues derived from customers located within the City to move the Company's electric distribution lines located on public streets and public easements underground, provided that the undergrounding shall extend for a minimum distance of one block or 750 feet.

(B) Any unexpended portion of the one and one-half percent (1½ %) of electric revenue shall be carried over to succeeding years and, in addition, upon request by the City, the Company shall anticipate amounts to be available for up to three years in advance. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advance is eliminated.

(C) The City and the Company shall consult and plan together regarding projects to be undertaken pursuant to this section. The Company shall provide nonbinding "ball park" cost estimates for planning purposes at no cost to the City. The final decision as to which projects are selected rests with the City, subject to the provisions of this section. The specific scheduling of projects rests with the Company, which shall make every reasonable effort to complete such projects within the time requested by the City.

(D) If the PUC authorizes a system-wide program or programs of undergrounding electric distribution facilities, the Company will allocate to the program of undergrounding in the City such amount as is authorized by the PUC, but in no case less than one and one-half percent (1½ %) of annual electric revenues derived from customers located within the City.

(E) In no event shall any overhead conversion expense be charged against the one and one-half percent (1½ %) fund herein provided for unless the project to be so funded has been approved by the City to be funded pursuant to this section.

(F) No relocation expenses which the Company is required to expend pursuant to Section 16-5-13 shall be charged to this allocation.

(G) In addition to the provisions of this section, the City may require additional facilities to be moved underground at the City's expense.

(H) The establishment of this undergrounding program creates no vested right in the City to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the undergrounding monies are not convertible to cash or available for any other purposes, except that the City and the Company may agree to utilize said monies for other utility-related capital projects within the franchise area.

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

Section 3. 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 ORDERED PUBLISHED this 25th day of June, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of July, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office

CERTIFICATION OF CITY CLERK

I, Linda Yeager, City Clerk, hereby certify and attest that this ordinance was published in the Westminster Window, a weekly newspaper of general circulation in the City, on \_\_\_\_\_, 2012 and on \_\_\_\_\_, 2012.

\_\_\_\_\_

City Clerk



Agenda Memorandum

City Council Meeting  
July 9, 2012



**SUBJECT:** Second Reading of Councillor’s Bill No. 22 re Concession Agreement with Top One, Inc.

**Prepared By:** Ken Watson, Regional Parks and Golf Manager

**Recommended City Council Action**

Pass Councillor’s Bill No. 22 on second reading approving a concession agreement between the City of Westminster, Hyland Hills Park and Recreation District and Top One, Inc., d/b/a Benders Bar and Grill to operate a restaurant in the Ice Centre at the Promenade.

**Summary Statement**

- In May 2012, Hyland Hills Park and Recreation District staff were notified by the owner of Benders Bar and Grill that they would be trying to finalize an agreement for the sale of their business.
- Top One, Inc. was successful with negotiating a buyout of the existing Benders Bar and Grill equipment and the restaurant operation.
- After careful review of the qualifications of Top One, Hyland Hills and City of Westminster staff are recommending to move forward with a lease for the new restaurant operator.
- Highlights of the concession agreement include the same basic points as the prior lease with Benders Bar and Grill:
  - a. An initial lease term of five years with two five-year options to renew. After five years, the lease rate will be renegotiated.
  - b. A starting lease rate of \$10 per square foot, which equals \$5,000 per month.
  - c. If during the first year of the lease agreement, the tenant’s total gross revenues exceed \$1 million, the tenant shall pay to the landlord an additional two percent of such total gross revenues. Each succeeding year, the \$1 million total gross revenue number shall be increased by \$50,000 for purposes of computing the additional rent payment.
  - d. The tenant shall pay utility expenses and also pay to the landlord 10% of the Ice Centre’s total expense for common area maintenance and insurance, to be paid monthly.
- This Councillor’s Bill was approved on first reading by City Council on June 25, 2012.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments – Ordinance with Exhibit A

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **22**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**Briggs - Major**

**A BILL  
FOR AN ORDINANCE APPROVING A LEASE AGREEMENT FOR CONCESSION  
OPERATION AT THE ICE CENTRE**

WHEREAS, the City and Hyland Hills Park and Recreation District (the "District") co-own the Ice Centre at 10710 Westminster Boulevard; and

WHEREAS, it is in the City's and the District's interest to maximize the income generated from such operation by collecting rental income from the concession operation space located in the Ice Centre.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. Pursuant to City Charter Section 13.4, the Lease Agreement attached hereto as Exhibit A is hereby approved and ratified.

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

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The lease agreement attached hereto as Exhibit A shall be executed by the lessee prior to consideration of this ordinance 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 25<sup>th</sup> day of June, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9<sup>th</sup> day of July, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office

EXHIBIT A  
LEASE

This Lease, made and entered into this \_\_\_\_ day of July, 2012, by and between HYLAND HILLS PARK AND RECREATION DISTRICT and the CITY OF WESTMINSTER, hereinafter collectively referred to as "Landlord" and TOP ONE, INC., d/b/a Benders Bar and Grill, a Colorado corporation, hereinafter referred to as "Tenant".

1. LEASED PREMISES:

Upon the terms, conditions, covenants, limitations and agreements, and at the rental and for the terms as hereinafter set forth, Landlord hereunto leases unto Tenant and Tenant hereby leases from Landlord the Leasehold Premises ("Premises"), containing approximately 6,000 square feet of floor area, at Landlord's ("Ice Centre"), 10710 Westminster Blvd., Jefferson County, Colorado, as more fully described in Exhibit A attached hereto.

2. TERM:

The term of this Lease and the right of Tenant to take possession and occupy the Premises, pursuant to this Lease, shall commence at 12:01 a.m. on the \_\_\_\_ day of \_\_\_\_\_, 2012, and, unless sooner terminated or later extended, as provided herein, shall expire at 12:00 a.m. on the 31st day of \_\_\_\_\_, 2017.

3. USE OF PREMISES:

3.1 Tenant shall occupy, use and operate the Leasehold Premises as a top quality Concession operation for the sale and service of food and beverages, including alcoholic beverages, to the general public and patrons of the Premises at such prices and under such standards of operation as will assure prompt, courteous, and convenient services to the general public and patrons. The Concessionaire shall comply with all guidelines and standards that are contained in Exhibit B, attached hereto and incorporated herein. Tenant acknowledges that Landlord has an existing contract with Pepsi Cola Metropolitan Bottling, Inc. ("Pepsi") dated February 22, 1999 (the "Pepsi Contract"), paragraph 2 of which limits the type of beverage products that may be sold at any of Landlord's facilities, including the Premises and Tenant agrees to the limitations set forth therein.

3.2 Tenant shall not:

a. Permit any unlawful practice to be carried on or committed on the Leasehold Premises;

b. Make any use or allow the Leasehold Premises or any part thereof to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by Landlord, for any purposes other than those hereinabove specified, nor for any purpose that shall constitute a public or private nuisance, shall be in violation of any governmental laws, ordinances or regulations, shall be contrary to any restrictive covenants, agreements or limitations of record, or shall render the premises, or any part thereof, uninsurable with standard insurance at ordinary rates. Notwithstanding the foregoing, Landlord

believes and understands that use of the Leased Premises for the Permitted Use will not invalidate or increase the rate of Landlord's insurance, and is not contrary to any restrictive covenants, agreements or limitations of record.

c. Keep or permit to be kept or used on the Leasehold Premises any flammable fluids, toxic materials, or substances of any nature reasonably deemed dangerous by the Lessor or the Lessor's insurance carriers without obtaining prior written consent of the Lessor, except for small quantities of cleaning and cooking products incidental to the permitted uses described in this Agreement;

d. Use the Leasehold Premises for any purpose which creates a nuisance or injures the reputation of the Leasehold Premises or the Lessor;

e. Commit or suffer any waste in or about the Leasehold Premises;

f. Permit any odors to emanate from the Leasehold Premises in violation of any local, state or federal law or regulation;

g. Use any portion of the Leasehold Premises for storage of other purposes except as is necessary and required with its use specified in this Agreement; or

h. Conduct, or allow to be conducted, gambling on site.

#### 4. RENT AND SECURITY DEPOSIT:

4.1 Tenant shall pay to Landlord, as minimum rent during the term of this Lease, \$5,000 per month, together with any additional rents as may hereinafter be reserved. Said rental, exclusive of any additional rents, shall be payable in advance, commencing on the rental commencement date of \_\_\_\_\_, 2012, and on that same date of the month for every month of the rental term thereafter. Every such payment referenced above shall be payable at the office of Landlord, 1800 West 89th Avenue, Denver, Colorado 80260, without notice or demand whatsoever. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to terminate this Lease in the event Tenant is unable to obtain all licenses and permits necessary for Tenant to operate its business in the Premises, despite using reasonable efforts to obtain the same, within sixty (60) days after the date hereof.

4.2 Tenant shall pay to Landlord, upon execution of this Agreement, the sum of \$10,000.00 as a security deposit. Said security deposit will be returned, minus any amounts retained and applied to damages (ordinary wear and tear excepted), caused by Tenant, or rent owing to Landlord from Tenant, upon completion of all necessary repairs to the Premises or within ninety (90) days of termination of the this Lease, whichever comes earlier.

4.3 If during the first year of this Lease Agreement, Tenant's total gross revenues exceed \$1,000,000.00, Tenant shall pay to Landlord, as additional rent, two percent of such total gross revenues. In each succeeding year of the Lease Agreement, the \$1,000,000.00 total gross revenue number shall be increased by \$50,000.00 for purposes of computing any additional rent payment from Tenant to Landlord. Such additional rent shall be due on the 1<sup>st</sup> day of the second month following completion of the respective rental year. This and any other sums

of money or charges to be paid by the Tenant, pursuant to the provisions of this Lease, shall also be designated as "additional rent". A failure to pay additional rent shall be treated in all events as the failure to pay rent.

4.4 If the payment of any rent, additional rent or any other monies payable under the terms of this Lease shall be more than ten (10) days in arrears, Tenant agrees, upon demand of Landlord, to make a late charge payment of five percent (5%) of the amount in arrears.

4.5 Rent shall be abated by 66.66%, prorated on a daily basis, for each day the Ice Centre at the Promenade is closed in excess of three consecutive days.

4.6 Rent for the first three months of the original term of this Agreement shall be reduced to \$4,000.00.

5. OCCUPANCY OF THE PREMISES:

Occupancy of all or a part of the Premises by Tenant shall be deemed an acceptance of the same in good and suitable condition by said Tenant. Notwithstanding the foregoing, Landlord represents and warrants that to the best of its knowledge, as of the delivery of the Premises to Tenant, the Premises shall be in compliance with all applicable laws, rules and regulations, including, without limitation, the Americans with Disabilities Act.

6. PARKING:

Landlord agrees that Tenant, its employees and customers, shall have the non-exclusive right to use the parking lots adjoining and adjacent to the Ice Centre together with other patrons of the Promenade Center.

