



**REVISED
CITY COUNCIL AGENDA**

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
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. 2010 Water Meter Transponder Purchases
 - B. Memorandum of Agreement – Colorado Task Force One
 - C. 68th Avenue and Utica Street Project – Landscape Change Order
 - D. Bradburn Boulevard/Raleigh Street Realignment – Preliminary Engineering Services
 - E. West Nile Virus Intergovernmental Agreement with the Jefferson County Department of Health and Environment
 - F. Second Reading of Councillor's Bill No. 18 re Annexation of the 144th Avenue and Tejon Street Property
 - G. Second Reading of Councillor's Bill No. 19 re CLUP Amendment for the 144th Avenue and Tejon Street Property
 - H. Second Reading of Councillor's Bill No. 20 re Rezone of the 144th Avenue and Tejon Street Property
 - I. Second Reading of Councillor's Bill No. 21 re Annexation of the 144th Avenue and Zuni Street Property
 - J. Second Reading of Councillor's Bill No. 22 re CLUP Amendment for the 144th Avenue and Zuni Street Property
 - K. Second Reading of Councillor's Bill No. 23 re Rezone of the 144th Avenue and Zuni Street Property
 - L. Second Reading of Councillor's Bill No. 32 re W.M.C. Title XI Revisions re Trash Storage and Off Street Parking
 - M. Second Reading of Councillor's Bill No. 33 re Lease of City Property
 - N. Second Reading of Councillor's Bill No. 37 re W.M.C. Title VI Chapter 17 re Residency of Sexually Violent Predators
9. Appointments and Resignations
 - A. Resolution No. 25 re Appointments to the Board of Building Code Appeals
10. Public Hearings and Other New Business
 - A. Public Hearing re Exclusion of .25 Acres of Undeveloped Residential Property from the 144th Avenue GID
 - B. Councillor's Bill No. 38 re Granting Petition to Exclude .25 Acres of Undeveloped Property from the 144th Ave. GID
 - C. Councillor's Bill No. 39 re W.M.C. Title V New Chapter 10 re Medical Marijuana Centers, Cultivation, Manufacturing
 - D. Councillor's Bill No. 40 re Extension of Comcast Cable Franchise
 - E. Resolution No. 26 re Fall 2010 Adams County Open Space Grant Applications
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session
 - A. City Council
 - B. Executive Session – Consultation with the City Attorney concerning Westminster Mall Company v. City of Westminster pursuant to W.M.C. 1-11-7(C)(3) and (8) and CRS 24-6-402(4)(b) and (e).
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 28, 2010 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Major, to approve the minutes of the regular meeting of June 14, 2010, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall invited everyone to planned activities in celebration of Independence Day from 6 to 9:30 p.m. at City Park. In addition to food vendors opening at 6 p.m., the public was invited to bring picnics and enjoy the music of the Nacho Men at 7 p.m. The finale of the celebration would begin at 9:15 p.m. with the best fireworks display in the north metro area.

Because national holidays falling on Sundays were observed on Mondays, City Hall would be closed on Monday, July 5, and City Council would not meet that day.

Following the City Council meeting, the Council would convene a post-meeting in the Board Room to listen to and discuss results of the 2010 Citizens Survey and the potential phase I renovation of the Swim and Fitness Center.

CITY COUNCIL COMMENTS

Councillor Briggs congratulated Mayor McNally on her election to the Colorado Municipal League Board of Directors at the annual conference the prior week. The conference had been informative and timely. One session had focused on proposed amendments to the Colorado Constitution that would appear on the November 2 statewide ballot. If those amendments passed, the Council would not be able to refund bonds and realize savings of taxpayer dollars, as was scheduled to be considered later during this meeting. The impact on government at the state, county and local levels would be huge, and he hoped the electorate would become educated about the proposed amendments and their impacts before casting their ballots.

Mayor McNally congratulated Councillor Winter on her election as President of the Colorado Chapter of Women in Municipal Government and Councillor Lindsey for receipt of her 30-hour training certificate from the Colorado Municipal League. Both occasions also had occurred at the annual conference.

Councillor Major reported that Council had met with Department Heads on Saturday to update the Strategic Plan. Clear goals resulted and clarification had been provided to staff on any matters of question. Additionally, Councillor Major reported that Aric Otselberger, Management Analyst in the City Manager's Office, had given a presentation on performance measurement at the Colorado Municipal League's annual conference. The City was a respected leader in this area and a model for other Colorado municipalities. At the City's suggestion to the International City Manager's Association (ICMA), a consortium of Colorado municipalities had been created to review and propose standardized, unique performance measures of significance and meaningfulness to Colorado.

PRESENTATIONS

Kathy Barta, administrator of the Colorado Government Finance Officer Association, presented the Government Finance Officer's Certificate of Achievement for Excellence in Financial Reporting to the City's Comprehensive Annual Financial Report project team. This was the 26th consecutive year the City had received this prestigious award. Accepting the award were Cheri Sanchez, Sherri Rickard, and Gary Newcomb of the Finance Department's Accounting Division.

CITIZEN COMMUNICATION

Bill Hayes, 10350 Dover Street, urged Council to support immediate Congressional action to pass the Glass-Steagall amendment and adopt measures that would lead to the shutdown of the derivatives market

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the May 2010 Financial Report; based on the City Manager's recommendation, find the public interest would best be served by authorizing the City Manager to substitute Hydros Consulting, Inc. for AMEC Earth and Environmental, Inc. with approval to execute a sole source professional services agreement for the Update and Refinement of the Standley Lake Water Quality Models that was authorized by City Council on May 24, 2010; authorize the Mayor to execute the renewal of the Adams County Collaborative Transportation Planning Agreement; accept the 2009 Comprehensive Annual Financial Report; authorize the City Manager to execute agreements for bond counsel services with Sherman & Howard for a fee not to exceed \$20,000, plus actual expenses not to exceed \$1,500, and for disclosure counsel services with Kutak Rock for a total fee not to exceed \$20,000, both in connection with the proposed issuance of \$13.4 million Sales Tax Revenue Refunding Bonds, Series of 2010, in substantially the same form distributed with the agenda, and to authorize the City Manager to execute agreements for special counsel services with Sherman & Howard for a fee not to exceed \$40,000, plus actual expenses not to exceed \$1,200 and for disclosure counsel services with Kutak Rock for a total fee not to exceed \$24,000, both in connection with the \$18.3 million Certificates of Participation Refunding, Series of 2010, in substantially the same form distributed with the agenda; and final passage of Councillor's Bill No. 31 on second reading making revisions to Westminster Municipal Code Section 1-8-3 regarding the Cash Handling Policy.

No items were removed for individual consideration, and it was moved by Councillor Major, seconded by Councillor Kaiser, to approve the consent agenda as presented. The motion carried with everyone voting yes.

RESOLUTION NO. 21 FILLING A VACANCY ON THE ENVIRONMENTAL ADVISORY BOARD

It was moved by Councillor Briggs and seconded by Councillor Kaiser to adopt Resolution No. 21 to fill a vacancy on the Environmental Advisory Board by appointing William Lange the alternate. The motion carried unanimously.

PUBLIC HEARING – 144TH AVE/TEJON ST ANNEXATION, CLUP AMENDMENT AND ZONING

At 7:17 p.m. the Mayor opened a public hearing that had been continued on May 10, 2010, to consider the 144th Avenue & Tejon Street annexation, Comprehensive Land Use Plan (CLUP) amendment, and rezone. Mac Cummins, Planning Manager, presented background information. The area of consideration contained 1.122 acres and consisted of right-of-way along 144th Avenue and a City-owned parking area used for the adjacent City Open Space lands. He entered into evidence the notice of public hearing that had been published in the *Westminster Window*, advised that the property had been posted and that written notice of the proposal had been mailed to the Adams County Commissioners and Attorney, as well as all special districts and all property owners within 300 feet. He entered the agenda memo and its attachments into the record. The proposed land use designation was City-owned Open Space; proposed rezoning from Adams County A-1 to City of Westminster O-1.

Mayor McNally invited public comment. There was none and Councillors had no questions.

Mr. Cummins reported that the Planning Commission had considered this proposal on April 13 and had voted to recommend approval.

The Mayor closed the hearing at 7:22 p.m.

RESOLUTION NO. 14 MAKING FINDINGS RE 144TH AVENUE & TEJON STREET ANNEXATION

Mayor Pro Tem Dittman moved to adopt Resolution No. 14 making certain findings of fact as required under Section 31-12-110 C.R.S. regarding the proposed 144th Avenue and Tejon Street property annexation. The motion was seconded by Councillor Winter and passed unanimously at roll call.

COUNCILLOR'S BILL NO. 18 ANNEXING 144TH AVENUE & TEJON STREET PROPERTY

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Winter, to pass Councillor's Bill No. 18 on first reading annexing the 144th Avenue and Tejon Street property into the City. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 19 AMENDING THE CLUP FOR 144TH AVENUE & TEJON STREET PROPERTY

Mayor Pro Tem Dittman moved, seconded by Winter, to pass Councillor's Bill No. 19 on first reading amending the Comprehensive Land Use Plan for the 144th Avenue and Tejon Street property by changing the designation from unincorporated Adams County to City-owned Open Space based on finding that the proposed amendment would be in the public good; there was justification for the proposed change and the Plan was in need of revision as proposed; the amendment was in conformance with the overall purpose and intent and the goals and policies of the Plan; the proposed amendment was compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. The motion passed with all Councillors voting affirmatively on roll call vote.

COUNCILLOR'S BILL NO. 20 REZONING THE 144TH AVENUE & TEJON STREET PROPERTY

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Winter, the Council voted unanimously on roll call vote to pass Councillor's Bill No. 20 on first reading approving the rezoning of the 144th Avenue and Tejon Street property from Adams County A-1 to City of Westminster Open District O-1 based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code had been met.

PUBLIC HEARING – 144TH AVE/ZUNI ST ANNEXATION, CLUP AMENDMENT AND ZONING

The Mayor opened the continued public hearing at 7:25 p.m. Mr. Cummins summarized background information concerning the 144th Avenue & Zuni Street annexation, Comprehensive Land Use Plan amendment, and rezoning of the 144th Avenue & Zuni Street property annexation. The annexation area contained nearly 5.902 acres and included right-of-way along 144th Avenue as well as the former Barnett property that the City had purchased for Open Space. He entered into the record the agenda memorandum and its attachments, the notice of hearing published in the *Westminster Window*, and advised that the property had been posted and written notice of the proposal had been mailed to the Adams County Commissioners and Attorney, as well as all special districts and all property owners within 300 feet. Also entered into the record were revised documents and maps reflecting corrected legal descriptions from those distributed in the agenda packet.

The Mayor invited public comment. There was none and Councillors had no questions.

Mr. Cummins reported that the Planning Commission had considered this proposal on April 13 and have voted to recommend approval.

At 7:28 p.m., the Mayor closed the hearing.

RESOLUTION NO. 15 MAKING FINDINGS RE 144TH AVENUE & ZUNI STREET ANNEXATION

It was moved by Councillor Briggs and seconded by Councillor Major, to adopt Resolution No. 15 making certain findings of fact as required under Section 31-12-110 C.R.S. regarding the proposed 144th Avenue and Zuni Street property annexation. The motion passed unanimously at roll call.

COUNCILLOR'S BILL NO. 21 ANNEXING THE 144TH AVENUE & ZUNI STREET PROPERTY

Councillor Briggs moved to pass Councillor's Bill No. 21 on first reading to annex the 144th Avenue and Zuni Street property into the City. Councillor Major seconded the motion, and it passed unanimously.

COUNCILLOR'S BILL NO. 22 AMENDING THE CLUP FOR 144TH AVENUE & ZUNI STREET PROPERTY

Based on finding that the proposed amendment would be in the public good and that there was justification for the proposed change and the Plan was in need of revision as proposed, that the amendment was in conformance with the overall purpose and intent and the goals and policies of the Plan, that the proposed amendment was compatible with existing and planned surrounding land uses, and that the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems, Councillor Briggs moved to pass Councillor's Bill No. 22 on first reading amending the Comprehensive Land Use Plan for the 144th Avenue and Zuni Street property changing the designation from unincorporated Adams County to City-owned Open Space. The motion was seconded by Councillor Major and passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 23 TO REZONE THE 144TH AVENUE & ZUNI STREET PROPERTY

Upon a motion by Councillor Briggs, seconded by Councillor Major, the Council voted unanimously at roll call to pass Councillor's Bill No. 23 on first reading approving the rezoning of the 144th Avenue and Zuni Street property from Adams County (A-3) to Open District (O-1) based on finding that the criteria set forth in Section 11-5-3 Westminster Municipal Code had been met.

COUNCILLOR'S BILL NO. 32 REVISING W.M.C. RE TRASH STORAGE & PARKING STANDARDS

It was moved by Councillor Major and seconded by Mayor Pro Tem Dittman to pass Councillor's Bill No. 32 on first reading to make revisions to Title XI of the Westminster Municipal Code regarding screening of trash storage areas and off-street parking standards. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 33 AUTHORIZING LEASE OF CITY-OWNED PROPERTY

Councillor Briggs moved, seconded by Councillor Major, to pass Councillor's Bill No. 33 on first reading authorizing the execution of a two-year lease in substantially the same form as the agreement distributed in the agenda for the JHRBarnum, LLC property located at 6899 Grove Street, Denver, CO 80221. The motion carried unanimously on roll call vote.

COUNCILLOR'S BILL NO. 34 AUTHORIZING LEASE/PURCHASE AGREEMENT

Mayor Pro Tem Dittman moved, seconded by Councillor Major, to pass Councillor's Bill No. 34 as an emergency ordinance authorizing the City to enter into a lease-purchase agreement for \$67,209 with Municipal Services Group, Inc., appropriating the funds, and authorizing the City Manager to sign the contract and all necessary documents. The motion passed unanimously on roll call vote.

PURCHASE OF OFFICE EQUIPMENT

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Major, to authorize the purchase of eight copiers of varying size to various vendors based on price agreements reached through the National Joint Powers Alliance and Association of Educational Purchasing Agencies Purchasing Program pricing agreement and the City of Westminster procurement process in the amount of \$67,209, with vendors and amounts as follows: Konica Minolta, \$7,080; Oki, \$4,917; Lewan and Associates, \$55, 212. The motion carried with all Council members voting yes.

COUNCILLOR'S BILL NO. 35 REFUNDING SERIES 2001 & 2002 SALES TAX REVENUE BONDS

Councillor Winter moved to adopt Councillor's Bill No. 35 as an emergency ordinance, approving the sale of Sales and Use Tax Revenue Refunding Bonds to refund the Series 2001 and 2002 Sales and Use Tax Revenue Bonds in the amount not to exceed \$11,720,000, and to direct the Mayor, Finance Director and City Clerk to sign necessary documents on behalf of the City. After being seconded by Councillor Kaiser, the motion passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 36 REFUNDING SERIES 1998 BONDS & SERIES 2001 COP'S

Councillor Lindsey moved to adopt Councillor's Bill No. 36, as an emergency Ordinance, in the amount not to exceed \$18,220,000 to refund the Golf Course Enterprise Revenue Bonds Series 1998 and Certificates of Participation, Series 2001 (Public Safety Building). Councillor Major seconded the motion, which passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 37 MODIFYING TITLE VI, W.M.C., RE SEXUALLY VIOLENT PREDATORS

Upon a motion by Councillor Winter, seconded by Councillor Major, the Council voted unanimously on roll call vote to pass Councillor's Bill No. 37 on first reading amending the City Code by the addition of a new Chapter 6-17 entitled "Residency of Sexually Violent Predators."

RESOLUTION NO. 22 AUTHORIZING STREET LIGHTING/TRAFFIC SIGNAL LIGHTING AGREEMENT

Councillor Briggs moved to adopt Resolution No. 22 authorizing a Street Lighting and Traffic Signal Lighting Service Agreement with Xcel Energy. Mayor Pro Tem Dittman seconded the motion and it passed unanimously at roll call.

RESOLUTION NO. 23 TO PURSUE ONE-YEAR FOCUSED WORKWEEK TRIAL

It was moved by Mayor Pro Tem Dittman and seconded by Councillor Major to adopt Resolution No. 23 establishing City Council's direction to pursue a one-year focused workweek trial for several City facilities, including City hall and the Municipal Court. The motion passed unanimously on roll call vote.

RESOLUTION NO. 24 MODIFYING GENERAL LEAVE BENEFITS

Upon a motion by Councillor Briggs, seconded by Councillor Major, the Council voted unanimously at roll call to adopt Resolution No. 24 amending the City Employee General Leave Benefits.

ADJOURNMENT

There being no further business to come before the Council, it was moved by Dittman and seconded by Kaiser to adjourn. The motion carried and the meeting adjourned at 7:37 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 8 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: 2010 Water Meter Transponder Purchases

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

Recommended City Council Action

Upon recommendation of the City Manager, City Council finds that the public interest will best be served by authorizing a negotiated purchase from the sole source provider, National Meter & Automation, Inc., for cumulative purchases from National Meter & Automation, Inc. in an amount not to exceed \$165,000 for calendar year 2010.

Summary Statement

- The Utilities Division anticipates purchasing 300 Orion transponders, which would complete the City-wide conversion from TRACE to ORION transponders and provide approximately 100 transponders for new meter settings and attrition replacements for the remainder of 2010.
- Staff is requesting approval to negotiate these purchases from National Meter & Automation, Inc., due to the Badger Orion meter system being a proprietary item and only available from Badger Meter Company through the authorized local distributor, National Meter & Automation, Inc.
- Throughout 2010, previous purchases and additional ancillary purchases for meter parts, etc., will not exceed a total of \$165,000.
- An annual purchase limit of \$125,000 was previously approved by City Council on March 22, 2010; however, additional unanticipated purchases have created the need to increase this purchase limit.

Expenditure Required: Not to exceed \$165,000

Source of Funds: Utility Fund – 2010 Utilities Operations Division Budget

Policy Issue

Should the Utilities Division utilize budgeted 2010 operating budget account funds to purchase Orion transponders?

Alternative

An alternative would be to only purchase a portion of the transponders and delay the purchase of most of the replacement transponders until 2011. This is not recommended as this would delay installing new meter parts, which could lead to problems with the accuracy of the meters.

Background Information

In 2005, the City of Westminster began a series of water meter retrofit programs for the entire City. All existing Badger TRACE water meters were replaced or retrofitted with the new ORION transponder as it is more effective and reliable than the TRACE transponder. Badger water meters have long been established as the City's standard water meter. National Meter & Automation, Inc., is the western regional Badger Water Meter sole supplier. The meters and transponders furnished by National Meter & Automation, Inc. meet all required specifications set by the City.

Additional purchases will allow the City to replace all of the remaining TRACE transponders in the system and provide approximately 100 transponders for new meter settings and attrition replacements for the remainder of 2010. This will complete the conversion from TRACE to ORION and allow the City to retire the TRACE reading equipment and related vehicles; a goal included in the 2011 Budget.

Staff is requesting authority to purchase material up to \$165,000 on an as-needed basis. Material will be ordered and used as required to provide accurate water meter readings. Staff is confident that the pricing provided by National Meter & Automation, Inc. is reasonable and competitive.

The Utilities Operations Division utilizes a variety of waterworks material vendors in providing the needed materials for the water and wastewater operations and programs provided by Division personnel. These on-going purchases include routine items, competitively bid items, and emergency purchases needed to address water or wastewater system critical events. Also, some are sole-source purchases as the needed item(s) are only stocked by limited or sole vendors in our area. All purchases will be made in accordance with the City's established purchasing procedures, with appropriate approvals at different levels.

The City's approach to these types of collective purchases from a single vendor is to assure that purchases in excess of \$50,000 are identified in advance and brought to City Council for approval. Additional purchases for the year 2010 from National Meter & Automation, Inc., are anticipated to total less than an aggregate \$165,000 for the entire year. Any additional purchase up to this amount will be made in accordance with the City's established purchasing procedures. Any purchase that would exceed this amount will be returned to the City Council for appropriate action.

This purchase helps achieve the City Council's Strategic Plan Goal of "Financially Sustainable City Government," by contributing to the objective of well-maintained City Infrastructure and Facilities.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Memorandum of Agreement - Colorado Task Force One

Prepared By: Bill Work, Deputy Fire Chief

Recommended City Council Action

Authorize the City Manager to sign a memorandum of agreement between the West Metro Fire Protection District as the sponsoring agency for the Federal Emergency Management Agency (FEMA), and the City of Westminster, to allow Westminster’s participation on the Colorado Task Force One, an Urban Search and Rescue Task Force Team.

Summary Statement

The Westminster Fire Department has been a participating agency with Colorado Task Force One, a federally sponsored Urban Search and Rescue (USAR) team, for the past five years. As a participating agency the Westminster Fire Department would continue to commit to the following:

- Assure that personnel are able to participate in Colorado Task Force One activities including deployment on little or no notice, training, meetings, and equipment maintenance assignments.
- Provide members with workers compensation, long-term disability, and general liability insurance coverage pursuant to applicable Colorado laws.
- The submittal of personnel costs, including overtime and backfill, to the Sponsoring Organization following activation for applicable reimbursement.

The Federal Emergency Management Agency (FEMA) through the sponsoring organization (West Metro Fire Protection District) provides for the following:

- The provision of air or ground transportation for the task force to and from deployment sites.
- The cost of sponsored functional training and other non-sponsored training through grants.
- The salary, overtime, and benefit costs for deployed personnel.
- Personnel backfill costs to maintain local staffing levels in the event of a deployment and authorized trainings, including salary, overtime, benefits, and provisional pay.

The purpose of this task force is to provide highly skilled search and rescue assistance in natural and manmade disasters at the regional and national level.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council wish to continue to commit local resources to an Urban Search and Rescue Team that will serve to assist in natural and man made disaster operations on a regional and national level?

Alternative

City Council could direct the Fire Department to decline the renewal to participate on Colorado Task Force One. This is not recommended as there is a significant need for intergovernmental cooperation in national disaster assistance.

Background Information

Colorado Task Force One (CO-TF1) started in 1992 and is one of 28 Urban Search and Rescue Task Forces nationwide under the Department of Homeland Security, Federal Emergency Management Agency, National Urban Search and Rescue Response System. Westminster has been a participating agency in this Task Force since April, 2005. The Management Team of the Fire Department, after reviewing this opportunity with City Council back in 2005, had approved to commit to fill five positions. Currently, there are only four active Westminster personnel, with the fifth spot remaining open at this time.

The mission of CO-TF1 is urban search and rescue operations for local, state, and national disasters. CO-TF1 is also equipped and trained to handle weapons of mass destruction incidents. Westminster firefighters have been deployed a number of times in the last five years. Most of these deployments were in response to hurricanes, which have included hurricanes Katrina, Ernesto, Gustav, Ike and Rita. CO-TF1 was also put on standby for several other storms and the earthquake in Haiti. Additionally, CO-TF1 personnel have responded to other disasters such as the World Trade Center after 9-11, the Oklahoma City bombing, the Space Shuttle incident, and the Fort Collins floods in 1997. CO-TF1 can deploy a specialized team of up to 70 personnel. The task force must be able to deploy within four hours by ground and six hours by air for a period of up to ten days. The current Westminster Fire Department members play key roles as logistics officers and Class A drivers.

Personnel for CO-TF1 come from area Fire Departments, Police departments, other Emergency Services, and the civilian sector. Other current participating agencies on the task force include the sponsoring organization, the West Metro Fire Protection District (FPD), and the Denver Fire Department (FD), Longmont FD, South Metro FPD, Aurora FD, Fort Carson FD, Poudre Fire Authority, Littleton FD, Parker FPD, Arvada FPD, Boulder Rural FD, and Cunningham FPD.

The Department of Homeland Security (DHS), specifically the Federal Emergency Management Agency (FEMA) provides the primary funding for CO-TF1. DHS/FEMA is currently providing funding for equipment, training, equipment storage, and management staff. As previously noted, FEMA also provides funding to cover personnel deployment and backfill costs as a result of deployment for participating task force agencies.

This memorandum of agreement updates the memorandum of understanding that was signed by Westminster on April 21, 2005. This new memorandum of agreement has been reviewed and approved as to form by the City Attorney's Office. In addition to the memorandum of agreement, also attached is Appendix A, the memorandum of agreement for participation in the National Urban Search and Rescue Response System; and Appendix B, Federal Register 44 CFR Part 208 concerning the National Urban Search and Rescue Response System.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

- Memorandum of Agreement – Colorado Task Force One
- Appendix A – Memorandum of Agreement – National Urban Search and Rescue System
- Appendix B – Federal Register 44 CFR Part 208

**MEMORANDUM OF AGREEMENT
BETWEEN**

WEST METRO FIRE PROTECTION DISTRICT

**AS THE SPONSORING AGENCY
OF THE COLORADO TASK FORCE ONE
OF THE NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM**

AND

CITY OF WESTMINSTER – WESTMINSTER FIRE DEPARTMENT

AS A PARTICIPATING AGENCY OF THE TASK FORCE

This "Agreement" is entered into by and between the parties designated in Section 1 below, who agree that subject to all of the provisions of this Agreement, City of Westminster– Westminster Fire Department will serve as a Participating Agency for the Colorado Task Force One] of the National Urban Search and Rescue Response System. Each party further agrees that it assumes all of the duties and responsibilities assigned to that party under this Agreement and that so long as this Agreement remains in effect, the party will fully perform all of those duties and responsibilities.

1. PARTIES

The parties to this Agreement are the following entities:

1.1. Sponsoring Agency:

West Metro Fire Protection District

433 S. Allison Parkway

Lakewood, CO 80226

1.2. Participating Agency:

City of Westminster– Westminster Fire Department

9110 Yates Street

Westminster, CO 80031

2. RECITALS

Sponsoring Agency and Participating Agency have entered into this Agreement in recognition of the following Recitals:

2.1 Sponsoring Agency. Sponsoring Agency is a cooperating party under a "Memorandum of Agreement" dated October 6, 2009 with the Federal Emergency Management Agency ("FEMA") and the State of Colorado. A copy of the Memorandum of Agreement (the "FEMA MOA") is attached to this Agreement as Appendix "A" and incorporated by reference

2.2 National Urban Search & Rescue Response System. Pursuant to federal law, principally the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 through 5206 (the "Stafford Act"), the U.S. Department of Homeland Security ("DHS"), acting through FEMA, operates the National Urban Search & Rescue Response System ("System") in conjunction with State and local governments.

2.3 Task Forces. Each Sponsoring Agency is responsible for recruiting and organizing a Task Force consisting of individuals occupying certain specified positions plus additional support personnel, all of whom have been properly trained with the requisite skills and capabilities required for urban search and rescue operations and/or deployment of the Task Force. A Task Force may be deployed as a single unit or it may be reorganized into teams for purposes of modularized responses for limited or specialized Activations. Members of a Task Force may also be deployed as members of a management or other technical team.

