



## CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) 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. Lift Station Study
- B. Golf Courses' Cumulative Purchases Over \$50,000 in 2011
- C. Special Legal Counsel for Review of Employment Agreements
- D. Second Reading of Councillor's Bill No. 19 re Pension Plan Amendments to the Westminster Municipal Code
- E. Second Reading of Councillor's Bill No. 20 re Westminster Center East Urban Renewal Subarea Appropriation
- F. Second Reading of Councillor's Bill No. 21 re Telecommunications Facility Application Amendments to W.M.C.
- G. Second Reading of Councillor's Bill No. 22 re Lease of City Property at 7225 Bradburn Boulevard

### 9. Appointments and Resignations

### 10. Public Hearings and Other New Business

- A. Councillor's Bill No. 23 re Savery Farm Estates Master Plan Implementation Supplemental Appropriation
- B. Councillor's Bill No. 24 re 2011 Community Development Block Grant Fund Appropriation

### 11. Old Business and Passage of Ordinances on Second Reading

### 12. Miscellaneous Business and Executive Session

- A. City Council

### 13. Adjournment



**GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS**

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, JUNE 27, 2011, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Boy Scouts attending the Council meeting to earn credit toward badges led the Mayor, Council, staff and audience in the Pledge of Allegiance.

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Lindsey moved, seconded by Councillor Kaiser, to approve the minutes of the regular meeting of June 13, 2011, as presented. Yeager noted that Bill McCann's address had been corrected after the minutes were distributed, making the record of proceedings accurate. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that City offices would be closed on Monday, July 4, and the City Council would not meet. Everyone was invited to be at City Park that evening to celebrate Independence Day. Activities would begin at 6 p.m. and conclude after the fireworks display that would start shortly after 9 p.m.

Mr. McFall introduced Westminster's new Fire Chief, Doug Hall. Chief Hall had a long, distinguished career with the City and was selected from a field of outstanding candidates following a national recruitment.

Following this City Council meeting, the Westminster Economic Development Authority Board of Directors would meet. After adjournment of that meeting, the City Council would receive post-meeting information about a recently completed core services inventory and the Westminster Housing Authority's proposed purchase and sale agreement concerning the Westminster Commons.

COUNCIL REPORTS

Councillor Briggs reported that four members of Council had attended the Colorado Municipal League Annual Conference in Vail last week and were proud to see Diane Allen, a City employee and Lakewood City Council member, become the League's new President. The conference presented opportunities to network with other elected officials throughout the state and attend classes geared toward addressing issues facing Colorado's communities. It had been a learning experience for which he was grateful.

CITIZEN COMMUNICATION

Gail Charrée, 9046 Vrain Street, Bill McCann, 10210 West 102<sup>nd</sup> Avenue, and Davies McDaniel, 8956 Carr Street, spoke in opposition to adoption of 2030 Bicycle Master Plan, citing inadequate surveying and documentation, nonexistent funding of proposed improvements, lack of a cost:benefit analysis justifying the need for bike lanes, and the need to address long-term maintenance costs for any improvements made. Bicycle licensing fees could be imposed to fund improvements in the proposed plan, and the plan should contain a statement that the City would not add to its bonded indebtedness to fund improvements described in the plan. The plan was incomplete and should be sent back to staff.

### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the May 2011 Financial Report; authorize the City Manager to execute a \$768,229 contract with A-1 Chipseal Company, the low bidder, for the 2011 Slurry Seal Project with options for two additional one-year renewals (2012 and 2013) and authorize a 3% contingency of \$23,047 for a total project budget of \$791,276; upon recommendation of the City Manager, find that the public interest would best be served by authorizing a negotiated purchase from the sole source provider, National Meter & Automation, Inc. for new water meter replacement transponders, chambers and disc assembly in the amount of \$90,071 and cumulative purchases from National Meter & Automation, Inc. in an amount not to exceed \$103,000 for calendar year 2011; based on the City Manager's recommendation, find that the public interest would be best served by awarding the bid for small diameter sewer pipe lining to Insituform Technologies, Inc. in the amount of \$488,124 and authorize a 10% contingency of \$48,812 for a total project budget of \$536,936; authorize the City Manager to execute a \$63,542 contract with Spectrum General Contractors for the rehabilitation of the Bowles House east porch and the preservation of the north masonry wall and authorize a construction contingency in the amount of \$3,851, subject to final budget approval by the State Historical Fund; authorize the purchase of a 25.49-acre portion of the Sisters of the New Covenant property located at 100<sup>th</sup> Avenue and Alkire Street for open space from the Trust for Public Land for \$1,945,000, plus \$70,110 in fencing costs and closing costs not to exceed \$5,000, and authorize the City Manager to execute all documents required to close on the purchase of the property; and authorize the City Manager to sign an Intergovernmental Agreement with the City of Arvada that provides for reimbursement of funds by the City of Arvada to the City of Westminster for Arvada's portions of the construction of certain street improvements on West 88<sup>th</sup> Avenue between Wadsworth Parkway and the Burlington Northern Railroad Crossing.

No items were removed from the consent agenda for individual consideration. It was moved by Mayor Pro Tem Dittman and seconded by Councillor Major to approve the consent agenda as presented. The motion carried unanimously.

### RESOLUTION NO. 22 TO FILL VACANCIES ON BOARDS & COMMISSIONS

Councillor Lindsey moved, seconded by Mayor Pro Tem Dittman, to adopt Resolution No. 22 making appointments to fill vacancies on the Environmental Advisory Board, the Personnel Board, and the Planning Commission. The motion passed unanimously on roll call.

### COUNCILLOR'S BILL NO. 19 AMENDING PENSION PLAN PROVISIONS IN THE WMC

Mayor Pro Tem Dittman moved, seconded by Councillor Major, to pass on first reading Councillor's Bill No. 19 amending the Westminster Municipal Code concerning the General Employee and Police Pension Plans ordinances. The motion was unanimously passed on roll call vote.

### WESTMINSTER CENTER COOPERATION AGREEMENT BETWEEN THE CITY AND WEDA

It was moved by Councillor Major to authorize the City Manager to execute the Westminster Center Cooperation Agreement between the City of Westminster and the Westminster Economic Development Authority. Councillor Lindsey seconded the motion and it carried with all Council members voting affirmatively.

### COUNCILLOR'S BILL NO. 20 AUTHORIZING SUPPLEMENTAL APPROPRIATION

Upon a motion by Councillor Major, seconded by Councillor Kaiser, the Council voted unanimously on roll call vote to pass on first reading Councillor's Bill No. 20 to appropriate monies received from the Westminster Center Eastern Subarea Urban Renewal Area.

COUNCILLOR’S BILL NO. 21 TO AMEND TELECOMMUNICATION FACILITY APPLICATION IN WMC

Councillor Briggs moved, seconded by Councillor Lindsey, to pass on first reading Councillor’s Bill No. 21 amending Section 11-4-11(F) of the Westminster Municipal Code requiring a final Federal Communications Commission license and consent to independent testing as part of an application for a telecommunications facility. At roll call, the motion passed unanimously.

COUNCILLOR’S BILL NO. 22 TO LEASE CITY PROPERTY AT 7225 BRADBURN BOULEVARD

It was moved by Councillor Winter and seconded by Councillor Lindsey to pass on first reading Councillor’s Bill No. 22 authorizing the execution of a lease with Johnny Chavez, in substantially the same form as the agreement distributed in the agenda packet, for property located at 7225 Bradburn Boulevard. The motion passed unanimously on roll call vote.

RESOLUTION NO. 23 ADOPTING THE WESTMINSTER 2030 BICYCLE MASTER PLAN

Councillor Major moved, seconded by Mayor Pro Tem Dittman, to adopt Resolution No. 23 adopting the Westminster 2030 Bicycle Master Plan. Before voting on the motion Council members responded to comments made by citizens earlier in the meeting and voiced support of the plan as proposed. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Kaiser and seconded by Councillor Major to adjourn. The motion carried and the meeting adjourned at 7:35 P.M.

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Mayor

ATTEST:

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City Clerk



# Agenda Item 8 A

## Agenda Memorandum

City Council Meeting  
July 11, 2011



**SUBJECT:** Lift Station Study

**Prepared By:** Michael Wong, Senior Engineer  
Steve Grooters, Senior Projects Engineer

### Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest is best served by authorizing the City Manager to execute a contract with Stantec Consulting Services, Inc. for a study of five sewer lift stations in the amount of \$208,541 with a ten percent contingency of \$20,854 for a total project budget of \$229,395.

### Summary Statement

- The City owns and operates seven sewer lift stations for transmitting sewage to Metro Wastewater Reclamation District's (Metro) Central Plant and the City's Big Dry Creek Wastewater Treatment Facility (BDCWWTF) for treatment.
- Staff has identified five lift stations that are potentially eligible for elimination. The overall purpose of this project is to investigate and confirm which lift stations can be eliminated in a cost-effective way and to identify a prioritized plan for implementation. Where elimination is not feasible, the study project will recommend and prioritize improvements to enhance existing lift station reliability.
- A key component of this study will be a comprehensive, prioritized capital improvement program for these lift stations to aid in near and long term planning and budgeting.
- Staff prepared a Request for Proposals for the Lift Station Study and distributed it to seven engineering firms qualified to perform this type of specialized work. Of the four proposals received, Staff believes Stantec Consulting Services, Inc. presented the best proposal and provides the best value to the City.
- Staff recommends awarding the contract to Stantec Consulting Services, Inc. (Stantec) based on their competitive pricing, proposed scope of work, familiarity with the City's infrastructure and the successful experience of their proposed project team.