7. UTILITIES:

Tenant shall pay all charges for, gas, electrical, water, sewer, telephone, cable and all other utilities serving the Premises and for trash removal for the Premises. In addition, Tenant shall pay to Landlord 10% (currently \$577.50 per month) of the Ice Centre's total expenses for common area maintenance and insurance, payable monthly; provided that common area expenses shall not include utilities, trash removal or any other expenses for which Tenant is billed directly or separately. Total charges will change year to year based on the actual cost of providing the common area maintenance services and snow removal. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to contribute to any costs incurred in connection with snow removal from the parking lots of the Ice Centre.

Landlord, not later than April 1 of each year of term of this Agreement, shall provide Tenant with an itemized statement of the Ice Centre's expenses for common area maintenance and insurance incurred by Landlord during the preceding calendar year. To the extent such accounting reveals that the total of Tenant's monthly payment exceed 10% of such expenses during the preceding calendar year, Landlord shall credit such overpayment against the next due monthly rental payments.



8. MAINTENANCE AND REPAIRS:

8.1 Except as covered by any maintenance agreement entered into by Landlord for Landlord owned equipment and furnishings pursuant to section 8.4, below, Tenant shall keep and maintain the Premises, including all Landlord owned equipment and furnishings and all sewer and water drains and connections which exclusively serve the Premises, in good condition and repair at the sole expense of Tenant and, at the expiration of this Lease as well as restroom fixtures and furnishings, Tenant shall surrender and deliver up the said Premises in as good order, condition and repair, loss by inevitable accident, Act of God and ordinary wear and tear excepted, as said Premises were accepted by Tenant at the commencement of this Lease. Landlord shall transfer and assign to Tenant any and all warranties on said sewer and water connections for the term of this lease.

8.2 Tenant shall keep the Premises, including the restrooms located in the Ice Centre Lobby, clean and in the sanitary condition required by the ordinances and health and police regulations of the City of Westminster, County of Jefferson and State of Colorado. Tenant shall neither permit nor suffer any disorderly conduct, noise or nuisance whatsoever about the Premises.

8.3 If Tenant shall fail or refuse to complete or perform any maintenance, repairs or upkeep required pursuant to the terms of this paragraph 8 within fifteen (15) days after written request by Landlord so to do, Landlord may cause such maintenance, repairs or upkeep to be made or done and may thereafter charge the reasonable cost thereof to Tenant and the same shall be and constitute additional rent due hereunder.

8.4 Tenant shall be responsible for, to the satisfaction of Landlord, all HVAC maintenance.

9. LIENS AND CLAIMS AGAINST LANDLORD:

9.1 Tenant shall pay, when due, for all work performed on or for the benefit of or materials furnished to, the Premises, by any person at Tenant's request. In this regard, Tenant shall indemnify and hold harmless and defend Landlord from any and all liability and expense resulting from any lien, claim of lien, or claim against Landlord arising from such work or labor. Tenant shall have the right to contest the validity of such lien, claim of lien, or claim.

9.2 Tenant shall not contract for the performance of any such labor or the acquisition of or delivery of any such materials in connection with, or the installation of any such improvements, unless Tenant shall first obtain Landlord's written approval thereof which approval shall not be unreasonably withheld, conditioned, or delayed.

10. INSURANCE:

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

- a. Commercial General Liability Insurance with combined single limit of \$3,000,000 per occurrence. This policy must include Contractor Liability; Products Liability; Broad Form Property Damage including, but not limited to, coverage for any damage to any Landlord personal or real property due to fire or water related to Tenant's operations pursuant to this Agreement; and Personal Injury;
- b. Owned, hired, and non-owned automobile liability coverage with \$600,000 limit;
- c. Statutory workers' compensation on all employees;
- d. All risk insurance for full insurable replacement value of Landlord-owned equipment and personal property.

10.2 The required insurance policies shall be endorsed to include the City of Westminster and Hyland Hills Park and Recreation District as additional insureds as their interests may appear under this Agreement. Every policy required above shall be primary insurance, and any insurance carried by the City of Westminster and/or Hyland Hills Park and Recreation District, their respective elected officials, officers, employees, or others working on their behalf, or carried by or provided through any self-insurance pool of the City or Hyland Hills, shall be excess and not contributory insurance to that provided by Tenant. Each party to this Agreement agrees to waive subrogation on respective property insurance.

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

Executive Director  
Hyland Hills Park and Recreation District  
1800 W. 89<sup>th</sup> Ave  
Denver, Colorado 80260

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

10.4 The parties hereto understand and agree that the City of Westminster and Hyland Hills Park and Recreation District are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitation (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et. seq.*, C.R.S., as from time to time amended, or otherwise available to them and their elected officials, officers, or employees.

10.5 Tenant covenants that it will neither permit nor suffer the Premises or the walls or floors thereof to be endangered by overloading, nor said Premises to be used for any purpose which would render the insurance void or the insurance risk more hazardous.

11. DAMAGE BY FIRE OR OTHER CASUALTY:

11.1 Unless as set forth in subparagraph 11.2, below, this Lease and all agreements, covenants, terms and conditions contained herein shall remain in full force and effect notwithstanding damage to or destruction of any of the furniture, fixtures, inventory or equipment maintained upon the Premises and, regardless of the nature or extent of the damage and Tenant shall not be entitled to any reduction in or abatement of the rental hereinabove reserved, nor shall Tenant be entitled to any reduction, abatement, or postponement of any of the monthly rental installments hereinabove reserved for or on account of such damage or destruction.

11.2 However, in the event that such damage or destruction was not caused by any act of Tenant, its officers, employees, or agents, than in that event, Landlord shall inform Tenant, within thirty (30) days of the date of destruction or damage, of Landlord's intent to remedy such damage or destruction by replacement or renovation of the damaged property (except for such damage covered under the policies of insurance more fully described in paragraph 10, above). If Landlord does not replace or renovate the non-covered damage or destruction or if the Premises cannot be reasonably restored to the condition existing at the time of the damage or destruction, either within ninety (90) days of such damage or destruction, Tenant may, at Tenant's option terminate this Lease without further obligation on Tenant's part and Tenant shall vacate the Premises within twenty (20) days of such decision to terminate or Tenant may elect to continue the Lease and shall cooperate fully with Landlord in restoring/repairing the damage or destruction. If Tenant elects to so continue the Lease, and if the Premises are untenable, Tenant shall receive an apportionment of the rent until the Premises are tenable.

12. ASSIGNMENT AND SUBLETTING:

12.1 Tenant may not assign, in whole or in part, this Lease or any interest therein, nor may Tenant sublet all or any part of the Premises without the prior written consent of Landlord being first had and obtained, which consent shall not be unreasonably withheld, conditioned or delayed; provided that the proposed transferee's use of the Premises is, in Landlord's opinion: (a) lawful, (b) consistent with the Permitted Use; (c) consistent with the general character of business carried on by tenants of the Ice Centre; (d) not in conflict with any exclusive rights or covenants not to compete in favor of any other tenant or proposed tenant of the Ice Centre; (e) not going to increase the likelihood of damage or destruction of the Premises or the Ice Centre; (f) not going to increase the rate of wear and tear to the Leased Premises or the Common Areas; (g) not likely to cause an increase in the insurance premiums for insurance policies applicable to the Building; and (h) not going to require new tenant improvements incompatible with the then existing Building systems and components. Any assignment or sublease in violation of the provisions of this paragraph shall be null, void and of no effect whatsoever, regardless of the fact that Landlord may have received other sums of money or

services from the proposed assignee or sublessee. Any sum so received shall be deemed to have been received from Tenant.

12.2 No attempted assignment or attempted subletting of all or any part of the Premises shall relieve Tenant from any of its obligations under the provisions of this Lease, including the payment of rent and any notice required to be given by the provisions of this Lease shall be deemed to be properly given to all putative assignees and putative sublessees when given to Tenant as herein provided.

12.3 Tenant may not grant any easement or license to any person or entity not a party hereto for any reason whatsoever without the express written consent of Landlord.

13. SURRENDER OF LEASEHOLD PREMISES:

Upon the expiration or other termination of this Lease or any extension thereof, Tenant shall quit and surrender the Premises and all Landlord owned equipment and furnishings to Landlord in as good order, condition and repair, loss by inevitable accident, Act of God and ordinary wear and tear excepted, as when said Premises, equipment and furnishings were accepted by Tenant at the commencement of this Lease. Tenant's obligation to observe or perform the provisions of this paragraph shall survive the expiration or termination of this Lease.

14. HOLDING OVER:

If, after the expiration or other termination hereof, Tenant shall remain in possession without a written agreement therefor, such holding over shall be deemed to be upon a month-to-month tenancy under the same terms, conditions and provision contained herein, and for a monthly rental equal to one hundred fifty percent (150%) of the amount of the last monthly installment of rent and additional rent paid pursuant to the terms hereof.

15. RENEWAL.

15.1 If Tenant shall not be in default of any of the terms of the Agreement, Landlord and Tenant shall meet, no later than 6 months prior to the termination of the Lease Term set forth in 2. Term, above, to discuss, in good faith, renewal thereof, for a five (5) year term and any changes required to be made to this Lease regarding this renewal.

15.2 Any renewal shall be subject to the discretion of Landlord and Landlord's determination of satisfactory performance by Tenant of the terms and conditions of this Lease, as well as mutual agreement between the parties regarding, but not limited to, amendment of Section 4 minimum and additional rent amounts to be paid by Tenant to Landlord.

15.3 This Lease may further be renewed for an additional five year renewal term pursuant to the requirements and determinations set forth in subsections 15.1 and 15.2, above.

16. DEFAULTS BY LESSEE AND REMEDIES:

16.1 Subject to the other provisions of this paragraph, each of the following shall constitute a default by Tenant and a breach of this Lease:

a. If the rent, additional rent, or any part thereof, as herein reserved, shall be unpaid when due.

b. If Tenant does not comply with any provision of this Lease which imposes an obligation upon Tenant.

c. If Tenant should violate or fail to comply with any of the statutes, ordinances, rules, orders, regulation or requirements, as the same exist or may hereinafter be established, of the government of the United States of America, the State of Colorado, County of Adams and the City of Westminster, or of any bureau, department or subdivision thereof.

d. If the Premises should be abandoned or vacated. Abandonment or vacation shall include the attempted removal of equipment, furniture and/or fixtures such as to degrade the ability of Tenant to carry on its business upon the Premises or cessation of a substantial portion of Tenant's normal business dealings at the Premises.

e. If Tenant should attempt to sell, assign, sublet or mortgage all or any part of either the Premises or the leasehold interest herein created without the prior written consent of Landlord having been first had and obtained.

f. If by operation of law this Lease should be transferred to, or pass to, or devolve upon, any person or entity other than Tenant.

g. If Tenant should be adjudicated as bankrupt or insolvent and such proceeding should not be vacated within thirty (30) days.

h. If Tenant should file a petition in bankruptcy or make a general assignment for the benefit of creditors.

i. If Tenant should file a petition or answer seeking reorganization or readjustment under Federal bankruptcy laws.

j. If a Receiver or Trustee should be appointed with respect to all or substantially all property of Tenant in any suit or proceeding against Tenant or in any bankruptcy proceeding.

k. If any execution or attachment shall be issued against Tenant, or any of Tenant's property, whereby someone other than Tenant shall take or occupy the Premises.