2.4 CO Task Force 1. The West Metro Fire Protection District is the Sponsoring Agency for CO Task Force 1 (the "Task Force") and is charged with, among other things, recruiting and organizing members for the Task Force. In the performance of its responsibilities, the Sponsoring Agency may enter into cooperative arrangements with federal, state, or local government entities, or non-profit or for-profit entities, to serve as Participating Agencies in the Task Force and with individuals to serve as Affiliated Personnel of the Task Force. The Sponsoring Agency is obligated to enter into written agreements with those Participating Agencies and Affiliated Personnel setting forth the relationship between the parties.

2.5 Participating Agency. City of Westminster– Westminster Fire Department desires to be a Participating Agency in the Task Force, subject to all of the provisions of this Agreement.

2.6 Applicable Provisions. With respect to National Urban Search & Rescue Response System activities, this Agreement incorporates the provisions of Interim Final Rule, "National Urban Search and Rescue Response System," 70 Fed. Reg. 9182 (Feb. 24, 2005) ("Interim Final Rule"), attached as Appendix "B," as well as the provisions of the FEMA MOA, attached as Appendix "A." To the extent the Interim Final Rule is contrary to the FEMA MOA, the Interim Final Rule will prevail. Upon the effective date of the Final Rule governing this subject ("Final Rule"), the Final Rule shall supersede the Interim Final Rule in Appendix "B" and shall prevail over any contrary provisions of the Interim Final Rule or the FEMA MOA.

2.7 Definitions of Terms. Capitalized words and phrases in this Agreement have the same meaning as they do in the Interim Final Rule, unless or until superseded by the Final Rule. Capitalized words and phrases not defined in the Interim Final Rule or the Final Rule have the meaning given in this Agreement.

3. AGREED TERMS AND CONDITIONS

3.1 Participating Agency.

3.1.1 Participating Agency agrees to provide personnel to serve in certain designated positions on the Task Force as determined by Sponsoring Agency. Participating Agency Chief shall approve all members of participation by signing the Appendix (C) letter at the time of the members administrative paper work is submitted.

3.1.2 Participating Agency further agrees that Participants will meet the required qualifications for the positions to be filled, will receive the required training specified in this Agreement and will satisfy other conditions of preparedness and response as required by the Sponsoring Agency.

3.1.3 The Parties will cooperate with each other so as to facilitate achievement of the goals and objectives of the System as fully and completely as possible.

3.2 Third Party Liability and Workers' Compensation.

3.2.1 Participating Agency and its Participants shall be afforded such coverage for third party liability and workers' compensation as is afforded all Task Forces and their System Members under Federal law, the scope of which is generally described in Appendices "A" and "B."

3.2.2 Except as afforded by the Federal Government, the responsibility for risks associated with claims for third party liability and workers' compensation arising out of participation in the Task Force, either organizationally by the Participating Agency or individually by its Participants, shall be the responsibility of Participating Agency and not under any circumstances, the responsibility of Sponsoring Agency. At all times, Participating Agency shall maintain in full force and effect, and provided proof thereof, for the benefit of its Participants and its other employees engaged in System activities, coverage for workers compensation and third party liability to the full extent required by law.

3.3 Financial Provisions.

3.3.1 Preparedness Funds

3.3.1.1 In its sole discretion, Sponsoring Agency may distribute to Participating Agency such preparedness grant funding as Sponsoring Agency shall be eligible to and does receive from FEMA. Any such distributions shall be subject to the requirements of the preparedness grants and the needs of the Task Force generally.

3.3.1.2 Any other funding received by Sponsoring Agency from sources other than the federal government may also be made available as Sponsoring Agency determines in its discretion. Sponsoring Agency shall make such distributions fairly and equitably taking into account the mission, goals and objectives of the Task Force and the needs of the Sponsoring Agency as compared to other proper needs and demands.

3.3.2 Response Funds

3.3.2.1 Sponsoring Agency shall promptly reimburse Participating Agency for response expenses that are authorized to be incurred by or for the benefit of Participants engaged in Task Force activities, upon receiving reimbursement for such expenses from the federal government. Such expenses must be properly ascertained, accumulated and reported to the Sponsoring Agency, and the funds to be utilized for payment must have been reimbursed by or on behalf of FEMA to Sponsoring Agency.

3.3.2.2 After an Activation, Participating Agency shall provide Sponsoring Agency with a complete cost reimbursement package to be submitted by Sponsoring Agency as part of an overall claim package, which Sponsoring Agency is obliged to submit to FEMA. The Participating Agency's cost reimbursement package shall be submitted to the Sponsoring Agency within 30 days after the end of the Personnel Rehabilitation Period established by FEMA. Participating Agency's cost reimbursement package shall be prepared in conformance with applicable federal directives, which Sponsoring Agency shall disseminate to Participating Agency.

3.3.2.3 Participating Agency shall provide Sponsoring Agency with employee compensation information for its Participants at time of request per policies and procedures

3.3.2.4 To ensure proper reimbursement from FEMA, the compensation of Participants on the Task Force shall be in accordance with pay schedules and policies established by Appendix "B", from the time of activation and until the Task Force returns, is deactivated and Participants are returned to regular work schedules.

3.3.2.5 All financial commitments of Sponsoring Agency are subject to the availability and receipt of funds by Sponsoring Agency from FEMA and other sources.

3.3.2.6 Neither Participating Agency nor any Participant shall be reimbursed for costs incurred outside the scope of this Agreement.

3.4 Reporting And Record Keeping Requirements.

3.4.1 The Participating Agency shall provide the Sponsoring Agency with records when requested to meet CO-TF1 Administrative Procedures and FEMA US&R System Requirements and Directives. Such records may consist of training, mask fit, physical fitness and payroll.

3.4.2 The Sponsoring Agency shall issue a Task Force Picture Identification Card for all task force members.

3.4.3 Participating Agency shall ensure that any medical or other records and information that are afforded confidentiality under applicable law are protected from unauthorized disclosure.

3.4.4 Participating Agency shall provide prompt and accurate reporting as specified in this Agreement.

3.5 Mandatory Minimum Requirements For Participation. Each Participant must satisfy all of the following for participation on the Task Force.

3.5.1 Each Participant shall be an employee in good standing of the Participating Agency. Entry-level employees who are probationary or in a similar status are not eligible.

3.5.2 Each Participant shall be of good moral character and shall not have been convicted of any felony or any other criminal offense involving moral turpitude.

3.5.3 Participants serving in a Task Force position that requires the individual to hold a license, registration, certificate or other similar authorization to lawfully engage in an activity must hold the appropriate authorization, which must be current and validly issued.

3.5.4 Subject to any applicable FEMA standards, each Participant must meet the medical/fitness standards mutually agreed upon by Sponsoring Agency and Participating Agency and not have any medical condition or disability that will prevent performance of the duties of the Task Force position he/she occupies.

3.5.5 Each Participant must be available on short notice to mobilize within 3.5 hours of request and be able to respond on a mission for up to 14 days.

- 3.5.6 Each Participant must be capable of improvising and functioning for long hours under adverse working conditions.
- 3.5.7 Each Participant must receive such inoculations as are specified by the Sponsoring Agency.
- 3.5.8 Each Participant must be aware of the signs, symptoms and corrective measures of Critical Incident Stress Syndrome.
- 3.5.9 Each Participant must understand and adhere to safe working practices and procedures as required in the urban disaster environment.
- 3.5.10 Each Participant must have a working knowledge of the US&R System and the Task Force's organizational structure, operating procedures, safety practices, terminology and communication protocols.
- 3.5.11 Each Participant must have completed such courses of education and training and other requirements as the Sponsoring Agency shall specify
- 3.5.12 Sponsoring Agency has authority to immediately suspend or terminate a Participant's participation on the Task Force for failure to satisfy any mandatory requirement.

3.6 Clothing and Equipment.

3.6.1 Sponsoring Agency will issue to each Participant certain items of personal protective clothing and equipment for use in Task Force activities and operations. In the event of Activation, Participant shall provide certain additional items of personal clothing and equipment. All these matters are detailed specifically in Policies and Procedures. Items of clothing and equipment supplied by Sponsoring Agency shall remain the property of Sponsoring Agency and shall be returned promptly whenever a person ceases to be a Participant.

3.6.2 Subject to FEMA requirements, all uniforms will display the official patch of the Task Force and the official patch of the System, as specified by the Sponsoring Agency. The Sponsoring Agency shall specify the design of the uniform and any identifying insignia or markings.

3.7 Command, Control and Coordination.

3.7.1 When a Participant has been Activated or has otherwise been placed at the direction, control and funding of FEMA, such as, for example, during participation in FEMA sponsored training, the ultimate authority for command, control and coordination of the service of the Participant reposes with FEMA exercised through the system chain of command. Subject to the principle just stated, the following provisions of this Section 3.7 govern the responsibilities of the parties with respect to supervisory, disciplinary and other specified aspects of the Participant's employment within the context of his/her participation on the Task Force.

3.7.2 Sponsoring Agency shall exercise direct supervisory authority over Participants during Activations, deployments and other activities of the Task Force conducted by Sponsoring Agency, but for disciplinary purposes, that authority is limited to temporary suspension or permanent exclusion from participation. In all other instances where disciplinary action may be necessary, Sponsoring Agency shall report the pertinent circumstances to Participating Agency, which shall cooperate with Sponsoring Agency and shall administer discipline as appropriate in accordance with the Participating Agency's established rules and regulations.

3.7.3 Nothing in this Agreement is intended to, nor does it, affect the employer-employee relationship between Participating Agency and its employees who are Participants, and Participating Agency shall at all times continue to be fully responsible for all of its employment obligations to its employee Participants, including the compensation and benefits that the Participating Agency has agreed to provide.

3.7.4 While participating in System activities conducted by the Task Force, Participants shall be subject to and observe and comply with all lawful orders and directions of the authorized representatives of Sponsoring Agency and the Task Force. Sponsoring Agency retains the right to suspend or exclude any Participant from participation on the Task Force for cause including failure to abide by the provisions of this Agreement.

3.8 Media and Information Policy.

3.8.1 Subject to applicable law, including FEMA regulations and directives, all photographs and video taken during a deployment will be kept under the control of Sponsoring Agency until use in internal or external education programs or other dissemination is approved by FEMA.

3.8.2 All applicable federal, state, and local media policies will be strictly enforced and followed.

3.8.3 Subject to applicable rules and regulations, Sponsoring Agency will have the primary responsibility for coordination of media coverage and liaison with media sources and representatives concerning activities of the Task Force. Sponsoring Agency shall endeavor to expose all Participating Agencies to favorable media coverage opportunities.

3.9 Rules of Conduct.

3.9.1 All Participants will be expected to abide by the rules of conduct established by FEMA and the Sponsoring Agency.

3.9.2 The failure of a Participant to abide by the rules of conduct constitutes may result in suspension or exclusion from the Task Force under Section 3.7 above.

3.10 Preparedness Activities.

3.10.1 Sponsoring Agency shall conduct Task Force management, administration, training, equipment procurement and other preparedness activities required by FEMA. Participating Agency and its Participants shall cooperate with Sponsoring Agency and shall participate in the activities as necessary to achieve Task Force preparedness goals and objectives.

3.10.2 Specific training activities to be conducted, respectively, by Sponsoring Agency and by Participating Agency, including training, administration and reporting requirements, are contained in policies and procedures.

3.10.3 As established by System directives but subject to the availability of federal funding, Sponsoring Agency shall procure and maintain required caches of equipment and supplies. The contents of these caches shall be utilized for deployments of the Task Force and, subject to federal rules and regulations, will be made available for training activities of Sponsoring Agency and Participating Agency. Participants shall use Task Force cache equipment and supplies only for authorized purposes and shall exercise reasonable care to protect and preserve the property against loss or damage. The Participating Agency shall be

financially accountable for any Task Force property that is lost or damaged due to negligence or unauthorized use by the Participating Agency.

3.11 Notification Procedures and Other Communications.

3.11.1 Alerts and Activation.

3.11.1.1 Sponsoring Agency's commander/chief executive officer or his/her designee shall determine whether the Task Force is capable of and will respond to Activation Orders.

3.11.1.2 Participating Agency shall maintain at all times a "Point of Notification" for receipt of notices from Sponsoring Agency concerning possible deployments of the Task Force. The Point of Notification shall include 24-hour telephonic and electronic capabilities. Information concerning the Participating Agency Point of Notification shall be set forth in the Mobilization Manual.

3.11.1.3 Upon receipt of Alert or Activation Orders, Sponsoring Agency shall give prompt telephonic and electronic notice to Participating Agency's Point of Notification. The notice shall designate the Task Force positions for which Participating Agency's Participants are being requisitioned, the location of the assembly point, and to the extent known, the nature and character of the Activation.

3.11.1.4 Participating Agency shall at all times maintain the capability of providing requisitioned Participants for participation on a deployment of the Task Force.

3.11.1.5 Upon receipt of an Activation Order for the Task Force, Participating Agency shall cause the required Participants to respond to the assembly point designated in the notice.

3.11.2 Mobilization.

3.11.2.1 All requisitioned Participants will respond to the designated assembly point within [3.5 hours; also see Section 3.5.5] hours of notification with all required personal clothing and equipment and required documentation.

3.11.2.2 Participating Agency will select its Participants through a pre-established selection system that ensures the requisition is promptly filled with fully qualified Participants.

3.11.2.3 Selected Participants will be subject to a pre-deployment medical screening. Any Participant who fails the screening will not be deployed.

3.11.2.4 Sponsoring Agency retains the sole right to determine which Participating Agency personnel, if any, will respond with the Task Force when Activated.

3.11.3 Other Communications. Sponsoring Agency will remain in contact with Participating Agency through the Participating Agency Point of Notification during the period of Activation.

3.12 Critical Incident Stress Syndrome ("CISS") and Management.

3.12.1 Sponsoring Agency will have primary responsibility to provide CISS training, intervention and support, before, during and after activation.

3.12.2 Costs incurred for unauthorized CISS activities are not eligible for reimbursement.

4. GENERAL PROVISIONS

4.1 Effective Date. This Agreement shall be effective February 5, 2010 and when it has been duly and regularly authorized and executed by both parties.

4.2 Authority. As more specifically indicated above and below, this Agreement is made (a) pursuant to the provisions of the Interim Final Rule or the Final Rule; and (b) under the authority of [State] law, in furtherance of the purposes of the National Urban Search and Rescue Response System.

4.3 Contents of the Agreement. Upon its execution, the Agreement consists of this Agreement, along with the following Appendices and other attachments, if any:

4.3.1 Appendix "A" - The currently effective Memorandum of Agreement between FEMA, the State of Colorado, and Sponsoring Agency, by which West Metro Fire Protection District is appointed as and has agreed to serve as Sponsoring Agency for the Task Force.

4.3.2 Appendix "B" - The federal regulations published on February 24, 2005 in the Federal Register as the Interim Final Rule at Vol. 70, No. 36, pages 9182-9203.

4.3.3 Appendix "C" - Participating Agency Individual Member Letter of Endorsement.

[Etc.; see the following sections of this Agreement for additional topics that may be suitable for inclusion in appendices:

3.1.1 Information about Participants.

3.3.2.3 Participant compensation data.

3.4.1 Records to be provided by Participating Agency.

3.4.4 Participating Agency reporting requirements.

3.6.1 Participant clothing and equipment requirements.

3.10.2 Training activities, administration and reporting requirements.

3.11.2 Participating Agency's Point of Notification.]

4.4 Amendments and Termination.

4.4.1 Except as otherwise expressly provided, this Agreement may be modified or amended only by another written agreement approved and executed by both parties, and all such amendments will be attached to this Agreement.

4.4.2 Term and Termination. The Agreement shall continue in effect unless and until terminated as provided in this Agreement. The Agreement may be terminated by either party upon 30 days written notice, except that Participating Agency may not terminate this Agreement without the written consent of Sponsoring Agency during any time interval when the Task Force has been placed on Alert status or has been Activated if the Alert or Activation affects Participants of the Participating Agency.

4.5 Miscellaneous Provisions

4.5.1 The obligations of the Participating Agency set forth in this Agreement are non-delegable and may not be assigned to or assumed by any other person without the prior written consent of Sponsoring Agency.

4.5.2 Except and to the extent federal law controls, this Agreement shall be construed and enforced, as between the parties, according to the laws of the State of Colorado.

4.5.3 No party shall engage in any conduct or activity in the performance of this Agreement or participation in the System that constitutes a conflict of interest under applicable federal, state or local law, rules and regulations.

4.5.4 Each party shall at all times observe and comply with all applicable federal, state and local laws, rules and regulations.

4.5.5 Except as provided otherwise with respect to emergency notifications, if it is necessary for the purposes of this Agreement for one of the named parties to give notice to the other named party, notice shall be in writing with the expenses of delivery or mailing fully prepaid and shall be delivered by personal service or a form of public or private mail service requiring proof of delivery. Notice is effective upon personal delivery, or by mail service, on the date of either actual receipt or five days after posting, whichever is first. Unless changed in writing in accordance with this Section, notice shall be served on the party at the address shown in Sections 1.1 and 1.2 of this Agreement.

4.5.6 Titles and section headings are for convenience only and are not a part of the parties' Agreement

4.5.7 Should any provision of this Agreement be determined to be invalid or unenforceable under applicable law, the provision shall, to the extent required, be severed from the remainder of the Agreement which shall continue in full force and effect.

4.5.8 This Agreement and its provisions are binding upon and inure to the benefit of the parties and to their respective successors in interest, provided, however, this Agreement does not and will not bestow any rights or remedies upon persons to whom an unlawful delegation or assignment has been made by Participating Agency.

4.5.9 This Agreement is made for the sole and exclusive benefit of the named parties and their lawful successors in interest, and no other person or entity is intended to, nor shall such other person or entity acquire or be entitled to receive any rights or benefits as a third-party beneficiary of this Agreement.

4.5.10 Neither the United States of America or the State of Colorado is a party to this Agreement

4.5.11 Each person executing this Agreement represents that: he/she was and is lawfully authorized to sign the Agreement on behalf of the party he/she represents; execution of the Agreement was duly and

regularly authorized by the party's governing body; and, to the person's best knowledge and belief the Agreement is a binding and enforceable obligation of the party on whose behalf he/she acted.

4.5.12 Each party represents to the other, that the party has fully read and understood all of the provisions of this Agreement including the Appendices and other attachments, if any; that the party has secured and considered such legal advice and other expert counsel as the party deemed necessary and advisable for these purposes; and, that in agreeing to execute and become a signatory to this Agreement the party has deemed itself adequately informed and advised as to all of the risks assumed and obligations undertaken pursuant to this Agreement.

4.5.13 This Agreement, including the Appendices and attachments, if any, constitutes the entire agreement between the parties and it supersedes any prior agreements on this matter.

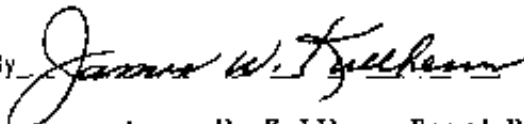
5. EXECUTION

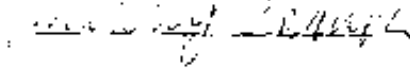
This Agreement was executed by the parties on the dates shown below.

Sponsoring Agency:

Date: April 6, 2010

West Metro Fire Protection District

By 
Title: James W. Kullhem, Board President

And By 
Title: Manny Chavez, Board Secretary

Participating Agency:

Date: _____

City of Westminster- Westminster Fire Department

By _____
Title: _____

And By _____
Title: _____

**MEMORANDUM OF AGREEMENT
FOR PARTICIPATION IN
THE NATIONAL URBAN SEARCH & RESCUE RESPONSE SYSTEM**

Memorandum of Agreement between the U.S. Department of Homeland Security, acting through the Federal Emergency Management Agency, the State of Colorado, and the West Metro Fire Protection District, the Sponsoring Agency of Colorado Task Force 1, regarding participation in the National Urban Search & Rescue Response System.

I. PARTIES

The parties to this Agreement are the Department of Homeland Security, acting through the Federal Emergency Management Agency, the State of Colorado, and the West Metro Fire Protection District, the Sponsoring Agency of Colorado Task Force 1.

II. AUTHORITY

This Agreement is authorized under the Homeland Security Act as amended (6 U.S.C. §§ 101, et seq.); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §§ 5121-5206); and the National Urban Search & Rescue Response System Interim Final Rule, 70 Fed. Reg. 9182 (Feb. 24, 2005), codified at 44 CFR Part 208. (Upon the effective date of a Final Rule, the Final Rule will supersede the cited interim Final Rule and its provisions shall prevail over any contrary provisions of the Interim Final Rule.)

III. PURPOSE

This Agreement sets forth responsibilities with respect to participation in the National Urban Search & Rescue Response System.

IV. DEFINITIONS

DHS means the Department of Homeland Security.

FEMA means the Federal Emergency Management Agency, an operational component of DHS.

FEMA-Sanctioned Training or Exercise means a training session or exercise sponsored by an organization other than FEMA, which has received FEMA approval.

Regulations means the National Urban Search & Rescue Response System regulations published at 44 CFR Part 208.

Preparedness Cooperative Agreement means a Preparedness Cooperative Agreement as defined in Section 208.2 of the Regulations.

Stafford Act means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §§ 5121-5206).

System Resources means System Members, canines, tools and equipment maintained by a Sponsoring Agency, Participating Agency, or Affiliated Personnel for use as part of the System.

Task Force Program Manager means the person designated by the Sponsoring Agency to be responsible for the day-to-day administration and management of the Task Force.

- B. The following terms, as used in this Memorandum of Agreement, have the meaning set forth in the Stafford Act at 42 U.S.C. § 5122:

Major Disaster

Emergency

- C. The following terms, as used in this Agreement, have the meaning set forth in Section 208.2 or 208.32 of the Regulations:

Activated or Activation

Advising or Advisory

Affiliated Personnel

Alert

Demobilization Order

Participating Agency

Preparedness Cooperative Agreement

Sponsoring Agency

System or National Urban Search & Rescue Response System

System Member

Task Force

US&R or Urban Search and Rescue

V. RESPONSIBILITIES

A. DHS, through FEMA, is responsible for developing and administering the System, and its responsibilities include:

1. Promulgating the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
2. Maintaining overall direction and control of System Resources engaged in System activities, as contemplated in the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
3. Maintaining an advisory and consultative structure for communicating and consulting with System participants with respect to the responsibilities set forth in this section, as appropriate;
4. Preparing, providing, and maintaining a Preparedness Cooperative Agreement and a Response Cooperative Agreement with the Sponsoring Agency, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
5. Providing preparedness funding to the Sponsoring Agency, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
6. Developing, scheduling, and delivering FEMA-Sponsored Training and Exercises;
7. Granting FEMA sanction to training and exercises in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
8. Maintaining overall direction and control of System Resources engaged in FEMA-Sanctioned Training and Exercises and FEMA-Sponsored Training and Exercises;
9. Evaluating System and performance in accordance with the Regulations, standards, policies and procedures and directives of the System;
10. Advising, Alerting, Activating and Demobilizing System Resources;
11. Obtaining the consent of the State, if applicable, and the Sponsoring Agency to Alert or Activate System Resources, in accordance with the Regulations, standards, policies and procedures of the System;
12. Appointing System Members into Federal service at appropriate times.

13. Taking steps as necessary to ensure coverage for System Members under the Federal Employees Compensation Act, the Federal Tort Claims Act, and the Public Safety Officers Benefit Act during FEMA-Sponsored Training and Exercises, FEMA-Sanctioned Training and Exercises, Alert, and Activation, to the extent allowed by law;
 14. Processing claims for Federal employee benefits, as set forth in the Regulations and this Agreement.
 15. Maintaining overall direction and control of System Resources engaged in System activities during Alert or Activation;
 16. Providing ground, air, rail, or marine transportation for System Resources during Alert or Activation, as required;
 17. Providing re-supply and logistical support for System Resources during Activation;
 18. Establishing, developing, administering, Advising, Alerting, Activating, Demobilizing, and maintaining overall direction and control of System management teams, as appropriate;
 19. Notifying the Sponsoring Agency when FEMA has Alerted, Activated, or Deactivated a Task Force member for participation on a System management team or in a technical function;
 20. Scheduling and conducting periodic meetings of System advisory committees and other consultative bodies;
 21. Processing claims for reimbursement in accordance with the Regulations; and
 22. Ensuring proper coordination and cooperation within FEMA, between FEMA and other DHS components and entities, and between FEMA and other Federal, state, local, and private-sector entities for the purpose of System activities.
18. The State, if applicable, is responsible for:
1. Maintaining 24-hour per day capability to receive a request for Alert or Activation of System Resources and to accept or decline the request within one hour; and
 2. Using Task Forces resident within the State as State assets before requesting additional Task Forces from FEMA in anticipation of, or in response to, a disaster or emergency within the State for which the State or

its local governments have primary responsibility, unless the resources have been otherwise committed.

- C. The Sponsoring Agency is responsible for organizing and administering the Task Force, and this responsibility includes the following:
1. Recruiting and training the Task Force, according to the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System promulgated by FEMA;
 2. Designating a Task Force Program Manager, as well as other such persons as required by the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 3. Executing a Preparedness Cooperative Agreement and a Response Cooperative Agreement with FEMA, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 4. Providing administrative, financial, and personnel management for the Task Force, to include providing FEMA with all documentation required to appoint System Members into Federal service;
 5. Maintaining such agreements with Participating Agencies and Affiliated Personnel as are required under the Regulations, standards, policies, directives, procedures, and overall concept of operations for the System. Agreements with Participating Agencies and Affiliated Personnel for System activities must be consistent with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System, and this Memorandum of Agreement. All agreements with Participating Agencies must include an express authorization for the Sponsoring Agency to commit an employee of the Participating Agency to Federal service. All agreements with Affiliated Personnel must include an express authorization for the Sponsoring Agency to commit the individual to Federal service;
 6. Registering and qualifying all Task Force medical personnel, as required under the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 7. Requesting FEMA sanction for training and exercises, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 8. Notifying FEMA when there is a change in the operational status of the Task Force;

9. Maintaining 24-hour per day capability to receive a request for Alert or Activation of System Resources and to accept or decline the request within one hour;
10. Acquiring, maintaining, and accounting for equipment, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
11. Complying with financial, administrative, acquisition, reimbursement, and reporting requirements set forth in the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
12. To the extent that the Sponsoring Agency chooses to provide System Members for System management teams and technical functions, or for any FEMA advisory and consultative entities, complying with financial, administrative, acquisition, reimbursement, and reporting requirements set forth in the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System with respect to these System Members;
13. Keeping all records relating to the Task Force, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
14. Submitting to FEMA a copy of any agreements it maintains with any Participating Agency and Affiliated Personnel; and
15. Processing state and local employee benefit claims for which a System Member may be eligible.

VI. POINTS OF CONTACT

A. DHS-FEMA:

Acting Chief, Urban Search & Rescue Branch
Federal Emergency Management Agency
U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472
(302) 646-3456

B. Sponsoring Agency:

Chief, West Metro Fire Protection District
433 S. Allison Parkway
Lakewood, CO 80226
303-689-4307

VII. OTHER PROVISIONS

A. Financial Arrangements

1. FEMA shall provide the Sponsoring Agency with funding for preparedness activities pursuant to a Preparedness Cooperative Agreement, in accordance with the Regulations.
2. FEMA shall reimburse the Sponsoring Agency for costs incurred in System response activities pursuant to a Response Cooperative Agreement, in accordance with the Regulations.
3. All financial commitments are subject to the availability of funds. Nothing in this Agreement obligates funds of the respective parties.