**Expenditure Required:** \$229,395

**Source of Funds:** Utility Fund Capital Account – Lift Station Improvements



**Policy Issue**

Should the City execute a contract to Stantec Consulting Services for the Lift Station Study project?

**Alternatives**

1. The City could choose to award the contract to one of the other engineering firms that submitted a proposal to complete this project. However, Staff reviewed all four proposals submitted and determined that Stantec provided the most comprehensive and best proposal. Additionally, Stantec has a history of success on current and past projects for the City.
2. The City could choose to implement this project at a later date. This option is not recommended as many of these lift stations are aging and near-term projects are necessary to maintain their operations. This study will help determine the most cost-effective program for the City to maintain system reliability.

**Background Information**

The City owns and operates a number of lift stations to transmit sewage from the Little Dry Creek Basin to Metro's Central Treatment Plant and sewage from the Big Dry Creek Basin to the City's Big Dry Creek Wastewater Treatment Facility (BDCWWTF). The Sunset Ridge West Lift Station located at West 94<sup>th</sup> Avenue and Quitman Street was eliminated in 2009, and the West 87<sup>th</sup> Avenue & Wadsworth Boulevard Lift Station is being relocated and constructed under a separate capital improvement project. The remaining five lift stations within the system are aging and near-term projects are necessary to maintain their operations. The five lift stations include the following and are shown on the attached project location map:

- 1) Shadow Ridge Lift Station located at West 80<sup>th</sup> Avenue and Clay Street in Little Dry Creek Basin
- 2) Sunset Ridge East Lift Station located at West 95<sup>th</sup> Avenue and Federal Boulevard in Little Dry Creek Basin
- 3) Greenbriar Lift Station located at West 88<sup>th</sup> Avenue and Zuni Street in Little Dry Creek Basin
- 4) North Huron Lift Station located at West 133<sup>rd</sup> Avenue and Huron Street in Big Dry Creek Basin
- 5) Standley Lake Region Park Lift Station located at West 100<sup>th</sup> Avenue & Simms Street in Big Dry Creek Basin

Before costly improvements are made to these existing lift stations, Staff would like to confirm if these lift stations could cost-effectively be eliminated. Therefore, Staff is proposing the Lift Station Study, a project that includes a comprehensive investigation of potential ways to eliminate each lift station. If elimination is not feasible, the project study will recommend and prioritize improvements to enhance lift station reliability and reduce risk of wastewater overflows.

Due to the specialized nature of this project and engineering expertise required, Staff sent a Request for Proposals (RFP) to seven consulting firms who specialize in this type of facility study and evaluation. Four proposals were received on May 19, 2011.

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

Stantec Consulting Services, Inc.	\$ 91 to \$164/hr
URS Corporation	\$110 to \$180/hr
Black & Veatch Corporation	\$110 to \$190/hr
Frachetti Engineering	(Hourly rates not provided)

Engineering fees were based on each firm's proposed approach and ranged from \$142,130 to \$228,134, with Stantec submitting the highest and most complete proposal. Of the firms that proposed, the Stantec approach and team experience were the best and most qualified for the project, and their level of effort and fee were competitive for the desired project scope of work. Staff negotiated a final scope of work with Stantec to remove scope items that were beyond the City's intent for this project. The fee was also negotiated resulting in a final contract amount of \$208,541. In Staff's opinion, retaining Stantec Consulting, Inc. to complete this study will result in a better end product and provide the best value to the City. Sufficient funds are available in the Lift Station Improvements account for this contract.

Stantec Consulting Services, Inc. is recommended by the staff selection committee for this work based on the firm's responses to the following criteria as outlined in the Request for Proposals:

- Response to the requirements in the RFP and an approach that clearly indicates understanding of the project scope and City's goals and expectations.
- Firm's specialized experience in wastewater lift station design, rehabilitation, construction, hydraulic modeling and capacity evaluations.
- Successful past experience in working with State offices for lift station planning and permitting.
- Firm's proposed approach to working with neighboring jurisdictions to determine their potential to accept sewage from the City as a result of lift station elimination.
- Recent and relevant project experience in the Colorado region for work of similar size, scope and complexity. Positive reference feedback regarding past project performance and the performance of individuals proposed for the project.
- Experience, availability and office location of each of the members of the team and their qualifications.
- Total level of effort and fee relative to the proposed approach. Competitive firm fee schedule and competitive hourly rates for their staff assigned to this project relative to their experience level.
- Project schedule and task breakdown that demonstrates clear understanding of the project and that allows for City input on project deliverables.

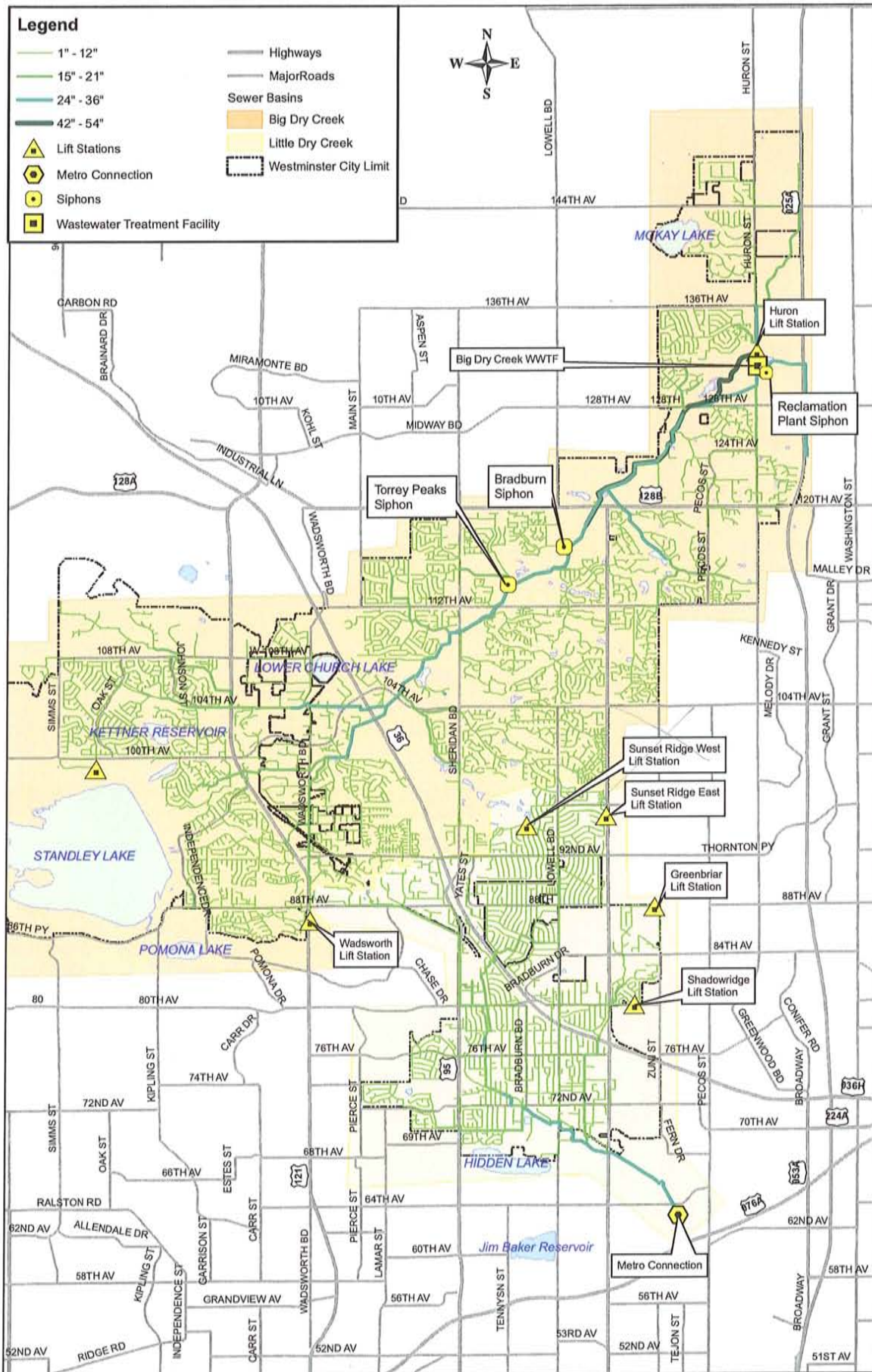
This project helps achieve two of the City Council's Strategic Plan goals: achieving a "Financially Sustainable City Government" by contributing to the objective of well-maintained and operated City facilities; and contributing to a "Beautiful and Environmentally Sensitive City" by enhancing the reliability of the City's wastewater transmission system and improving public health and safety.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment - Project Location Map





Project Location Map



## Agenda Item 8 B

### Agenda Memorandum

City Council Meeting  
July 11, 2011



**SUBJECT:** Golf Courses' Cumulative Purchases Over \$50,000 in 2011

**Prepared By:** Chris Swinhart, Head Golf Pro – Legacy Ridge Golf Course  
Brian Carlson, Head Golf Pro – The Heritage Golf Course at Westmoor

### Recommended City Council Action

Based on the recommendation of the City Manager, determine that the public interest will be best served by awarding contracts and approve 2011 expenditures to the following vendors: Titleist up to a maximum of \$70,000, Nike U.S.A. Golf Division up to a maximum of \$60,000, and Oakley up to a maximum of \$60,000.