16.2 Upon the occurrence of any of the events of default set forth above, then, and at any time thereafter, Landlord may, at Landlords' sole option and in addition to all other rights available to Landlord at law or equity or contained in this Lease, either:

a. Give Tenant written notice of Landlord's intention to terminate this Lease on the date of such notice or on any later date specified herein, upon which date Tenant's right to use, occupancy and possession of the Premises shall cease and this Lease shall thereupon be terminated; or

b. Re-enter and take possession of the Premises or any part thereof and repossess the same as Landlord's former estate.

Should Landlord take such possession pursuant to the terms of this agreement, legal proceedings or pursuant to any notice provided by law or this Lease, Landlord may: (1) terminate this Lease at any time; or (2) from time to time without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Premises but reserving to Landlord the right at any time to elect to terminate this Lease as paragraph 16.2 (a) provides.

16.3 Unless Landlord shall have exercised its right to re-enter and take possession of the Premises pursuant to 16.2(b), in the event Landlord shall elect to terminate this Lease, Landlord shall give Tenant twenty (20) days written notice of the existence and nature of such default and of Landlord's election so to terminate. If such default exists at the expiration of such twenty (20) day period, and Landlord shall not have waived the same by written instrument, this Lease, and the term hereof, together with any and all right, title and interest in the Premises as herein granted to Tenant, shall terminate on the date fixed in said notice with the same force and effect (except as to the continuance of Tenant's liability) as if the date fixed by notice were the expiration of the term originally granted herein.

16.4 In the event Landlord shall elect to retake the Premises without terminating this Lease, Landlord shall give Tenant twenty (20) days written notice of the existence and nature of any such default and of Landlord's election to retake under the terms hereof. If such default exists at the expiration of said twenty (20) day period, and Landlord shall not have waived the same by written instrument, Landlord may, without terminating this Lease, retake possession of the Premises.

16.5 In the event that Landlord does not elect to terminate this Lease as permitted in paragraph 16.2 (a), but on the contrary elects to take possession as provided in paragraph 16.2 (b), then such possession of the Premises by Landlord shall not relieve Tenant of its liability and obligation under this Lease, all of which shall survive such repossession. In the event of such repossession, Tenant shall pay the fixed rent and all additional rent as herein provided up to the time of termination of this Lease (which Landlord can declare at any time), and thereafter Tenant, until the end of what would have been the term of this Lease in the absence of such repossession, and whether or not the Premises shall have been relet, shall be liable to Landlord for, and shall pay to Landlord as liquidated current damages:

a. The minimum rent and additional rent as herein provided which would be payable hereunder if such possession had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all of Landlord's expenses in connection with such

reletting, including, but without limitation all repossession costs, legal expenses and attorneys' fees and expenses of preparation for such reletting.

Tenant shall pay such current damages to Landlord on the days on which the fixed rent would have been payable hereunder if Landlord had not repossessed, and Landlord shall be entitled to receive the same from Tenant on each such day.

b. If Tenant breaches or defaults any term of this Lease and abandons or vacates the Premises before the end of the term hereof, or if Tenant's right to possession is terminated by Landlord because of a breach or default of this Lease, Landlord may recover from Tenant a judgment from a court of law having appropriate jurisdiction, in addition to any other damages provided for at law, in equity, in this Lease, or otherwise, a sum equal to the unpaid lost rent for the balance of the rental term, or any exercised extension thereto, minus the amount of such rental loss for the same period the Tenant proves could be reasonably avoided.

16.6 Tenant shall, at the expiration of the twenty (20) days notice periods set forth above and Tenant has not cured any default, immediately quit and surrender to Landlord the entire Premises, and Landlord may enter into or repossess the Premises either by force, summary proceedings, or otherwise. Tenant further agrees that, in the event of repossession by Landlord, Landlord may, without notice to Tenant, sell such of Tenant's inventory, furniture, fixtures or equipment as then remain upon the Premises in such manner and for such amount as Landlord may deem advisable. Thereafter, Landlord shall remit the proceeds of such sale, after deduction for the costs of the sale and any monies owed to Landlord by Tenant pursuant to the term of this Lease, to Tenant.

16.7 In the event of any default by Tenant pursuant to subparagraph 16.1d, above, or if Tenant violates the provisions of Section 17, below, and notwithstanding any other provision herein, Landlord shall have the right, at Landlord's sole option and without any necessity of notice (and without restricting or surrendering any of Landlord's other rights hereunder), and Tenant hereby agrees and consents thereto, to immediately take possession of the Premises and all equipment, inventory, contents, furniture and fixtures therein, of whatever kind or ownership, and to, within a reasonable time and in a reasonable manner, cause the same to be sold and the proceeds thereof applied to any monies owed to Landlord by Tenant pursuant to this Lease.

17. LESSEE'S BUSINESS OPERATIONS:

During the term of this Lease, and as the same may be extended or renewed, Tenant shall continuously conduct and carry on Tenant's business activities in the entire Premises.

18. IMPROVEMENTS TO LEASEHOLD PREMISES:

Tenant shall make no improvements to the Premises without the prior written consent of Landlord and only upon such terms and conditions as set forth by Landlord. All such

improvements, however denominated, shall be and remain the property of Landlord unless otherwise agreed to in writing between the parties hereto and may not be removed by Tenant at any time from the Premises, without the express written consent of Landlord.

19. SIGNAGE:

19.1 Tenant may cause to be installed one or more interior and exterior signs, at no additional rent or charge by Landlord to Tenant, in such design(s) and location(s) as shall be approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed. Such sign(s) shall be and remain the property of Tenant and Tenant shall be solely responsible for the purchase, installation, operation and maintenance of the sign(s) and all associated costs. Tenant shall maintain all signs or advertisements approved by Landlord in good and attractive condition. Landlord shall assist with the electrical hook-up of said sign(s). Upon the termination of the Lease, unless otherwise agreed to by Landlord, Tenant shall cause such sign(s) and any associated improvements to be immediately removed from the premises and repair any resulting damage to the Premises, all at Tenant's expense. All of Tenant's signs shall be in compliance with the requirements of the City of Westminster sign code and any other applicable regulations.

19.2 Tenant shall have the right to place one dasher board sign on each ice rink at the Ice Centre at the Promenade, without charge except that Tenant shall pay for the production and installation of each such sign.

20. RELATIONSHIP OF PARTIES:

Landlord and Tenant are not nor shall they become, by virtue of this Lease, anything other than Landlord and Tenant. Landlord and Tenant are not joint venturers, partners, or agents of one another nor is either party employed by the other.

21. NOTICES:

All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been sufficiently given or served if deposited in the United State mails, registered or certified, postage prepaid, and addressed as indicated below:

Landlord:

Executive Director  
Hyland Hills Park and Recreation District  
1800 West 89th Avenue  
Denver, Colorado 80260

Tenant:



22. PERMITS AND LICENSES:

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

22.2 Tenant shall apply for a Hotel and Restaurant Liquor License, with Optional Premises within fifteen (15) business days after the date this Agreement is fully executed and shall maintain such license during the term of this Agreement. The Director will fully cooperate with Tenant in such application. Tenant shall pay all expenses necessary to obtain the liquor license. Nothing contained in this Agreement shall be construed to guarantee that the City of Westminster will approve the issuance of any license. In the event such license is denied, or in the event that such license is issued but later revoked or suspended BY THE LOCAL OR STATE LIQUOR LICENSING AUTHORITIES, such denial, suspension, or revocation may be deemed a material breach and event of default by Tenant, and Landlord may immediately terminate this Agreement. No transfer of the license shall be made without the approval of the City of Westminster and only as part of an assignment of this Agreement. Upon termination, the City of Westminster may designate a transferee of the liquor license. Tenant agrees to take all actions necessary to promptly transfer the existing license to the transferee.

23. ENTIRE AGREEMENT:

This Lease, with all exhibits and schedules annexed hereto, contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, waive, release, discharge, terminate, or effect an abandonment of, this Lease, in whole or in part, unless such executory agreement is in writing and signed by both Landlord and Tenant.

24. SEVERABILITY:

If any provision, sentence, phrase, or word of this Lease, or application thereof to any person or circumstance, shall be held invalid, the remainder of this Lease, or the application of such provision, sentence, phrase or work to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

25. BINDING EFFECT:

Except as is otherwise provided herein, this Lease shall be binding upon and inure to the benefit of the heirs, administrators, devisees, personal representatives, successors and assigns of Landlord and Tenant.

26. WAIVER:

No assent, express or implied, to any breach of any one or more of the covenants and agreements hereof shall be deemed or taken to be a waiver of any other or succeeding breach.

27. SURVIVAL CLAUSE:

All unperformed agreements, covenants and conditions herein contained shall survive the execution, expiration or termination hereof and shall not be merged therewith.

28. PARAGRAPH HEADINGS:

The paragraph headings contained herein are for convenience only and shall in no way change, alter, modify or affect any of the provisions or conditions herein contained.

29. ACKNOWLEDGMENT OF EXAMINATION:

The parties hereto acknowledge that they have carefully read and thoroughly understand the terms and conditions of this Lease. It contains the entire agreement and understanding under which they have entered into this Lease and the results and understandings of all of their negotiations have been merged in this Lease. Tenant and Landlord accept the terms and conditions hereof in all respects and agree to be bound thereby. Each of the parties hereto acknowledge that they have either had benefit of legal counsel in the negotiation and preparation hereof, or, in the alternative, they recognize the need for such counsel but have elected not to seek the same.

30. ACCESS AND INSPECTION:

Landlord, its designated agents, employees, servants, and any other person authorized by Landlord may enter the Leasehold Premises, at any reasonable time and with reasonable written notice, for the purpose of inspecting the same. Any entry onto or inspection of the Leasehold Premises by Landlord pursuant to this section shall not constitute interference with the operations of Tenant and no abatement of any payments due under this Agreement shall be allowed; provided, however, the scope and length of the inspection is reasonable.

31. OTHER PAYMENT OBLIGATION:

Tenant shall promptly pay all taxes and fees of whatever nature, applicable to the operation of the Leasehold Premises, and shall maintain all licenses, municipal, state or federal, required for the conduct of business and shall not permit any of said taxes or fees to become delinquent. Tenant shall pay promptly when due all bills, debts and obligations attributable to the Premises, including but not limited to its portion of charges for water, sewer, light and electricity as set out in Section 7 herein, as well as all charges for telephone service, refuse collection, and all other costs and expenses related to the operation of the Leasehold Premises and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of Lessor under this Agreement. All such costs and expenses of Tenant are to be borne by Tenant.