B. Title to Equipment

1. Title to equipment purchased and maintained by the Sponsoring Agency with funds provided under a cooperative agreement prior to February 24, 2005 vests in the Sponsoring Agency in accordance with 44 CFR § 13.32(a).
2. Title to equipment purchased and maintained by the Sponsoring Agency with funds provided under a Preparedness Cooperative Agreement vests in the Sponsoring Agency in accordance with 44 CFR § 13.32(a).
3. Title to equipment purchased by DHS, and distributed to and maintained by the Sponsoring Agency, remains vested in DHS in accordance with 44 CFR § 13.32(f), unless transferred to the Sponsoring Agency under applicable Federal regulations.

C. Use of Sponsoring Agency Resources

1. Offer, consent and acceptance of services, facilities and employees

The Sponsoring Agency and the State offer and consent to FEMA's use of their services, facilities, and employees as specifically described in this Memorandum of Agreement with respect to the System, and FEMA accepts the offer of such services, facilities, and employees in carrying out the purposes of the Sections 306(a) and 621(c)(1) of the Stafford Act, 42 U.S.C. §§ 5149(a) and 5197(c)(1).

2. Appointment into Federal Service
 - a. FEMA will appoint System Members into Federal service pursuant to section 208.11 of the Regulations, as follows:
 - (1) When instructing or participating in FEMA-Sanctioned Training and Exercises;
 - (2) When instructing or participating in FEMA-Sponsored Training and Exercises;
 - (3) When undertaking specific duties required by FEMA during an Alert to prepare for Activation; and
 - (4) When Activated.
 - b. At all such times when System Members are appointed into Federal service, those System Members will be under FEMA's overall direction and control.
 - c. A System Member's appointment into Federal service is concurrent with a System Member's employment with the Sponsoring Agency or other entity.

D. Coverage under Federal statutes; FEMA's intent

1. Pursuant to section 208.11 of the Regulations, it is FEMA's intent that on the basis of subsections C.1. and 2., above, System Members appointed into Federal service are Federal employees during the activities described in subsection C.2.a., above, for the purposes of the following acts:
 - a. The Federal Employees Compensation Act.
 - b. The Federal Tort Claims Act.
2. It is FEMA's intent that System Members appointed into Federal service are Public Safety Officers during the activities described in subsection C.2.a., above, as defined in the Public Safety Officers Benefit Act, 42 U.S.C. § 3796b .
3. No individual may participate in the Task Force who is not an employee of the Sponsoring Agency, an employee of a Participating Agency, or an Affiliated Personnel.
4. Nothing contained within this Agreement is intended to diminish a System Member's non-Federal employment rights, relationships, or entitlements to non-Federal pension or welfare benefits.

- E. FFMA, the State, and the Sponsoring Agency will not discriminate against any System Member or applicant for a position as a System Member on the grounds of race, color, religion, sex, age, national origin, or economic status in fulfilling any and all obligations under this Memorandum of Agreement.
- F. Use of Federal facilities, supplies and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination. Distribution of supplies, processing of applications, provision of technical assistance and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, sex, age, national origin, or economic status.

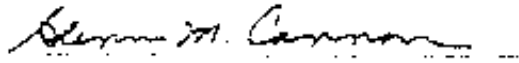
VIII. EFFECTIVE DATE

The terms of this Agreement will become effective on the date that the last party signs this Agreement.

IX. MODIFICATION, AMENDMENT, AND TERMINATION

- A. Any provision of this Agreement later found to be in conflict with Federal law or regulation, or invalidated by a court of competent jurisdiction, shall be considered inoperative and/or superseded by that law or regulation. Any provision found inoperative is severable from this Agreement, and the remainder of the Agreement shall remain in full force.
- B. This Agreement may be modified or amended only with the written agreement of all of the parties.
- C. This Agreement remains in effect unless terminated. This Agreement may be terminated by any party upon 30 days written notice.
- D. This Agreement is the full and complete agreement between the undersigned parties, and supersedes any prior agreement between the parties, written or oral, with the exception of an existing Preparedness Cooperative Agreement or Response Cooperative Agreement.
- E. This may be executed in several counterparts, each of which is a valid agreement, provided that all parties to the Memorandum of Agreement have executed at least one original copy of the Memorandum of Agreement.

X. EXECUTION



Glenn M. Cannon
Assistant Administrator
Disaster Operations Directorate
Federal Emergency Management Agency

Date: 6/18/08

Regional Administrator

Date:

Director
State Emergency Management Agency

Date:

Chief Executive or Designee
Sponsoring Agency

Date:

X. EXECUTION

Glenn M. Cannon

Glenn M. Cannon
Assistant Administrator
Disaster Operations Directorate
Federal Emergency Management Agency

Date: *6/18/08*

Stephen A. Cone

Regional Administrator

Date: *10/6/09*

Director
State Emergency Management Agency

Date: _____

Chief Executive or Designee
Sponsoring Agency

Date: _____

X. EXECUTION



Glenn M. Cannon
Assistant Administrator
Disaster Operations Directorate
Federal Emergency Management Agency

Date: 6/18/08

Regional Administrator

Date: _____



Director
State Emergency Management Agency

Date: 9/16/09

Chief Executive or Designee
Sponsoring Agency

Date: _____

Mr. [Name]

1000 [Address]
[City, State, Zip]

Dear Mr. [Name]:

[Faint text]

James W. Fullerton
[Title]

10-6-09



Federal Register

**Thursday,
February 24, 2005**

Part III

**Department of
Homeland Security**

Federal Emergency Management Agency

44 CFR Part 208

**National Urban Search and Rescue
Response System; Maximum Pay Rate
Table, National Urban Search and Rescue
Response System (US&R); Interim Final
Rule and Notice**

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 208

RIN 1660-AA07 (formerly RIN 3067-AC93)

National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security (DHS).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule standardizes the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of the Department of Homeland Security, participating State emergency management agencies and local public safety agencies across the country. This rule addresses the relationship between Sponsoring Agencies¹ of Urban Search & Rescue (US&R) Task Forces and DHS and also funding for preparedness and response activities, including the acquisition of equipment and supplies and training.

Concurrently we² are publishing as a Notice in this issue of the **Federal Register** a Maximum Pay Rate Table on which we also request comments.

DATES: This interim rule is effective February 24, 2005. We invite comments on this interim rule and the Maximum Pay Rate Table published separately today as a Notice in this issue of the **Federal Register**. We will accept comments on both until April 11, 2005.

ADDRESSES: *Mail:* When submitting comments by mail, please send the comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472. To ensure proper handling, please reference RIN 1660-AA07 and Docket No. DHS-2004-0010 on your correspondence. This mailing address may also be used for submitting comments on paper, disk, or CD-ROM.

Hand Delivery/Courier: The address for submitting comments by hand delivery or courier is the same as that for submitting comments by mail.

¹ Sponsoring Agencies are State or local government agencies that have signed Memoranda of Agreement with DHS to organize and manage US&R Task Forces.

² Throughout the preamble to this rule the terms "we" and "our" refer to and mean the Department of Homeland Security. "You" refers to the reader.

Viewing Comments: You may view comments and background material at: <http://www.epa.gov/feddocket> or <http://www.regulations.gov>. You may also inspect comments in person at the Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Michael Tamillow, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., room 326, Washington, DC 20472, (202) 646-2549, or (e-mail) mike.tamillow@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Federal Emergency Management Agency (FEMA) published a proposed rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627-77640 (Proposed Rule). On March 1, 2003, FEMA became a part of the Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security (DHS). The National Urban Search and Rescue Response System is now a program in FEMA under the EP&R Directorate.

This preamble and Interim Rule reflect certain decisions made regarding comments that FEMA received on the Proposed Rule, and changes resulting from FEMA's integration into the Department of Homeland Security. The process for creating and updating the Maximum Pay Rate Table (Table), which establishes the maximum rates that DHS will pay for certain medical, engineering, canine handling and backfill services, is described in § 208.12. The Maximum Pay Rate Table, which was mentioned but not published in the Proposed Rule, is incorporated in the Interim Rule, and published concurrently with this Interim Rule as a Notice. Because the Maximum Pay Rate Table was not published previously and will become a part of the National Urban Search and Rescue Response System final rule, we are asking for public comment both on the Table and the Interim Rule.

Section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5144, authorizes the President of the United States to form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. The President delegated this function to the Director of the FEMA under Executive Order (E.O.) 12148. Under E.O. 13286 of

February 28, 2003, the President amended E.O. 12148 to transfer the FEMA Director's delegated authority to the Secretary of Homeland Security, and under Homeland Security Delegation No. 9100, delegated the Secretary's authority under Title V of the Homeland Security Act of 2002, which includes the Stafford Act, to the Under Secretary for Emergency Preparedness and Response (EP&R).

Section 306(a) of the Stafford Act authorizes the President (as delegated to the Under Secretary for EP&R) to accept and use the services or facilities of any State or local government, or of any agency, officer or employee thereof, with the consent of such government, in the performance of his responsibilities under the Stafford Act. Section 306(b) of the Stafford Act authorizes the President to appoint and fix the compensation of temporary personnel without regard to U.S. Code provisions governing appointments in the competitive service. Section 403(a)(3)(B) of the Stafford Act provides further that the President may authorize Federal agencies to perform work on public or private lands essential to save lives and protect property, including search and rescue and emergency medical care, and other essential needs. Under section 621(c) of the Stafford Act, the Secretary may accept and use the services of State or local governments, and use voluntary services by individuals or organizations as needed.

FEMA established the National Urban Search & Rescue Response System (System or US&R) under the authorities cited. The System provides specialized lifesaving assistance during major disasters or emergencies that the President declares under the Stafford Act. US&R operational activities include locating, extricating and providing on-site medical treatment to victims trapped in collapsed structures, victims of weapons of mass destruction events, and when assigned, performing incident command or other operational activities.

Created in consultation with State emergency management agencies and local public safety agencies, the System is built around a core of Sponsoring Agencies prepared to deploy US&R Task Forces³ immediately and initiate US&R operations at DHS's direction. Members of the Task Forces, also referred to as "System Members," may respond as

³ The US&R System comprises 28 Task Forces in 19 States. A full Task Force consists of 70 System Members, three deep (designed for 210 members) specially trained and equipped to find, extricate, and provide initial medical care to victims of collapsed buildings, weapons of mass destruction, as well as to perform other assigned duties.

part of Joint Management Teams (JMT)⁴ or other overhead or technical teams, or as individual resources.

The Task Forces are staffed primarily by local fire department and emergency services personnel specially trained and experienced in collapsed structure search and rescue operations, incident management, and other emergency operational activities. On activation by DHS, members of the US&R Task Forces, US&R System Members of Joint Management Teams, and other overhead or technical teams, operate as Temporary Excepted Federal Volunteers.⁵

The National Urban Search and Rescue Response System presently comprises 28 US&R Task Forces in 19 States. Typically, a State agency or local public safety agency (Sponsoring Agency) sponsors each of the Task Forces. While the Sponsoring Agencies are solely responsible for the administrative management of their respective Task Forces, many Sponsoring Agencies invite other public safety agencies and other entities in their vicinity to contribute personnel and other resources to the Task Force. These public safety agencies and other entities that enter into agreements with the Sponsoring Agency to contribute personnel and other resources are Participating Agencies. In certain cases, individuals who are not employed by a Sponsoring Agency or Participating Agency⁶ become members of a Task Force as Affiliated Personnel.⁷

DHS provides financial support in the form of grants or Cooperative Agreements⁸ (Grants) to each of the

Sponsoring Agencies under the disaster preparedness and training authorities of the Stafford Act. The Sponsoring Agencies use these Grants to train Task Force personnel, maintain a state of readiness and to acquire necessary equipment and supplies. DHS awards and administers Grants under 44 CFR 13. In return for this financial support, each Task Force must be available for deployment as a Federal resource when DHS activates it.⁹ Task Forces also must maintain minimum training requirements that DHS prescribes.¹⁰

Separate non-standardized memoranda of agreement (MOA), which were individually negotiated at different stages in the System's development, currently govern the relationship between DHS and each of the Sponsoring Agencies. In addition, we require the Sponsoring Agencies to enter into separate Cooperative Agreements on forms that our Office of Financial Management prescribes. As the System has matured, the participants have concluded that it is desirable to standardize these relationships through a set of comprehensive regulations. We developed the Interim Rule with the assistance of the National Urban Search and Rescue Advisory Committee and its Legal Issues Working Group.

Adoption of the Interim Rule enables DHS to standardize our agreements with the Sponsoring Agencies. Following adoption of the final rule, we will ask each of the Sponsoring Agencies to enter into a new, streamlined MOA as well as a Preparedness Cooperative Agreement,¹¹ as described in subpart B

of the rule, and a Response Cooperative Agreement,¹² as described in subpart C of this rule. These new, standardized agreements will document our relationship with the Sponsoring Agencies.¹³ Upon the effective date of the Interim Rule, if a conflict exists between a provision of the rule and an existing MOA, the provision of the rule will control.

References in the Preamble to Parts, Subparts or Sections

Throughout the preamble and rule, references to part, subpart, or sections (as "section" or "§") are to parts, subparts or sections of this rule unless specifically cited as a section of an Act, e.g., section 306 of the Stafford Act, or document other than this rule.

Organization of the Interim Rule

The Interim Rule is divided into four subparts. Subpart A addresses the organization of the National US&R Response System, explains the relationship among the various components of the system, incorporates certain provisions of other regulations and provides for sanctions if US&R regulations and directives are violated.

Subpart B describes the process through which we provide grant funds to the Sponsoring Agencies to maintain Task Force readiness. Sponsoring Agencies use these grant funds to administer the Task Forces, provide initial and recurrent training,¹⁴ and acquire and maintain a uniform cache of equipment and supplies.

Following adoption of the final rule, we will ask each Sponsoring Agency to enter into a Preparedness Cooperative Agreement with us. In addition, from time to time, DHS will purchase and distribute equipment and supplies directly to each Task Force.

capabilities and readiness for operations, including training.

¹² When DHS activates a Task Force it provides Federal funding for the Task Force's response under the terms of the Response Cooperative Agreement.

¹³ Following adoption of the final rule, DHS expects to develop a National US&R Response System Directive Manual, which will contain system policies and explain other Federal regulations, and will govern the operation of the National US&R Response System. The Directive Manual will be updated periodically as needed.

¹⁴ Sections 306(a) and 621(c) of the Stafford Act, 42 U.S.C. 5149(a), 5197(c), authorize DHS to federalize members of US&R Task Forces to participate in preparedness activities. We periodically federalize US&R teams to participate in DHS-sanctioned training exercises, also known as mobilization exercises. During these periods, they are not "Activated" within the meaning of § 208.2 of the rule and, therefore, the provisions of subpart C do not apply to DHS-sanctioned training exercises. Funding for participation in DHS-sanctioned training exercises may be available under § 208.24(b) of the rule.

⁴ A Joint Management Team is a multi-disciplinary group of National Disaster Medical System (NDMS), Urban Search and Rescue (US&R) and other specialists combined to provide operational, planning, logistics, finance and administrative support for US&R and NDMS resources, and to provide technical advice and assistance to State and local governments.

⁵ The term "Temporary Excepted Federal Volunteer" means that a System member's status is temporary for the period of Federal activation, excepted from Civil Service rules regarding Federal employment, Federal for purposes of tort claim protection and Federal "workers' compensation", and a volunteer in that DHS does not pay the individual directly, but reimburses the Sponsoring Agency for the System Member's services.

⁶ A Participating Agency is a State or Local Government, non-profit organization, or private organization that has executed an agreement with a Sponsoring Agency to participate in the National US&R Response System.

⁷ Affiliated Personnel are individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.

⁸ Cooperative Agreements are similar to grants, but differ from grants in the amount of government cooperation and involvement in the implementation of the agreement.

⁹ The Task Forces also respond to disasters and emergencies in their home states as State resources. DHS does not normally and directly reimburse Sponsoring Agencies of the Task Forces for the costs that Task Forces incur when deploying in their home states, although in a State deployment, Task Forces may use equipment that they have purchased with DHS grant funds and Federal property that is in their custody. Subpart C of this rule does not cover in-state deployment of US&R resources. However, Federal reimbursement for the cost of an in-state deployment may be available through DHS's Public Assistance Program under regulations published at 44 CFR part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of certain Task Forces to deliver humanitarian assistance abroad under agreements to which DHS is not a party. The rule does not affect the relationships between USAID and the Sponsoring Agencies of the Task Forces.

¹⁰ In addition to participation on Task Forces, participants in the System (referred to as System Members) may also be called upon to serve as members of Joint Management Teams or other overhead or technical teams.

¹¹ DHS enters into a Preparedness Cooperative Agreement with each Sponsoring Agency to provide Federal funding to develop and maintain System resource (personnel, equipment and supplies)

Subpart C addresses the deployment of System Members, either as part of a Task Force, a Joint Management Team, or another overhead or technical team, as a Federal resource, and the reimbursement of the Sponsoring Agencies for the costs that they incur as a result of these deployments. This subpart also explains the Response Cooperative Agreement that we will ask each Sponsoring Agency to sign following adoption of the final rule.

Subpart D establishes the procedures by which Sponsoring Agencies may present claims to DHS for reimbursement of costs incurred when we use System Members as Federal resources, including the timeframes in which the Sponsoring Agencies must present such claims, and procedures for appeals, in writing and submitted within 60 days after receipt of written notice of DHS's determination of the initial appeal. The timeframes and procedures for appeals are set out in § 208.62, Appeals.

A glossary of defined terms that we use throughout the Interim Rule and in subpart A appears in § 208.2. A sub-glossary of defined terms used 208.32 (subpart C) appears in that subpart.

Sectional Analysis

Section 208.33 sets forth the principles under which we will reimburse Sponsoring Agencies for participating in Alerts¹⁵ and Activations.¹⁶ Subsection (a) expresses our policy that participation in Alerts and Activations be as cost neutral as possible to Sponsoring Agencies and Participating Agencies. This commitment is critical to avoid putting local fire departments, which are the predominant sponsors of the Task Forces, at risk for the cost of providing emergency services outside of their respective jurisdictions. Payments are subject to 44 CFR part 13, particularly §§ 13.21 (payment) and 13.22 (allowable cost). 44 CFR 13.22 incorporates various Office of Management and Budget (OMB) circulars that address allowable cost. However, if there is a conflict between this rule and 44 CFR part 13 or the OMB Circulars, this rule controls.

Section 208.39 explains how we will compensate Sponsoring Agencies for personnel costs during Activations. When we deploy System Members,

¹⁵ Alert means the status of a System resource's readiness when triggered by an Alert Order indicating that DHS may Activate the System resource.

¹⁶ Activation means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

either as part of a Task Force, or as part of a Joint Management Team or other overhead or technical team, we appoint them into Federal service as Excepted Temporary Federal Volunteers and they work under our direction and control for the duration of the deployment. However, System Members who are regularly employed by a Sponsoring Agency or Participating Agency retain their concurrent employment relationship with their usual employers.¹⁷ The maintenance of this concurrent employment relationship is a fundamental principle of the National US&R Response System, and dates from the inception of the System. We adopted the principle after consultations with the States, local governments and public safety employee organizations and we intend it to prevent System Members from suffering a break in their service to the usual employer while away on the Federal deployment. While on a Federal deployment, these System Members receive pay and benefits from their usual employers during the Federal deployment just as they would if they were not Activated.

Section 208.39(a) of this part provides that we will reimburse the Sponsoring Agency for personnel costs that result from the Activation and are consistent with this rule. The Sponsoring Agency is responsible for reimbursing the personnel costs of its Participating Agencies under the provisions of § 208.39.

Section 208.39(b) of this part speaks to how we compensate Sponsoring Agencies for overtime costs that might not have been incurred but for the Federal deployment. Section 7(k) of the Fair Labor Standards Act (section 7(k)) exempts public safety organizations from paying their employees overtime under certain circumstances. As interpreted by Department of Labor regulations and court decisions, the section 7(k) exemption does not apply unless the employee in question is trained in fire protection, has the legal authority and responsibility to engage in fire suppression, is employed by a public safety agency engaged in fire suppression and actually engages in fire suppression at least 80 percent of the time.

After reviewing Department of Labor regulations relating to section 7(k) and relevant court decisions, we are uncertain whether the rescue activities

¹⁷ In some cases, the relationship between the individual and the Sponsoring Agency or Participating Agency is a contractual relationship or a volunteer relationship. These regulations do not create a common law employment relationship between an individual and a Sponsoring Agency or Participating Agency where none otherwise exists.

undertaken by Sponsoring Agencies of the US&R Task Forces are analogous to fire suppression. We also note that some System Members will not fall within the section 7(k) exemption because they are not regularly employed in fire suppression. It would be unfair to compensate these individuals at one overtime rate, when fellow System Members, who may be volunteers or part-time fire service employees, are compensated at another overtime rate. For these reasons, DHS instructs the Sponsoring Agencies to disregard the section 7(k) exemption when calculating its reimbursement for personnel costs, and reimburses Sponsoring Agencies for regular wages and overtime wages as described in § 208.39(d), (e) and (f).¹⁸ This instruction will not create a windfall for Sponsoring Agencies and Participating Agencies because they cannot charge DHS for personnel costs in excess of those that they actually and normally incur.

Section 208.39(c) of this part establishes a uniform 24-hour tour of duty during the Federal deployment. DHS will reimburse the Sponsoring Agencies for 24 hours of pay for each day that a System Member is deployed, from his or her arrival at the Point of Assembly¹⁹ until his or her release from duty, which may be the airport or Air Force Base to which the Task Force returns, or at the Task Force's original Point of Assembly,²⁰ or some other point. This reimbursement procedure is known as "portal to portal" pay.

We are not establishing a different rate of reimbursement for meal periods or scheduled sleep periods. Once deployed, all System Members must be available for immediate response twenty-four hours a day during the entire deployment period. Meal periods and sleep periods will be interrupted if System Members are needed to engage in vital lifesaving activities, just as they are in the firehouse.

Search and rescue professionals whom we expect to respond on a moment's notice at any time during a 24-hour period should be compensated for 24 hours of work. Activated System Members often work the first 24 to 48 hours of the Activation continuously, as

¹⁸ Section 208.40(b) addresses reimbursement for various differentials paid by Sponsoring Agencies.

¹⁹ Certain activated System Members will not report to a Point of Assembly, but rather will be instructed to travel to the incident location directly from their home or regular place of work. These individuals are Activated when they leave their home or regular place of business and we will adjust the "portal to portal" pay of these individuals accordingly.

²⁰ The Point of Assembly is the location where a Task Force assembles before departure in response to an activation order.

this initial period involves packaging the Task Force for transport, loading and unloading equipment, attending briefings, receiving and adjusting to changes in operational objectives, establishing the base of operations and initiating the search for live victims. Once the search begins, we control Task Force activities during the entire 24-hour period and Task Forces must be available for immediate response at any time.

Section 208.39(g) provides for the reimbursement of Backfill²¹ expenses. The National US&R Response System depends upon the voluntary participation of public safety agencies. We recognize that these public safety agencies may be short-handed when some of their personnel are away on a Federal deployment. If a public safety agency ordinarily Backfills a position in situations where a regular employee is unavailable for a period of time similar to that spent on a US&R deployment (e.g., Family and Medical Leave, participation in an extended mutual aid assignment, injury or disability), then the public safety agency may bill DHS for the cost of Backfilling the position for the period that the regular employee is away on a Federal deployment. However, we will only reimburse for the incremental overtime salary and benefit expenses associated with the replacement employee. We will not reimburse the Backfilling agency for the regular salary and overtime cost of the replacement employee because the public safety agency would have to pay this cost if the Federal deployment had not occurred.

Public Comments on the Proposed Rule

During the comment period on the Proposed Rule, which closed on February 3, 2003, we received a number of comments. We summarize the comments and our response to them in the materials that follow.

Usage of Terms in the **SUPPLEMENTARY INFORMATION**. We received comments concerning the use of the terms "Task Force Member" and "System Member" in the **SUPPLEMENTARY INFORMATION** to the Proposed Rule. In the **SUPPLEMENTARY INFORMATION** to the Proposed Rule, we used the term "Task Force Member" to denote individuals who respond as part of the National US&R Response System. However, while most participants in the System respond as part of a US&R Task Force, participants in the System may also be called upon to serve on Joint

Management Teams and other overhead or technical teams. As a result, the term "System Member" is a more accurate and comprehensive term to describe individuals who participate in System activities, and the term "Task Force Member" is best used to describe a System Member who is Activated as part of a Task Force. We have corrected the usage of these terms in the **SUPPLEMENTARY INFORMATION** to the Interim Rule.

In certain parts of the **SUPPLEMENTARY INFORMATION** to the Proposed Rule, we also used the term "US&R Task Force," rather than "Sponsoring Agency," to denote the agency or entity with which DHS has entered into legal and financial agreements with respect to the US&R Task Forces. We have corrected the usage of these terms in the **SUPPLEMENTARY INFORMATION** to the Interim Rule.

Finally, in the **SUPPLEMENTARY INFORMATION** to the Proposed Rule, we described the reimbursable period during an Activation as ending when a System Member returns to the pre-deployment staging area. This description conflicts both with standard terminology and the reality of System deployments. A more accurate description of the duration of the reimbursable period during an Activation is set forth in the Interim Rule.

Eligibility for Reimbursement and Coverage Under Federal Statutes While Traveling to and from the Point of Assembly. One Task Force commented on the time period that we propose to pay System Members, namely from arrival at the Point of Assembly until his or her release from duty, which may be the airport or Air Force Base to which the Task Force returns, or at the Task Force's original Point of Assembly, or some other point. Noting that some of its members live 2 or more hours away from the Point of Assembly, the Sponsoring Agency reimburses members from the time that they are alerted to the time that they return home (including travel mileage).

Response: This question has two aspects: (1) Reimbursement for time spent traveling to and from the Point of Assembly, and reimbursement for travel mileage while traveling to and from the Point of Assembly; and (2) consideration of time spent traveling to and from the Point of Assembly as "in the course of employment" for the purposes of workers' compensation (for injuries sustained) and tort liability (for civil wrongs or harms caused) during that travel.

Reimbursement: This issue is related to the Fair Labor Standards Act (FLSA),

which establishes a minimum hourly wage for employees and requires employers to pay overtime wages for hours worked above the statutory maximum. It is also related to the Portal-to-Portal Act of 1947, which requires that time spent "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform" is not compensable time under the FLSA unless it is compensable by contract, custom, or practice. The general Federal rule regarding travel mileage is: commuting to and from work, that is, between permanent residence and permanent duty station, is a personal expense. The employee is expected to be at work; how the employee chooses to get there is entirely his or her own business. 27 Comp. Gen. 1 (1947).