### Summary Statement

- These purchases are for routine commodities that are provided for sale at the golf course pro shops and for the driving ranges.
- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council for authorization. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- Adequate funds were previously appropriated in the 2011 Budget and are available in the Golf Course Funds for the purchases.

**Expenditure Required:** Not to exceed \$190,000

**Source of Funds:** Golf Course Fund Operating Budget



**Policy Issue**

Should Council approve the purchase of golf course commodities that total over \$50,000 for 2011?

**Alternative**

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

**Background Information**

Staff has identified all three vendors, Titleist, Nike and Oakley, as potentially having aggregate amounts exceeding \$50,000 by the end of 2011. Funds are available in the appropriate budgets for these expenditures.

The details of these purchases are as follows:

- The City anticipates expenses of up to \$70,000 from Titleist for both of the City's golf courses combined. The City purchases high-quality Pinnacle Range Balls (Legacy Ridge) from Titleist and merchandise for resale including 40% of the golf gloves; golf balls (Pro-v, Pro-v 1x, NXT, NXT Tour and Pinnacle); and a limited number of clubs for stock in the golf shop (woods, wedges, putters). Most irons, drivers, fairway woods, and hybrid purchases are done on a special-order basis with Staff providing the customer with a custom club fit.
- The City anticipates expenses from Nike USA Golf Division to reach up to \$60,000. The golf courses also purchase Nike USA Golf Division merchandise for resale including golf balls (Mojo, Nike One Platinum and Nike One Black); 60% of the shoe inventory, clothing and a limited number of clubs and special-order all iron sets. In 2010, Staff will purchase approximately 50% of the golf shop's clothing line for resale from Nike USA Golf Division (shirts, jackets, wind shirts, socks).
- The City anticipates expenses from Oakley of up to \$60,000. The golf courses also purchase Oakley merchandise for resale including 30% of the show inventory at Legacy Ridge and 100% at The Heritage at Westmoor, clothing and sunglasses and special-order clothing, shoes, and sunglasses. In 2011, Staff will purchase approximately 40% of the golf shops' clothing line for resale from Oakley (shirts, jackets, wind shirts, socks, and sunglasses).

These purchases support City Council's Strategic Plan Goal of "Financially Sustainable City Government Providing Exceptional Services."

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**Agenda Memorandum**

City Council Meeting  
July 11, 2011



**SUBJECT:** Special Legal Counsel for Review of Employment Agreements

**Prepared By:** Matt Lutkus, Deputy City Manager

**Recommended City Council Action**

Designate Kendra Carberry of the law firm Hayes, Phillips, Hoffman and Carberry, P.C., as special legal counsel for the review and update of employment agreements with the City Manager, City Attorney and Presiding Judge at the rate of \$185 per hour.

**Summary Statement**

- Periodically, special legal counsel has been retained to review the employment agreements that the City has with the City Manager, the City Attorney and the Presiding Judge. In 2004, the City contracted with John Hayes of Hayes, Phillips, Hoffman and Carberry to review and recommend changes to these agreements based on legislative changes and case law in the areas of employment law and other applicable statutes and constitutional amendments such as the Taxpayers' Bill Of Rights (TABOR).
- Mr. Hayes recently retired from practicing law and recommended that the City use the services of Kendra Carberry who is also an attorney with Hayes, Phillips, Hoffman and Carberry. Like Mr. Hayes, Ms. Carberry has considerable experience in municipal law.
- Although the anticipated fees for these services are budgeted and are well below the threshold required for City Council approval, the City Charter provides for special City Council action to retain special legal counsel. The rate negotiated by the City with Ms. Carberry is \$185 per hour.

**Expenditure Required:** Not to exceed \$2,500

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



**Policy Issue**

Should special legal counsel be appointed to review the employment agreements with the City Manager, City Attorney and Presiding Judge to ensure that these documents are consistent with current State and Federal law?

**Alternatives**

1. Council could decide not to appoint outside legal counsel for a review of the employment agreements. Staff believes that having an outside attorney periodically review these documents helps ensure that the City will be protected in the event of a legal challenge to the contracts.
2. Direct Staff to solicit proposals for the review of these agreements. This alternative is not recommended given Ms. Carberry's considerable background and familiarity with municipal law, the relatively small scope of this work and the fact that the quoted fee of \$185 per hour is very reasonable for this type of legal work.

**Background Information**

The City Council annually reviews and amends two-year employment agreements with the City Manager, City Attorney and Presiding Judge. The current agreements address the general duties assigned to these positions, the terms of the agreements, termination and severance pay, salary and fringe benefits, hours of work and other miscellaneous aspects of employment.

Like other agreements of this nature, it is important that the provisions not be inconsistent with laws that may have changed as a result of judicial action and the legislative actions at either the State or Federal levels. Given that the City Attorney is a party to one of the agreements and the three agreements are very similar, it would not be appropriate for his office to be asked to review the documents on behalf of the City. The City Staff has, therefore, sought outside legal counsel to conduct this review.

The last time that these documents were reviewed for consistency with Federal and State laws was the summer of 2004. The City previously contracted with John Hayes to conduct this review. Since that time, there have been changes in the judicial interpretation of TABOR that may impact provisions in these agreements. In addition, there may have been a number of pieces of Federal and State legislation that require that these documents be updated.

John Hayes recently retired from the practice of law. In a recent conversation with Mr. Hayes, he recommended Kendra Carberry in his firm as an individual who could conduct this legal review. Ms. Carberry has had considerable municipal law experience including services as the City Attorney for the City of Greenwood Village and the attorney for a number of smaller towns, cities, special districts and authorities in Colorado.

Contracting with special legal counsel for a review and update of these agreements is consistent with the City Council's Strategic Goal of Financially Sustainable City Government Providing Exceptional Services and specifically the objective under that goal of maintaining a value driven organization through talent acquisition, retention, development and management.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



## Agenda Item 8 D

### Agenda Memorandum

City Council Meeting  
July 11, 2011



**SUBJECT:** Second Reading of Councillor's Bill No. 19 re Pension Plan Amendments

**Prepared By:** Kim McDaniel, Retirement Administrator

### Recommended City Council Action

Adopt Councillor's Bill No. 19 on second reading amending the Westminster Municipal Code concerning the General Employee and Police Pension Plans ordinances.

### Summary Statement

- The IRS has established a system of cyclical periods of five years duration during which qualified pension plan documents must be amended for changes in federal pension laws and must be filed with the IRS in order to retain their tax-qualified status.
- On November 17, 2008, Council approved revisions to the pension plan documents, as proposed by Brownstein Hyatt Farber Schreck, LLP, to reflect federal pension law requirements. The pension plans were filed with the IRS on January 9, 2009 in order to obtain favorable letters of determination with respect to the amendments.
- On April 13, 2011, the IRS issued a favorable determination letter with respect to the City of Westminster General Employee Pension Plan and Police Pension Plan. The Plans' favorable tax-qualified status is contingent upon the IRS' proposed amendments to the Plans.
- The amendments also include some housekeeping items that will allow the plans to operate more efficiently.
- This Councillor's Bill was passed on first reading June 27, 2011.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager  
Attachment - Ordinance



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **19**

SERIES OF 2011

INTRODUCED BY COUNCILLORS  
**Dittman - Major**

**A BILL  
FOR AN ORDINANCE AMENDING CHAPTERS 1 AND 2 OF TITLE XIV OF THE  
WESTMINSTER MUNICIPAL CODE CONCERNING POLICE AND GENERAL EMPLOYEE  
PENSION PLANS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 14-1-2, subsection (I), W.M.C., is hereby AMENDED as follows:

**14-1-2: DEFINITIONS:** (2464 3319 3360)

(I) "EMPLOYEE" Any person who fills a City-authorized position of Police Officer as defined in this Chapter that is ~~scheduled to work at least twenty (20) hours during a seven-day cycle~~ in a .5 full time equivalency (FTE) or greater, excluding temporary employees, elected officials, independent contractors, volunteers and ~~part time employees scheduled to work less than twenty (20) hours in a seven-day cycle~~ non-benefited full time and part-time employees.

Section 2. Section 14-1-5, subsections (B)(4), (B)(5) and (F)(1), W.M.C., are hereby AMENDED to read as follows:

**14-1-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:** (2464 3319)

(B) Limitations on Allocations.