32. RELATIONSHIP TO TRUSTEE:

32.1 The parties hereto acknowledge that pursuant to that certain Ground Lease Agreement ("Lease"), and that certain Lease Purchase and Sublease Agreement ("Sublease") dated 1998, both by and between the City of Westminster and the City of Westminster Building Authority, the City has leased to the City of Westminster Building Authority the Ice Centre building and the improvements located therein and said Building Authority has subleased to the City said building and improvements.

32.2 The parties hereto further acknowledge that the City of Westminster Building Authority has assigned certain of its rights pursuant to the documents described in subparagraph 32.1 and that certain 1998 Mortgage and Indenture of Trust ("Indenture") to the U. S. Bank National Association d/b/a Colorado National Bank, as Trustee.

32.3 The parties hereto further acknowledge that, pursuant to paragraph 13.2 of the above-referenced Sublease:

a. This Agreement is subordinate to the Lease, Sublease and Indenture;

b. If a Termination Event occurs (as defined in said Sublease), Tenant, provided Tenant's occupancy is not disturbed, shall pay to the Trustee all rents payable under this Agreement and this Agreement will be assigned to the Trustee;

c. So long as Tenant is in compliance with the terms of this Agreement, neither the Trustee, Landlord, nor the Building Authority shall disturb Tenant's use of the Premises.

32.3 Landlord warrants that nothing in this Agreement violates any terms of the Ground Lease or any associated document, law, or regulation and that Landlord is not in default thereof.

33. ATTORNEYS FEES:

If any dispute shall arise between the parties hereto regarding the interpretation of this lease or any provision thereof or the application of any provision, which dispute results in the filing of any suit or legal proceeding, the party adjudged by the judge or legal officer presiding over such proceedings to be the prevailing party shall be awarded its reasonable attorneys fees and costs from the non prevailing party.

34. DEFAULT BY LANDLORD:

34.1 Landlord's failure to perform or observe any material obligation hereunder which remains uncured for a period of thirty (30) days after the Landlord receives notice from Tenant setting forth in reasonable detail the nature and extent of the Default and identifying the applicable Lease provision(s) constitutes a default by Landlord.

34.2 In addition to any other remedies available at law or equity, Tenant may, upon prior written notice to Landlord, pursue any of the following remedies if Landlord's Default remains uncured pursuant to Paragraph 34.1 hereof:

- a. Set off the reasonable cost of remedying the default against any Rent due, or;
- b. Terminate this Lease and immediately surrender the Premises to Landlord.

34.3 In the event the Ice Centre is closed to the public in excess of thirty (30) days, other than during periods of maintenance and repair, which periods shall not exceed one hundred eighty (180) days, Tenant, at its option, may terminate this Lease.

35. CONSENT:

Throughout this Lease, where Landlord's consent is required, such consent shall not be unreasonably withheld or delayed.

36. INDEMNIFICATION.

**Tenant agrees to indemnify and hold harmless Landlord, its boards of directors, council, officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of Tenant's operation of the Premises and liquor license, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Tenant, any contractor or subcontractor of Tenant, or any officer, director, shareholder, member, employee, representative, or agent of Tenant, or which arise out of any workers' compensation claim of any employee of Tenant or of any employee of any contractor or subcontractor of Tenant. Tenant agrees to investigate, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of Tenant, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.**

**LANDLORD:**

HYLAND HILLS PARK AND RECREATION DISTRICT

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Greg Mastriona, Executive Director

Approved as to legal form: \_\_\_\_\_  
Richard Fuller, Administrative Counsel

CITY OF WESTMINSTER

\_\_\_\_\_  
Brent McFall, City Manager

\_\_\_\_\_  
Linda Yeager, City Clerk

Approved as to legal form:           *MR McCallough*            
City Attorney

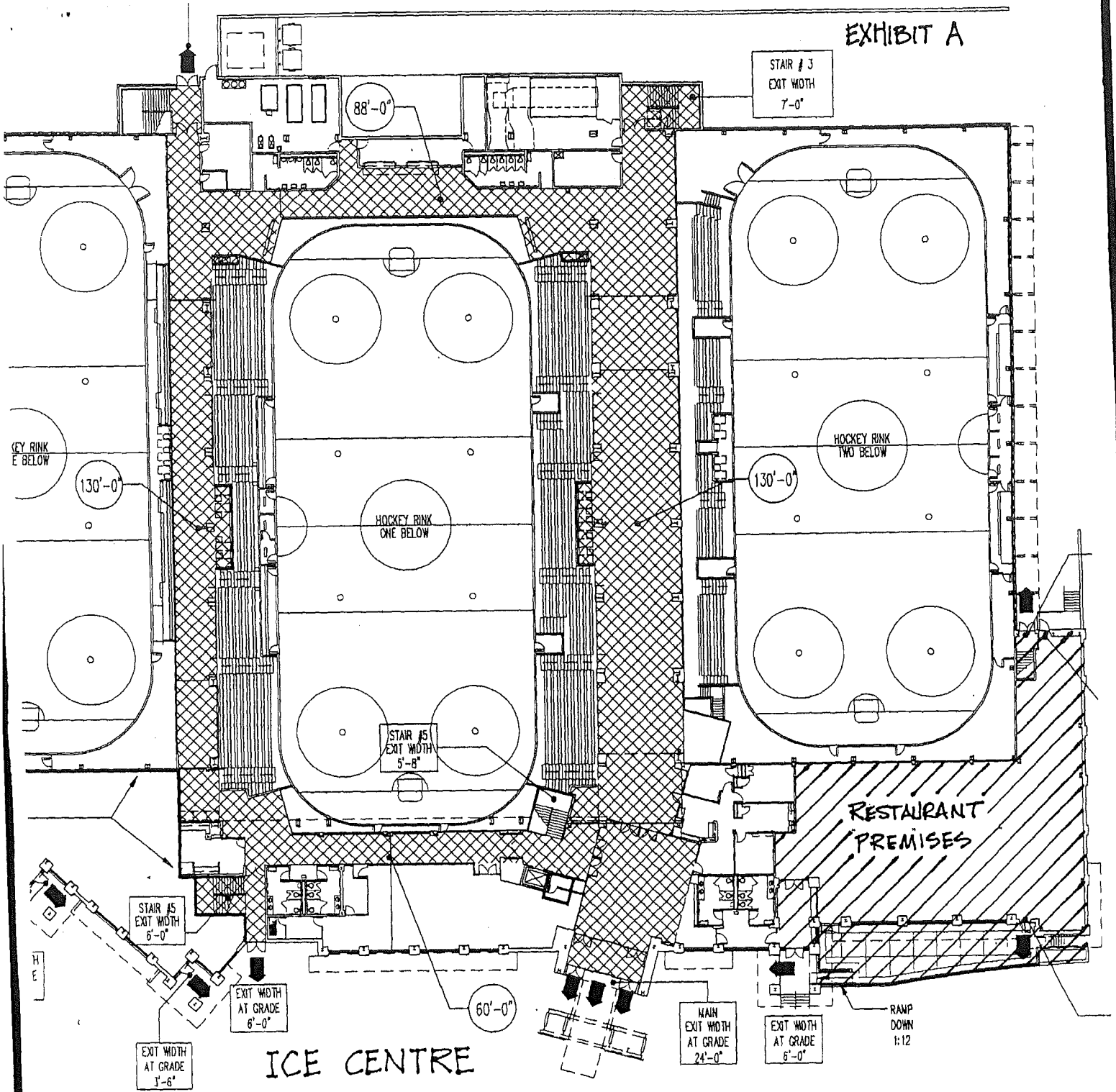
**TENANT:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A



ICE CENTRE

RESTAURANT  
PREMISES

STAIR # 3  
EXIT WIDTH  
7'-0"

88'-0"

130'-0"

HOCKEY RINK  
ONE BELOW

STAIR #5  
EXIT WIDTH  
5'-8"

130'-0"

KEY RINK  
E BELOW

STAIR #5  
EXIT WIDTH  
6'-0"

EXIT WIDTH  
AT GRADE  
6'-0"

60'-0"

EXIT WIDTH  
AT GRADE  
1'-6"

MAIN  
EXIT WIDTH  
AT GRADE  
24'-0"

EXIT WIDTH  
AT GRADE  
6'-0"

RAMP  
DOWN  
1:12

H  
E

**EXHIBIT B**  
**GUIDELINES & STANDARDS OF OPERATIONS**

**Cleanliness Standards**

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

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

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

#### **Facility and Equipment Maintenance**

1. Tenant shall be responsible for the daily cleanliness, of all equipment and facilities for food and beverage handling. Prior to the first day of business under this Lease, Landlord and Tenant will conduct a walk-through inspection of all equipment and the facilities to note any repair/replacement items.

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

#### **Custodial Maintenance**

1. Unless covered by a maintenance agreement pursuant to section 8.4 of the Lease, Tenant will be responsible for custodial maintenance of the dining room, bar, kitchen, patio area, delivery area, cooktop ventilation hood system, grease trap system, restaurant storage area, and restaurant office areas. Window cleaning in the restaurant-dining room and the patio areas is the responsibility of the Tenant.

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

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

4. Failure to comply with this section, after notice from Landlord, shall be an event of default.

#### **Menu**

1. The Tenant shall plan and prepare imaginative menu selection with an adequate variety of products, in consultation with Landlord.

2. Tenant shall adhere strictly to all pure food laws and regulation as adopted by the State of Colorado or the County Health Department. Food shall be prepared in such a way as to be



acceptable to most patrons. Hot food shall be hot and cold food shall be cold. The amount of food served shall be sufficient in relation to price and other services offered. Service shall be prompt, giving attention to the patron's needs and promoting a friendly relationship. The food shall complement the facility and shall reflect the eating preferences of most patrons.

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

### **Entertainment**

All costs for amenities such as background music, live entertainment, cable/satellite TV, and bar video games are the responsibility of Tenant.

### **Employee Conduct and Appearance**

1. Tenant shall be responsible for employment and compensation of its own employees. All employees shall provide prompt and courteous service to all customers and the general public. Tenant shall provide qualified supervision, competent management staff, and numbers of employees necessary to maintain good service. Employees shall be clean and maintain appropriate clothing and appearance. Tenant shall at all times enforce strict discipline and good order among employees.

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

### **Customer Service**

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



**Agenda Memorandum**

City Council Meeting  
July 9, 2012



**SUBJECT:** Councillor's Bill No. 23 re FY2011 Carryover Appropriation into FY2012

**Prepared By:** Barbara Opie, Assistant City Manager

**Recommended City Council Action**

Pass Councillor's Bill No. 23 on first reading, appropriating FY2011 carryover funds into the FY2012 budgets of the General, General Fund Stabilization Reserve, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Fleet, General Capital Outlay Replacement, POST and Conservation Trust Funds.