There are exceptions to the general rule if the travel is not ordinary and is spent outside the workday to and from job assignments. Examples include substantial travel to an emergency job assignment at a location outside the normal workplace, or the employer requires the employee to be "on call" to respond to emergency job assignments. A corollary of the "substantial travel" exception is that the travel is noncompensable if the amount of time spent traveling is minimal.

On reconsideration of our position, we will reimburse certain travel costs and time spent traveling to the Point of Assembly when a System Member responds to an Activation and must travel a considerable distance or time, as determined by DHS on a case by case basis, to reach the Point of Assembly. Otherwise, we will follow the general rule regarding noncompensable travel, including minimal travel. When we activate a Task Force or other System resource, timely assembly of the System Members is critical, and under those circumstances warrants our exception to the general rule. This exception will apply only to Activations, and will not apply, for instance, to Alerts, to travel home after return to the Point of Assembly, or to travel required for training, which we consider to be ordinary noncompensable travel.

In the Course of Employment: Ordinary travel to and from a fixed workplace is generally not within the scope of employment for workers' compensation purposes, under the "going and coming" rule. Under the rule, employees with a fixed workplace are covered by workers' compensation only when they are on their employer's premises, or performing an assignment required by the employer. One of the

²¹ Backfill means the personnel practice of temporarily replacing a person in his or her usual position with another person.

exceptions to the general rule of going and coming is travel to and from job assignments, where the employer compensates the employee for the time or expense of the travel. Consistent with that exception and our intent to reimburse travel costs and time spent traveling to the Point of Assembly in response to an Activation, on a case-by-case basis we will meet our obligations regarding workers' compensation claims that arise out of injuries that System Members incur while traveling to a Point of Assembly in response to an Activation, but for no other purpose.

Definitions. We received several comments on the definitions in § 208.2, and made the following changes:

We changed the term "Memorandum of Understanding" to "Memorandum of Agreement."

The definition for "Equipment Cache List" now reads: "The DHS-issued list that defines:

"(1) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and

"(2) the maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with FEMA funds."

The definition for "Participating Agency" reads: "A State or Local Government, non-profit organization, or private organization that has executed an agreement with the Sponsoring Agency to participate in the National US&R Response System."

One Task Force expressed concern regarding the definitions of "Program Manager," "Program Office," and "Project Manager." We have decided to retain the definitions of "Program Manager" and "Program Office" as they are. Currently, the Program Manager is the Chief of the US&R Section, which is part of the Response Division of FEMA, under the Emergency Preparedness and Response Directorate of DHS, and the Program Office is the US&R Section. However, these entities may change as the organizational structure of DHS evolves. We will notify the Sponsoring Agencies if we designate a different Program Manager or Program Office. We have deleted the definition of "Project Manager" from the definitions set forth in § 208.22, since that term appears nowhere else in the Interim Rule.

We have added the following definition: "*Program Directive* means guidance and direction for action to ensure consistency and standardization across the National US&R Response System." This replaces the term "System Order" in the proposed rule with "Program Directive" in the interim rule.

One commenter recommended that DHS include a definition of "Affiliated Member." The equivalent term is defined at § 208.32 as "Affiliated Personnel."

Section 208.6, System Resource Reports. One commenter noted that Sponsoring Agency, Participating Agencies and System Members are to cooperate fully in audits, investigations, studies and evaluation, and asked, "who pays for salary cost associated with gathering and processing the information?"

DHS provides funding for program management in the Preparedness Cooperative Agreement to support administrative activities, including the salary costs for gathering and processing System resource reports.

Workers' Compensation and Other Benefit Costs. Several Sponsoring Agencies commented that workers' compensation and other benefit costs incurred by Sponsoring Agencies as the result of an injury or death to a System Member are not reimbursable costs. As set forth in § 208.11 and explained in the Supplementary Information, DHS will appoint System Members into Federal service, concurrent with those individuals' local employment, to secure protection for such employees under the Federal Employees' Compensation Act and the Federal Tort Claims Act. If a System Member sustains an injury, that System Member may file a claim for compensation under the Federal Employees' Compensation Act. Because the System Member's Federal appointment is concurrent with his or her local employment, the System Member may also be eligible for compensation under his or her local workers' compensation system. In that case, the System Member may collect either the incremental difference between Federal benefits and local benefits, or may collect local benefits in full, depending on whether the local benefits may be offset by the Federal payment to the System Member.

As explained in § 208.40, DHS will reimburse the Sponsoring Agency for the workers' compensation insurance premium costs associated with the time during Activation. However, any local benefit payment is not a reimbursable expense, because DHS (through the U.S. Department of Labor) provides coverage under the Federal Employees Compensation Act, and because we are prohibited under our current statutory authority from reimbursing Sponsoring Agencies for the costs of benefit payments.

Death or Disability in Line of Duty. One Participating Agency asked whether a System Member killed or

disabled while Activated would be entitled to benefits through the agency's municipal pension program, and whether the death or injury would be considered in the line of duty. We intend that System Members remain fully eligible for local benefits during Federal Activation, and that, as a result, any death or injury during Activation should be considered to have occurred while the System Member was acting in the scope of employment.

Federal Death Benefits. One Sponsoring Agency asked how a "Federal death benefit," if incurred, would be calculated. The "Federal death benefit" for System Members comprises two separate components: (1) A benefit payment under the Federal Employees Compensation Act; and (2) a payment under the Public Safety Officers' Benefit Act. The death and injury benefits available under each of those statutes are determined using formulas set forth in those statutes.

Voluntary Contribution to Municipal Pension Plans. One Sponsoring Agency asked whether contributions to a municipal pension plan made voluntarily by System Members during an Activation, rather than contributions made by the System Member's employer under the terms of a collective bargaining agreement or other arrangement, are reimbursable by DHS. Voluntary employee contributions, as opposed to mandatory employer contributions, are not reimbursable expenses.

Contributions to the Pension Plan Based on Overtime. One Sponsoring Agency commented that under its benefits plan, salary is defined as the total actual fixed cash compensation, including overtime, and contributions to its pension plan are based on this total salary, including overtime. The Sponsoring Agency asked whether contributions to the pension plan based on overtime pay received during Activation reimbursable under this rule. Under § 208.40(a)(2), these contributions are reimbursable.

Cost Sharing. One Task Force commented that § 208.23(f) refers to "Cost Sharing" but makes no distinction between "hard share," *i.e.*, cash contributions, and "soft share," *i.e.*, other value-added benefits provided by the Sponsoring Agency. We do not presently require Sponsoring Agencies to provide a cost share, either hard or soft, for preparedness or response funding. Please note that section 208.22(f) provides for cost sharing if it were required in the future. If we were to institute a cost-sharing requirement in the future, we would clearly indicate in the Cooperative Agreement whether

such cost share would be “hard” or “soft.”

Equipment Ownership. Several Sponsoring Agencies commented that the Proposed Rule does not address ownership or disposition of equipment purchased under this program.

OMB Circulars A-87 and A-110 specify that equipment purchased with Federal Grant funds is the property of the grantee. However, title, use, management and disposition of equipment purchased under a grant or Cooperative Agreement is set out in 44 CFR 13.32, a government-wide rule to which DHS adheres. While the Sponsoring Agency has title to any equipment purchased with Federal preparedness and response Cooperative Agreement funds, DHS reserves the right to transfer title to the Federal Government or a third party that we may name, under 44 CFR 13.32(g). DHS would generally expect to limit its exercise of this right to instances when a Sponsoring Agency indicates or demonstrates that the Sponsoring Agency cannot fulfill its obligations under the Memorandum of Agreement.

Maximum Pay Rate Table. We received the most number of comments concerning the Maximum Pay Rate Table (Table) identified in the Proposed Rule. For clarity, we set forth here the applicability of the Table and the process we will follow for creating and updating the Table.

Section 208.32 defines the “Maximum Pay Rate Table” as “the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.” In that same section, “Affiliated Personnel” are defined as “individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.”

One Sponsoring Agency commented that the Table seemed to contradict the principle of cost neutrality set forth prominently in the Proposed Rule. However, as defined, the Table applies only to those individuals who are not normally employed by a Sponsoring Agency or Participating Agency, or whose affiliation with a Sponsoring Agency or Participating Agency is as a volunteer; that is, an individual whom the Sponsoring Agency or Participating Agency does not normally compensate in any way, at any rate.

The Table sets forth maximum rates for which we will reimburse the

Sponsoring Agency for compensation paid to those individuals while Activated. The Sponsoring Agency may choose to compensate these individuals at a higher rate, but we will not reimburse the increment above the maximum rate specified in the Table. Likewise, the Sponsoring Agency may choose to enter into a Participating Agency agreement with the individual’s employer, rather than use the individual as an Affiliated Personnel, in which case the Table would not apply. Consequently, only a Sponsoring Agency’s choice to exceed the maximum rates set forth in the Maximum Pay Rate Table would result in an uncompensated expenditure, and the Table would not violate the principle of cost neutrality.

A number of parties expressed concern that the Table was not provided concurrently with the publishing of the Proposed Rule. We chose not to delay the Proposed Rule until the Table could be developed. We have inserted a new section 208.12, Maximum Pay Rate Table, to establish the process for creating, updating and using the Table. We are also publishing the Table as a Notice in the **Federal Register** and are asking for comments on both the Interim Rule and the Table before publishing the final rule.

One Sponsoring Agency expressed concern that the rates set forth in the Table could not be used with respect to individuals employed by the Sponsoring Agency, and not when the individual would serve on the Task Force as Affiliated Personnel (e.g., a Sponsoring Agency fire department dispatcher affiliated with the US&R Task Force in a non-dispatcher role as a canine search specialist). Although the Table would not necessarily apply to reimbursement for salary and benefits for that individual, Sponsoring Agencies may use the rates in the Table as a guide for establishing compensation levels for Affiliated Personnel.

Affiliated Personnel. Several commenters noted that the rule can be interpreted to preclude the reimbursement of Backfill expenses for Affiliated Personnel under § 208.39(g). Those commenters expressed concern that, since the highly-trained civilians such as physicians, structural engineers and canine handlers are typically Affiliated Personnel, reimbursement for Backfill expenses is important to securing the participation of these individuals in the System. The restriction on Backfill costs for Affiliated Personnel could limit the ability of Sponsoring Agencies to recruit and retain these highly trained civilians.

However, the only permissible way to reimburse Affiliated Personnel for Backfill costs is through Participating Agencies—neither we nor the Sponsoring Agencies have contractual or employment relationships with the individuals Backfilling the jobs of Affiliated Personnel. If reimbursement for Backfill expenses is a problem for Affiliated Personnel, we encourage them to have their employers or professional association seek Participating Agency status. Participating Agency status is available to private, for-profit organizations under the revised definition of “Participating Agency” set forth in this Interim Rule. (See Definitions, § 208.2, *Participating Agency*, and § 208.12, *Maximum Pay Rate Table*.) Note, however, that compensation costs, for the purposes of reimbursement and Backfill, refer to the System Member’s actual compensation, or the compensation of the individual who Backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40), rather than billable or other rates that might be charged for services rendered to commercial clients or patients.

Creating, Updating and Using the Maximum Pay Rate Table. We have inserted a new section 208.12 in this rule to establish how we will create, update and use the Table to reimburse Affiliated Personnel (Task Force Physicians, Task Force Engineers, and Canine Handlers) and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency; the Table applies only to these named categories. Section 208.12 describes the method for determining maximum pay rates using United States Office of Personnel Management’s (OPM) salary rates, and provides links to OPM’s applicable salary rate tables and locality pay tables.

The section provides that DHS will review and update the Table periodically (at least annually). DHS is publishing the initial Table in the **Federal Register** as a Notice with request for comments. DHS will publish subsequent revisions to the Table as Notices in the **Federal Register**.

The section further states that a Sponsoring Agency may choose to pay Affiliated Personnel at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Table.

Resupply and Logistics Costs During a Federal Activation. One Sponsoring Agency noted that, under § 208.38, we will not reimburse costs incurred for resupply and logistical support during Activation. That section states that resupply and logistical support needed

during Activation are the responsibility of the Joint Management Team (JMT). The Sponsoring Agency asked, "What happens if the Incident Management Team [now the JMT] cannot be established?"

During Activation, we are responsible for resupply and logistics. Currently, we accomplish this responsibility through either the JMT, which operates in the field, or the Emergency Support Function 9 (ESF-9),²² which operates from the National Emergency Operations Center, an emergency coordinating center located at FEMA headquarters. As DHS develops and evolves, we may change the names or functions of these teams; however, the responsibility for resupply and logistics will remain with us. Task Forces should not engage in resupply or logistical support during Activation unless coordinated through one of these teams. In extraordinary circumstances, *e.g.*, if the Task Force cannot make contact with either the JMT or the EST, the Task Force should follow the instructions in § 208.44, Reimbursement for other costs. Absent such circumstances, we will not reimburse costs incurred for resupply and logistical support during Activation.

Compensation for Exempt System Members. Several agencies commented on the proposed reimbursement for compensation paid to Exempt System Members, *i.e.*, System Members who are paid a salary, rather than an hourly wage, and are otherwise exempt from the Fair Labor Standards Act. One agency commented that reimbursement for Exempt System Members should be based on the employees' salary, converted to a 40-hour workweek and then paid at that rate on an hourly basis during Activation. Another agency commented that the different methods of compensation calculation for Exempt and non-exempt System Members will result in non-exempt System Members receiving a greater amount of compensation during Activation than Exempt System Members, who are typically more experienced firefighters holding higher ranks in the Sponsoring Agency or Participating Agency. This agency speculated that the method of compensation calculation used in the Proposed Rule would result in fewer chief officers (who are typically

classified as Exempt System Members) participating as System Members.

There are two guiding principles underlying our compensation calculation rules: (1) Cost neutrality; and (2) customary and usual practice. The compensation calculation system for Exempt System Members complies with both of these principles. If an individual is classified as an Exempt System Member in his or her regular position with the Sponsoring Agency or Participating Agency, then this individual will receive compensation on a daily basis, rather than an hourly basis, regardless of the number of hours the individual works in a day. The rule provides reimbursement to the Sponsoring Agency or Participant Agency on this basis—that is, for the amount that the individual would have customarily and usually received. If the Sponsoring Agency or Participating Agency customarily and usually compensates Exempt System Members by paying a salary and overtime, or customarily and usually awards compensatory time or another overtime substitute for hours worked above a predetermined threshold, then the Sponsoring Agency may request reimbursement for the overtime amount, or the liquidated value of the compensatory time or other overtime substitute, in accordance with §§ 208.39(e)(5)(ii) and (iii). In this way, this rule abides by the principle of cost neutrality.

One Sponsoring Agency asked that we examine the feasibility of giving Sponsoring Agencies the option of having chief officers appointed as Disaster Assistance Employees (DAE) (temporary DHS employees) during Activation. In that case, those officers would be temporary Federal employees, would probably take a reduction in pay, and would take vacation or administrative leave from the Sponsoring Agency or Participating Agency for the period of Activation. In turn, a DAE appointment might affect their pension and seniority rights. We believe that disadvantages of DAE appointments outweigh any benefits that chief officers might derive, and that the current language of this rule concerning Exempt System Members represents the best general practice.

One Sponsoring Agency asked whether, under § 208.39(e)(3), chiefs compensated based on a 56-hour workweek should be converted to a 40-hour workweek for purposes of calculating reimbursable compensation under the rule. This Sponsoring Agency also noted that compensating individuals who customarily and usually work a 56-hour workweek, by

converting their hourly wage rate to a 40-hour workweek, results in approximately 40 percent higher costs during Activation. Sponsoring Agencies and Participating Agencies that compensate employees based on a 56-hour workweek take advantage of the partial overtime exemption set forth in section 7(k) of the Fair Labor Standards Act. As explained herein, we require that Sponsoring Agencies and Participating Agencies disregard the section 7(k) partial exemption in calculating personnel costs, and we will reimburse personnel costs based on a 40-hour work week, as described in § 208.39 of this rule.

One Sponsoring Agency notes that the calculation of reimbursable personnel costs will place an extra burden on payroll staff, and there will most likely be personnel who will be eligible for overtime compensation immediately upon Activation since they have already exceeded the overtime threshold for that week. We have included an administrative allowance in the reimbursement for response costs, found at § 208.41, to compensate the Sponsoring Agency for this increased burden on payroll staff. We also provide for reimbursement of any additional salary and overtime costs in § 208.39(f), *e.g.*, those incurred because a System Member is eligible for overtime compensation immediately upon Activation.

Reimbursement for Personnel Costs for Equipment Cache Rehabilitation. Under § 208.43, we will reimburse Sponsoring Agencies for personnel costs associated with equipment cache rehabilitation up to the number of hours specified in the Demobilization Order.²³ One Sponsoring Agency stated that the number of hours specified in the Demobilization Order should be an estimate only, rather than a fixed limit, and asked whether there is an appeal process for the number of hours specified in the Demobilization Order, or another mechanism for requesting additional hours based on unforeseen circumstances. There is no appeal process for the number of hours specified in the Demobilization Order. However, if the Sponsoring Agency feels that unforeseen circumstances will prevent it from completing its equipment cache rehabilitation within the specified number of hours, the Sponsoring Agency should follow the

²² ESF-9, or Emergency Support Function 9, Urban Search and Rescue, is responsible to plan and coordinate the use of Urban Search and Rescue assets following an event that requires locating, extricating and providing immediate medical treatment of victims trapped in collapsed structures. ESF-9 also provides planning and coordination of US&R assets when they engage in other disaster-related assignments.

²³ A Demobilization Order is a DHS communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

procedures in § 208.44 for reimbursement of other costs.

Reimbursement for Other Costs.

Section 208.44 sets a procedure for Sponsoring Agencies to follow if the Sponsoring Agency or the Task Force believes that it must incur an expense not included in subpart C for which it expects to request reimbursement. Section 208.44 requires that the Sponsoring Agency request in writing permission from DHS to make the expenditure or, if advance permission in writing is not possible to obtain, to meet three criteria before making the expenditure, including requesting and receiving advance verbal approval.

One agency commented that during an extreme emergency, in particular during the initial 24- to 48-hours of an Activation, it can be difficult to obtain written or verbal approvals, and that personnel authorized to approve expenditures are not available 24 hours a day during this period. Moreover, this agency commented that Joint Management Teams, in the past, have left requests for resupply unanswered for extended periods of time. The agency recommended that we empower Task Force Leaders to make procurement decisions.

We feel that this comment addresses operational problems rather than regulatory issues. Many of these problems will be alleviated by the construction of the new DHS operations center that will be staffed 24 hours a day during an Activation, and by assuring that there is at least one person on duty in the operations center who holds delegated authority to authorize procurements. Moreover, the revised Equipment Cache List²⁴ provides for the purchase of multiple, back-up methods of communication to assure that Task Forces can communicate with the operations center under any circumstances. We believe that the rule controls the costs associated with Activation and limits duplicative procurement without compromising responder safety.

Advance of Funds. Section 208.45 states that we will provide the Sponsoring Agency with an advance of funds up to 75 percent of the estimated personnel costs of the Activation. Several agencies commented that we should increase this amount to 90 percent of the estimated personnel costs. These agencies commented that since personnel costs of an Activation

can exceed \$1 million, an advance up to 75 percent of that amount still leaves the Sponsoring Agency with approximately \$250,000 in outlays for personnel costs for which it must wait for up to 120 days or more for reimbursement. The financial burden of these outlays would be compounded in the event of multiple Activations within a relatively short time period.

We believe that up to 75 percent is the optimal amount for an advance of funds because it balances the need for funds against the possibility of overestimated funds. As one commenter pointed out, for many years we did not provide any advance of funds, and for more recent Activations we provided an advance equal to 25 percent of estimated personnel costs. The amount “up to 75 percent” is a result of our examination of personnel cost data from a number of previous Activations. It also recognizes the financial burden borne by the Sponsoring Agencies in carrying, even temporarily, these additional salary costs. However, Activations often last for a shorter period of time than we use to calculate the estimated personnel costs for the Activation, as was the case recently with Hurricane Isabel when teams were activated for fewer than 7 days. As one commenter pointed out, some percentage of personnel costs may be questioned and ultimately disallowed as a result of the reimbursement review process. For these reasons, at this time, we believe that up to 75 percent of estimated personnel costs is the best amount for an advance of funds. We expect to review Sponsoring Agencies’ experience periodically under this provision, and will make revisions as warranted.

Deadline for Submission of Claims.

One agency commented that the deadline for submission of claims comes too soon after an Activation has ended. Currently, § 208.52 specifies that Sponsoring Agencies must submit claims for reimbursement within 90 days of the conclusion of the Activation. Section 208.52 also states that DHS may extend and specify the time limitation upon a written request and justification from the Sponsoring Agency. The commenting agency noted that it could take many weeks to obtain certain items, often because of manufacturers’ inventory status. The agency stated that setting a deadline of 120 days would obviate the need for a Sponsoring Agency to apply for repeated extensions.

We believe that the 90-day timeframe for submission, with the opportunity for Sponsoring Agencies to apply for 30-day extensions, is the better policy. In the past, we found that Sponsoring

Agencies often do not submit claims for reimbursement in a timely manner. This tendency interferes with our ability administratively to “close out” the accounts we set up for each major disaster or emergency, and also results in Sponsoring Agencies carrying unreimbursed costs for longer periods of time. We believe that it is better to require submission of claims for reimbursement within 90 days of the conclusion of the Activation, while permitting Sponsoring Agencies to apply for 30-day extensions at their option.

Reevaluation and Potential Revision of the Rule. One agency commented that we should provide a date certain for reevaluation and potential revision of this rule. The agency believed that providing this date certain was important because some provisions of the rule will require additional discussion and development, and other issues may arise after the rule is implemented. We do not believe that there is a need to provide a date certain by which we will reevaluate and, if necessary, revise the rule. However, we will work with our State and Local Government partners through the National Urban Search and Rescue System Advisory Committee and its Legal Issues Working Group to evaluate this rule, measure its efficacy, and develop revisions as necessary.

Task Force Leader. One Sponsoring Agency commented that this rule should include a definition of the role and responsibilities of the Task Force Leader, the highest leadership position on a US&R Task Force. The commenting agency stated that “[t]he Task Force Leader is the individual during a deployment who is in control and responsible for the entire Task Force, in addition to reporting to FEMA (whether the FEMA Emergency Support Team (EST) or the IST [now JMT]) the Task Force Leader is the individual that the Sponsoring Agency designates to represent the Sponsoring Agency both financially and legally while the Task Force is deployed.”

We feel that the roles and responsibilities of the Task Force Leader should not be included in the rule. We have developed and published a Position Description for the Task Force Leader, and have described the roles and responsibilities of the Task Force Leader in several operational documents. These descriptions may change over time, and we want to retain flexibility by including these descriptions in operational documents rather than in the rule. Moreover, different Sponsoring Agencies have vested their Task Force Leaders with

²⁴ The *Equipment Cache List* is the DHS-issued list that defines: (a) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and (b) the maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with DHS funds.

different levels of authority. For these reasons, we have not defined the roles and responsibilities of the Task Force Leader in the rule.

Use of Federally Purchased Equipment for Local Use in Daily Operations. One commenter noted that, in the Federalism Summary Impact Statement included with the Proposed Rule, we stated that "Equipment and supplies purchased with Federal funds may be used to respond to state disasters or emergencies." The commenter asked whether the intent of the rule was to prevent the use of federally purchased equipment for daily operations.

We intend the System to provide a Federal capability to respond to major disasters or emergencies involving structural collapse, weapons of mass destruction, or other incidents that the President declares. A Sponsoring Agency may use equipment and supplies purchased with Federal funds to respond to disasters or emergencies requiring urban search and rescue response at the state and local level, and if necessary, to repair or replace equipment so used at the Sponsoring Agency's expense. However, we do not intend that Sponsoring Agencies use federally purchased equipment in routine, day-to-day operations.

Indirect Costs. One Sponsoring Agency commented on our prohibition of reimbursement for indirect costs related to response, and our 7.5 percent limitation on indirect costs related to preparedness. The commenting agency noted that this limitation on indirect costs is inconsistent with other FEMA programs and diverges from standard Federal indirect cost percentages. The commenting agency stated that this limitation could threaten the ability of that Sponsoring Agency to remain in the System, stating that the "work burden formulas presuppose economies of scale for a larger, pre-existing agency."

We brought this issue to the National US&R Advisory Committee, which recommended retention of the indirect costs policy as in the proposed rule. We agree. This limitation is not inconsistent with other limitations applicable to FEMA programs. Accordingly, we have not changed this section. Note that this limitation applies only to Preparedness Cooperative Agreements, which apply over the course of at least one year and to which indirect cost principles can be applied readily. Except as provided in § 208.41, we allow no indirect costs under Response Cooperative Agreements. US&R deployments are most often short-term, on the order of 10–14 days. Consistent with section 407 of the Stafford Act, we will allow the

administrative allowance listed in § 208.41 of this part in lieu of attempting to establish indirect cost rates for short-term deployments.

Administrative Procedure Act Determination

We are publishing this Interim Rule under the Administrative Procedure Act, 5 U.S.C. 553, with our request for public comments. Concurrently with publication of the Interim Rule, we are publishing the Maximum Pay Rate Table (Table) in the **Federal Register** as a Notice. We published a Proposed Rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627–77640, and received over 30 comments from various Task Forces in the National US&R Response System. We discuss the comments in the preamble of the Interim Rule, indicating where we agree with the comments and have made changes, and also where we do not agree with the comments.

We did not have the Table prepared at the time we published the Proposed Rule but received a large number of comments and questions about the Table. To provide an opportunity for comment before publishing the final rule, and because of the delay between the date of the Proposed Rule and the Interim Rule, we request that interested parties comment within 45 days of today's publication.

The National US&R Response System provides a number of public services that are unique within the Federal Government. Members are experienced and trained professionals highly skilled in the often dangerous roles of searching for, extricating and providing initial medical care for victims from collapsed buildings, whether collapsed by natural or manmade causes. The searching is important to the public to ensure that every effort has been made to rescue people still alive within a collapsed structure. Members also have an important role in finding the bodies of those killed in the collapse, so that victims might be identified and returned to grieving families. The tasks performed and the dangers inherent in the work benefit other firefighters and disaster responders who do not have the specialized training and experience of the National US&R Response System Members and who are not put at risk by entering the collapsed structures when US&R teams are present.

The Interim Rule is effective today, the date of publication. There is an urgent need within the National US&R Response System to standardize financial, administrative and operational functions among the 28

Task Forces located in 19 States. These needs include codifying the relationship between the Department of Homeland Security (DHS) and the Sponsoring Agencies of the 28 Task Forces, and standardizing the relationships of Sponsoring Agencies with their Participating Agencies and Affiliated Personnel. Efforts to standardize the Memoranda of Agreement between DHS and the Sponsoring Agencies, and in turn, the agreements between the Sponsoring Agencies and Participating Agencies and Affiliated Personnel, are essential to the effective functioning of the System and must be completed soon to inform, guide and govern all System participants uniformly in their respective roles, responsibilities and activities.