(4) Treatment of Excess. In the event an allocation would otherwise exceed the limitations of this Section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this Section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the Employer. If the Employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the Employer is discretionary and, if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the Employer contribution to each of the plans. If this Plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limits, shall be returned to the Employer.

This Section 14-1-5(B)(4) shall not apply in any limitation year beginning on or after July 1, 2007. With respect to any limitation year beginning on or after July 1, 2007, if there is an excess allocation with respect to a Participant, the Plan shall only correct the excess allocation in accordance with the Employee Plans Compliance Resolution System ("EPCRS") as set forth in Revenue Procedure 2008-50 or any superseding guidance, including, but not limited to, the preamble of the final Section 415 Regulations.

(5) Compensation. For the purposes of applying the limitations of this Subsection (B), Compensation means the total amount paid by the Employer to a Participant for services rendered to the

Employer which are included in the taxable income of the Participant, including any amounts paid to the Participant by the later of (x) two and one-half months after the Participant's separation from employment or (y) the end of the limitation year that includes such date of the Participant's separation from employment if, absent such separation from employment, such amounts would have been paid to the Participant while the Participant continued in employment with the Employer For ~~provided that for~~ limitation years beginning after December 31, 1997, Compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a Participant under a plan established under Code Section 125, 132(f)(4), 402(g)(3), 457, 401(k), or 403(b). The "Annual Compensation" of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(b). For limitation years beginning prior to January 1, 2002, the dollar amount in the foregoing sentence is \$150,000. "Annual Compensation" means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(F) Vesting of Participants' Interests.

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. Upon attaining normal retirement age, a Participant's interest in the contributions made by the Participant and the contributions made by the City, and the earnings losses and changes in the fair market value thereof, shall be fully vested.

Section 3. Section 14-1-6, subsection (B)(2), W.M.C., is hereby AMENDED to read as follows:

**14-1-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY:** (2464 3319 360)

(B) Beneficiaries.

(2) Determination of a Beneficiary When There is No Designated Beneficiary. If a Participant shall fail to designate a Beneficiary before ~~his death the Participant's death~~, or if all designated Beneficiaries or contingent Beneficiaries should die, cease to exist before the Participant's death, or if all designated Beneficiaries or contingent Beneficiaries disclaim their interests or die prior to distribution, the Board shall direct the Trustee to pay the Participant's entire interest in the Trust Fund to the Participant's surviving spouse, if any or, if none, then to the personal representative of the Participant's estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after his death, the Board may direct the Trustee to pay the Participant's entire interest to such person or persons as may be entitled thereto under the laws of the State where such Participant resided at the date of the Participant's death, intestate laws of Colorado and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

Section 4. Section 14-1-7, subsections (C)(2), (G)(2), and (H)(2), W.M.C., is hereby AMENDED to read as follows:

**14-1-7: DISTRIBUTION FROM TRUST FUND:** (2464 3319 3360)

(C) Distribution of Interests.

(2) Election to Defer Benefits. A Participant may elect to defer the commencement of distribution of his or her benefit, but in no event shall the commencement of distribution be later than the



required distribution commencement date specified in subsection (F) of this Section. ~~No election to change the method of payment may be made more than once every six months once payments have commenced.~~

(G) Spendthrift Provisions.

(2) Qualified Domestic Relations Order. Paragraph (1) of this Subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or alternate payee pursuant to a qualified domestic relations order (“QDRO”) setting forth the agreement of the parties with respect to the division of benefits in compliance with 26 U.S.C. Section 414(p) and pursuant to Colorado Revised Statutes, Section 14-10-113. The QDRO must specifically address the division of any 401(h) Retirement Medical Savings Account, if applicable. A lump sum distribution will be made pursuant to such an order within one hundred twenty (120) days after the date on which a certified court order approving such an agreement permitting such a distribution has been submitted to and received by the Board. Procedures for submitting a QDRO may be obtained from the City’s Pension Administrator.

(H) Manner of Distribution. A Participant’s interest in the Plan may be distributed by one or more of the following methods:

(2) Installments. The Participant’s interest in the Plan may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed the joint life expectancy of the Participant and his Beneficiary (or until the account is exhausted) and not in installment frequency greater than monthly. This maximum period shall be determined under the applicable IRS Tables at the time the initial monthly installment payment becomes payable. The Participant, or his Beneficiary in the event of the Participant’s death, shall have the right to have the distribution made in this manner by filing a written elective with the Trustee within such time as the Board shall prescribe. ~~In no instance shall any changes in this type of distribution be allowed more than once every six (6) months.~~

Section 5. Section 14-1-10, subsections (B)(6) and (E), W.M.C., are hereby AMENDED to read as follows:

**14-1-10: POWERS AND DUTIES OF THE TRUSTEE:** (2464 3319)

(B) Administrative Powers of the Trustee. The Trustee shall have all powers necessary or advisable to carry out the provisions of this Plan and all inherent, implied and statutory powers now or hereafter provided by law, including specifically the power to do any of the following:

(6) To pay any amount due on any loan or advance made to the Trust Fund, all taxes of any nature levied, assessed or imposed upon the Trust Fund, except for any taxes imposed with respect to any prohibited transaction as defined in Code Section 4975(c), and all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters.

(E) Taxes, Expenses and Fees of the Trustee. The Trustee shall charge against and pay from the Trust Fund any taxes which may be imposed upon the Trust Fund or the income thereof, or upon or with respect to the interest of any person therein which the Trustee is required to pay; provided that the Trust Fund shall not pay or assume any taxes imposed with respect to any prohibited transaction as defined in Code Section 4975(c).

Section 6. Section 14-2-2, subsection (G), W.M.C., is hereby AMENDED to read as follows:

**14-2-2: DEFINITIONS:** (2464 3319) When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural.

(G) "EMPLOYEE" Any person who fills a City-authorized ~~or temporary intern-~~ position in a .5 full time equivalency (FTE) or greater, that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding firefighters and Police Officers, temporary employees, elected officials, independent contractors, volunteers and ~~part-time employees scheduled to work less than non-benefited full time and part-time employees. twenty (20) hours in a seven day cycle.~~

Section 7. Section 14-2-5, subsections (B)(4), (B)(5) and (F)(1), W.M.C., are hereby AMENDED to read as follows:

(B) Limitations on Allocations.

(4) Treatment of Excess. In the event an allocation would otherwise exceed the limitations of this Section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this Section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the Employer. If the Employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the Employer is discretionary and, if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the Employer contribution to each of the plans. If this Plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limits, shall be returned to the Employer.

This Section 14-2-5(B)(4) shall not apply in any limitation year beginning on or after July 1, 2007. With respect to any limitation year beginning on or after July 1, 2007, if there is an excess allocation with respect to a Participant, the Plan shall only correct the excess allocation in accordance with the Employee Plans Compliance Resolution System ("EPCRS") as set forth in Revenue Procedure 2008-50 or any superseding guidance, including, but not limited to, the preamble of the final Section 415 Regulations.

(5) Compensation. For the purposes of applying the limitations of this Subsection (B), Compensation means the total amount paid by the Employer to a Participant for services rendered to the Employer which are included in the taxable income of the Participant, including any amounts paid to the Participant by the later of (x) two and one-half months after the Participant's separation from employment or (y) the end of the limitation year that includes such date of the Participant's separation from employment if, absent such separation from employment, such amounts would have been paid to the Participant while the Participant continued in employment with the Employer. For ~~provided that for~~ limitation years beginning after December 31, 1997, Compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a Participant under a plan established under Code Section 125, 132(f)(4), 402(g)(3), 457, 401(k) or 403(b). The Annual Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(b). For limitation years beginning prior to January 1, 2002, the dollar amount in the foregoing sentence is \$150,000. "Annual Compensation" means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the

Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(F) Vesting of Participants' Interests.

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. Upon attaining normal retirement age, a Participant's interest in the contributions made by the Participant and the contributions made by the City, and the earnings losses and changes in the fair market value thereof, shall be fully vested.

Section 8. Section 14-2-6, subsection (B)(2), W.M.C., is hereby AMENDED to read as follows:

**14-2-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY:** (2464 3319 3390)

(B) Beneficiaries.

~~(1)~~ (2) Determination of a Beneficiary When There is No Designated Beneficiary. If a Participant shall fail to designate a Beneficiary before ~~his death~~ the Participant's death, or if all designated Beneficiaries or contingent Beneficiaries should die, cease to exist before the Participant's death, or if all designated Beneficiaries or contingent Beneficiaries disclaim their interests or die prior to distribution, the Board shall direct the Trustee to pay the Participant's entire interest in the Trust Fund to the Participant's surviving spouse, if any or, if none, then to the personal representative of the Participant's estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after the Participant's death, the Board may direct the Trustee to pay the Participant's entire interest to such person or persons as may be entitled thereto under the ~~laws of the State where such Participant resided at the date of his death~~ intestate laws of Colorado, and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

Section 9. Section 14-2-7, subsections (C)(2), (G)(2) and (H)(2), W.M.C., are hereby AMENDED to read as follows:

**14-2-7: DISTRIBUTION FROM TRUST FUND:** (2464 3319 3390)

(C) Distribution of Interests.