**Summary Statement**

- The City Council annually reviews and appropriates carryover funds from the previous year's budget into the current year budget for the following:
  - those items and services included in the previous year's budget but not received or provided until the current year's budget;
  - new items and services not included in the previous year's budget or funds that were identified as available for these new priorities in late 2011, but the items or services were not received or provided until the current year's budget; and
  - existing or new capital projects and key operating priorities for which funds are needed and carryover funds are available.
- Total funding of \$12,109,495 to be appropriated for the items recommended comes from unrestricted revenues and unexpended 2011 funds in the various amounts identified. This amount is a proposed increase of \$378,041 from the figure reflected in the June 25, 2012, Post City Council Meeting Staff Report. Upon further review, Staff is recommending the appropriation of unrestricted fund balance available in the Golf Course Fund. This fund balance became available as a result of the 2010 refinancing of the Heritage debt.
- Staff is requesting that City Council authorize the proposed carryover items included within this Agenda Memorandum and appropriate FY2011 carryover funds into the FY2012 budgets of the General, General Fund Stabilization Reserve, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Fleet, General Capital Outlay Replacement, POST and Conservation Trust Funds.
- One of the high priority carryover recommendations is to allocate \$500,000 to the General Fund Stabilization Reserve. This continues City Council's policy of maintaining a healthy reserve to address future economic downturns.
- The carryover appropriation takes place annually once the audit is completed for the prior year and carryover amounts are finalized.

**Expenditure Required:** \$12,109,495

**Source of Funds:** FY2011 Carryover from the General, Utility, Storm Drainage, Sales & Use Tax, Golf Course, General Capital Improvement, General Capital Outlay Replacement, POST and Conservation Funds

## **Policy Issue**

Should the City appropriate carryover funds as proposed?

## **Alternatives**

1. City Council could decide not to appropriate any of these funds at this time. This is not recommended as many of the carryover requests are for items and services that have already received City Council approval during the FY2011 Budget process as priority expenditures for the City.
2. City Council could choose to approve the carryover appropriation for only previously appropriated operating items. Staff recommends utilizing the carryover funds for the previously appropriated operating items as well as the new operating and capital improvement projects noted in this memorandum to maximize the use of these funds in providing services to residents and businesses.

## **Background Information**

Total funding of \$12,109,495 is recommended to be appropriated for the items included within this memo from available revenues and unexpended 2011 funds in the various amounts identified. This amount represents an increase of \$378,041 from the figure included within the Staff Report reviewed with City Council June 25. Upon further evaluation, Staff is recommending the appropriation of funds available in the Golf Course Fund to assist with the land acquisition associated with the Heritage Golf Course. Additional information is available in the Golf Course Fund section of this agenda memorandum.

### PROPOSED RE-APPROPRIATION OF OPERATING ITEMS PREVIOUSLY APPROVED IN 2011

Certain items were budgeted and ordered in 2011 but were not received until 2012. In addition, certain services, authorized in 2011, were not fully performed by the end of the year. Under standard accounting procedures, these remaining funds should be re-appropriated in the new year to complete the desired purchase or service. Staff recommends the funds described below be re-appropriated in 2012.

#### **GENERAL FUND**

City Manager's Office – One item totaling \$15,000 for updates to the web and marketing information related specifically to economic development. These items were not completed during 2011 due to staff turnover.

Fire Department – One item totaling \$14,710 from the annual Emergency Management Performance Grant (EMPG) used for emergency management operations in 2012. The City received a greater than originally anticipated amount of EMPG funds in 2011 and wants to maximize these federal funds as intended on training and materials.

Parks, Recreation & Libraries – Two items totaling \$14,353 as follows:

1. \$5,029 for the purchase of equipment associated with the second phase of the SmartPay software implementation, allowing patrons to make credit card payments on the library self-check-out computers. This project was delayed during implementation due to staff illness, software vendor technology changes, staff turnover, and other library priorities.
2. \$9,324 in scholarship funds, received in 2011 from citizens and recreation program participants, for the Westminster Youth Scholarship Fund. These funds are intended to supplement registration fees for City-sponsored recreation programs for individuals needing financial assistance. These funds will be available for scholarships in 2012.

**UTILITY FUND**

Public Works & Utilities Department – Two items totaling \$78,851 as follows:

1. \$3,631 for the implementation of the Accela Citizen Access Software. The Building Division's software to allow contractors and residents to submit for and track progress on building permits and inspections. The project was originally scheduled to be completed by year-end 2011 but delays in vendor negotiations caused the project to commence later than planned.
2. \$75,220 for the replacement stainless steel, insulated, deep-drop, tank-trailer for Big Dry Creek Wastewater Treatment Facility authorized by City Council in late November 2011. During the bid process, clarifications were needed that delayed the final purchase but did save cost. However, as a result of these delays, the trailer will not be delivered until third quarter 2012.

Information Technology Department – One item totaling \$6,086 for the purchase of 216 GB memory for the R710 Server. The memory was ordered December 8, 2011, but due to production delays, not delivered until January 12, 2012. A total of 216 Gigabytes of was installed into six computer servers responsible for running the JD Edwards, ArcGIS, Sale Tax, Accela Maintenance Management, GS-Fleet and Court software applications. Due to the increasing demands of these applications, the IT Department was seeing memory utilization approaching the maximum recommended on these servers. The additional memory has helped to ensure that users of these applications continue to experience excellent application performance and response time.

**PROPOSED APPROPRIATION OF NEW OPERATING ITEMS**

Staff recommends utilizing some of the General and Utility Funds' carryover moneys available to help address new high priority spending needs in the funds identified below. The items listed below are intended to be proactive measures to help minimize the impact on future budgets for needed items.

**GENERAL FUND**

City Manager's Office – One item totaling \$13,167 for workspace reconfiguration in Economic Development. A longtime need has been to enhance confidentiality for ED staff when discussing opportunities with potential clients on the telephone when the ED area is located so closely to the waiting area for the Community Development Department; as such, the reconfiguration addressed overall confidentiality needs by enclosing the ED space as well as addressing desk configuration/storage needs.

Central Charges – Six items totaling \$1,054,125 as follows:

1. \$70,000 for miscellaneous studies and projects unanticipated in 2012. A total of \$138,500 was budgeted in the professional services account in 2012. These funds represent savings in the Central Charges 2011 operating budget and are proposed to offset additional costs associated with special projects, PR&L Director recruitment, facilitation services, federal lobbyist services and special studies that might arise per City Council and Staff requests.
2. \$24,000 for the Citizen Relationship Management (CRM) system to enhance City services by offering citizens a streamlined process for submitting service requests to the City via a smartphone device and the City's website. As noted in an April 16, 2012, Staff Report, Staff has selected and is currently implementing an application through Government Outreach's GoRequest CRM system that will enable residents to make service requests and offer suggestions from the comfort of their home, office or mobile device. The amount reflects the initial implementation cost plus the remaining 2012 maintenance costs; the funds represent savings in the Electronic Media accounts from the 2011 Central Charges budget.
3. \$200,000 for South Westminster Urban Renewal Area (URA). For 2012, it is anticipated that the cash available in South Westminster URA will not be sufficient to cover all of the obligations for the URA. Obligations include debt service, economic development agreement payments and interfund loan payments. In order to have sufficient cash to fulfill the listed obligations for 2012, Staff proposes that the General Fund transfer these funds to the Westminster Economic Development Authority Fund for the South Westminster URA and assist with these obligations.

4. \$500,000 to the General Fund Stabilization Reserve (GFSR) created in 2009. The current balance is \$3,212,830 according to the 2011 audit. Per the Amended 2012 Budget, an additional \$327,209 will be added to the GFSR, of which \$77,209 is projected interest earnings. Per City Council adopted policy, the GFSR target range is between 5% and 10% of the total Sales and Use Tax Fund revenues budgeted for the year, as funding allows. For 2012, the Sales and Use Tax Fund revenues budgeted totals \$65,012,872; therefore, the target range for 2012 is between \$3,250,644 (5%) to \$6,501,287 (10%). The current GFSR balance is 4.9% of the 2012 Sales and Use Tax Fund total. The funds proposed through carryover, added to the 2012 budgeted amount, will bring the total GFSR balance to \$4,040,039 or 6.2%.
5. \$246,125 to the General Capital Outlay Replacement Fund (GCORF). This request is to repay the GCORF for an unplanned equipment replacement for unit 6133, a 2006 Lee Boy 8515 Paver for the Street Division of Public Works & Utilities Department that City Council approved on March 26, 2012. Council authorized Staff to utilize GCORF fund balance (general vehicles) to allow the unplanned replacement of this unit in 2012 with the proposal to replenish GCORF through 2011 carryover funds. Recognizing the looming potential need to replace this unit early, the Street Division worked diligently in 2011 and saved adequate funds within their operating budget for this purchase.
6. \$14,000 to the Fleet Maintenance Fund to complete the upgrade of the fuel dispensing system at the Big Dry Creek Wastewater Treatment Facility. This upgrade was identified in 2011 and work commenced to position the Fleet Division to implement this needed upgrade in 2012. Savings in 2011 from the General Services Department were identified to fund this project that will move the underground piping above ground and improve dispensing speed and tracking of fuel consumed.

#### UTILITY RESERVE FUND – WATER AND WASTEWATER

Staff proposes appropriating a total of \$917,136 to the Rate Stabilization Reserve (RSR) and \$3,063,958 to the Capital Project Reserve (CPR).

1. Rate Stabilization Reserve – The RSR was established and funded to meet a specific risk such as revenue loss related to a certain level of demand curtailment. The reserve is designed to minimize or mitigate rate impacts. Impacts to the rate stabilization reserves are determined by the annual performance of rates versus the budgeted rate revenue. The target level for this reserve is set at 25% of budgeted revenues for the Water Fund and 10% of budgeted revenues for the Wastewater Fund. The RSR has an upper limit of 140% of the target and a lower limit of 70% of the target. Staff recommends appropriating \$487,599 in carryover for the RSR for the Water Fund to keep the Water balance within the upper portion of the reserve balance target range and \$429,537 in carryover for the RSR for the Wastewater Fund to keep the Wastewater balance within the reserve balance target range. The current Water balance is \$10,549,556 and the Wastewater balance is \$1,240,521 per the 2011 audit.
2. Capital Project Reserve – This reserve was created to establish and maintain a Capital Improvement Program capable of sustaining long-term utility capital requirements. The City established the CPR to accumulate funds in excess of near-term needs. This policy is intended to foster timely system reinvestment, while providing resources for periodic increases in outlays without undue rate burden. Staff recommends appropriating \$2,724,325 in carryover to the CPR in the Water Fund and appropriating \$339,633 to the CPR in the Wastewater Fund. The current Water balance is \$17,557,906 and the Wastewater balance is \$3,387,683 per the 2011 audit.