In the years since September 11, 2001, Congress has appropriated increased funds to US&R for equipment, training, and other measures to ensure that each Task Force is fully staffed, trained and available for whatever disaster they may be called upon for help. It is imperative and urgent that there be full accountability for the funds granted to the Sponsoring Agencies, and that there be uniform standards that the Sponsoring Agencies can apply in the performance of their US&R responsibilities. This rule provides those standards; it is urgent that they be in effect as soon as possible.

The direct effect of this rule is on the 28 Sponsoring Agencies, their Participating Agencies, and Affiliated Personnel—a relatively small, well-defined universe. The Sponsoring Agencies, the Advisory Committee of the National US&R Response System (Advisory Committee),²⁵ the Working Groups²⁶ under the Advisory Committee, and others associated with the National US&R Response System have frequently and repeatedly requested publication and implementation of this rule, which they urgently need to fulfill their obligations to the System, themselves and their organizations. As matters of sound policy, planning and management for the entire System, it is important to make the rule effective upon publication.

Good cause exists and it is in the public interest to make this Interim Rule

²⁵ The Advisory Committee of the National US&R Response System provides advice, recommendations, and counsel on the continuing development and maintenance of a National US&R Response System to the Under Secretary for Emergency Preparedness and Response.

²⁶ The System has several specialized Working Groups, e.g., command and general staff, medical, legal issues, training, etc., that provide professional and technical advice on US&R issues to DHS through the National Advisory Committee.

effective upon publication (and to request comments on the Interim Rule and on the Table as published separately today as a Notice). DHS will review and evaluate any comments that it receives and will publish the final rule at a later date.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) categorically excludes from actions such as the preparation, revision, and adoption of regulations, and specifically 44 CFR 10.8(d)(2)(xviii)(C), which relates to planning and administrative activities in support of emergency and disaster response and recovery, including deployment of urban search and rescue teams. Accordingly, we have not prepared an environmental assessment or environmental impact statement for this rule.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a “significant regulatory action” is subject to OMB review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

In determining whether to proceed with the formulation and publication of this rule, we considered three alternatives: maintain the status quo ante; manage the program through administrative directives; and cancel the program.

Maintain the Status Quo Ante. The National US&R Response System has operated since the early 1990s without formal regulations. The first ten years or so were formative years with a great deal of flux. Federal appropriations were minimal until the events following September 11, 2001, which led to major changes in planning, operations, management, training and funding.

Twenty US&R teams responded to the World Trade Center and five responded to the Pentagon. After-action evaluations showed the need for greater interoperability of equipment, consistency in training and operating across the 28 teams, and many other factors to permit 28 disparate units in 19 States to perform as a cohesive whole. Congress appropriated larger sums to support the program, mandating that the program not add new task forces until existing task forces were fully equipped and trained. Spurred by the response of Congress and the Administration, we redoubled efforts to standardize the financing, administration and operation of the National US&R Response System.

Under the *status quo ante* and the low level of Federal funding, we had little leverage to standardize the program. With increased appropriations and expanding mission that followed September 11, 2001 (*e.g.*, response to acts of terrorism and weapons of mass destruction events, response to hurricanes), operating without formal regulations was no longer tenable. Sound management and responsible stewardship of the program demand formal regulations. For these reasons, we rejected the *status quo ante*.

Management by Administrative Directives. We rejected this alternative on grounds that administrative directives do not have the force of law, tend to be piecemeal, and do not adequately support our need for standardized practices within the US&R program. In contrast, the rule will have the force of law and will concisely support our need to standardize the financing, administration and operation of the US&R program.

Cancel the Program. The US&R program grew out of the evident need to have highly skilled, specially trained and equipped personnel swiftly available to search for and extricate victims from collapsed buildings, whether from earthquakes and other natural causes, acts of terrorism, accidents or other human causes. The need is greater today than perceived in the late 1980s and early 1990s. The program has garnered a well- and hard-earned recognition of its effectiveness, with strong support from Congress, the Administration, and its Sponsoring and Participating Agencies. With that continuing support, cancellation of the program is not a feasible alternative.

Interim Rule. We (FEMA) published a Proposed Rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627–77640. During the 45-day comment period, we received about 30 comments from Sponsoring Agencies, one from a

Participating Agency, one from a Member of Congress, and none from the public at large. We reviewed the comments, accepting some, rejecting some. This preamble and Interim Rule reflect the decisions made regarding the comments that we received.

When we published the Proposed Rule, we mentioned, but had not yet prepared, the Maximum Pay Rate Table (Table). In order to have that part of the rule on which we had received comments go into effect, and to obtain public comments on the Table, we elected to publish the rule as an Interim Rule, and, concurrently to publish the Table as a Notice, with request for comments.

Economic Significance of the Rule. This rule will not have an annual effect on the economy of \$100 million or more and is not an economically significant rule under Executive Order 12866. The rule establishes the relationship between the Sponsoring Agencies of the Urban Search & Rescue (US&R) Task Forces and DHS, funding for preparedness and response activities, including the acquisition of equipment and supplies and training, and the eligibility of Task Forces to receive and maintain Federal excess property.

This interim rule impacts 28 Sponsoring Agencies, 26 of which are from local communities, 2 are associated with state universities. All of the communities have populations greater than 50,000. Most of the Sponsoring Agencies have agreements with Participating Agencies for additional support to meet the staffing, equipment and training requirements of the National US&R Response System. US&R-related costs of Participating Agencies are paid by DHS through the Sponsoring Agencies. Similarly, expenses of Affiliated Personnel are reimbursed through the Sponsoring Agencies.

DHS has designed the National US&R Response System to be as cost neutral to Sponsoring Agencies as Federal law authorizes. DHS acquires equipment and supplies, pays for training, meetings and related travel, lodging, and per diem expenses, and attempts to cover Sponsoring Agencies’ preparedness costs through preparedness Cooperative Agreements. When DHS activates a US&R Task Force we reimburse the Sponsoring Agency for 100 per cent of its direct eligible costs incurred, including overtime and Backfill costs, and indirect costs capped at 7.5 percent of direct costs, under the terms of the response Cooperative Agreements. Sponsoring Agencies will incur certain paperwork burdens and expenses, which are described and quantified

below in the materials on the Paperwork Reduction Act. We expect that our Cooperative Agreements and their associated indirect cost rates will cover the eligible costs that the Sponsoring Agencies incur to participate in the National US&R Response System.

Costs to DHS to administer the National US&R Response System include the salaries and expenses of an 8-person staff, and the indirect staff costs for financial, acquisition, logistics and other administrative services provided by DHS and FEMA. Current appropriations limit administrative costs to 3 percent of the total amount appropriated for US&R.

FEMA's planning and program guidance for fiscal years 2005 through 2009 set funding levels of \$6.438 million for the National US&R Response System, representing the baseline nondisaster-specific budget for operating expenses. In the past two years, congressional annual appropriations for US&R were \$60 million, most of which US&R passed to the Sponsoring Agencies pursuant to Cooperative Agreements. FEMA passes the amounts appropriated to the Sponsoring Agencies in preparedness Cooperative Agreements funded 100 percent by the Federal Government to cover planning, training, equipment or other essentials to fulfill the US&R mission, which do not impose conditions on the Sponsoring Agencies making them economically significant. Nor would Cooperative Agreement funding adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

This rule is a significant regulatory action, but not an economically significant regulatory action within the definition of section 3(f) of Executive Order 12866, and it adheres to the principles of regulation of the Executive Order. The Office of Management and Budget has reviewed this rule under the provisions of the Executive Order.

Regulatory Flexibility Act, 5 U.S.C. 601

Under the Regulatory Flexibility Act, agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). The Act also provides that, if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

This rule standardizes the financing, administration and operation of the

National Urban Search and Rescue Response System (System or US&R), which FEMA established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The System currently comprises 28 US&R Task Forces in 19 States. A State agency or local public safety agency (Sponsoring Agency) typically sponsors a Task Force,²⁷ staffed primarily by local fire department and emergency services personnel, and include Joint Management Teams (JMT) and other overhead or technical teams. None of the Sponsoring Agencies are in communities with populations fewer than 50,000. The governments of the Sponsoring Agencies are urban or State instrumentalities and none qualify as a "small governmental jurisdiction" within the meaning of 5 U.S.C. 601(5).

Some of the Participating Agencies are small businesses, such as engineering firms and HMOs. DHS reimburses Sponsoring Agencies for the eligible costs that the Sponsoring Agencies incur in reimbursing their Participating Agencies. DHS expects Participating Agencies to receive full reimbursement for the salaries and expenses of their personnel who are participating System Members, indirect costs up to 7.5 percent, per diem, travel and related costs when Task Forces activated, and backfill expenses.

DHS has designed the US&R program to be as cost neutral to Sponsoring Agencies as Federal law authorizes. When DHS activates a US&R Task Force it reimburses the Sponsoring Agency for its direct costs incurred, including overtime and Backfill costs, and indirect costs capped at 7.5 percent of direct costs. Upon activation, System Members become Temporary Excepted Federal Volunteers entitled to the benefits of the Federal Employees Compensation Act (FECA) and the Federal Tort Claims Act (FTCA). In some instances, State workers' compensation benefits exceed those available under FECA, and the

²⁷ The Task Forces also respond to disasters and emergencies in their home states as State resources. DHS does not directly reimburse Sponsoring Agencies of the Task Forces for the costs that they incur when deploying in their home state, although in a State deployment Task Forces may use equipment that they have purchased with DHS grant funds and Federal property that is in their custody. Subpart C of this rule does not cover in-state deployment of US&R resources. However, Federal reimbursement for the cost of an in-state deployment may be available through DHS's Public Assistance Program under regulations published at 44 CFR part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of certain US&R Task Forces to deliver humanitarian assistance abroad under agreements to which DHS is not a party. The rule does not affect the relationships between USAID and the Sponsoring Agencies of the Task Forces.

difference between the State benefits and the Federal benefits may have to be borne by the Sponsoring Agency.

US&R Task Forces also must maintain minimum training requirements that DHS prescribes. Under current interpretations by the Department of Justice, the FTCA covers System Members during Task Force activations, but does not apply to training activities. This lack of FTCA coverage during training is a potential liability that a Sponsoring Agency might incur, but such a circumstance has not occurred in 15 years of experience. DHS is working with the Department of Justice to determine what measures DHS could take to provide liability coverage for System Members during US&R training events.

DHS assumes that the professional skills necessary for preparation of the reports and records are within the capabilities of the Sponsoring and Participating Agencies. DHA further assumes that Sponsoring and Participating Agencies incur no extra, unreimbursed costs for sound administration and accountability that Federal Cooperative Agreements require of any recipient of such awards. We have no basis for estimating the expected cost or range of costs per impacted Sponsoring or Participating Agency.

DHS is not aware of any rules that may duplicate, overlap or conflict with this rule. In our discussion of E.O. 12866 above, we considered several alternatives to this rule, including *status quo ante*, cancellation of the program, management by program directives, and this interim rule. None of the alternatives to this rule met DHS needs to standardize the financing, administration and operation of the US&R System; none provided differing compliance or reporting requirements, or clarified, consolidated, or simplified compliance and reporting, or exempted any of the Sponsoring Agencies from coverage of the rule.

For the reasons stated, we certify under 5 U.S.C. 605(b) that this Interim Rule will not have a significant economic impact on a substantial number of small entities and does not apply to this interim rule.

Paperwork Reduction Act of 1995

DHS has determined that the implementation of this rule is subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As the Paperwork Reduction Act of 1995 requires and, concurrently with this rule, we have submitted a request for Office of Management and Budget (OMB) review and approval of a new collection of

information, which is contained in this rule. The collection of information complies with provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). We invite the general public to comment on the collection of information.

Collection of Information

Title: Urban Search and Rescue Program.

US&R grant application forms approved by OMB under Control Number 1660-0025, which expires July 31, 2007, are:

Form Numbers: SF 424, Application for Federal Assistance; DHS Form 20-10, Financial Status Report; DHS Form 20-16, Summary Sheet for Assurances

and Certifications; DHS Form 20-16A, Assurances—Non-Construction Programs; DHS Form 20-16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; DHS Form 20-20, Budget Information—Non-Construction Programs; and SF LLL, Disclosure of Lobbying Activities.

Abstract: This information collection is to implement the National Urban Search and Rescue System (US&R), by which DHS provides specialized lifesaving assistance during major disaster or emergency. US&R operational activities include locating, extricating and providing on-site medical treatment to victims trapped in

collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities. In order to implement the US&R program DHS must collect certain types of information, including grant applications, budget and budget narrative, financial status reports, assurances and certifications, performance information, and requests for advances or reimbursement on forms approved by OMB under Control Number 1660-0025.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 803 hours. A breakdown of the burden follows:

DHS forms	No. of responders (A)	Frequency of response (B)	Hours per response and record-keeping (C)	Annual burden hours (A × B × C)
The following forms were approved under 1660-0025:				
SF-424 Application for Federal Assistance	28	1	1 hour	28 hours.
DHS Form 20-10 Financial Status Report	28	1	1 hour	28 hours.
DHS Forms 20-16, 20-16A, 20-16C, Summary Sheet for Assurances and Certifications.	28	1	30 minutes	14 hours.
SF LLL, Disclosure of Lobbying Activities	28	1	10 minutes	5 hours.
DHS Form 20-20, Budget Information Non-Construction Programs and Budget Narrative.	28	2	9 hours	504 hours.
SF 270, Request for Advance or Reimbursement	28	2	4 hours	224 hours.
Subtotal		224		803 hours.

OMB Number: New.

Abstract: In order to implement the US&R program, DHS must collect certain types of information not included in OMB Control Number

1660-0025, including memoranda of agreement, program narrative statements, grant awards, progress reports, extension or change requests, closeout information and audits.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 1181 hours. A breakdown of the burden follows:

DHS forms	No. of responders (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (A × B × C)
The following are new collections:				
Narrative Statement	28	2	4 hours	224 hours.
Progress Reports	28	2	2 hours	112 hours.
Extension or Change Requests	5	1	1 hour	5 hours.
Audits of States, Local Governments, and Non-Profit Organizations.	28	1	30 hours	840 hours.
Memoranda of Agreement	28	1	(¹)	8
Subtotal		145		1181 hours.
Total hours		369		1984 hours.

¹ After we publish the final rule, we will prepare a standardized, streamlined memorandum of agreement in consultation with the National US&R Response System Advisory Committee and its Legal Issues Working Group. When completed, we will make a second Paperwork Reduction Act submission to OMB.

Estimated Times and Costs: The approximate annual salary of State and local staff who will complete the forms is \$35,000. The approximate hourly rate of pay is \$18.90 (\$35,000 divided by 1850 hours). The total cost to grantees is estimated to be \$37,498.

The cost to DHS is largely personnel salary costs to review and analyze the information collected on these forms—for all DHS grant programs, not just US&R grants, which is a significant portion of grants management annual work. We estimate that for the US&R program, DHS Headquarters would

expend approximately 672 hours on analysis, or an average of 24 hours per program. We estimate the cost to DHS to be \$14,112 (672 hours times \$21 per hour of staff work). Printing costs are minimal because the forms are available in electronic format.

The total annual estimated time and costs are 1984 hours and \$37,498 cost to applicants and \$14,112 cost to DHS. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or completing the forms. The new collection is required for sound grants management and compliance with OMB Circulars and DHS regulations.

FOR FURTHER INFORMATION CONTACT:

Contact Michael Tamillow, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Washington, DC 20472, telephone (202) 646-2549, facsimile (202) 646-4684, or e-mail mike.tamillow@dhs.gov for additional information. You may contact Muriel B. Anderson for copies of the proposed collection of information at (202) 646-2625 or (facsimile) (202) 646-3347, or e-mail informationcollections@dhs.gov.

Executive Order 13132 Federalism—Federalism Summary Impact Statement

Executive Order 13132 requires DHS to develop a process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” Such policies are defined in the Executive Order to include rules that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

We have analyzed this interim rule in accordance with the principles and criteria in the Executive Order and has determined that this interim rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule imposes no mandates on State or local governments; participation in the National US&R Response System is strictly voluntary. Moreover, one of the most significant objectives of this program is to build State and local US&R capability. The US&R program recognizes the primary role of State and local governments in responding to disasters and emergencies. Equipment and supplies purchased with Federal funds may be used to respond to in-state disasters and emergencies. The teams may only be deployed across State lines when released by their home State. The assistance these teams provide, like

other assistance under the Stafford Act, is only furnished when disaster or emergency needs exceed the combined State and local capabilities and the Governor requests the assistance. Therefore, we certify that this interim rule does not have federalism implications as defined in Executive Order 13132.

While this interim rule does not have federalism implications, this rule has been developed through a collaborative process with representatives of State and local governments. As noted above, the Legal Issues Working Group, a subgroup of the National US&R Response System Advisory Committee, developed the original draft of these regulations. The National US&R Response System presented a draft to DHS. The Legal Issues Working Group and the National US&R Response System Advisory Committee both comprised Federal, State and Local Government officials, as well as representatives of labor organizations, some of whose members serve on the US&R Task Forces.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. The rule is not a “major rule” within the meaning of that Act. It standardizes the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of the Department of Homeland Security, participating State emergency management agencies and local public safety agencies across the country.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have “significant adverse effects” on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This rule is subject to the information collection requirements of the Paperwork Reduction Act and OMB has assigned Control No. 1660-0025. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 208

Disaster assistance, Grant programs.
■ Accordingly, we add part 208 to title 44, chapter I of the Code of Federal Regulations, as follows:

PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Subpart A—General

Sec.

- 208.1 Purpose and scope of this part.
- 208.2 Definitions of terms used in this part.
- 208.3 Authority for the National US&R Response System.
- 208.4 Purpose for System.
- 208.5 Authority of the Director of the Response Division (Director).
- 208.6 System resource reports.
- 208.7 Enforcement.
- 208.8 Code of conduct.
- 208.9 Agreements between Sponsoring Agencies and Participating Agencies.
- 208.10 Other regulations.
- 208.11 Federal status of System Members.
- 208.12 Maximum Pay Rate Table.
- 208.13–208.20 [Reserved]

Subpart B—Preparedness Cooperative Agreements

- 208.21 Purpose.
- 208.22 Preparedness Cooperative Agreement process.
- 208.23 Allowable costs under Preparedness Cooperative Agreements.
- 208.24 Purchase and maintenance of items not listed on Equipment Cache List.
- 208.25 Obsolete equipment.
- 208.26 Accountability for use of funds.
- 208.27 Title to equipment.
- 208.28–208.30 [Reserved].

Subpart C—Response Cooperative Agreements

- 208.31 Purpose.
- 208.32 Definitions of terms used in this subpart.
- 208.33 Allowable costs.
- 208.34 Agreements between Sponsoring Agencies and others.
- 208.35 Reimbursement for Advisory.
- 208.36 Reimbursement for Alert.
- 208.37 Reimbursement for equipment and supply costs incurred during Activation.
- 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.
- 208.39 Reimbursement for personnel costs incurred during Activation.
- 208.40 Reimbursement of fringe benefit costs during Activation.
- 208.41 Administrative allowance.
- 208.42 Reimbursement for other administrative costs.
- 208.43 Rehabilitation.
- 208.44 Reimbursement for other costs.
- 208.45 Advance of funds.
- 208.46 Title to equipment.
- 208.47–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

- 208.51 General.
- 208.52 Reimbursement procedures.

- 208.53–208.59 [Reserved]
 208.60 Determination of claims.
 208.61 Payment of claims.
 208.62 Appeals.
 208.63 Request by DHS for supplemental information.
 208.64 Administrative and audit requirements.
 208.65 Mode of transmission.
 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.
 208.67–208.70 [Reserved]

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart A—General

§ 208.1 Purpose and scope of this part.

(a) *Purpose.* The purpose of this part is to prescribe policies and procedures pertaining to the Department of Homeland Security's (DHS) National Urban Search and Rescue Response System.

(b) *Scope.* This part applies to Sponsoring Agencies and other participants in the National Urban Search and Rescue Response System that have executed agreements governed by this part. Part 206 of this chapter does not apply to activities undertaken under this part, except as provided in §§ 208.5 and 208.10 of this part. This part does not apply to reimbursement under part 206, subpart H, of this chapter.

§ 208.2 Definitions of terms used in this part.

(a) *General.* Any capitalized word in this part is a defined term unless such capitalization results from the application of standard capitalization or style rules for Federal regulations. The following definitions have general applicability throughout this part:

Activated or *Activation* means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

Activation Order means the DHS communication placing a System resource under the direction, control, and funding of DHS.

Advisory means a DHS communication to System resources indicating that an event has occurred or DHS anticipates will occur that may require Alert or Activation of System resources.

Alert means the status of a System resource's readiness when triggered by an Alert Order indicating that DHS may Activate the System resource.

Alert Order means the DHS communication that places a System resource on Alert status.

Assistance Officer means the DHS employee who has legal authority to bind DHS by awarding and amending Cooperative Agreements.

Backfill means the personnel practice of temporarily replacing a person in his or her usual position with another person.

Cooperating Agency means a State or Local Government that has executed a Cooperative Agreement to provide Technical Specialists.

Cooperative Agreement means a legal instrument between DHS and a Sponsoring Agency or Cooperating Agency that provides funds to accomplish a public purpose and anticipates substantial Federal involvement during the performance of the contemplated activity.

Daily Cost Estimate means a Sponsoring Agency's estimate of Task Force personnel compensation, itemized fringe benefit rates and amounts including calculations, and Backfill expenditures for a 24-hour period of Activation.

Deputy Director means the Deputy Director of the Response Division, Emergency Preparedness and Response Directorate, Department of Homeland Security, or other person that the Director designates.

DHS means the Department of Homeland Security.

Director means the Director of the Response Division, Emergency Preparedness and Response Directorate, DHS.

Disaster Search Canine Team means a disaster search canine and handler who have successfully completed the written examination and demonstrated the performance skills required by the Disaster Search Canine Readiness Evaluation Process. A disaster search canine is a dog that has successfully completed the DHS Disaster Search Canine Readiness Evaluation criteria for Type II or both Type II and Type I.

Emergency means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Equipment Cache List means the DHS-issued list that defines:

(1) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and

(2) The maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with DHS funds.

Federal Excess Property means any Federal personal property under the control of a Federal agency that the agency head or a designee determines is not required for its needs or for the discharge of its responsibilities.

Federal Response Plan means the signed agreement among various Federal departments and agencies that provides a mechanism for coordinating delivery of Federal assistance and resources to augment efforts of State and Local Governments overwhelmed by a Major Disaster or Emergency, supports implementation of the Stafford Act, as well as individual agency statutory authorities, and supplements other Federal emergency operations plans developed to address specific hazards.

Joint Management Team or *JMT* means a multi-disciplinary group of National Disaster Medical System (NDMS), Urban Search and Rescue (US&R), and other specialists combined to provide operations, planning, logistics, finance and administrative support for US&R and NDMS resources, and to provide technical advice and assistance to States and Local Governments.

Local Government means any county, city, village, town, district, or other political subdivision of any State; any federally recognized Indian tribe or authorized tribal organization; and any Alaska Native village or organization.

Major Disaster means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, that in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, Local Governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Memorandum of Agreement (MOA) means the document signed by DHS, a Sponsoring Agency and its State that describes the relationship of the parties with respect to the National Urban Search & Rescue Response System.

Participating Agency means a State or Local Government, non-profit organization, or private organization

that has executed an agreement with a Sponsoring Agency to participate in the National US&R Response System.

Personnel Rehabilitation Period means the period allowed by DHS for a person's rehabilitation to normal conditions of living following an Activation.

Preparedness Cooperative Agreement means the agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency to develop and maintain System capabilities and operational readiness.

Program Directive means guidance and direction for action to ensure consistency and standardization across the National US&R Response System.

Program Manager means the individual, or his or her designee, within DHS who is responsible for day-to-day administration of the National US&R Response System.

Program Office means the organizational entity within DHS that is responsible for day-to-day administration of the National US&R Response System.

Response Cooperative Agreement means an agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency as a result of an Alert or Activation.

Sponsoring Agency means a State or Local Government that has executed an MOA with DHS to organize and administer a Task Force.

Stafford Act means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands.

Support Specialist means a person participating in the System who assists the Task Force with administrative or other support during mobilization, ground transportation and demobilization as directed.

System or National US&R Response System means the national US&R response capability administered by DHS.

System Member means any Task Force Member, JMT Member, Technical Specialist, Support Specialist or Disaster Search Canine Team.

Task Force means an integrated US&R organization of multi-disciplinary resources with common communications and a leader, organized

and administered by a Sponsoring Agency and meeting DHS standards.

Task Force Member means a person occupying a position on a Task Force.

Technical Specialist means a person participating in the System contributing technical knowledge and skill who may be placed on Alert or Activated as a single resource and not as a part of a JMT or a Task Force.

US&R means urban search and rescue, the process of searching for, extricating, and providing for the immediate medical stabilization of victims who are entrapped in collapsed structures.

(b) *Additional definitions.* Definitions for certain terms that apply only to individual subparts of this part are located in those subparts.

§ 208.3 Authority for the National US&R Response System.

(a) *Enabling legislation.* The Federal Emergency Management Agency established and operated the System under the authority of §§ 303, 306(a), 306(b), 403(a)(3)(B) and 621(c) of the Stafford Act, 42 U.S.C. 5144, 5149(a), 5149(b), 5170b(a)(3)(B) and 5197(c), respectively. Section 503 of the Homeland Security Act of 2002, 6 U.S.C. 313, transferred the functions of the Director of FEMA to the Secretary of Homeland Security. The President redelegated to the Secretary of Homeland Security in Executive Order 13286 those authorities of the President under the Stafford Act that had been delegated previously to the Director of FEMA under Executive Order 12148.

(b) *Implementing plan.* The National Response Plan identifies DHS as the primary Federal agency with responsibility for Emergency Support Function 9, Urban Search and Rescue.

§ 208.4 Purpose for System.

It is DHS policy to develop and provide a national system of standardized US&R resources to respond to Emergencies and Major Disasters that are beyond the capabilities of affected State and Local Governments.

§ 208.5 Authority of the Director of the Response Division (Director).

(a) *Participation in activities of the System.* The Director is responsible for determining participation in the System and any activity thereof, including but not limited to whether a System resource is operationally ready for Activation.

(b) *Standards for and measurement of System efficiency and effectiveness.* In addition to the authority provided in § 206.13 of this chapter, the Director may establish performance standards

and assess the efficiency and effectiveness of System resources.

§ 208.6 System resource reports.

(a) *Reports to Director.* The Director may request reports from any System resource relating to its activities as part of the System.

(b) *Reports to FEMA Regional Directors.* Any FEMA Regional Director may request through the Director reports from any System resource used within or based within the Regional Director's jurisdiction.

(c) *Audits, investigations, studies and evaluations.* DHS and the General Accounting Office may conduct audits, investigations, studies, and evaluations as necessary. Sponsoring Agencies, Participating Agencies and System Members are expected to cooperate fully in such audits, investigations, studies and evaluations.

§ 208.7 Enforcement.

(a) *Remedies for noncompliance.* In accordance with the provisions of 44 CFR 13.43, if a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member materially fails to comply with a term of a Cooperative Agreement, Memorandum of Agreement, System directive or other Program Directive, the Director may take one or more of the actions provided in 44 CFR 13.43(a)(1) through (5). Any such enforcement action taken by the Director will be subject to the hearings, appeals, and effects of suspension and termination provisions of 44 CFR 13.43(b) and (c).