(2) Election to Defer Benefits. A Participant may elect to defer the commencement of distribution of his or her benefit, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (E) of this Section. ~~No election to change the method of payment may be made more than once every six months once payments have commenced.~~

(G) Spendthrift Provisions.

(2) Qualified Domestic Relations Order. Paragraph (1) of this Subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or alternate payee pursuant to a qualified domestic relations order ("QDRO") setting forth the agreement of the parties with respect to the division of benefits in compliance with pursuant to 26 U.S.C. Section 414(p) and Colorado Revised Statutes, Section 14-10-113. The QDRO must specifically address the division of any 401(h) Retirement Medical Savings Account, if applicable. A lump sum distribution will be made pursuant to such QDRO an order within one hundred twenty (120) days after the date on which a

certified court order approving such an agreement permitting such a distribution has been submitted to and received by the Board. Procedures for submitting a QDRO may be obtained from the City's Pension Administrator.

The Board shall establish such reasonable procedures as are necessary to determine the compliance of a domestic relations order with the requirements of Colorado Revised Statutes, Section 14-10-113 and to administer distributions under such qualified order. Such procedures may be at the discretion of the Board, including standardized forms to be used for such marital agreements and orders. A person who obtains a right to a benefit payable to a Participant pursuant to a qualified domestic relations order shall have no rights to vote in elections held pursuant to this Plan.

(H) Manner of Distribution. A Participant's interest in the Plan may be distributed by one or more of the following methods:

(2) Installments. The Participant's interest in the Plan may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed the joint life expectancy of the Participant and his Beneficiary (or until the account is exhausted) and not in installment frequency greater than monthly. This maximum period shall be determined under the applicable IRS Tables at the time the initial monthly installment payment becomes payable. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the Trustee within such time as the Board shall prescribe. ~~In no instance shall any changes in this type of distribution be allowed more than once every six (6) months.~~

Section 10. Section 14-2-10, subsections (B)(6) and (E), W.M.C., are hereby AMENDED to read as follows:

**14-2-10: POWERS AND DUTIES OF THE TRUSTEE:** (2464 3199)

(B) Administrative Powers of the Trustee. The Trustee shall have all powers necessary or advisable to carry out the provisions of this Plan and all inherent, implied and statutory powers now or hereafter provided by law, including specifically the power to do any of the following:

(6) To pay any amount due on any loan or advance made to the Trust Fund, all taxes of any nature levied, assessed or imposed upon the Trust Fund, except for any taxes imposed with respect to any prohibited transaction as defined in Code Section 4975(c), and all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters.

(E) Taxes, Expenses and Fees of the Trustee. The Trustee shall charge against and pay from the Trust Fund any taxes which may be imposed upon the Trust Fund or the income thereof, or upon or with respect to the interest of any person therein which the Trustee is required to pay; provided that the Trust Fund shall not pay or assume any taxes imposed with respect to any prohibited transaction as defined in Code Section 4975(c).

(1) The reasonable expenses of the Trustee incurred in the administration of the Plan, including the fees of any corporate co-trustee, which might be appointed as may be mutually agreed upon from time to time by the Trustee and the Board, and attorney's fees incurred by the Trustee shall be chargeable to and paid by the Trust Fund, provided that the City may pay all or part of such expenses and fees in the discretion of the City Manager.

(2) All expenses incurred in the preparation and adoption of the Plan shall be paid by the City.

Section 11. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27<sup>th</sup> day of June, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11<sup>th</sup> day of July, 2011.

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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



## Agenda Item 8 E

### Agenda Memorandum

City Council Meeting  
July 11, 2011



**SUBJECT:** Second Reading of Councillor's Bill No. 20 re Supplemental Appropriation of Monies Repaid to the City by the Westminster Economic Development Authority's Westminster Center East Urban Renewal Subarea

**Prepared By:** Tammy Hitchens, Finance Director

### Recommended City Council Action

Adopt Councillor's Bill No. 20 on second reading appropriating monies received from the Westminster Center East Urban Renewal Subarea.

### Summary Statement

- City Council action is requested to adopt the attached Councillor's Bill on second reading authorizing a supplemental appropriation to the 2011 budget of the General Fund for \$1,000,000.
- This Councillor's Bill was passed on first reading June 27, 2011.

**Expenditure Required:** \$1,000,000

**Source of Funds:** Transfers-in Westminster Center East Urban Renewal Subarea

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment - Ordinance



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **20**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

**Major - Kaiser**

**A BILL**

**FOR AN ORDINANCE INCREASING THE 2011 BUDGET OF THE GENERAL FUND AND  
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2011 ESTIMATED  
REVENUES IN THE FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2011 appropriation for the General Fund initially appropriated by Ordinance No. 3550 is hereby increased by \$1,000,000. This appropriation is due to the receipt of funds from the Westminster Center East Urban Renewal Area.

Section 2. The \$1,000,000 increase in the General Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10C, dated June 27, 2011 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	<u>\$1,000,000</u>
Total	<u>\$1,000,000</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 27<sup>th</sup> day of June, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11<sup>th</sup> day of July, 2011.

ATTEST:

\_\_\_\_\_  
Mayor

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



**Agenda Memorandum**

City Council Meeting  
July 11, 2011



**SUBJECT:** Second Reading of Councillor's Bill No. 21 re Amendments to Section 11-4-11(F) of the Westminster Municipal Code re to Require a Federal Communications Commission License and Consent to Independent Testing as Part of an Application for a Telecommunications Facility

**Prepared By:** Jana Easley, Principal Planner  
Hilary Graham, Assistant City Attorney

**Recommended City Council Action**

Pass Councillor's Bill No. 21 on second reading amending Section 11-4-11(F) of the Westminster Municipal Code requiring a final Federal Communications Commission (FCC) license and consent to independent testing as part of an application for a telecommunications facility.

**Summary Statement**

- Section 11-4-11(F) of the Westminster Municipal Code sets forth the application requirements for accepting a telecommunications application on private property. One requirement is that the telecommunications provider has either applied for or received a FCC license.
- The City's emergency communications systems, as well as other systems that use the Global Positioning System (GPS) such as traffic signals, may be interrupted by new equipment using certain bandwidths and/or frequencies not meeting all FCC standards.
- The proposed Municipal Code amendment would require that the telecommunications provider present a final operating license issued by the FCC as part of the telecommunications application and would require that the telecommunications provider consent to independent testing to ensure compliance with the FCC's standards.
- Staff considers the proposed amendments to be important for the health, safety and welfare of the residents and businesses located in and around the City of Westminster.
- Staff believes that these amendments are necessary in order to ensure all telecommunications providers are in compliance with all FCC standards.
- This Councillor's Bill was approved on first reading by City Council on June 27, 2011.

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

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager  
Attachment - Ordinance





BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **21**

SERIES OF 2011

INTRODUCED BY COUNCILLORS  
**Briggs - Lindsey**

**A BILL**

**FOR AN ORDINANCE AMENDING SECTION 11-4-11(F) OF THE WESTMINSTER MUNICIPAL CODE TO REQUIRE AN FCC LICENSE AND CONSENT TO INDEPENDENT TESTING AS PART OF AN APPLICATION FOR A TELECOMMUNICATIONS FACILITY**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 11-4-11(F), subsections (1) and (8), W.M.C., are hereby AMENDED to read as follows:

(F) APPLICATION: The procedures and requirements, set forth in Title 11, Chapter 5, of the Westminster Municipal Code, will apply to any application for a telecommunications facility. In addition, the application shall contain the following:

(1) (a) Certification by the telecommunications provider that the telecommunication facility is in compliance with the current standards and regulations of the FAA, the FCC, and any other agency of the federal government with authority to regulate the telecommunications facilities that are the subject of the application; and

(c) Written consent by the telecommunications provider to submit to, at the provider's expense and prior to receiving final City approval to operate the facility, testing of the facility by an independent consultant chosen by the City in order to confirm compliance of the facility with all applicable technical regulations and to confirm that the facility does not cause harmful interference, as defined by the Federal Communications Commission, to any public safety communications or adjacent landowner.

(8) Proof, satisfactory to the City, that the telecommunications provider has received a final operating license from the FCC to provide the telecommunications services or facilities proposed at the location within the City. For the purposes of this Section a "final operating license" means an FCC license from which no notice of appeal, protest, petition for review, or petition for reconsideration, as defined by Title 47 of the Code of Federal Regulations, as amended, has been or may be filed.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27<sup>th</sup> day of June, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11<sup>th</sup> day of July, 2011.

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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



Agenda Memorandum

City Council Meeting  
July 11, 2011



**SUBJECT:** Second Reading of Councillor’s Bill No. 22 re Lease of City Property at 7225 Bradburn Boulevard

**Prepared By:** Tony Chacon, Senior Projects Coordinator

**Recommended City Council Action**

Pass Councillor’s Bill No. 22 on second reading authorizing the execution of a lease in substantially the same form as the attached agreement with Johnny Chavez (“Lessee”) for property located at 7225 Bradburn Boulevard.