#### UTILITY FUND

Public Works & Utilities – One item totaling \$490,403 for the 2012 purchase of Denver “Moffat” water. Denver Water is required to deliver up to 4,500 acre-feet (AF) of raw water to Westminster each year. This Denver “Moffat” water is delivered from the West Slope through Denver’s system into the City’s Kinnear Ditch Pipeline and stored in Standley Lake. The City’s contracts with Denver Water require that the annual delivery occurs from July 1<sup>st</sup> through June 30<sup>th</sup> and that the City pays Denver Water the raw

water rate for use of the water each year. In addition, the City has a contractual obligation to pay for 1,750 AF during the same time period, even if the City does not take delivery of any Denver Water. Funding for the obligatory 1,750 AF is included in the current 2012 operations budget and will be spent by June 30, 2012. Given below average snowpack and stream flow forecasts, and the continued warm, dry spring weather conditions, Staff is recommending the purchase of an additional 1,750 AF of water for delivery during the late summer and fall months of 2012. This additional water will help to maximize storage levels in Standley Lake and put the City's water supply in the most favorable position going into 2013. Because Denver Water's fiscal year is July 1<sup>st</sup> through June 30, Staff does not normally have budgeted funds for the purchase of water from Denver after the initial "take or pay" obligation is met by June 30 of each year. This one-time carryover of funds will allow the purchase and delivery of water in late 2012 to meet the next July-June year's obligation of 1,750 AF, thus allowing the funds budgeted for Denver contract water to be applied in the latter part of 2013 for the following July-June period. A total of 3,500 AF will be purchased by the City in 2012, keeping Westminster's purchases within our contractual rights.

#### PROPOSED APPROPRIATION FOR EXISTING OR NEW CAPITAL PROJECTS

Staff has completed a review of potential capital improvement projects for the balance of carryover funds. Staff is recommending that carryover funds be appropriated for the following Capital Improvement Program (CIP) projects. Higher than anticipated revenues and better than anticipated expenditure savings in the General, Utility, Stormwater, Sales & Use Tax, General Capital Improvement, GCORF, POST, Conservation Trust, and Golf Course Funds are proposed to be utilized for these projects.

#### GENERAL CAPITAL IMPROVEMENT FUND

A total of \$4,056,057 for capital projects is proposed to be appropriated into the General Capital Improvement Fund (GCIF) as follows:

1. \$265,423 for the radio system replacement project. The City is currently planning for the future replacement of its existing radio system with a P-25 digital interoperable simulcast radio system. The City's current system is 20 years old is approaching end-of-life status. Staff is working to accrue funding for this project over several years; a total of \$378,000 has been accrued to date and it is estimated that the total replacement cost will exceed \$2 million for the City's share (the City partners with Arvada on the radio system). The project will replace major radio system components, dispatch equipment and radios. Per this forthcoming project, Staff only replaced broken or malfunctioning radios in 2011 and other replacements were postponed until commencement of this project. Staff requests appropriation of these funds into the Citywide Radio System Replacement capital project account. A total of \$247,223 is from General Fund; a small component of this is from original radio replacements budgeted within all department operating budgets and a majority from Police Department savings thanks to the acquisition of significant grant funding that the department otherwise would have had to pay during 2011. An additional \$18,200 is from the Utility Fund department operating budgets for radio replacements originally budgeted for 2011 and proposed to be transferred into this project.
2. \$1,500,000 into a new Capital Project Reserve account. This funding is proposed as a contingency measure should the City need to complete payment on the Sears note due in December 2013. While the plan remains to have a developer on board assuming the note for the WURP site by that time, Staff believes it is prudent to develop a contingency plan should unforeseen delays be experienced.
3. \$860,000 is proposed to go towards the City's local match for the 72<sup>nd</sup> Avenue/Little Dry Creek Bridge Replacement project. The total project is estimated to cost over \$4.3 million. A \$1,843,400 grant from the Colorado Off-System Bridge Program in 2013 will assist in the reconstruction of the Little Dry Creek drainage crossing at 72<sup>nd</sup> Avenue. The City has appropriated \$1,630,018 towards this project, and the \$860,000 proposed through 2011 carryover will fund the final amount needed for the bridge replacement.

4. \$20,720 for the New Art Participation project. Funds for new art were deposited for one project completed in 2011. This project serves as a "holding account" for developer contributions toward new art requirements. These funds will be utilized throughout the City towards new art projects.
5. \$47,768 for the Tree Mitigation project. Funds for tree mitigation were deposited for three projects in 2011. This project serves as a "holding account" for developer contributions toward landscaping requirements. These funds will be utilized throughout the City towards forestry projects, including tree replacements and new tree plantings as needed. The tree mitigation money is being used to replace trees that have been removed from public grounds across the City.
6. \$326,476 is proposed to be appropriated into The Heritage Golf Course Back Nine Land Acquisition capital project. \$31,432 is from Jefferson County open space attributable share revenues and \$295,044 is from unrestricted Park GCIF revenues and PR&L savings in the General Fund. (The amount from unrestricted Park GCIF revenues was \$297,003 in the June 25 Staff Report; however, upon further review, Staff identified that \$1,959 was restricted revenue associated with the POST 2007D bond issue that should not be included with this appropriation.) These funds will be utilized towards purchasing the land associated with the back nine holes owned by and leased from the Rocky Mountain Metropolitan Airport. This lease has an escalator built into it that continues to strain the finances of the golf course operations. A grand total of \$1,226,723 is proposed through 2011 carryover towards this project (GCIF, Conservation Trust, POST and Golf Course funding).
7. A total of \$290,357 is proposed to be appropriated into Community Enhancement-Bridge Enhancement capital project. \$180,336 is from Sales and Use Tax revenues and \$110,021 is from accommodations tax revenues. These funds will be utilized towards the amount owed to CDOT for the enhancements made to the 80<sup>th</sup> Avenue Bridge over US36.
8. \$44,630 is proposed for the City's share of the corridor-wide FASTER grant application through CDOT for US36 Bus Kiosks. Per the grant proposal, 14 kiosks are proposed along the US36 corridor, totaling \$781,000. The \$44,630 is the City's share of the local match for the corridor in this grant application.
9. \$181,000 is proposed towards the City's share of the 92<sup>nd</sup> Avenue and Federal Boulevard Intersection Improvements. Federal Heights submitted a proposal for DRCOG Transportation Improvement Program (TIP) funding in early 2012 that included matches from CDOT and Westminster for this intersection improvement. Through a series of events, this project was selected for funding and moved the project timeline to 2012-2014 (originally it was proposed for later years). The total project cost is over \$5.67 million and the City's share is only \$600,500. The \$181,000 proposed through carryover is the amount needed in 2012 to commence final engineering design. Additional funds (\$96,500 in 2013 and \$323,000 in 2014) will be proposed through the City's 2013/2014 Budget process.
10. \$487,815 is proposed for the Westminster Station improvements proposed by the City. Overall, between all funding sources, which currently includes approximately 57% funding from outside partners, the investment in the Westminster Station TOD area is estimated at \$35 million. This includes approximately \$13.4 million in funding from the City's General Capital Improvement, Utility and Stormwater Funds. These funds are needed towards the estimated costs of betterments proposed to the south plaza and platform.
11. \$30,683 for the upgrade to the City's Laserfiche document management software system. SCorp provided the opportunity to receive full credit on the cost of our original licenses toward the purchase that would otherwise have cost over \$100,000 to implement. The upgraded version has extended functionality included with the product, including document workflow and routing, automating retention for better compliance with the City document retention policy, and watermark capabilities.

This upgrade was not anticipated in the 2012 budget. The total cost is \$47,204 but proposed to be split between the General Capital Improvement Fund and the Utility Fund based on utilization of the system.

12. \$1,185 for the Adams County Open Space Land Acquisition project. These funds are dedicated Adams County open space attributable share revenues and must be utilized on eligible Adams County open space projects. This project funds land acquisitions and currently is being utilized to help make the Metzger Farm certificate of participation payments.

#### CONSERVATION TRUST FUND

One item totaling \$120,247 is proposed to be appropriated into The Heritage Golf Course Back Nine Land Acquisition capital project. These are in addition to the Jefferson County open space attributable share revenues, unrestricted Park GCIF revenues and PR&L GF savings, unrestricted POST Fund savings and Golf Course Fund savings. These funds will be utilized towards purchasing the land associated with the back nine holes owned by and leased from the Rocky Mountain Metropolitan Airport.

#### GOLF COURSE FUND

One item totaling \$380,000 is proposed to be appropriated into The Heritage Golf Course Back Nine Land Acquisition capital project in the General Capital Improvement Fund. Staff did not originally include these funds within the Staff Report reviewed with City Council on June 25. The opportunity to move more quickly with the land acquisition has escalated the need to complete assembly of funding needed to complete the transaction. These funds are unrestricted fund balance available as a result of the 2010 refinancing of the bonds associated with the building of The Heritage. The refinancing freed funds originally set aside as a debt service reserve required by the original golf course debt issue. The certificates of participation do not have the same requirement, thus making these funds unrestricted. Staff originally did not bring them forward to City Council in recognition of the economic and weather uncertainty impacts on golf operations and the challenges the golf courses have experienced over the last several years. However, given the position the golf courses are currently in (positive golf rounds and revenues year-to-date), Staff believes utilizing these funds to assist with the acquisition of the back nine golf holes at The Heritage, which would then eliminate the escalating ground lease the City has with the Rocky Mountain Metropolitan Airport (RMMA), is a prudent use of these funds. The ground lease with RMMA was last adjusted in 2008 to \$80,011 and is set to be adjusted every five years, which means it is scheduled to adjust again in 2013, 2018, 2023, etc.

These funds are recommended in addition to the Jefferson County open space attributable share revenues, unrestricted Park GCIF revenues and PR&L GF savings, unrestricted POST Fund savings and Conservation Trust Fund savings. These funds will be utilized towards purchasing the land associated with the back nine holes owned by and leased from the Rocky Mountain Metropolitan Airport. The anticipated shortfall remaining to purchase the back nine holes is approximately \$112,000, which Staff continues working to identify funds to cover this difference in the anticipated land purchase price.

#### UTILITY FUND

One item totaling \$16,521 for the upgrade to the City's Laserfiche document management software system. SCorp provided the opportunity to receive full credit on the cost of our original licenses toward the purchase that would otherwise have cost over \$100,000 to implement. The upgraded version has extended functionality included with the product, including document workflow and routing, automating retention for better compliance with the City document retention policy, and watermark capabilities. This upgrade was not anticipated in the 2012 budget. The total cost is \$47,204 but proposed to be split between the General Capital Improvement Fund and the Utility Fund based on utilization of the system.