(b) The enforcement remedies identified in this section, including suspension and termination, do not preclude a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member from being subject to "Debarment and Suspension" under E.O. 12549, as amended, in accordance with 44 CFR 13.43(d).

(c) *Other authority for sanctions.* Nothing in this section limits or precludes the application of other authority to impose civil or criminal sanctions, including 42 U.S.C. 5156.

§ 208.8 Code of conduct.

The Director will develop and implement a code of conduct for System Members acting under DHS's direction and control. Nothing in this section or the DHS code of conduct will limit the authority of a Sponsoring Agency, Participating Agency or Cooperating Agency to apply its own code of conduct to its System Members or employees. If the DHS code is more restrictive, it controls.

§ 208.9 Agreements between Sponsoring Agencies and Participating Agencies.

Every agreement between a Sponsoring Agency and a Participating Agency regarding the System must include a provision making this part applicable to the Participating Agency and its employees who engage in System activities.

§ 208.10 Other regulations.

The following provisions of title 44 CFR, Chapter I also apply to the program in this part:

(a) Section 206.9, which deals with the non-liability of DHS in certain circumstances.

(b) Section 206.11, which prescribes nondiscrimination in the provision of disaster assistance.

(c) Section 206.14, which deals with criminal and civil penalties.

(d) Section 206.15, which permits recovery of assistance by DHS.

§ 208.11 Federal status of System Members.

The Director will appoint all Activated System Members as temporary excepted Federal volunteers. The Director may appoint a System Member who participates in Alert activities as such a Federal volunteer. The Director may also appoint each System Member who participates in DHS-sanctioned preparedness activities as a temporary excepted Federal volunteer. DHS intends these appointments to secure protection for such volunteers under the Federal Employees Compensation Act and the Federal Tort Claims Act and do not intend to interfere with any preexisting employment relationship between a System Member and a Sponsoring Agency, Cooperating Agency or Participating Agency. System Members whom DHS appoints as temporary excepted Federal volunteers will not receive any compensation or employee benefit directly from the United States of America for their service, but will be compensated through their Sponsoring Agency.

§ 208.12 Maximum Pay Rate Table.

(a) *Purpose.* This section establishes the process for creating and updating the Maximum Pay Rate Table (Table), and the Table's use to reimburse Affiliated Personnel (Task Force Physicians, Task Force Engineers, and Canine Handlers) and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. Section 208.32 defines the "Maximum Pay Rate Table" as "the DHS-issued table that identifies the maximum pay rates for

selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency." In that same section, the term "Affiliated Personnel" is defined as "individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers."

(b) *Scope of this section.* (1) The Maximum Pay Rate Table applies to those individuals who are not normally employed by a Sponsoring Agency or Participating Agency, or whose affiliation with a Sponsoring Agency or Participating Agency is as a volunteer; that is, an individual whom the Sponsoring Agency or Participating Agency does not normally compensate in any way, at any rate.

(2) The Table also applies to Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(c) *Method for determining maximum pay rates.* (1) DHS uses the United States Office of Personnel Management's salary rates, computed under 5 U.S.C. 5504, as the basis for the maximum pay rate schedule. DHS considers System members' experience and sets maximum pay rates at the maximum grade, middle step for each position, which demonstrates an experience level of five years.

(2) The Office of Personnel Management (OPM) publishes salary and locality pay schedules each calendar year.

(i) *Physicians.* DHS uses the latest Special Salary Rate Table Number 0290 for Medical Officers (Clinical) Worldwide for physicians. The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/SSR/HTML/0290.asp>.

(ii) *Engineers and Canine Handlers.* DHS uses the latest General Schedule pay scale for both positions. Both specialties are compared to the General Schedule pay scale to ensure parity with like specialties on a task force (canine handlers are equated with rescue specialists). The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/html/gs.asp>.

(iii) *Locality Pay.* To determine adjustments for locality pay DHS uses the latest locality pay areas (including the "Rest of U.S." area) established by OPM. The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/locdef.asp>.

(3) *Review and update.* DHS will review and update the Table periodically, at least annually. The comments of Sponsoring and Participating Agencies and their experience with the Table will be considered and evaluated in the course of the reviews.

(4) *Initial rates and subsequent revisions.* DHS will publish the initial maximum pay rate table in the **Federal Register** as a notice with request for comments. Subsequent revisions will be made to the pay rate table as OPM changes salary rates as described in this section. When subsequent revisions are made to the maximum pay rate table DHS will publish the new maximum pay rate table in the **Federal Register**. The rates will be effective for the latest year indicated by OPM.¹

(d) *Application of the maximum pay rate table—(1) Applicability.* The Maximum Pay Rate Table sets forth maximum rates for which DHS will reimburse the Sponsoring Agency for compensation paid to Activated Affiliated Personnel and as Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(2) *Higher rates.* The Sponsoring Agency may choose to pay Affiliated Personnel at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Maximum Pay Rate Table. Likewise, the Sponsoring Agency may choose to enter into a Participating Agency agreement with the individual's employer, rather than use the individual as an Affiliated Personnel, in which case the Maximum Pay Rate Table would not apply.

(3) *Compensation for Sponsoring Agency employees serving as Affiliated Personnel.* An employee of a Sponsoring Agency serving on a Task Force in a capacity other than his or her normal job, e.g., a fire department dispatcher affiliated with the Task Force as a canine search specialist, as an Affiliated Personnel, would not necessarily be subject to the Maximum Pay Rate Table for reimbursement for salary and benefits for that individual. However, Sponsoring Agencies may use the rates in the Maximum Pay Rate Table as a guide for establishing compensation levels for such individuals.

(4) *Backfill expenses for Affiliated Personnel under § 208.39(g).* (i) The only way that DHS can reimburse for Backfill costs incurred for Affiliated Personnel is through Participating

¹ In some years the latest year may not be the current calendar year. For instance, OPM did not change its pay rates for calendar year 2004, and the 2003 schedules apply.

Agencies. If reimbursement for Backfill expenses is needed for Affiliated Personnel, DHS encourages them to urge their employers or professional association to seek Participating Agency status.

(ii) *Private, for-profit organizations.* Participating Agency status is available to private, for-profit organizations, e.g., HMOs or medical or engineering professional associations, under the revised definition of "Participating Agency" set forth in this Interim rule. (See Definitions, § 208.2, *Participating Agency*, and § 208.32, *Maximum Pay Rate Table*). When a for-profit Participating Agency must backfill an Activated System Member's position we will compensate that Participating Agency up to the maximum rate provided in the Table.

(iii) *Compensation costs.* DHS will reimburse for-profit organizations, for purposes of reimbursement and Backfill, for the System Member's actual compensation or the actual compensation of the individual who Backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40), but will not reimburse for billable or other rates that might be charged for services rendered to commercial clients or patients.

§§ 208.13—208.20 [Reserved]

Subpart B—Preparedness Cooperative Agreements

§ 208.21 Purpose.

Subpart B of this part provides guidance on the administration of Preparedness Cooperative Agreements.

§ 208.22 Preparedness Cooperative Agreement process.

(a) *Application.* To obtain DHS funding for an award or amendment of a Preparedness Cooperative Agreement, the Sponsoring Agency must submit an application. Standard form SF-424 "Application for Federal Assistance" generally will be used. However, the application must be in a form that the Assistance Officer specifies.

(b) *Award.* DHS will award a Preparedness Cooperative Agreement to each Sponsoring Agency to provide Federal funding to develop and maintain System resource capabilities and operational readiness. For the purposes of the Preparedness Cooperative Agreement, the Sponsoring Agency will be considered the "recipient."

(c) *Amendment—(1) Procedure.* Absent special circumstances, DHS will fund and amend Preparedness Cooperative Agreements on an annual basis. Before amendment, the Assistance

Officer will issue a call for Cooperative Agreement amendment applications. The Assistance Officer will specify required application forms and supporting documentation to be submitted with the application.

(2) *Period of performance.* Absent special circumstances, the period of performance for Preparedness Cooperative Agreements will be 1 year from the date of award. The Assistance Officer may allow for an alternate period of performance with the approval of the Director.

(3) *Assistance Officer.* The Assistance Officer is the only individual authorized to award or modify a Preparedness Cooperative Agreement.

(d) *Award amounts.* The Director will determine award amounts on an annual basis. A Task Force is eligible for an annual award only if the Program Manager receives and approves the Task Force's current-year Daily Cost Estimate.

(e) *DHS priorities.* The Director will establish overall priorities for the use of Preparedness Cooperative Agreement funds taking into consideration the results of readiness evaluations and actual Activations, overall priorities of DHS, and other factors, as appropriate.

(f) *Cost sharing.* The Director may subject Preparedness Cooperative Agreement awards to cost sharing provisions. In the call for Preparedness Cooperative Agreement amendment applications, the Assistance Officer must inform Sponsoring Agencies about any cost sharing obligations.

(g) *Sponsoring Agency priorities.* The Sponsoring Agency should indicate its spending priorities in the application. The Program Manager will review these priorities and will make recommendations to the Assistance Officer for negotiating the final agreement.

(h) *Responsibility to maintain integrity of the equipment cache.* The Sponsoring Agency is responsible to maintain the integrity of the equipment cache, including but not limited to, maintenance of the cache, replacement of equipment or supplies expended in training, activations, or local use of the cache, and timely availability of the cache for Task Force Activations.

§ 208.23 Allowable costs under Preparedness Cooperative Agreements.

System Members may spend Federal funds that DHS provides under any Preparedness Cooperative Agreement and any required matching funds under 44 CFR 13.22 and this section to pay reasonable, allowable, necessary and allocable costs that directly support System activities, including the following:

- (a) Administration, including:
 - (1) Management and administration of day-to-day System activities such as personnel compensation and benefits relating to System maintenance and development, record keeping, inventory of equipment, and correspondence;
 - (2) Travel to and from System activities, meetings, conferences, training, drills and exercises;
 - (3) Tests and examinations, including vaccinations, immunizations and other tests that are not normally required or provided in the course of a System Member's employment, and that DHS requires to meet its standards.
- (b) Training:
 - (1) Development and delivery of, and participation in, System-related training courses, exercises, and drills;
 - (2) Construction, maintenance, lease or purchase of System-related training facilities or materials;
 - (3) Personnel compensation expenses, including overtime and other related expenses associated with System-related training, exercises, or drills;
 - (4) System-required evaluations and certifications other than the certifications that DHS requires System Members to possess at the time of entry into the System. For instance, DHS will not pay for a medical school degree, paramedic certification or recertification, civil engineering license, etc.
- (c) Equipment:
 - (1) Procurement of equipment and supplies specifically identified on the then-current DHS-approved Equipment Cache List;
 - (2) Maintenance and repair of equipment included on the current Equipment Cache List;
 - (3) Maintenance and repair of equipment acquired with DHS approval through the Federal Excess Property program, except as provided in § 208.25 of this part;
 - (4) Purchase, construction, maintenance or lease of storage facilities and associated equipment for System equipment and supplies.
- (d) Disaster search canine expenses limited to:
 - (1) Procurement for use as a System resource;
 - (2) Training and certification expenses;
 - (3) Veterinary care.
- (e) Management and administrative costs, actually incurred but not otherwise specified in this section that directly support the Sponsoring Agency's US&R capability, provided that such costs do not exceed 7.5 percent of the award/amendment amount.

§ 208.24 Purchase and maintenance of items not listed on Equipment Cache List.

(a) Requests for purchase or maintenance of equipment and supplies not appearing on the Equipment Cache List, or that exceed the number specified in the Equipment Cache List, must be made in writing to the Program Manager. No Federal funds provided under any Preparedness Cooperative Agreement may be expended to purchase or maintain any equipment or supply item unless:

(1) The equipment and supplies directly support the Sponsoring Agency's US&R capability;

(2) The Program Manager approves the expenditure and gives written notice of his or her approval to the Sponsoring Agency before the Sponsoring Agency purchases the equipment or supply item.

(b) Maintenance of items approved for purchase under this section is eligible for reimbursement, except as provided in § 208.26 of this subpart.

§ 208.25 Obsolete equipment.

(a) The Director will periodically identify obsolete items on the Equipment Cache List and provide such information to Sponsoring Agencies.

(b) Neither funds that DHS provides nor matching funds required under a Preparedness Cooperative Agreement may be used to maintain or repair items that DHS has identified as obsolete.

§ 208.26 Accountability for use of funds.

The Sponsoring Agency is accountable for the use of funds as provided under the Preparedness Cooperative Agreement, including financial reporting and retention and access requirements according to 44 CFR 13.41 and 13.42.

§ 208.27 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Preparedness Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 44 CFR 13.32(g), for example, when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

§§ 208.28–208.30 [Reserved]**Subpart C—Response Cooperative Agreements****§ 208.31 Purpose.**

Subpart C of this part provides guidance on the administration of Response Cooperative Agreements.

§ 208.32 Definitions of terms used in this subpart.

Affiliated Personnel means individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.

Demobilization Order means a DHS communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

Exempt means any System Member who is exempt from the requirements of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, pertaining to overtime compensation and other labor standards.

Maximum Pay Rate Table means the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. The Maximum Pay Rate Table does not apply to a System member whom a Sponsoring Agency or Participating Agency employs.

Mobilization means the process of assembling equipment and personnel in response to an Alert or Activation.

Non-Exempt means any System Member who is covered by 29 U.S.C. 201 *et seq.*

Rehabilitation means the process of returning personnel and equipment to a pre-incident state of readiness after DHS terminates an Activation.

§ 208.33 Allowable costs.

(a) *Cost neutrality.* DHS policy is that an Alert or Activation should be as cost neutral as possible to Sponsoring Agencies and Participating Agencies. To make an Alert or Activation cost-neutral, DHS will reimburse under this subpart all reasonable, allowable, necessary and allocable costs that a Sponsoring Agency or Participating Agency incurs during the Alert or Activation.

(b) *Actual costs.* Notwithstanding any other provision of this chapter, DHS will not reimburse a Sponsoring Agency or Participating Agency for any costs greater than those that the Sponsoring Agency or Participating Agency actually incurs during an Alert, Activation.

(c) *Normal or predetermined practices.* Consistent with Office of Management and Budget (OMB) Circulars A–21, A–87, A–102 and A–110 (2 CFR part 215), as applicable, Sponsoring Agencies and Participating Agencies must adhere to their own normal and predetermined practices

and policies of general application when requesting reimbursement from DHS except as it sets out in this subpart.

(d) *Indirect costs.* Indirect costs beyond the administrative and management costs allowance established by § 208.41 of this part are not allowable.

§ 208.34 Agreements between Sponsoring Agencies and others.

Sponsoring Agencies are responsible for executing such agreements with Participating Agencies and Affiliated Personnel as may be necessary to implement the Sponsoring Agency's Response Cooperative Agreement with DHS. Those agreements must identify established hourly or daily rates of pay for System Members. The hourly or daily rates of pay for Affiliated Personnel must be in accordance with, and must not exceed, the maximum pay rates contained in the then-current Maximum Pay Rate Table.

§ 208.35 Reimbursement for Advisory.

DHS will not reimburse costs incurred during an Advisory.

§ 208.36 Reimbursement for Alert.

(a) *Allowable costs.* DHS will reimburse costs incurred during an Alert, up to the dollar limit specified in the Alert Order, for the following activities:

(1) Personnel costs, including Backfill, incurred to prepare for Activation.

(2) Transportation costs relating to hiring, leasing, or renting vehicles and drivers.

(3) The administrative allowance provided in § 208.41 of this part.

(4) Food and beverages for Task Force Members and Support Specialists when DHS does not provide meals during the Alert. DHS will limit food and beverage reimbursement to the amount of the then-current Federal meals daily allowance published in the **Federal Register** for the locality where such food and beverages were provided, multiplied by the number of personnel who received them.

(b) *Calculation of Alert Order dollar limit.* The Alert Order dollar limit will equal:

(1) An allowance of 10 percent of the Task Force's Daily Cost Estimate; and

(2) A supplemental allowance of 1 percent of the Task Force's Daily Cost Estimate for each 24-hour period beyond the first 72 hours of Alert.

(c) *Non-allowable costs.* DHS will not reimburse costs incurred or relating to the leasing, hiring or chartering of aircraft or the purchase of any equipment, aircraft, or vehicles.

§ 208.37 Reimbursement for equipment and supply costs incurred during Activation.

(a) *Allowable costs.* DHS will reimburse costs incurred for the emergency procurement of equipment and supplies in the number, type, and up to the cost specified in the current approved Equipment Cache List, and up to the aggregate dollar limit specified in the Activation Order. The Director may determine emergency procurement dollar limits, taking into account previous Activation history, available funding, the extent and nature of the incident, and the current state of Task Force readiness.

(b) *Non-Allowable costs.* DHS will not reimburse costs incurred for items that are not listed on the Equipment Cache List; for items purchased greater than the cost or quantity identified in the Equipment Cache List; or for any purchase of non-expendable items that duplicate a previous purchase under a Preparedness or Response Cooperative Agreement.

§ 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.

With the exception of emergency procurement authorized in the Activation Order, and replacement of consumable items provided for in § 208.43(a)(2) of this subpart, DHS will not reimburse costs incurred for re-supply and logistical support during Activation. Re-supply and logistical support of Task Forces needed during

Activation are the responsibility of the Joint Management Team.

§ 208.39 Reimbursement for personnel costs incurred during Activation.

(a) *Compensation.* DHS will reimburse the Sponsoring Agency for costs incurred for the compensation of each Activated System Member during Activation. Reimbursement of compensation costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. The provisions of § 208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* DHS will reimburse Sponsoring Agencies for costs incurred by Non-Exempt System Members in accordance with 29 U.S.C. 207(a) of the Fair Labor Standards Act, without regard to the public safety exemption contained in 29 U.S.C. 207(k). In other words, DHS will reimburse Sponsoring Agencies on an overtime basis for any hours worked by Non-Exempt System Members greater than 40 hours during a regular workweek.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. DHS will reimburse the Sponsoring Agency for salary and overtime costs incurred in

compensating System Members for meal periods and regularly scheduled sleep periods during Activation. Activated System Members are considered “on-duty” and must be available for immediate response at all times during Activation.

(d) *Regular rate.* The regular rate for purposes of calculating allowable salary and overtime costs is the amount determined in accordance with § 208.39(e)(1) through (3) of this subpart.

(e) *Procedures for calculating compensation during Activation.* A Sponsoring Agency or Participating Agency must:

(1) Convert the base hourly wage of any Non-Exempt System Member regularly paid under 29 U.S.C. 207(k) to its equivalent for a 40-hour work week;

(2) Convert the annual salary of any salaried Non-Exempt System Member to its hourly equivalent for a 40-hour workweek;

(3) Calculate the daily compensation of Exempt System Members based on their current annual salary, exclusive of fringe benefits;

(4) Calculate the total number of hours worked by each System Member to be included in the Sponsoring Agency’s request for reimbursement; and

(5) Submit a request for reimbursement under § 208.52 of this part according to the following table:

If the Sponsoring Agency or Participating Agency * * *	And the Sponsoring Agency or Participating Agency * * *	Then the following compensation costs are allowable:
(i) Customarily and usually compensates Exempt System Members by paying a salary, but not overtime,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Exempt System members.	The daily compensation equivalent calculated under §208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation.
(ii) Customarily and usually compensates Exempt System Members by paying a salary but not overtime	Customarily and usually awards compensatory time or other overtime substitute for Exempt System Members for hours worked above a predetermined hours threshold (for example, the Sponsoring Agency customarily and usually grants compensatory time for all hours worked above 60 in a given week).	The daily compensation equivalent calculated under §208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the dollar value at the time of accrual of the compensatory time or other overtime substitute for each Activated Exempt System Member based on the duration of the Activation.
(iii) Customarily and usually compensates Exempt System Members by paying a salary and overtime,	Customarily and usually calculates overtime for Exempt System Members by paying a predetermined overtime payment for each hour worked above a predetermined hours threshold,.	The daily compensation equivalent calculated under §208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the predetermined overtime payment for each hour during the Activation above the previously determined hours threshold for each Activated Exempt System Member.
(iv) Customarily and usually compensates Non-Exempt System Members by paying overtime after 40 hours per week,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System members,.	For each seven-day period during the Activation, the hourly wage of each Activated Non-Exempt System Member for the first 40 hours AND the overtime payment for each Activated Non-Exempt System Member for every hour over 40.

If the Sponsoring Agency or Participating Agency * * *	And the Sponsoring Agency or Participating Agency * * *	Then the following compensation costs are allowable:
(v) Customarily and usually compensates Non-Exempt System Members according to a compensation plan established under 29 U.S.C. 207(k),	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System Members..	For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member calculated under §208.39(e)(1) of this part for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under §208.39(e)(1) of this part for every hour over 40.
(vi) Activates Personnel, who are customarily and usually paid an hourly wage according to the Maximum Pay Rate Table,	For each seven-day period during the Affiliated Activation, the hourly wage for each Activated Affiliated Personnel for the first 40 hours and one and one-half times the hourly wage for each Activated Affiliated Personnel for every hour over 40.
(vii) Activates Affiliated Personnel who are customarily and usually paid a daily compensation rate according to the Maximum Pay Rate Table,	The daily compensation rate for each Activated Affiliated Personnel for each full or partial day during the Activation.

(f) *Reimbursement of additional salary and overtime costs.* DHS will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Agency as a result of the temporary conversion of a Non-Exempt System Member normally compensated under 29 U.S.C. 207(k) to a 40-hour work week under 29 U.S.C. 207(a).

(g) *Reimbursement for Backfill costs upon Activation.* DHS will reimburse the cost to Backfill System Members. Backfill costs consist of the expenses generated by filling the position in

which the Activated System Member should have been working. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of Activated System Members from the total costs (non-overtime and overtime compensation, including fringe benefits) paid to Backfill the Activated System Members. Backfill reimbursement is available only for those positions that are normally Backfilled by the Sponsoring Agency or Participating Agency during Activation.

Employees exempt under the Fair Labor Standards Act (FLSA) not normally Backfilled by the Sponsoring Agency or Participating Agency are not eligible for Backfill during Activation.

§208.40 Reimbursement of fringe benefit costs during Activation.

(a) Except as specified in §208.40 (c) of this subpart, DHS will reimburse the Sponsoring Agency for fringe benefit costs incurred during Activation according to the following table:

If the Sponsoring Agency or Participating Agency * * *	Then the Sponsoring Agency or Participating Agency must * * *	Example
(1) Incurs a fringe benefit cost based on the number of base hours worked by a System Member,	Bill DHS for a pro-rata share of the premium based on the number of base hours worked during Activation.	The City Fire Department incurs a premium of 3 percent for dental coverage based on the number of base hours worked in a week (53 hours). The City should bill DHS an additional 3 percent of the firefighter's converted compensation for the first 40 hours Activation.
(2) Incurs a fringe benefit cost based on the number of hours a System Member actually worked (base hours and overtime),	Bill DHS for a pro-rata share of the premium based on the number of hours each System Member worked during Activation.	The City Fire Department pays a premium of 12 percent for retirement based on the number of hours worked by a firefighter. The City should bill DHS an additional 12 percent of the firefighter's total compensation during Activation.
(3) Incurs a fringe benefit cost on a yearly basis based on the number of people employed full-time during the year,	Bill DHS for a pro-rata share of those fringe benefit costs based on the number of non-overtime hours worked during Activation by System Members employed full time.	The City Fire Department pays workers compensation premiums into the City risk fund for the following year, based on the number of full-time firefighters employed during the current year. The City should bill DHS for workers compensation premium costs by multiplying the hourly fringe benefit rate or amount by the number of non-overtime hours worked during Activation by full time firefighters who are System Members.

(b) *Differential pay.* DHS will reimburse the Sponsoring Agency for direct costs incurred because of any separate differential compensation paid for work performed during an

Activation including, but not limited to, differentials paid for holidays, night work, hazardous duty, or other paid fringe benefits, provided such differentials are not otherwise

reimbursed under paragraph (a) of this section. A detailed explanation of the differential payment for which the Sponsoring Agency seeks reimbursement must accompany any

request for reimbursement under this section together with identification of every fringe benefit sought under §208.40(a) of this part and the method used to calculate each such payment and the reimbursement sought from DHS.

(c) DHS will not reimburse the Sponsoring Agency for fringe benefit costs for Affiliated Personnel.

§ 208.41 Administrative allowance.

(a) The administrative allowance is intended to defray costs of the following activities, to the extent provided in paragraph (b) of this section:

- (1) Collecting expenditure information from Sponsoring Agencies and Participating Agencies;
- (2) Compiling and summarizing cost records and reimbursement claims;
- (3) Duplicating cost records and reimbursement claims; and
- (4) Submitting reimbursement claims, including mailing, transmittal, and related costs.

(b) The administrative allowance will be equal to the following:

- (1) If total allowable costs are less than \$100,000, 3 percent of total allowable costs included in the reimbursement claim;
- (2) If total allowable costs are \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of costs included in the reimbursement claim greater than \$100,000;
- (3) If total allowable costs are \$1,000,000 or more, \$21,000 plus 1 percent of costs included in the reimbursement claim greater than \$1,000,000.

§ 208.42 Reimbursement for other administrative costs.

Costs incurred for conducting after-action meetings and preparing after-action reports must be billed as direct costs in accordance with DHS administrative policy.

§ 208.43 Rehabilitation.

DHS will reimburse costs incurred to return System equipment and personnel to a state of readiness following Activation as provided in this section.

(a) *Costs for Equipment Cache List items*—(1) *Non-consumable items*. DHS will reimburse costs incurred to repair or replace any non-consumable item on the Equipment Cache List that was lost, damaged, destroyed, or donated at DHS direction to another entity, during Activation. For each such item, the Sponsoring Agency must document, in writing, the circumstances of the loss, damage, destruction, or donation.

(2) *Consumable items*. DHS will reimburse costs incurred to replace any

consumable item on the Equipment Cache List that was consumed during Activation.

(3) *Personnel costs associated with equipment cache rehabilitation*. DHS will reimburse costs incurred for the compensation, including benefits, payable for actual time worked by each person engaged in rehabilitating the equipment cache following Activation, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this part, up to the number of hours specified in the Demobilization Order. Fringe benefits are reimbursed under the provisions of § 208.40 of this part.

(b) *Costs for personnel rehabilitation*. DHS will reimburse costs incurred for the compensation, including benefits and Backfill, of each Activated System Member regularly scheduled to work during the rehabilitation period specified in the Demobilization Order, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this part.

(c) *Other allowable costs*—(1) *Local transportation*. DHS will reimburse costs incurred for transporting Task Force Members from the point of assembly to the point of departure and from the point of return to the location where they are released from duty. DHS will also reimburse transportation costs incurred for assembling and moving the equipment cache from its usual place(s) of storage to the point of departure, and from the point of return to its usual place(s) of storage. Such reimbursement will include costs to return the means of transportation to its point of origin.