**Summary Statement**

- Councillor’s Bill No. 22 was passed on first reading on June 27, 2011.
- City Council approved the purchase of 7225 Bradburn Boulevard from Johnny and Gloria Chavez at the April 11, 2011, meeting. The City plans to close on the property by July 28, 2011. This property will be acquired to facilitate realignment of Bradburn Boulevard.
- The City entered into a Purchase and Sale Agreement with the Chavez’s on April 12, 2011, which gave Mr. Chavez the right to lease the property back from the City for \$1 per year for up to two years.
- Approval of the ordinance will permit the City to lease the property back to Mr. Chavez pursuant to City Charter requirements. The lease will be executed following closing of the purchase by the City. The form of lease has been approved by the City Attorney’s Office and by the Lessee.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager  
Attachment - Ordinance



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **22**

SERIES OF 2011

INTRODUCED BY COUNCILLORS  
**Winter - Lindsey**

**A BILL  
FOR AN ORDINANCE APPROVING A LEASE AGREEMENT FOR THE LEASE OF THE  
PROPERTY LOCATED AT 7225 BRADBURN BOULEVARD**

WHEREAS, the City of Westminster will purchase the property at 7225 Bradburn Boulevard from Johnny and Gloria Chavez. Johnny Chavez has requested that the City allow him to remain on his property and continue his current use of the facility on the property for a period of up to two years, but ending not later than June 30, 2013; and

WHEREAS, Johnny Chavez negotiated the right to remain on the property through June 30, 2012 as part of the Purchase and Sale Agreement; and

WHEREAS, the final form of the lease agreement has been agreed to by the parties; and

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

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease Agreement between Johnny Chavez and the City for the property located at 7225 Bradburn Boulevard is approved in substantially the form attached to this Ordinance, and the City Manager is authorized to execute it on behalf of the City.

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 TITLE AND PURPOSE ORDERED PUBLISHED this 27<sup>th</sup> day of June, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11<sup>th</sup> day of July, 2011.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_ 2011, between the **CITY OF WESTMINSTER**, a Colorado home rule municipality (the "City"), and **JOHNNY PATRICK CHAVEZ** whose address is 5450 Bryant Street (the "Lessee").

WHEREAS, the City has purchased from the Lessee on this date the property described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, in conjunction with the sale of the Property to City, the City agreed to lease back the Property to Lessee, excepting that portion of the property as referenced in Exhibit "B", for a period of time not to exceed one (1) year with up to two (2) six month extensions, pursuant to the terms of this Lease Agreement (the "Lease.")

WITNESSETH that in consideration of the covenants and agreements by the Lessee hereinafter set forth, and for other good and valuable consideration, the City hereby leases unto the Lessee the Property situated in the County of Adams, State of Colorado, ("County") subject to the following Terms and Conditions:

### TERMS AND CONDITIONS OF LEASE

A. The term of this Lease shall be for the period commencing on July 28, 2011, and ending on June 1, 2012, at 12:00 a.m. MST. Upon City approval, the lease may be extended in three month increments subject to the City's written consent. The Lessee may terminate this Lease upon thirty (30) days advance written notice to the City without penalty. Subparagraphs 5, 7, 8, 11 and 13 of Section B, and subparagraphs 6, 7, 15, 19 and 20 of Section C shall survive any such termination.

B. In consideration of the lease of the Property, the Lessee covenants and agrees as follows:

1. Annual Rent. Annual rent during the term of the Lease shall be One Dollar (\$1).
2. Lawful Use. To use the Property solely for the purpose of conducting the existing carpet installation, repair, and cleaning businesses and to use the Property for no purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances of the City of Westminster or County of Adams, Colorado. Lessee may not expand or permit the expansion of such activities, and Lessee may not sublet or permit any new users to use or occupy the property.
3. Entry by City: To allow the City access at all times to enter onto the Property during Lessee's normal business hours, during any event of an emergency nature (e.g., fire, flood, building collapse), and at such other times as City may reasonably request upon 48 hours advance written notice.
4. Occupancy. Not to permit the Property to be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous.
5. Alterations; Modifications. Not to make any alterations to or modifications in or upon the Property without first obtaining the City's written consent. All such alterations or modifications shall be done in conformance with all applicable laws, codes, regulations, and rules of the County and the State of Colorado. All such alterations or modifications shall be done at the Lessee's expense. Further, unless the parties otherwise agree in writing, the Lessee shall be obligated to restore the Property to the original condition as entered upon if requested to do so in writing by City.
6. Duty of Care. To exercise reasonable supervision of all guests at all times when they are in or upon the Property.

7. Damage by Lessee. To reimburse the City for any expense incurred by it in repairing any damage to the Property caused by Lessee, its employees or agents, or any person in its care, ordinary wear and tear excepted.

8. Indemnity. During the term of the Lease, Lessee shall indemnify and hold harmless the City against any claims, demands, judgments or costs, including attorneys fees, arising from Lessee's lease and use of the Property and Lessee shall maintain commercially reasonable casualty, liability and other insurance as may be acceptable to City in City's reasonable discretion.

9. Subletting. Lessee may not assign this lease or any interest therein.

10. Nuisance. Not to permit any disorderly conduct or nuisance whatever on the Property, including the buildings and the building grounds.

11. Surrender in Good Condition. At the expiration or termination of this Lease to surrender and deliver up the Property in as good order and condition as when the same were entered upon, ordinary wear and tear excepted. Lessee shall be entitled to remove improvements and appurtenances as agreed to in writing by the City at such time the Lessee vacates the premises.

12. Restriction on Outdoor Storage. The property shall be cleared, and kept cleared, of all equipment, vehicles, materials and debris not directly related to the operation of the carpet cleaning, repair and/or installation business. All equipment, materials, excepting service related trucks and employee automobiles driven to work on daily basis, shall not be stored outside.

13. Taxes. Lessee shall be responsible for paying all sales, use, personal and real property and other taxes associated with Lessee's lease, possession and use of the property, including any possessory interest taxes.

C. The City and the Lessee further covenant and agree that:

1. Maintenance by Lessee. Lessee shall be responsible for the total caretaking and maintenance of the exterior and interior of the Property and all items brought onto the Property by the Lessee. The Lessee shall maintain in good repair, at his sole cost and expense, the building and all other improvements on the Property, including the landscaping, hardscaping, and irrigation systems, and shall be responsible for snow removal and payment of all utilities.

2. Maintenance by the City. Lessee accepts the Property "as is" and acknowledges that the City shall have no obligation for maintenance or repair of the Property.

3. Access. During the term of the Lease, City shall maintain reasonable access to the Property and any public improvements constructed or caused to be constructed by City shall be constructed in such a manner so as not to unreasonably interfere with Lessee's access to or use of the Property.

4. Emergency Repairs. Lessee agrees to perform all repairs of an emergency nature necessary to protect the Property from undue and avoidable injury or damage.

5. Continuation of operation. During the term of the Lease, Lessee may continue to operate its existing business activities on the Property.

6. Utilities. All charges for water and water rents, for heating, and for lighting of the Property are to be paid by Lessee.

7. Telephone Charges. Lessee will be responsible for payment for all telephone installation and service charges.

8. Keys. Upon termination of this Lease, Lessee shall return all keys to the City for the interior and exterior doors of the buildings on the Property.

9. The City is Not Responsible for Lessee's Personal Property. The City shall have no responsibility or liability for any loss or damage to any personal property of the Lessee or any fixtures installed by the Lessee, whether Lessee has obtained insurance coverage or not.

10. Flammable, Hazardous Materials. Lessee shall store no flammable, toxic, dangerous, hazardous or obnoxious materials anywhere on the Property, except as used in the normal ordinary course of its business.

11. Live Animals. Lessee shall neither bring nor permit the bringing of any live animals into the Property, except pets to the extent permitted by the City.

12. Untenantable Conditions. If the Property becomes so damaged by fire, flood, act of God or any other casualty not caused by the Lessee so as to render the Property untenantable, the Lessee may terminate this Lease without further obligation.

13. Vacancy of Property. If the Property is left vacant for a continuous 30 day period, the City may, at its option, either retake possession of the Property, terminating the Lease and the City's and Lessee's obligations hereunder, or it may re-rent the Property.

14. Bankruptcy. This Lease shall terminate upon the filing of a petition for bankruptcy by Lessee.

15. Peaceable Surrender. At the expiration of the term of this Lease, whether by passage of time or by act of the City as provided in this Lease Agreement, the Lessee shall surrender and deliver up the Property peaceably to the City, and if the Lessee shall remain in possession after termination of this lease, the Lessee shall be deemed guilty of a forcible detainer of the Property under the statute, and shall be subject to eviction and removal in accordance with state law.

16. Default. If default shall be made in any of the covenants or agreements contained in this Lease Agreement to be kept by Lessee, and such default continues for thirty (30) days after delivery or written notice of such default, it shall be lawful, upon 30 days written notice, for the City to declare the term ended and to repossess the Property in accordance with state law.