**STORM DRAINAGE FUND**

Two items totaling \$418,574 as follows:

1. \$37,000 is proposed for the installation of needed upgrades at the Municipal Service Center around the liquid deicer tank to ensure compliance with Federal stormwater regulations and increase capacity. The existing deicer tank is a 6,000 gallon capacity single walled tank, which does not provide adequate supply capacity for the City. Additionally, containment measures, should there be a breach of the tank, are not sufficient to meet Federal stormwater protection requirements. To be in compliance and assure alignment with the City's Municipal Service Center Stormwater Management Plan, a new tank needs to be installed or a containment system established. These funds will allow for the most cost effective way to ensure compliance and meet capacity needs of operations by purchasing a second 10,000 gallon single walled tank and build secondary containment around both.
2. \$381,574 is proposed for the Little Dry Creek Drainage Improvement Project. The project will implement improvements that include re-aligning Little Dry Creek to move it away from existing single family residences, a regional detention/water quality facility near Federal Boulevard, various grade control structures, pedestrian bridges across the re-aligned creek and massive excavation to accommodate the needed detention storage. City Council has appropriated \$3,864,434 to this project to date.

**GENERAL CAPITAL OUTLAY REPLACEMENT FUND (GCORF)**

A total of \$50,307 is proposed to be distributed as follows:

1. \$19,167 into the general vehicle purchase account. These funds will be added to the current balance within this account and be authorized for use by City Council at a future time when revenues impact the City's ability to fund replacement vehicles in a given year. These funds are for those vehicles that are non-public safety and serve operations in the General Fund.
2. A total of \$31,140 is proposed for the public safety vehicle purchase account. These funds will be added to the current balance within this account and be authorized for use by City Council at a future time when revenues impact the City's ability to fund replacement vehicles in a given year. These funds are for vehicles that serve public safety operations in the General Fund.

**PARKS, OPEN SPACE & TRAILS (POST) FUND**

Community Development – One item totaling \$1,000,000 for the purchase of open space land and construction of open space facilities. The majority of this amount reflects the open space funds that were received in 2011 for grants received in prior years for land purchases that will be available towards land purchases for open space in 2012.

Parks, Recreation and Libraries – One item totaling \$400,000 is proposed to be appropriated into The Heritage Golf Course Back Nine Land Acquisition capital project. These would be in addition to the \$31,432 from Jefferson County open space attributable share revenues; \$295,044 from unrestricted Park GCIF revenues and PR&L GF savings; \$120,247 from Conservation Trust revenues; and the \$380,000 from unrestricted Golf Course funds noted previously. These funds will be utilized towards purchasing the land associated with the back nine holes owned by and leased from the Rocky Mountain Metropolitan Airport.

These proposed carryover items support all five of the City's Strategic Plan Goals: Financially Sustainable City Government Providing Exceptional Services, Strong Balanced Local Economy, Safe and Secure Community, Vibrant Neighborhoods in One Livable Community, and Beautiful and Environmentally Sensitive City.

**REVENUE/EXPENDITURE DETAIL BY FUND**

The attached ordinance reflects a total increase of \$16,676,508. This amount differs from the \$12,109,495 noted in the Expenditure Required on the front of this agenda memorandum due to the accounting of transfers required to properly reflect the transactions on the City's books.

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	1000.40020.0000	\$0	<u>\$1,926,631</u>	\$1,926,631
Total Change to Revenues			<u>\$1,926,631</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Contractual Services	10005340.67800.0000	\$16,100	\$28,167	\$44,267
Prof Services	10010900.65100.0000	135,050	70,000	205,050
Contract Svcs Elec Media	10010900.67800.0386	53,850	24,000	77,850
Transfers Stabilization Fund	10010900.79800.0120	0	500,000	500,000
Transfers Fleet	10010900.79800.0300	0	14,000	14,000
Transfers Capital Replacement	10010900.79800.0450	0	246,125	246,125
Transfers WEDA	10010900.79800.0680	0	200,000	200,000
Transfers GCIF	10010900.79800.0750	117,000	815,276	932,276
Contract Services (EM Grant)	10025260.67800.0545	0	14,710	14,710
Comp Soft/Hard	10050620.75400.0000	11,158	5,029	16,187
Spec Prom Yth Scholarship	10050760.67600.0528	0	<u>9,324</u>	9,324
Total Change to Expenses			<u>\$1,926,631</u>	

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2000.40020.0000	\$0	<u>\$3,746,765</u>	\$3,746,765
Total Change to Revenues			<u>\$3,746,765</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Rate Reserve	20010900.79800.0205	\$0	\$487,599	\$487,599
Transfers Capital Reserve	20010900.79800.0207	0	2,724,325	2,724,325
Transfers GCIF	20010900.79800.0750	0	18,200	18,200
Contract Svcs	20035470.67800.0000	266,282	3,631	269,913
Lease Pay to Others	20035480.67700.0000	2,699,564	490,403	3,189,967
Prof Serv	20060230.65100.0000	82,400	6,086	88,486
Major Software Upgrades	80820060741.80400.8888	82,440	<u>16,521</u>	98,961
Total Change to Expenses			<u>\$3,746,765</u>	

These appropriations will amend the Waste Water Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2100.40020.0000	\$0	<u>\$844,390</u>	\$844,390
Total Change to Revenues			<u>\$844,390</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Rate Reserve	21010900.79800.0205	\$0	\$429,537	\$429,537
Transfers Capital Reserve	21010900.79800.0207	0	339,633	339,633
Vehicles Biosolids	21035490.75600.0401	0	<u>75,220</u>	75,220
Total Change to Expenses			<u>\$844,390</u>	

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2200.40020.0000	\$0	<u>\$380,000</u>	\$380,000
Total Change to Revenues			<u>\$380,000</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	22010900.79800.0750	\$0	<u>\$380,000</u>	\$380,000
Total Change to Expenses			<u>\$380,000</u>	

These appropriations will amend the Storm Drainage Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2500.40020.0000	\$0	<u>\$418,574</u>	\$418,574
Total Change to Revenues			<u>\$418,574</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Contract Svcs	25035450.67800.0000	\$310,710	\$37,000	\$347,710
Little Dry Creek Reg Detention	80825030829.80400.8888	3,212,434	<u>381,574</u>	3,594,008
Total Change to Expenses			<u>\$418,574</u>	

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF General Fund	3000.45000.0100	\$0	<u>\$14,000</u>	\$14,000
Total Change to Revenues			<u>\$14,000</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Maint/Rep Infra	30012460.66200.0000	\$15,000	<u>\$14,000</u>	\$29,000
Total Change to Expenses			<u>\$14,000</u>	

These appropriations will amend the GCORF revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	4500.40020.0000	\$0	\$50,307	\$50,307
TRF General Fund	4500.45000.0100	0	<u>246,125</u>	246,125
Total Change to Revenues			<u>\$296,432</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Capital Outlay - General	80645010900.80400.8888	\$801,236	\$265,292	\$1,066,528
Capital Outlay - PST	80645010911.80400.8888	1,994,294	<u>31,140</u>	2,025,434
Total Change to Expenses			<u>\$296,432</u>	

These appropriations will amend the Sales & Use Tax Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	5300.40020.0000	\$0	<u>\$2,693,412</u>	\$2,693,412
Total Change to Revenues			<u>\$2,693,412</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	53010900.79800.0750	\$1,965,000	<u>\$2,693,412</u>	\$4,658,412
Total Change to Expenses			<u>\$2,693,412</u>	

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	5400.40020.0000	\$0	<u>\$1,400,000</u>	\$1,400,000
Total Change to Revenues			<u>\$1,400,000</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchases	54010900.76600.0000	\$86,533	\$1,000,000	\$1,086,533
Transfers GCIF	54010900.79800.0750	314,417	<u>400,000</u>	714,417
Total Change to Expenses			<u>\$1,400,000</u>	

These appropriations will amend the Conservation Trust Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	5500.40020.0000	\$0	<u>\$120,247</u>	\$120,247
Total Change to Revenues			<u>\$120,247</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Heritage Back 9 Land Acq-CTF	81155050324.80400.8888	\$303,013	<u>\$120,247</u>	\$423,260
Total Change to Expenses			<u>\$120,247</u>	

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7500.40020.0000	\$263,000	\$183,473	\$446,473
TRF General Fund	7500.45000.0100	0	654,802	654,802
TRF Water	7500.45000.0200	0	18,200	18,200
TRF Sales & Use Tax	7500.45000.0530	1,965,000	2,513,076	4,478,076
Carryover	7501.40020.0000	0	345,696	345,696
TRF General Fund	7501.45000.0100	0	160,474	160,474
TRF Legacy Ridge	7501.45000.0220	0	380,000	380,000
TRF Sales & Use Tax	7501.45000.0530	0	180,336	180,336
TRF Open Space	7501.45000.0540	314,417	<u>400,000</u>	714,417
Total Change to Revenues			<u>\$4,836,057</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
CE - Bridges	80175050334.80400.8888	\$25,400	\$290,357	\$315,757
ADCO OS Land Acquisition	80375030304.80400.8888	350,000	1,185	351,185
Heritage Back 9 Land Acq	80375050324.80400.8888	32,145	1,075,044	1,107,189
New Art Participation	80575030426.80400.8888	30,076	20,720	50,796
Tree Mitigation Program	80575050425.80400.8888	33,233	47,768	81,001
South Westy TOD	80875030823.80400.8888	3,133,000	487,815	3,620,815
Major Software Upgrades	80875060741.80400.8888	369,477	30,683	400,160
Bradburn Blvd Realignment	81175030962.80400.8888	1,108,688	860,000	1,968,688
Heritage Back 9 Land Acq-JCOS	81175050324.80400.8888	343,116	31,432	374,548
Capital Project Reserve-CMO	81275005186.80400.8888	0	1,500,000	1,500,000
Citywide Radio Replacement	81275020911.80400.8888	378,000	265,423	643,423
92nd Ave/Fed Blvd Intersection	81275030989.80400.8888	0	181,000	181,000
US36 Bus Kiosks Local Match	81275030991.80400.8888	0	<u>44,630</u>	44,630
Total Change to Expenses			<u>\$4,836,057</u>	

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **23**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL  
 FOR AN ORDINANCE INCREASING THE 2012 BUDGET OF THE GENERAL, WATER,  
 WASTEWATER, LEGACY RIDGE, STORM DRAINAGE, FLEET, GENERAL CAPITAL  
 OUTLAY REPLACEMENT, SALES & USE TAX, PARKS OPEN SPACE & TRAILS,  
 CONSERVATION TRUST, AND GENERAL CAPITAL IMPROVEMENT AND AUTHORIZING  
 A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN  
 THESE FUNDS.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the General, Water, Wastewater, Legacy Ridge, Storm Drainage, Fleet, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, Conservation Trust, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3550 is hereby increased by \$16,676,508. This appropriation is due to the appropriation of 2011 carryover.

Section 2. The \$16,676,508 increase in the General, Water, Wastewater, Legacy Ridge, Storm Drainage, Fleet, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, Conservation Trust, and General Capital Improvement funds shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item #10 A dated July 9, 2012 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$1,926,631
Water Fund	3,746,765
Wastewater Fund	844,390
Legacy Ridge Fund	380,000
Storm Drainage Fund	418,574
Fleet Fund	14,000
General Capital Outlay Replacement Fund	296,432
Sales & Use Tax Fund	2,693,412
Parks, Open Space & Trails Fund	1,400,000
Conservation Trust Fund	120,247
General Capital Improvement Fund	4,836,057
Total	<u>\$16,676,508</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 9<sup>th</sup> day of July, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of July, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

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



**Agenda Memorandum**

City Council Meeting  
July 9, 2012



**SUBJECT:** Councillor's Bill No. 24 re Amend Various Sections of Titles I through IV, W.M.C.

**Prepared By:** Linda Yeager, City Clerk  
Marty McCullough, City Attorney

**Recommended City Council Action**

Pass Councillor's Bill No. 24 amending various sections of Titles I through IV of the Westminster Municipal Code.