(2) *Ground transportation*. When DHS orders a Sponsoring Agency to move its Task Force Members and equipment cache by ground transportation, DHS will reimburse costs incurred for such transportation, including but not limited to charges for contract carriers, rented vehicles, contract vehicle operators, fleet vehicles, fuel and associated transportation expenses. The Director has authority to issue schedules of maximum hourly or per mile reimbursement rates for fleet and contract vehicles.

(3) *Food and beverages*. DHS will reimburse expenditures for food and beverages for Activated Task Force Members and Support Specialists when the Federal government does not provide meals during Activation. Reimbursement of food and beverage costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the

Activation or traveling to or from locations at which they were actively supporting the Activation. Food and beverage reimbursement will be limited to the amount of the then-current Federal meals and incidental expenses daily allowance published in the **Federal Register** for the locality where such food and beverages were provided, multiplied by the number of personnel who received the same.

§ 208.44 Reimbursement for other costs.

(a) Except as allowed under paragraph (b) of this section, DHS will not reimburse other costs incurred preceding, during or upon the conclusion of an Activation unless, before making the expenditure, the Sponsoring Agency has requested, in writing, permission for a specific expenditure and has received written permission from the Program Manager or his or her designee to make such expenditure.

(b) At the discretion of the Program Manager or his or her designee, a request for approval of costs presented after the costs were incurred must be in writing and establish that:

- (1) The expenditure was essential to the Activation and was reasonable;
- (2) Advance written approval by the Program Manager was not feasible; and
- (3) Advance verbal approval by the Program Manager had been requested and was given.

§ 208.45 Advance of funds.

At the time of Activation of a Task Force, the Task Force will develop the documentation necessary to request an advance of funds be paid to such Task Force's Sponsoring Agency. Upon approval, DHS will submit the documentation to the Assistance Officer and will request an advance of funds up to 75 percent of the estimated personnel costs for the Activation. The estimated personnel costs will include the salaries, benefits, and Backfill costs for Task Force Members and an estimate of the salaries, benefits and Backfill costs required for equipment cache rehabilitation. The advance of funds will not include any costs for equipment purchase.

§ 208.46 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Response Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 44 CFR 13.32(g), when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its

obligations under the Memorandum of Agreement.

§§ 208.47–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

§ 208.51 General.

(a) *Purpose.* This subpart identifies the procedures that Sponsoring Agencies must use to request reimbursement from DHS for costs incurred under Response Cooperative Agreements.

(b) *Policy.* It is DHS policy to reimburse Sponsoring Agencies as expeditiously as possible consistent with Federal laws and regulations.

§ 208.52 Reimbursement procedures.

(a) *General.* A Sponsoring Agency must present a claim for reimbursement to DHS in such manner as the Director specifies.

(b) *Time for submission.* (1) Claims for reimbursement must be submitted within 90 days after the end of the Personnel Rehabilitation Period specified in the Demobilization Order.

(2) The Director may extend and specify the time limitation in paragraph (b)(1) of this section when the Sponsoring Agency justifies and requests the extension in writing.

§§ 208.53–208.59 [Reserved]

§ 208.60 Determination of claims.

When DHS receives a reviewable claim for reimbursement, DHS will review the claim to determine whether and to what extent reimbursement is allowable. Except as provided in § 208.63 of this part, DHS will complete its review and give written notice to the Sponsoring Agency of its determination within 90 days after the date DHS receives the claim. If DHS determines that any item of cost is not eligible for reimbursement, its notice of determination will specify the grounds on which DHS disallowed reimbursement.

§ 208.61 Payment of claims.

DHS will reimburse all allowable costs for which a Sponsoring Agency requests reimbursement within 30 days after DHS determines that reimbursement is allowable, in whole or in part, at any stage of the reimbursement and appeal processes identified in this subpart.

§ 208.62 Appeals.

(a) *Initial appeal.* The Sponsoring Agency may appeal to the Program

Manager any determination made under § 208.60 of this part to disallow reimbursement of an item of cost:

(1) The appeal must be in writing and submitted within 60 days after receipt of DHS's written notice of disallowance under § 208.60 of this part.

(2) The appeal must contain legal and factual justification for the Sponsoring Agency's contention that the cost is allowable.

(3) Within 90 days after DHS receives an appeal, the Program Manager will review the information submitted, make such additional investigations as necessary, make a determination on the appeal, and submit written notice of the determination of the appeal to the Sponsoring Agency.

(b) *Final appeal.* (1) If the Program Manager denies the initial appeal, in whole or in part, the Sponsoring Agency may submit a final appeal to the Deputy Director. The appeal must be made in writing and must be submitted not later than 60 days after receipt of written notice of DHS's determination of the initial appeal.

(2) Within 90 days following the receipt of a final appeal, the Deputy Director will render a determination and notify the Sponsoring Agency, in writing, of the final disposition of the appeal.

(c) *Failure to file timely appeal.* If the Sponsoring Agency does not file an appeal within the time periods specified in this section, DHS will deem that the Sponsoring Agency has waived its right to appeal any decision that could have been the subject of an appeal.

§ 208.63 Request by DHS for supplemental information.

(a) At any stage of the reimbursement and appeal processes identified in this subpart, DHS may request the Sponsoring Agency to provide supplemental information that DHS considers necessary to determine either a claim for reimbursement or an appeal. The Sponsoring Agency must exercise its best efforts to provide the supplemental information and must submit to DHS a written response that includes such supplemental information as the Sponsoring Agency is able to provide within 30 days after receiving DHS's request.

(b) If DHS makes a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which its determination of the claim or appeal is to be made will be extended by 30 days. However, without the

consent of the Sponsoring Agency, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

§ 208.64 Administrative and audit requirements.

(a) *Non-Federal audit.* For Sponsoring Agencies and States, requirements for non-Federal audit are contained in 44 CFR 13.26, in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

(b) *Federal audit.* DHS or the General Accounting Office may elect to conduct a Federal audit of any payment made to a Sponsoring Agency or State.

§ 208.65 Mode of transmission.

When sending all submissions, determinations, and requests for supplemental information under this subpart, all parties must use a means of delivery that permits both the sender and addressee to verify the dates of delivery.

§ 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.

(a) Upon written request by the Sponsoring Agency DHS will reopen the time period for submission of a request for reimbursement after the Sponsoring Agency has submitted its request for reimbursement, if:

(1) The salary or wage rate applicable to the period of an Activation is retroactively changed due to the execution of a collective bargaining agreement, or due to the adoption of a generally applicable State or local law, ordinance or wage order or a cost-of-living adjustment;

(2) The Sponsoring Agency or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Director determines that other extenuating circumstances existed that prevented the Sponsoring Agency from including the adjustment of costs in its original submission.

(c) The Sponsoring Agency must notify DHS as early as practicable that it anticipates such a request.

§§ 208.67–208.70 [Reserved]

Dated: February 3, 2005.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–3192 Filed 2–23–05; 8:45 am]

BILLING CODE 9110–69–P



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: 68th Avenue and Utica Street Project – Landscape Change Order

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract change order with Premier Paving, Inc., the general contractor, in an amount not-to-exceed \$46,000 for the installation of landscaping and irrigation improvements associated with the 68th Avenue and Utica Street Roadway Reconstruction Project; authorize the payment of \$8,500 for the irrigation tap fee; and authorize a landscape contingency in the amount of \$4,000.

Summary Statement

- The original bid for this project was very favorable, which allows the City to consider the addition of landscaping and irrigation improvements along the west side of Utica Street abutting the Hidden Lake Subdivision. This formal landscaping would enhance the aesthetics of the area and, along with the installation of curb, gutter and sidewalk, would prevent motorists from parking on the west side of Utica Street, which has been a concern of the Hidden Lake residents in the past.
- City staff presented a proposal to the Hidden Lake Subdivision Homeowners Association (HOA) in which the City would pay for the installation of the landscaping and irrigation along the west side of Utica Street with the stipulation that the HOA would maintain and pay for the watering of this landscaping in perpetuity once the installation is completed. The HOA has agreed with these terms.
- An Intergovernmental Agreement (IGA) between the City and School District 50 required a payment to the City of \$1.2M with the condition that this money could only be used for the 68th Avenue and Utica Street project and the Bradburn Boulevard and 72nd Avenue realignment project. The expenditure of \$46,000 for the proposed landscape improvements would still provide approximately \$225,000 of remaining funds for the design of the Bradburn Boulevard and 72nd Avenue realignment project.
- The general contractor for the 68th Avenue and Utica Street project, Premier Paving, Inc., has submitted a cost proposal for this landscaping and irrigation change order in an amount not-to-exceed \$46,000. This cost proposal is the lowest of three bids that Premier Paving secured from landscaping subcontractors.
- This change order exceeds 5% of the overall construction contract amount and therefore requires City Council approval.

Expenditure Required: \$58,500

Source of Funds: General Capital Improvement Fund

Policy Issue

Should the City execute a change order with Premier Paving for the installation of landscaping and an irrigation system abutting the Hidden Lake Subdivision along the west side of Utica Street?

Alternative

Council could decide not to approve this change order and require that the area abutting Hidden Lake Subdivision be planted with native seed as outlined in the original project scope. Staff recommends the approval of the change order to install a more formal landscape treatment because the price is reasonable, the Hidden Lake HOA will maintain the landscaping and irrigation, the landscaping will improve the aesthetics of the area and the landscaping will help prevent motorist from parking along the west side of Utica Street.

Background Information

The improvements to 68th Avenue between Lowell Boulevard and Utica Street and the widening of Utica Street between 68th Avenue and 70th Avenue are important due to the near completion of the new Westminster High School that will increase traffic on these streets when the school opens in August 2010. The construction of this project is a City obligation identified in the IGA between School District 50 and the City. The widening of 68th Avenue between the east boundary of the Westminster High School property and Lowell Boulevard is a project that was identified for rehabilitation as part of the City's maintenance program funded in the Street Division's operating budget. This roadway project will improve the overall transportation system of the area and add to the beauty of the new Westminster High School and surrounding neighborhood. The proposed landscape improvements will add the finishing touch to this roadway improvement project.

On April 26, 2010, Council authorized a construction contract with Premier Paving, Inc. for the widening and reconstruction of 68th Avenue and Utica Street, and that construction is currently underway. The bid submitted by Premier Paving was significantly less than anticipated (approximately \$250,000 less) which allows Council to consider the installation of a landscape and irrigation system along the Hidden Lake Subdivision boundary.

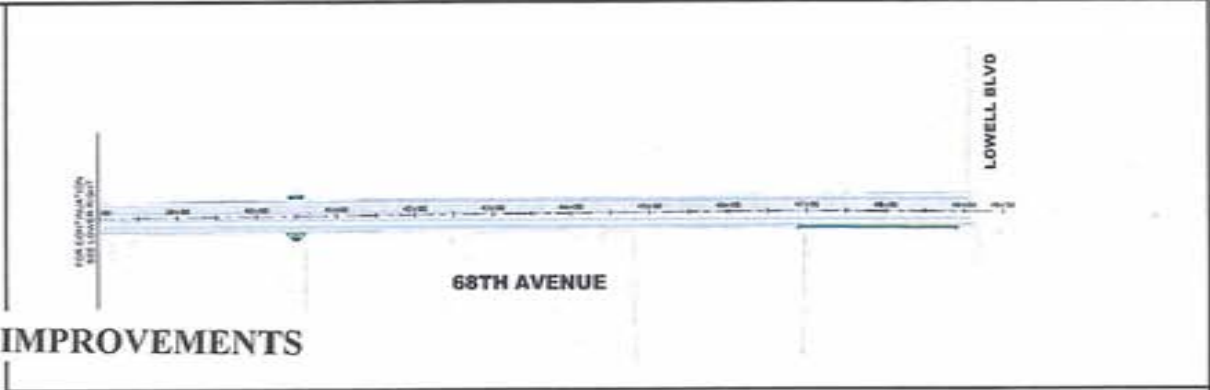
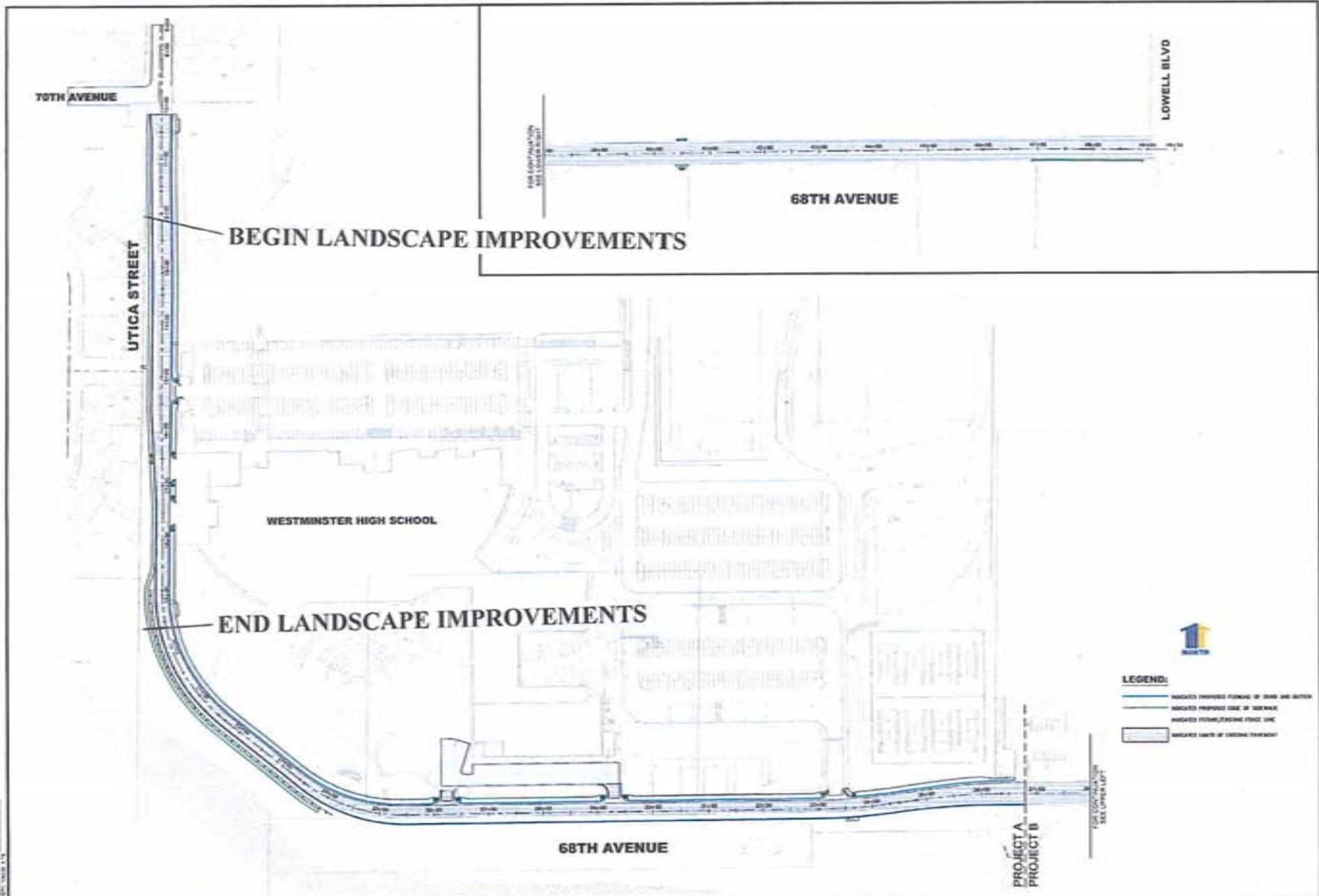
Staff requested a proposal from Premier Paving for the installation of the requested landscape and irrigation improvements as a change order to the original construction contract. The contractor submitted a proposal not-to-exceed \$46,000 for this work. In addition to this cost, the City will need to pay the tap fee of \$8,500 for the irrigation system. The requested \$4,000 contingency is typical for this type of work and is only needed if unforeseen conditions are encountered during construction.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Project Area Map and Landscape Plan



LEGEND:

- PROPOSED PROPOSED PAVING OF DRIVE AND WATER
- PROPOSED PROPOSED CURB OF SIDEWALK
- PROPOSED FUTURE/EXISTING STREET LINE
- PROPOSED LIMITS OF ORIGINAL FOOTWALK

PROJECT A
PROJECT B
FOR CONSTRUCTION
SEE LOWER SHEET

THE CITY OF WESTMINSTER, COLORADO
 4000 WEST 104TH AVENUE
 WESTMINSTER, CO 80031

DATE	DESCRIPTION

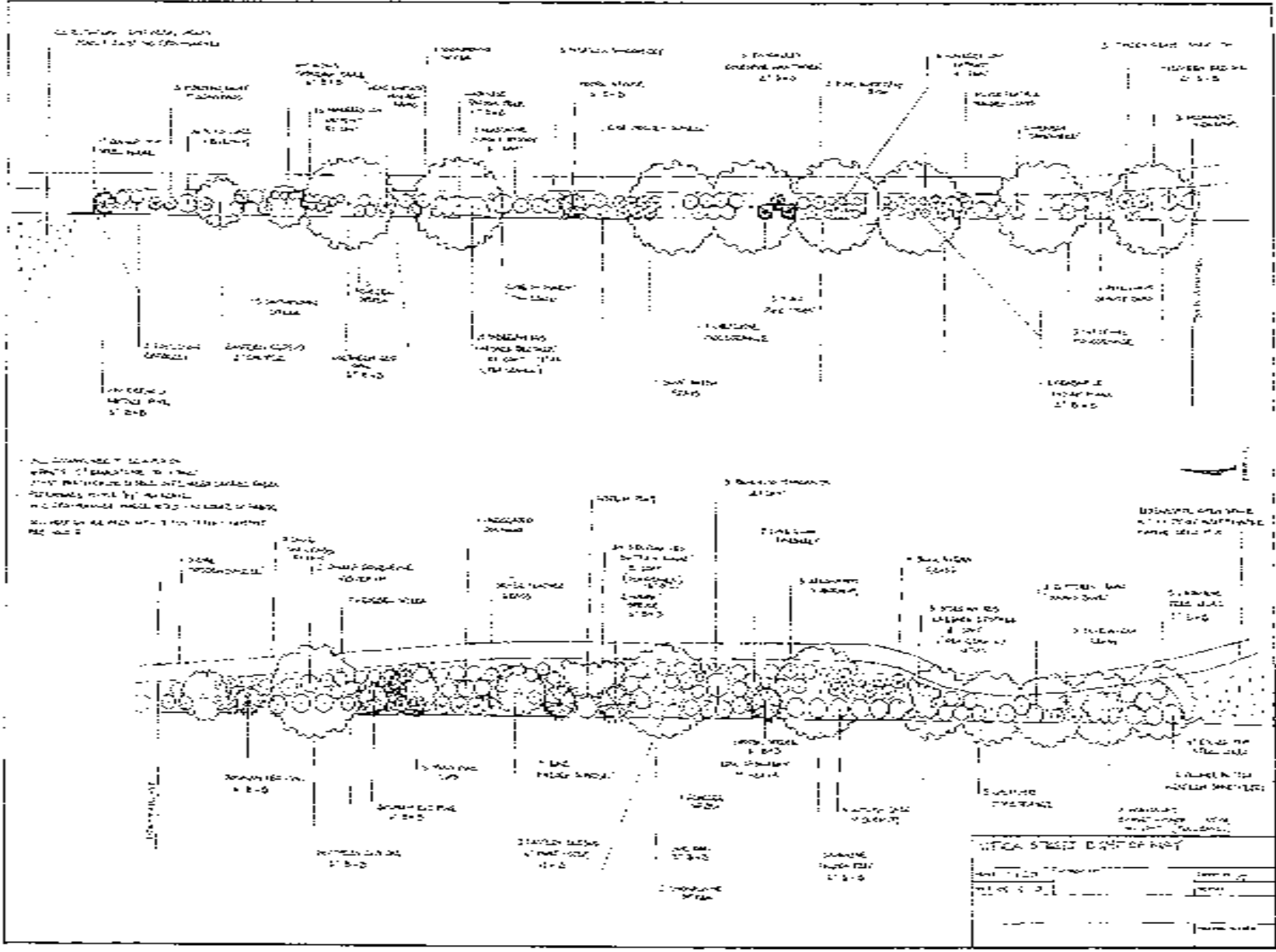
CITY OF WESTMINSTER
 4000 WEST 104TH AVENUE
 WESTMINSTER, CO, 80031

APPROVED/DATE 	 Scale = 1" = 40' Horizontal
CITY OF WESTMINSTER 700 7TH ST 80031	700 7TH ST 80031

Calibre
 Engineering • Planning • Construction • Services

WEST 68th AVENUE AND UTICA STREET
 ROADWAY PLANS
PRESENTATION EXHIBIT

X1
 MARCH 20, 2015





**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Bradburn Boulevard/Raleigh Street Realignment—Preliminary Engineering Services

Prepared By: Stephen C. Baumann, Assistant City Engineer

Recommended City Council Action:

Based on the report of the City Manager, City Council finds that the public interest would be best served by accepting the bid for this work from Jacobs Engineering Group Inc. Authorize the City Manager to sign an agreement with Jacobs Engineering Group Inc., for preliminary engineering services related to the realignment of Bradburn Boulevard with Raleigh Street at 72nd Avenue; authorize a total of \$118,500 for these services including a \$14,700 contingency for design-related activities.

Summary Statement:

- In 2007, City Council authorized a planning study for 72nd Avenue between Lowell Boulevard and Utica Street, a primary transportation and activity corridor in South Westminster. The study focused on planning and infrastructure needs to support the Regional Transportation District’s FasTracks project and the redevelopment interest it is expected to spark. One of the modifications explored in the study was the realignment of Bradburn Boulevard from its present intersection with 72nd Avenue to a connection with Raleigh Street 200 feet to the west so as to improve traffic operations, safety and general neighborhood connectivity.
- In 2009, the City applied for and received a grant from the Colorado Department of Transportation Special Highway Committee for replacement of the structure carrying 72nd Avenue over Little Dry Creek at Raleigh Street. An amount of \$1.1 million was approved for 2013. While less than half of what was requested, this grant creates an opportunity for the City to accomplish the bridge replacement in conjunction with the Bradburn/Raleigh realignment, a project that Council supports. To determine the extent of such a project, and the budget needed to add to the grant funds in 2013, City Staff is recommending that a contract for preliminary engineering design be undertaken.
- Proposals were received from seven engineering firms and that group was narrowed to the three firms most qualified for the assignment. The fee proposals for the preliminary engineering portion of the project ranged from under \$85,000 to over \$140,000, reflecting the generally indefinite nature of a preliminary design effort. Staff is recommending the proposal of Jacobs Engineering Group Inc. be accepted at the low end of their fee proposal, \$98,000. Together with \$5,800 for title/right-of-way and other research, and a contingency of \$14,700, a total authorization of \$118,500 in expenditures is being requested. The funding is available in an account in the Community Development Block Grant program.

Expenditure Required: \$118,500

Source of Funds: 2010 Community Development Block Grant Fund

Policy Issue

Should the City contract for preliminary engineering services for the proposed Bradburn Boulevard/Raleigh Street realignment?

Alternative

City Council could elect not to pursue this project at all. However, that alternative is contrary to City Council’s priorities for the ongoing funding the City receives through the Community Development Block Grant program. The 72nd Avenue Planning Study has identified the realignment of Bradburn Boulevard as a desirable upgrade to traffic operations and safety in that corridor and an important component of the revitalization of South Westminster. Staff recommends that this project take these additional steps forward as anticipated.

Background Information

In 2007 City Council approved a contract with Carter and Burgess, Inc., to prepare a broad-view planning study for the 72nd Avenue corridor west from Lowell Boulevard to Utica Street. Looking to the future of this primary east-west transportation and utility corridor was considered important given the promise of the Regional Transportation District’s FasTracks project and its proposed South Westminster transit stop; the future transit-oriented development that is expected to arise from it; and recognition that overall, the area infrastructure is aging. One of the products of this study was a recommendation that Bradburn Boulevard be realigned from its present intersection with 72nd Avenue to solve operational problems there. These include poor sight distance at the north and east approaches to the intersection and an awkward 200-foot offset between Bradburn Boulevard and Raleigh Street. There is also a sharp “dip” that causes damage to some vehicles. The study recommended that Bradburn be shifted to the west starting just north of the railroad crossing (72nd Way), curving to intersect 72nd Avenue at Raleigh Street where a traffic signal exists.

With information from the planning study and at the invitation of the Colorado Municipal League, the City made application to the Special Highway Committee in late 2009 and received a commitment of \$1.1 million in 2013 to be used toward replacement of the structure carrying 72nd Avenue over Little Dry Creek. This amount is less than half of what was requested. It is made available under a federal program to rehabilitate or replace non-State maintained (off-system) bridges in the poorest condition, and is administered by the Colorado Department of Transportation. The 72nd Avenue structure had a sufficiency rating of 33 at the time of the application, with 100 being the best possible condition.

Since the structure is located right at the intersection of 72nd Avenue and Raleigh Street, the recommended tie-in point for a realigned Bradburn Boulevard, it would be advantageous to combine the recommended realignment project with the bridge replacement to reduce overall cost from that of two separate projects. The combined project is somewhat complicated since it involves federal funding, has a railroad crossing reconstruction (at Bradburn/72nd Way) that will ultimately need to be compatible with future phases of FasTracks, has significant utility relocation aspects, and requires acquisition of portions of several private properties. Staff’s recommendation is that preliminary engineering be performed to define project limits, secure commitments for utility relocation work, set the stage for the permitting related to the railroad crossing, and develop competent cost estimates for use in budgeting for a projected construction start date in 2013.

Seven engineering firms responded to the City’s request for proposals and this group was whittled to three firms whose proposals showed a strong understanding of the assignment and experience with the primary elements of the project. The firms and their proposed fees are listed here.

S E H Inc.	\$85,000
Jacobs Engineering Group Inc.	\$98, 000 to \$110,000
ICON Engineering Inc.	\$143, 500

All of the proposals were competent and complete, although their respective definitions of the outcomes of this proposed preliminary engineering project were somewhat different. While the Jacobs Engineering Group Inc. proposal is priced about 15% higher than that of S E H Inc., staff is recommending that the contract be awarded to Jacobs. The proposed project team for Jacobs is intimately familiar with this project since they prepared the 72nd Avenue planning study while employed by Carter and Burgess, Inc. (Jacobs Engineering Group Inc. purchased Carter and Burgess, Inc. in 2008). In addition, Jacobs has a contract with the Regional Transportation District (RTD) to act as review engineer on the FasTracks projects, including those in the NW Corridor, so their responsibilities include the future quiet-zone crossing of Bradburn Boulevard near 72nd Way in the Bradburn Realignment project area. This makes it possible for Jacobs and the City to take an informed approach to the design and ultimate construction of that crossing. By virtue of this and other project experience, Jacobs has recent experience and knowledge of Public Utilities Commission processes and the role of the Burlington Northern Santa Fe Railroad (BNSF) as agreements between RTD and BNSF evolve for the FasTracks projects. While the proposal from S E H Inc. is the lowest cost, it may be too low to accomplish the necessary aspects of preliminary design up to the appropriate level. City staff believes that the Jacobs team has done that in their proposal.