17. No Waiver. No assent, express or implied, to any breach of any one or more of the covenants or agreements contained in this Lease Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

18. Designated Representatives. The following persons are hereby designated by the parties as the persons responsible for the implementation of this Lease. Should Notices need to be sent or problems arise concerning this Lease the parties agree to contact:

For the Lessee:

Mr. Johnny Chavez  
5450 Bryant Street  
Denver, Colorado 80221

For the City of Westminster:

J. Brent McFall, City Manager  
City of Westminster  
4800 West 92nd Avenue  
Westminster, CO 80031  
303-430-2400, Ext. 2142

19. Insurance. The Lessee will be solely responsible for any loss to any of its personal property and equipment associated with the Property, other than a loss caused by an intentional act of the City, and shall carry commercially reasonable, liability insurance in amounts as may be acceptable to City in City's reasonable discretion. At City's sole expense, to be effective upon closing, City shall add the Property to its schedule of property covered by its current property and casualty insurance as a member of the Colorado Intergovernmental Risk Sharing Agency ("CIRSA"). Such insurance shall be maintained on the Property for the duration of this Lease.

20. Taxes. The Lessee shall be responsible for paying all sales, use, property, and other taxes associated with the Lessee's lease, possession, and use of the property during the Lease, including any possessory interest taxes.

IN WITNESS WHEREOF the parties have executed this indenture the day and year first above written.

CITY OF WESTMINSTER

LESSEE: JOHNNY PATRICK CHAVEZ

By: \_\_\_\_\_  
J. Brent McFall  
City Manager

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

ATTEST:

By: \_\_\_\_\_  
Linda Yeager  
City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT A

THAT PART OF BLOCK 39, HARRIS PARK, COUNTY OF ADAMS, STATE OF COLORADO DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF THE EAST LINE OF SAID BLOCK 39, WHICH IS 149 FEET NORTH OF THE SOUTHEAST CORNER OF SAID BLOCK 39,  
THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 39, A DISTANCE OF 180 FEET, MORE OR LESS, TO THE NORTH-SOUTH CENTER LINE OF BLOCK 39,  
THENCE NORTH ALONG SAID CENTER LINE 317 FEET, MORE OR LESS TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC, DENVER, AND GULF RAILROAD,  
THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF SAID RAILROAD 212.76 FEET, MORE OR LESS, TO THE INTERSECTION OF SAID RIGHT OF WAY LINE WITH THE EAST LINE OF SAID BLOCK 39,  
THENCE SOUTH ALONG THE EAST LINE OF SAID BLOCK 39, A DISTANCE OF 203.36 FEET TO THE POINT OF BEGINNING,

EXCEPT THAT PART OF BLOCK THIRTY-NINE (39), HARRIS PARK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID BLOCK 39, WHICH IS 304 FEET NORTH OF THE SOUTHEAST CORNER OF SAID BLOCK 39,  
THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 39, A DISTANCE OF 180 FEET, MORE OR LESS, TO THE NORTH-SOUTH CENTER LINE OF SAID BLOCK 39,  
THENCE NORTH ALONG SAID CENTER LINE 162 FEET MORE OR LESS TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC, DENVER AND GULF RAILROAD,  
THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF SAID RAILROAD 212.76 FEET, MORE OR LESS, TO THE INTERSECTION OF SAID RIGHT OF WAY LINE WITH THE EAST LINE OF SAID BLOCK 39,  
THENCE SOUTH ALONG THE EAST LINE OF SAID BLOCK 39, A DISTANCE OF 48.36 FEET TO THE POINT OF BEGINNING, COUNTY OF ADAMS, STATE OF COLORADO.

*L.A.*



EXHIBIT B

The leasable area shall not include the most easterly 20 feet of garage bay and 40 feet of northerly most property immediately east of the garage building as generally reflected in the aerial image below.



## Agenda Item 10 A

### Agenda Memorandum

City Council Meeting  
July 11, 2011



**SUBJECT:** Councillor's Bill No. 23 re Savery Farm Estates Master Plan Implementation Supplemental Appropriation

**Prepared By:** Richard Dahl, Park Services Manager  
Sarah Washburn, Landscape Architect II

### Recommended City Council Action

Pass Councillor's Bill No. 23 on first reading authorizing a supplemental appropriation in the amount of \$232,000 reflecting the City's receipt of an Adams County Open Space Grant for implementation of the Savery Farm Estates Master Plan.

### Summary Statement

- In July 2010, Staff received City Council's approval to submit a request of \$282,000 to Adams County Open Space to assist with the master plan implementation of the Savery Farm Open Space. Staff presented the grant request on August 26, 2010, but was denied recommendation for funding at that time.
- In January 2011, Staff received City Council's approval to submit a second request of \$232,000 to Adams County for the Savery Farm Open Space project. Staff presented this grant request on February 24, 2011, and on May 11, 2011; the City was awarded the full request of \$232,000 to implement the master plan at this site.
- The master plan of this open space will include re-grading of the fill dirt located on site, construction of a small parking lot and concrete trails, installation of open space fencing and signage along Federal Boulevard, and revegetation of the site with native grasses.
- Staff will bring the recommended construction bid to City Council for approval later this year. Construction is expected to be complete in the summer of 2012.

**Expenditure Required:** \$232,000

**Source of Funds:** Adams County Open Space Grant



**Policy Issue**

Does Council wish to continue to pursue the use of grant funds to help fund the Savery Farm Open Space Rehabilitation project?

**Alternative**

Council could choose not to appropriate these grant funds. However, this is not recommended because the City and residents will benefit from these additional funds as they will allow enhancements for the project and because the City has successfully used grant funds from Adams County Open Space in the past.

**Background Information**

The City acquired the Savery Farm Estates property, once owned by Charles Savery, as part of the Savery Savory Mushroom Farm, in January 2010 to provide a buffer to the abutting Mushroom Pond Open Space. This acquisition was made possible with a grant of \$550,000 from Adams County. Staff developed a master plan for improvements to the site to include construction of the following: trailhead parking lot for the Farmers' High Line Canal Trail, new concrete trails including along Federal Boulevard, grading and revegetation, open space fence and signage along Federal Boulevard, and installation of interpretive signage related to the history of the Savery Savory Mushroom Farm and the recently renovated water tower (see attachments).

Staff brought this grant request to Adams County during the fall 2010 grant cycle. The request was denied funding due in part to a misunderstanding of what constituted the cash match by the City. Staff had proposed using the original property acquisition amount as an additional match that was allowed in the open space grant criteria; however, some board members did not agree with the grant guidelines and denied using the property acquisition match as credit toward the City's matching contribution to the second phase of the same project.

In the spring 2011 grant cycle, Staff identified a total of \$100,000 in City matching funds from the City's General Capital Improvement Fund - Sidewalk Account and the POST Trail Development funds. Adams County subsequently approved this second grant request in full. Staff will bring the recommended construction bid for City Council approval later this year, along with a request to transfer the necessary matching funds to the appropriate expense account.

This project supports the City's Strategic Plan Goals of "Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City" by increasing revenues that support defined City projects, and by providing the City with increased access to trails and open space.

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Adams County OS Grant	7501.40630.0010	\$205,000	<u>\$232,000</u>	\$437,000
Total Change to Revenues			<u>\$232,000</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Savery Farm OS Rehab	81175050980.80400.8888	\$0	<u>\$232,000</u>	\$232,000
Total Change to Expenses			<u>\$232,000</u>	

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

**Attachments**

- Ordinance
- Vicinity Map
- Master Plan Diagram

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **23**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

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**A BILL**

**FOR AN ORDINANCE INCREASING THE 2011 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2011 ESTIMATED REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2011 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3550 is hereby increased by \$232,000. This appropriation is due to the receipt of an Adams County Open Space Grant.

Section 2. The \$232,000 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10A dated July 11, 2011, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$232,000</u>
Total	<u>\$232,000</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.