**Summary Statement**

- As discussed with Council at the June 18, 2012 Study Session, the Westminster Municipal Code ("W.M.C." or "Code") is a codification of general ordinances of the City and serves as a major resource to Staff and citizens both in print and electronically.
- Although Staff attempts to keep the Code current by regularly seeking Council approval of necessary amendments, Council has requested Staff review and update the Code on a regular basis to maintain accuracy and ensure it is as free of errors as possible. In general, state, federal and city codes benefit from regular housekeeping measures such as those being proposed at this time for Westminster.
- Staff considers these proposed amendments to be primarily housekeeping in nature, but beyond the scope of authority granted to the City Clerk in Section 1-1-5, W.M.C., to correct errors of punctuation, capitalization, formatting, grammar and spelling, and internal references.
- Staff believes these amendments will improve the overall quality of the Code.

**Expenditure Required:** \$0

**Source of Funds:** N/A



**Policy Issue**

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

**Alternatives**

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

**Background Information**

In response to Council's request to regularly review and maintain the City Code, in January 2012 the City Clerk's Office began a comprehensive review of each Code provision for typographical, grammatical, cross-reference and other errors, and outdated or inaccurate information, while applying standard formatting conventions. Although the Westminster Municipal Code contains a section on "Rules for Construction," standard formatting conventions were only recently established by Staff. The attached ordinance contains those amendments identified thus far in the project within Titles I through IV and includes the deletion or updating of outdated information beyond the scope of authority granted to the City Clerk. Biannually, Staff anticipates proposing similar upgrading ordinances until each section has been revised to meet formatting conventions and outdated or inaccurate information is removed.

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

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **24**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

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**A BILL**

**FOR AN ORDINANCE AMENDING SECTIONS 1-1-1, 1-16-2, 1-16-3, 2-1-1, 3-1-11, 3-4-3, 4-1-36, 4-7-2, 4-7-3 OF THE WESTMINSTER MUNICIPAL CODE AS HOUSEKEEPING MEASURES THROUGH JUNE 2012**

THE CITY OF WESTMINSTER ORDAINS:

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

**1-1-1: MUNICIPAL CODE OF THE CITY OF WESTMINSTER:** (1699) This compilation, revision and codification of the General Ordinances of the City of Westminster is hereby declared to be and shall hereafter constitute the Official Code of General Ordinances of the City of Westminster.

Said Code shall be known and may be cited as the "Westminster Municipal Code", or "W.M.C.," and a copy or copies of such Code in printed form shall be received without further proof as the ordinances of permanent and general effect of the City of Westminster, in all courts and administrative tribunals of this State. ~~(A1699)~~

Any ordinance amending this Code shall set forth in full no less than the sub-subsection (i.e., (1), (2), etc.) or sections of the Code being amended, ~~and this shall constitute a sufficient compliance with any statutory requirements that no ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or amended section in full.~~

Section 2. Section 1-16-2, subsection (A), W.M.C., is hereby AMENDED to read as follows:

**1-16-2: DUTIES:** (1592 Charter)

(A) The City Attorney shall act as legal advisor to, and be attorney and counsel for, the Council and shall be responsible solely to the City Council. He shall advise any officer or department head of the City in matters relating to his official duties when so requested and shall ~~file with the City Clerk~~ maintain a copy of all written opinions given by him. ~~(1592)~~

Section 3. Section 1-16-3, subsection (B), W.M.C., is hereby AMENDED to read as follows:

**1-16-3: EMPLOYEES IN THE OFFICE OF THE CITY ATTORNEY:** (1592 1747 2922)

(B) All ~~unclassified~~ employees in the Office of the City Attorney shall be responsible to the City Attorney. ~~(1592)~~

Section 4. Section 2-1-1, subsection (F), W.M.C., is hereby AMENDED to read as follows:

**2-1-1: APPOINTMENT OF MEMBERS; TERMS:** (2068 2402 3102 3272 3372)

(F) MEMBER EMERITUS:

~~(1) Whereas, certain members of City Boards and Commissions have provided long term, dedicated service to the community and its residents; and~~

~~(2) Whereas, the City would like to honor these members for their long term service and commitment to high standards of service, to acknowledge the expertise of these members, and to provide an opportunity to draw upon such members' expertise after the member's retirement from a Board or Commission.~~

~~(3) Now therefore, t~~The City Council hereby creates the office of member emeritus of the various Boards and Commissions.

~~(4)~~ City Council shall designate a member of a Board or Commission a member emeritus at such times and for such service as Council deems appropriate.

~~(5)~~ A member emeritus is welcome to continue attendance at a Board or Commission meeting, and the Chair~~person~~ and members of the Board or Commission may request the opinion or information of the member emeritus during the portion of the Board or Commission meeting ~~during which~~ when members of the public customarily speak. The member emeritus will not be a voting member, or an alternate member, of the Board or Commission.

Section 5. Section 3-1-11, subsection (D), W.M.C., is hereby DELETED in its entirety as follows:

**3-1-11: CODE ENFORCEMENT PERSONNEL:** (2249 3192)

~~(D) The transfer of the position of Code Enforcement personnel from the Department of Community Development to the Police Department shall not affect any action or court proceeding taken or begun by the Code Enforcement personnel prior to the effective date of this ordinance.~~

Section 6. Section 3-4-3, subsection (C), W.M.C., is hereby AMENDED to read as follows:

**3-4-3: DUTIES AND RESPONSIBILITIES OF THE DIRECTOR:** (1096 1696 1747)

(C) The Director of Community Development shall be chief administrator of the Department of Community Development and shall have supervisory responsibility for the activities of ~~the Engineering Division, Planning Division, Building Division and Program Division.~~ (1096 1696 1747) all divisions within the Department.

Section 7. Section 4-1-36, subsection (F), W.M.C., is hereby AMENDED to read as follows:

**4-1-36: STATUTE OF LIMITATIONS:** (2032 3371 3544) Unless the limitation period has been extended as provided in this Section, the statute of limitations for provisions contained in this Title shall be as follows:

~~(F) Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of this Section. To the extent the periods described in this Section have not expired or been extended, the Finance Director may issue assessments and refund taxes paid, notwithstanding any previous audit, investigation, assessment, or refund pertaining to the same.~~

Section 8. Section 4-2-3, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

**4-2-3: RATE; IMPOSITION AND COLLECTION; DISTRIBUTION:** (2032 2379 2476 3071 3371)

(A) ~~Sales Tax~~SALES TAX: There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Section 4-2-5, W.M.C.

~~(1) — For sales transacted on or after January 1, 2004, but prior to January 1, 2033, the rate levied shall be three and eighty-five hundredths percent (3.85%). Unless otherwise lawfully provided, the three and eighty-five hundredths percent (3.85%) tax rate shall be reduced to three and six-tenths percent (3.6%) on January 1, 2033.~~

~~(2) — For sales transacted on or after January 1, 1986 but prior to January 1, 2004, the rate levied shall be three and one-quarter percent (3.25%).~~

~~(3) — For sales transacted prior to January 1, 1986, the rate levied shall be three percent (3%).~~

(B) ~~Use Tax~~USE TAX: There is hereby levied a tax or excise upon the privilege of using, storing, distributing, or otherwise consuming in the City any article or tangible personal property or taxable services purchased, leased or rented from sources inside or outside the City; on which the City sales tax has not been paid.

~~(1) — For sales transacted on or after January 1, 2004, but prior to January 1, 2033, the rate levied shall be three and eighty-five hundredths percent (3.85%). Unless otherwise lawfully provided, the three and eighty-five hundredths percent (3.85%) tax rate shall be reduced to three and six-tenths percent (3.6%) on January 1, 2033.~~

~~(2) — For sales transacted on or after January 1, 1986 but prior to January 1, 2004, the rate levied shall be three and one-quarter percent (3.25%).~~

~~(3) — For sales transacted prior to January 1, 1986, the rate levied shall be three percent (3%).~~

Section 9. Section 4-4-2, subsection (A), W.M.C., is hereby AMENDED to read as follows:

**4-4-2: TAX ON ACCOMMODATIONS; COLLECTION:** (2032 3544)

(A) ~~TAX ON ACCOMMODATIONS~~Sax on Accommodations:

~~(1) — There is hereby levied a tax or excise of five percent (5%) on the purchase price paid by any person or charged by any vendor on the lease, rental or other transaction of furnishing rooms or accommodations to any person who for a consideration uses, possesses, or has the right to use or possess, any room or rooms or other accommodations. This paragraph (1) of Subsection (A) of this Section shall apply to transactions consummated on or after January 3, 1986, and prior to January 1, 1991.~~

~~(2) — For transactions consummated on or after January 1, 1991 at 12:01 A.M., there is hereby levied a tax or excise of seven percent (7%) on the purchase price paid by any person or charged by any vendor on the lease, rental or other transaction of furnishing rooms or accommodations to any person who for a consideration uses, possesses, or has the right to use or possess, any room or rooms or other accommodations.~~

Section 10. Section 4-7-2, W.M.C., is hereby AMENDED to read as follows:

**4-7-2: LEVY OF TAX:** (1145)

~~(A) — There is hereby levied on and against each telephone utility company operating within the City of Westminster, (hereinafter called the "City") a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the City of Westminster and of supplying local exchange telephone service to the inhabitants of the City. The amount of the tax levied hereby shall be:~~

~~(1) For the portion of 1979 remaining after the date on which the tax begins to accrue as provided in Section 3, \$.38 per month per telephone account for which local exchange telephone service is provided within the corporate limits of the City of Westminster on said date; and~~

~~(2) For each subsequent calendar year, thirty-eight cents (\$.38) per month per telephone account for which local exchange telephone service is provided within the corporate limits of the City of Westminster on the anniversary of the date on which the tax begins to accrue as provided in Section 24-7-3, W.M.C.~~

Section 11. Section 4-7-3, W.M.C., is hereby AMENDED to read as follows:

**4-7-3: TIME PAYMENT OF TAX:** ~~(1145) The tax levied by this Chapter shall begin to accrue on the first day of October, 1979, and shall~~ be due and payable in twelve (12) equal monthly installments ~~for the remaining portion of 1979, and in twelve equal monthly installments for years subsequent to 1979,~~ each installment to be paid on the last business day of each calendar month. ~~(1145)~~

Section 12. This ordinance shall take effect upon its passage after second reading.

Section 13. 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 9th day of July, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of July, 2012.

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Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office