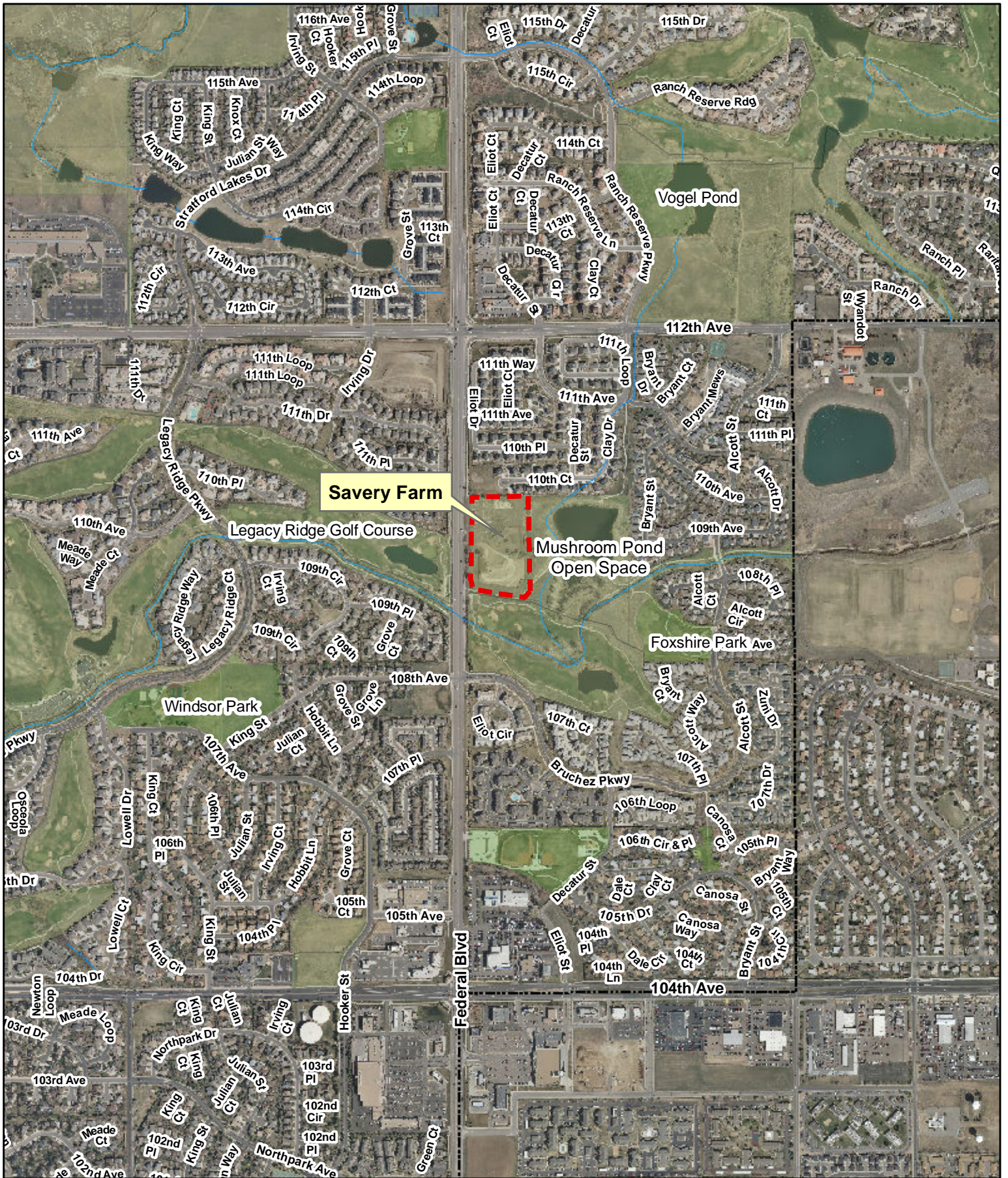
INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 11<sup>th</sup> day of July, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25<sup>th</sup> day of July, 2011.

ATTEST:

\_\_\_\_\_  
Mayor

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



**Savery Farm**

Mushroom Pond  
Open Space



**Savery Farm Master Plan**





## Agenda Item 10 B

### Agenda Memorandum

City Council Meeting  
July 11, 2011



**SUBJECT:** Councillor's Bill No. 24 re 2011 Community Development Block Grant Fund Appropriation

**Prepared By:** Signy Mikita, Community Development Program Planner

### Recommended City Council Action

Pass Councillor's Bill No. 24 on first reading appropriating funds received from the United States Department of Housing and Urban Development, Community Development Block Grant program, in the amount of \$506,907.

### Summary Statement

- City Council action is requested to pass the attached Councillor's Bill on first reading appropriating the City's 2011 Community Development Block Grant (CDBG) funds in the amount of \$506,907, awarded by the U.S. Department of Housing and Urban Development (HUD).
- The 2011 CDBG allocation was designated to fund the 2011 CDBG projects, pursuant to City Council approval on November 22, 2010.
- CDBG funding has been decreasing for several years, from \$696,000 in 2003 to \$559,370 in 2009. Although the 2010 allocation of \$604,991 was a one time increase of 8% (\$45,621 more than the 2009 grant), the 2011 allocation was decreased by 16% or \$98,084.

**Expenditure Required:** \$ 506,907

**Source of Funds:** 2011 Community Development Block Grant Funds





**Policy Issue**

Should the 2011 CDBG funds in the amount of \$506,907 be appropriated to the 2011 CDBG projects as previously approved by City Council on November 22, 2010?

**Alternative**

Do not appropriate the 2011 CDBG funds in the amount of \$506,907. This alternative is not recommended because this funding is needed for proposed 2011 projects.

**Background Information**

The 2011 CDBG budget and projects were developed from input provided by Westminster residents and City Staff. Public notices and citizen surveys were used to solicit community input on the development of the 2011 CDBG Action Plan. CDBG funds are used for community development projects that primarily benefit the City’s low- to moderate-income populations.

When City Council approved the 2011 projects on November 22, 2010, it was expected that the City’s grant would be about \$600,000 for 2011. Due to the 16% decrease in CDBG funding, the award is \$506,907, which provides \$93,093 less than anticipated.

The projects approved for 2011 and the recommended amounts are as follows:

<b>Project</b>	<b>Estimated</b>	<b>Actual</b>
Program Administration (20% - salaries & program costs)	\$120,000	\$101,381
Emergency & Minor Home Repair Program	\$50,000	\$50,000
Bradburn Boulevard Realignment	\$430,000	\$355,526
<b>TOTAL</b>	<b>\$600,000</b>	<b>\$506,907</b>

**2011 CDBG Program Administration**

**\$101,381**

Federal regulations allow grantees to utilize up to 20% of the CDBG funding for administration and planning expenses. HUD requires the City to provide a number of services that require a significant amount of staff time. Those duties include submission of the five-year Consolidated Plan, preparation of the annual action and performance reports, hosting citizen participation activities and community meetings, monitoring minority business contract reports, conducting environmental reviews, compliance with the Davis-Bacon Wage Act, national objective and eligibility review, and contracting and procurement regulatory procedures. This program administration portion of the grant may also be used for consulting, planning and costs such as computers used by CDBG staff.

**Emergency & Minor Home Repair Program**

**\$50,000**

The City Council directed Staff to develop a program to assist low-income homeowners with emergency and minor home repair needs. Often these requests are not covered by the HOME program administered by Adams County. Also, home rehabilitation projects funded by HOME require the entire home to be improved to meet building code requirements. Homeowners are often in need of an emergency repair and cannot wait for a major rehabilitation project to be conducted by the County.

In partnership with Brothers Redevelopment, the City began the Emergency & Minor Home Repair Program this spring using \$50,000 in 2010 CDBG funds. On November 22, 2010, City Council approved that a similar level of CDBG funding be allocated in 2011 to the program. There is ample demand for this service by homeowners who are struggling to maintain their homes on fixed or reduced incomes. Recipients of these small grants (not to exceed \$5,000) have incomes at or below 80% of the area median income (AMI). A family of four who earns \$62,550 in 2011 is at the 80% AMI income level.

**Bradburn Boulevard Realignment**

**\$355,526**

The Bradburn Boulevard Realignment project will realign Bradburn Boulevard so that it intersects 72<sup>nd</sup> Avenue at the traffic signal at Raleigh Street. This accomplishes several goals, including reconstruction of an aging culvert where Little Dry Creek passes under 72<sup>nd</sup> Avenue, increasing traffic safety by moving Bradburn Boulevard to a signalized intersection and away from a hill that has limited sight distance, facilitating better access to the new Westminster High School, and providing improved connectivity between neighborhoods north and south of 72<sup>nd</sup> Avenue.

This is a multi-phase project to be implemented over several years as funding becomes available. 2010 CDBG funds have been spent on preliminary design, as well as costs related to right-of-way property acquisition. In April of 2011, City Council approved a purchase and sale agreement with the property owners of 7225 Bradburn Boulevard for the realignment. The City negotiated an acquisition price of \$400,000 for the property. The closing costs are estimated to be up to \$10,000. A total of \$410,000 in CDBG funding (\$312,643 from 2010 and the remaining amount from 2011) will be committed to the property acquisition.

It is recommended that \$355,526 of the 2011 CDBG grant be used to fund the remaining property acquisition (estimated amount of \$97,357) and to prepare final construction documents (estimated amount of \$258,169) for the project.

This appropriation will amend CDBG Fund revenue and expense accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Block Grant-CDBG	7600.40610.0025	\$0	<u>\$506,907</u>	\$506,907
Total Change to Revenues			<u>\$506,907</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Salaries	76030350.60200.0000	\$0	\$101,381	\$101,381
CDBG Block Grant	80576030722.80400.8888	\$0	<u>\$405,526</u>	\$405,526
Total Change to Expenses			<u>\$506,907</u>	

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **24**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE INCREASING THE 2011 BUDGET OF THE COMMUNITY  
DEVELOPMENT BLOCK GRANT FUND AND AUTHORIZING A SUPPLEMENTAL  
APPROPRIATION FROM THE 2011 ESTIMATED REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2011 appropriation for the CDBG Fund, initially appropriated by Ordinance No. 3550 is hereby increased by \$506,907. This appropriation is the amount approved by the U.S. Department of Housing and Urban Development (HUD) for the City for 2011.

Section 2. The \$506,907 increase in the CDBG Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10B, dated July 11, 2011 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

CDBG Fund	<u>\$506,907</u>
Total	<u>\$506,907</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 11<sup>th</sup> day of July, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25<sup>th</sup> day of July, 2011.

ATTEST:

\_\_\_\_\_  
Mayor

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