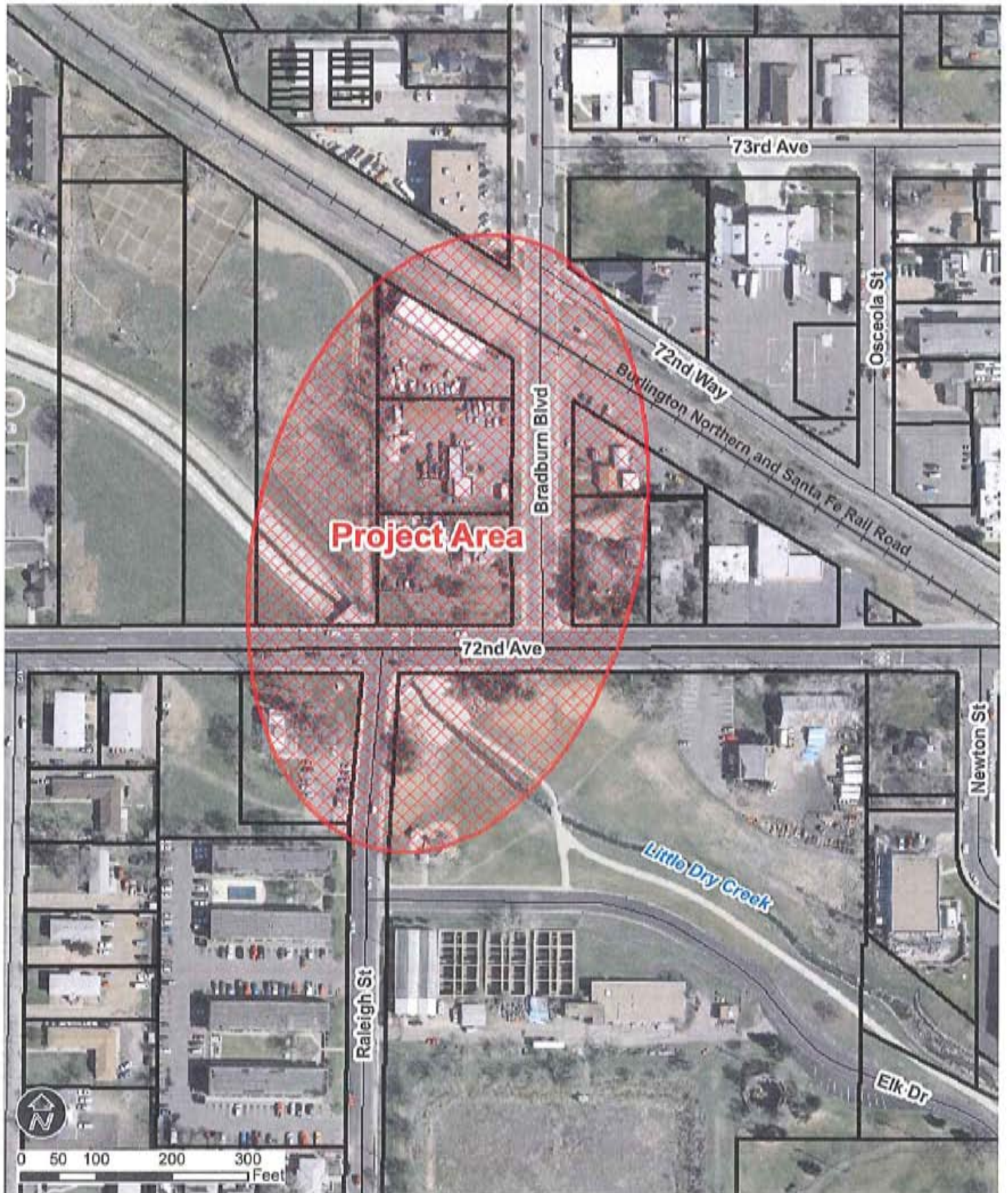
The cost of preliminary design of the Bradburn Boulevard/Raleigh Street Realignment and related expenditures is proposed to be paid from 2010 Community Development Block Grant funds. Staff is recommending that a contract in the amount of \$98,000 be awarded to Jacobs Engineering Group Inc. Because preliminary design is a somewhat vague assignment, the various engineering evaluations performed as part of it may need to be expanded beyond the original scope of work. An example in this instance would be sorting through the expectations and requirements of the BNSF, RTD and the Public Utilities Commission when it comes to the FasTracks crossing of Bradburn Boulevard. Determining what the future holds for this crossing is a significant component of the Bradburn Boulevard realignment project. As a result of the potential for these types of circumstances, a contingency amount of \$14,700 (15% of the design contract) is being recommended. Staff is also requesting \$5,800 for title research on affected properties and the rights-of-way in the area. A total authorization of \$118,500 in expenditures is being requested.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Bradburn Blvd/Raleigh St Realignment -Project Area-





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 12, 2010



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

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action

City Council action is requested to authorize the Mayor and other appropriate City Officials to sign the attached Intergovernmental Agreement (IGA) between the City of Westminster, and the Jefferson County Department of Health and Environment to reimburse the City for mosquito control expenses within the Jefferson County portion of the City for the year 2010.

Summary Statement

- The objective of Jefferson County's public health mosquito control is to prevent the mosquito-borne transmission of diseases to humans, livestock, and domestic pets. And in order to effectively deal with the continuing threat of mosquito-borne transmission of West Nile Virus and other arboviral diseases, Jefferson County, for 2010, is contracting with Colorado Otter Tail Environmental, Inc. for Integrated Mosquito Management (IMM) services within certain areas of Jefferson County.
- In March 2010, the City entered into a three-year agreement with Colorado Otter Tail Environmental, Inc. (Ottertail) to manage and control all mosquito populations including those capable of transmitting West Nile Virus within the boundaries of the City of Westminster.
- The City of Westminster 2010 expenditure of mosquito control with Ottertail is \$39,400.
- The City of Westminster currently performs mosquito control within Jefferson County, the county will reimburse the City of Westminster up to \$9,850 to reimburse 50% of their costs for those IMM services performed in the areas of Westminster that are located in Jefferson County.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City of Westminster enter into an Intergovernmental Agreement with the Jefferson County Department of Health and Environment to receive reimbursement in the amount of \$9,850 for mosquito control in that portion of the City within Jefferson County?

Alternative

Council could choose to not approve the IGA. Staff would advise against this option as additional funding for the program could offset future expenses in mosquito control for 2010 related to the West Nile Virus.

Background Information

The Jefferson County Health Department deems the threat of West Nile Virus to be serious enough to initiate a county-wide mosquito control program. The City of Westminster currently has a comprehensive mosquito management program (originally established in 1986) and the County will reimburse the City for the cost up to \$9,850 to perform West Nile Virus control measures in Jefferson County's portion of the City. The Department of Parks, Recreation and Libraries will be responsible to provide the County with documentation necessary to comply with the IGA Mosquito Management reimbursement program.

Participation in this IGA helps meet the City's Strategic Plan goal of "Safe and Secure Community" and "Beautiful and Environmentally Sensitive City,"

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

INTERGOVERNMENTAL AGREEMENT FOR INTEGRATED MOSQUITO MANAGEMENT

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into and effective as of the _____ day of _____, 2010, between **JEFFERSON COUNTY PUBLIC HEALTH**, whose address is 1801 19th Street, Golden, CO 80401, hereinafter referred to as the "Health Department"; and the **CITY OF WESTMINSTER**, a municipal corporation of the State of Colorado, with its principal office located at 4800 W. 92nd Ave., Westminster, CO, hereinafter referred to as "Westminster."

WITNESSETH:

WHEREAS, the primary objective of public health mosquito control is to prevent the mosquito-borne transmission of diseases to humans, livestock, and domestic pets, and

WHEREAS, in order to effectively deal with the continuing threat of mosquito-borne transmission of West Nile Virus and other arboviral diseases, the Health Department has contracted with Otter/Tall Environmental, Inc., ("Otter/Tall") to provide Integrated Mosquito Management ("IMM") services within certain areas of Jefferson County, Colorado during the year 2010, and

WHEREAS, these services shall be provided to Jefferson County and various municipalities within Jefferson County, and

WHEREAS, said IMM services are detailed in a document entitled PURCHASE OF SERVICES AGREEMENT, signed May 7, 2010 and approved by the Board of Health on April 20, 2010; a copy of which is attached hereto and incorporated herein as **Attachment A**, and

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

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

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

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

1. **WESTMINSTER RESPONSIBILITIES:** Upon the signing of this Intergovernmental Agreement by the parties hereto, Westminster shall direct their contractor, during the year 2010, to perform substantially similar IMM services as those set forth in **Attachment A** for the areas of Westminster located within Jefferson County. The services and service fee do not include adulticide services. The Health Department will monitor the need for adulticiding and advise the County and all participating municipalities if an adulticide program is recommended and approved by the Board of Health and Board of County Commissioners.
2. **PROVISION OF OTHER IMM SERVICES BY WESTMINSTER:** Westminster shall designate a point of contact for communication with the Health Department; provide a copy of their contractor's liability insurance indemnifying the Health Department against any liability resulting from the delivery of their contractor's IMM services; coordinate with the Health Department on IMM services or concerns; and advise the Health Department, by report, of the IMM services conducted by Westminster or its contractor within the portions of Westminster located within Jefferson County. The IMM service reports shall be submitted on a monthly basis on or before

the 5th of the month effective July 2010, and ending October 2010. At a minimum the IMM service report shall address the number of larval development sites in the county, number of larval development sites inspected, number of sites treated, and public educational activities conducted by Westminster and/or Westminster's IMM service contractor. A copy of Westminster's IMM service contract(s) shall be attached to the July report indicating the cost of its programs conducted within Jefferson County. The monthly report, with the notation "re: West Nile IGA Report", shall be sent to Jefferson County Public Health, 1801 19th Street, Golden Colorado 80401.

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

4. **PAYMENT OF WESTMINSTER IMM SERVICE FEE:**

(a) The Health Department agrees to pay to Westminster up to \$9,850.00 to reimburse 50% of their costs up to \$19,700.00 for IMM services provided by their contractor between June 7, 2010 and September 3, 2010 for the areas of Westminster located within Jefferson County. This amount is based on the cost of IMM services quoted by Westminster's contractor.

(b) Should the Health Department determine that IMM services need to be provided between May 17, 2010 and June 7, 2010, the Health Department agrees to pay Westminster up to \$758.00 per week, to reimburse Westminster for 50% of their costs for those IMM services performed in the areas of Westminster that are located within Jefferson County. The Health Department's maximum payment to Westminster for IMM services provided prior to June 7, 2010 shall not exceed \$2,274.00.

(c) Should the Health Department determine that IMM services need to be provided from September 4, 2010 to September 17, 2010, the Health Department agrees to pay Westminster up to \$758.00 per week, to reimburse Westminster for 50% of their costs for those IMM services performed in the areas of Westminster that are located within Jefferson County. The Health Department's maximum payment to Westminster for IMM services provided after September 4, 2010 shall not exceed \$1,616.00.

Total payment from the Health Department to Westminster for all 2010 IMM services shall not exceed \$13,640.00.

After execution of this Intergovernmental Agreement by the last party and upon receipt of the 2010 billings from Westminster and receipt of all documents outlined in paragraph 2 above, the Health Department will pay Westminster the amounts shown on the invoices not to exceed the amount(s) shown above. Billings, with a notation "re: West Nile IGA", shall be sent to Jefferson County Public Health, 1801 19th Street, Golden Colorado 80401.

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

6. **TERM:** The term of this Intergovernmental Agreement shall be from the date of signature by the last party herunder to and until December 31, 2010.

7. **NO GUARANTEE BY THE HEALTH DEPARTMENT:** Westminster acknowledges that

although the objective of the IMM services provided under Westminster's own contract or service agreement to be performed within Westminster's boundaries is to reduce the mosquito population and consequent threat of transmission of West Nile Virus, the Health Department makes no guarantee as to the effectiveness of such IMM services in achieving such objective.

8. **ENTIRE AGREEMENT:** This writing constitutes the entire Intergovernmental Agreement between the parties hereto with respect to the subject matter herein, and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.
9. **NO WAIVER OF IMMUNITY:** No portion of this Intergovernmental Agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess, nor shall any portion of this Intergovernmental Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Intergovernmental Agreement.
10. **NO THIRD PARTY BENEFICIARY ENFORCEMENT:** It is expressly understood and agreed that the enforcement of the terms and conditions of this Intergovernmental Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Intergovernmental Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Intergovernmental Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Intergovernmental Agreement shall be an incidental beneficiary only.

Signed by the parties the _____ day of _____, 2010

Jefferson County Public Health

By: _____
Secretary to the Board of Health

By: _____
President Board of Health

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

By: _____
City/Town Clerk

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

**Attachment to
IMM IGA**

PURCHASE OF SERVICES AGREEMENT

This PURCHASE OF SERVICES AGREEMENT ("Agreement") made this 7th day of May, 2010, by and between Jefferson County Public Health ("JCPH"), 1801 19th Street, Golden, CO 80401 and Otter Tail Environmental, Inc. ("Contractor"), whose address is 10200 W. 44th Avenue, Suite 210, Wheat Ridge, CO 80033.

WHEREAS, the Contractor has been selected to provide mosquito control services; and

WHEREAS, JCPH wishes to retain the services of Contractor as an independent contractor and Contractor wishes to provide services to JCPH; and

WHEREAS, JCPH has authority to acquire the services described in this Agreement under the provisions of § 25-1-506, *et seq.*, C.R.S., as amended.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth hereinafter, JCPH and the Contractor agree as follows:

1. SCOPE OF SERVICES

The Contractor shall perform in a satisfactory and proper manner, as determined by JCPH, the services identified in the "Scope of Services, General Description and Specifications", attached to and incorporated in this Agreement by reference as *Exhibit A*.

2. TERM

The term of this Agreement shall be May 1, 2010 through December 31, 2010.

3. COMPENSATION

The amount to be expended pursuant to this Agreement shall not exceed One Hundred Fifty-one Thousand Eight Hundred Ninety Eight dollars (\$151,898.00), which amount shall constitute the contract amount for the Thirteen-week Larval Surveillance and Control Program and the Mosquito Trapping Program (as defined in *Exhibit A*). Such amount may be altered by mutual written consent of parties in the event either Early Season or Late Season Larval Surveillance and Control Programs (as defined in *Exhibit A*, at the price quoted by Contractor in its Bid) are deemed necessary by JCPH.

a. JCPH will reimburse the Contractor on a monthly basis as services are provided, documented, and invoiced by Contractor. Contractor services will be documented in the form proscribed by JCPH and are subject to JCPH approval prior to authorization for payment. The final payment will be made only after the completion of all work by Contractor and acceptance by JCPH of all contract requirements.

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

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

4. WARRANTY

a. Contractor warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature and shall be of a quality acceptable to JCPH.

b. Unless otherwise provided herein, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use and JCPH's mission of protecting public health and the environment.

5. NON APPROPRIATION

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

6. RECORDS, REPORTS, and INFORMATION

At such times and in such forms as JCPH may require, Contractor shall furnish statements, records, reports, data and information pertaining to matters covered by this Agreement. The Contractor shall maintain its records in accordance with requirements prescribed by JCPH. Except as otherwise authorized by JCPH, Contractor shall maintain such records for a period of three (3) years after receipt of final payment under this Agreement.

7. AUDITS and INSPECTIONS

At any time during normal business hours and as often as JCPH may deem necessary, Contractor shall make its records with respect to matters covered by this Agreement available for examination. Contractor shall permit JCPH to audit, examine, copy, and make excerpts from such records and audit all contracts, invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to this Agreement. JCPH may call for a certified, independent audit to be performed, at Contractor's expense, by a mutually agreed upon auditor.

8. INDEPENDENT CONTRACTOR

a. The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Contractor affirms that it has or will secure at its own expense all personnel and materials required to perform the services detailed in *Exhibit A*. Such personnel shall not be employees of nor have any contractual relationship with JCPH.

b. Services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and properly licensed or certified, as required by local, state and federal law or regulation to perform such services. Neither Contractor nor its personnel, if any, is entitled to Worker's Compensation Benefits or any other benefit of employment with Jefferson County, Colorado. Further, Contractor is obligated to pay federal and state income tax on any compensation paid pursuant to this Agreement.

c. None of the services to be performed by Contractor under this Agreement shall be subcontracted or otherwise delegated without the prior written consent of the JCPH. The work subcontracted shall be specified in a written agreement between Contractor and its subcontractor(s), which agreement(s) shall be subject to each provision of this Agreement.

9. NON ASSIGNMENT

The Contractor and subcontractor(s) hereto shall not assign or transfer any rights in this Agreement without the prior written consent of the JCPH.

11. OFFICIALS NOT TO BENEFIT

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

12. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not refuse to hire, discharge, promote, demote or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, sex, color, national origin or ancestry, disability or age.

13. ILLEGAL ALIENS - PUBLIC CONTRACTS

a. The Contractor (entity or sole proprietor) shall execute the certification attached hereto as *Exhibit B*, in conformance with the provisions of § 8-17.5-102(1) and § 24-76.5-101, C.R.S., as amended.

b. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract; or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract.

c. If the Contractor obtains actual knowledge that a subcontractor performing work under this public contract knowingly employs or contracts with an illegal alien, the Contractor shall:

(1) Notify the subcontractor and JCPH within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (1), above, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

d. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to its authority.

e. Notwithstanding any other provision of this public contract, if the Contractor violates any provision of this paragraph, JCPH may terminate this public contract and the Contractor shall be liable for all actual and consequential damages resulting from that termination.

f. Except where exempted by federal law and, except as provided in § 24-76.5-103(3), C.R.S., as amended, the Contractor receiving Jefferson County funds under this public contract must confirm that any individual natural person eighteen (18) years of age or older is lawfully present in the United States pursuant to §24-76.5-103(4), C.R.S., as amended, if such individual applies for public benefits provided under this public contract. If the Contractor has verified that the County has accomplished such confirmation prior to the effective date of this public contract, the Contractor is relieved of responsibility under this paragraph.

14. SOLE SOURCE CONTRACTS

If the Contractor has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution which including this contract in the aggregate on an annual basis are equal to or exceed the amount of \$100,000, then the following provisions apply:

- a. Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Contractor shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.
- b. Contractor further agrees that if it makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, it shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.
- c. If Contractor intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages Contractor shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.

15. STATUTES, REGULATIONS AND ORDINANCES

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

16. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless JCPH, and its officers, employees and agents, acting officially or otherwise, from any and all claims, demands, damages, and actions of any kind brought by anyone, including attorney's fees, which may arise out of or result from the negligent or willful misconduct of Contractor or its subcontractor(s) in the performance of services as set forth in this Agreement and/or the breach of any condition(s) of this Agreement. This provision shall survive the termination of this Agreement.

17. INSURANCE

The Contractor providing services under this Contract will be required to procure and maintain, at their own expense and without cost to JCPH, until expiration of the agreement the following insurance. The policy limits required are to be considered minimum amounts:

Commercial General Liability Insurance: Combined single limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent contractor, and contractual liability.

Worker's Compensation and Employer's Liability and Occupational Disease Coverage in accordance with Colorado law or the law of the state in which the Contractor is a resident or the firm is registered.

Comprehensive Automobile Liability Insurance, including coverage for all, owned, non-owned and rented vehicles with \$1,000,000 combined single limit for each occurrence.

JCPH shall be named as an additional insured and the insurance policy shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to JCPH. Certificates of insurance shall be delivered to JCPH within fifteen (15) days of execution of the Agreement.

Contractor shall demonstrate contractual liability coverage supporting the Indemnity provisions of this Agreement, either through policy language or by waiver of exclusion.

18. DOCUMENT OWNERSHIP - WORKS MADE FOR HIRE

All of the deliverable items, if any, prepared for the JCPH under this Agreement shall belong exclusively to JCPH and shall be deemed to be "works made for hire" under the copyright laws of the United States. To the extent any of the deliverable items may not, by operation of law or otherwise, be works made for hire, the Contractor hereby assigns to JCPH the ownership of the copyright in the deliverable items, and JCPH shall have the right to obtain and hold in its own name, copyrights, registrations, and similar protections. The Contractor agrees to give JCPH or its designee all assistance reasonably required to perfect such rights. To the extent that any pre-existing materials are contained in the deliverable items, the Contractor grants to JCPH an irrevocable, non-exclusive, worldwide, royalty free license to use, execute, publish, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing materials and derivative works thereof and to authorize others to do any, some, or all of the foregoing.

19. TERMINATION FOR CAUSE

If the Contractor or JCPH fails to fulfill its obligations under this Agreement in a timely and proper manner or violates any of the provisions of this Agreement, the non-defaulting party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the defaulting party of such termination and specifying the effective date of termination. The defaulting party, however, shall not be relieved of liability to the non-defaulting party for damages sustained by virtue of any breach of this Agreement. In the event of default by the Contractor, JCPH may withhold payments due under Paragraph 3, above, for the purpose of set-off until such time as the exact amount of damages due JCPH from the Contractor is determined.

20. MODIFICATIONS

This Agreement may not be modified, amended or otherwise altered, unless mutually agreed upon in a writing executed by JCPH and the Contractor.

21. GOVERNING LAW

The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either JCPH or Contractor institute legal action for enforcement of any obligation contained herein, it is agreed that venue shall be in Jefferson County, Colorado.

22. SEVERABILITY

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

23. NOTICES

Notices to be provided under this Agreement shall be given in writing either by hand delivery or by certified return receipt requested United States mail, to the following:

JCPH Representative:

JCPH
Elizabeth Lipscomb
1801 19th Street
Golden, CO 80401

Contractor:

Otter Fall Environmental
Ed Fleming
10200 W 44th Ave, Ste 210
Wheat Ridge, CO 80033

24. HEADINGS

Titles and paragraph divisions are inserted in this Agreement for ease of reference and do not define, limit, or prescribe the scope or intent of the provisions of this Agreement or any part thereof.

25. AUTHORITY

Each person signing this Agreement represents and warrants that he/she is fully authorized to enter into and execute this Agreement and to bind the party represented to the provisions of this Agreement.

26. COUNTERPARTS and FACSIMILE SIGNATURES

This Agreement may be executed in counterparts, each of which shall be deemed an original. Facsimile signatures of, or on behalf of, JCPH or the Contractor on this Agreement and any modification hereto shall be effective for all purposes.

27. FORCE MAJEURE

Neither party shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including but not limited to strikes, riots, war, and acts of God.

28. INTEGRATION OF UNDERSTANDING

This Agreement represents the entire Agreement between the parties and supersedes all prior negotiations and representations, whether written or oral. Nothing herein shall be deemed to give anyone not a party to this Agreement any right of action against either JCPEH or the Contractor.

IN WITNESS WHEREOF, JCPEH and the Contractor have duly executed this Agreement as of 4/20/10 to be effective as of the date first shown above.

Jefferson County Public Health

OtterTail Environmental:

By: Cathy Corcoran
Cathy Corcoran, President
Board of Health

By: Ed Fleming
Ed Fleming
Printed Name
President
Title

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

Exhibit A
JEFFERSON COUNTY PUBLIC HEALTH
2010 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

GENERAL DESCRIPTION AND SPECIFICATIONS

GENERAL DESCRIPTION

The service provider shall conduct an Integrated Mosquito Management (IMM) Program for Jefferson County Public Health (JCPH) during the spring and summer of 2010. This program will be designed and implemented to control the spread of the West Nile Virus (WNV) and other mosquito-borne diseases such as St. Louis Encephalitis (SLE) and Western Equine Encephalitis (WEE) by reducing the number of disease causing mosquitoes.

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

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

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

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

Specific requirements pertaining to the service area, the services to be provided, term of the contract, and the work products are described in the Specifications section of this Scope of Work.

SPECIFICATIONS

I. SERVICE AREA

The service area of Jefferson County area consists of approximately 461,133.4 square miles of bedroom community located on the east side of the Rocky Mountains. The service area is bounded by Broomfield County on the north, Chatfield State Park on the south, the foothills on the west (elevation ~5,900 feet), and Sheridan Boulevard on the east (elevation ~5,300 feet). Because the service area is on the eastern slope of the foothills most of the precipitation occurring during the WNV IMM season runs through the service area via a series of drainage creeks and eventually into the South Platte River. There are not any large irrigated agricultural operations or large areas of swamp land in the service area. Approximately 70% of the potential larval development (P.L.D) sites in Jefferson County are less than 2 acres.

Exhibit A
JEFFERSON COUNTY PUBLIC HEALTH
2010 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

The 2010 Integrated Mosquito Management Service Area Map (**Attachment A**) illustrates the service area and the known potential larval development sites.

A summary of the service area is provided in the table below.

<u>Area / Municipality</u>	<u>Square Miles</u>
Arvada	27.6
Golden	8.3
Lakewood	41.8
Wheat Ridge	9.6
Unincorporated Jefferson County*	73.7
Total Square Miles:	161.0 133.4

* Includes Bow Mar (0.1), Edgewater (0.7), Lukeside (0.3), Littleton (0.6), Morrison (0.7), Mountain View (0.1).

II. SERVICES TO BE PROVIDED

A. Adult Mosquito Surveillance

1. General Requirements For Mosquito Trapping and Surveillance

- a) If any mosquito trap night is cancelled, the service provider shall notify JCPH immediately. JCPH may require the service provider to reschedule the cancelled trap night. Service provider will not be reimbursed for cancelled trap nights.
- b) After each trap night the service provider shall collect, identify, species, and count all trapped mosquitoes by methods recognized by CDC and/or the Colorado Department of Public Health and Environment (CDPHE) and report this information to JCPH at least once per week.
- c) All mosquito trapping activities including the submission of mosquito pool specimens shall be conducted in accordance with the protocols established in the current CDPHE Mosquito Surveillance Plan (**Attachment B**) and the West Nile Virus Mosquito Sentinel Site Guidelines (**Attachment C**). The CDPHE Mosquito Surveillance Plan is dated 2005 and the 2010 Sentinel Site Guidelines protocol is in draft form, any updates to those two attachments will be provided once they become available.
- d) The service provider shall assume all liability for the placement and operation of any and all equipment. JCPH shall not be responsible for any lost, damaged or stolen traps and/or equipment.
- e) The service provider shall maintain a toll-free (in Colorado) **Mosquito Complaint Call Center** and shall accept calls from the public reporting mosquito problems and/or standing, stagnant water in the service area that may indicate the presence of potential larval development (PLD) sites. The service provider shall maintain a log of calls received and shall summarize call and service provider response activity in weekly and annual reports.

Exhibit A
JEFFERSON COUNTY PUBLIC HEALTH
2010 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

2. State Mosquito Sentinel Program

- a) The service provider shall provide all supplies, equipment and personnel to operate and maintain the Mosquito Sentinel Program for **80 trap nights** at various sites selected with the concurrence of JCPH as follows:
- (i) Five (5) CDC light traps within the service area. These traps shall be operated one night per week on the same day of the week for a period of 11 weeks from June 14, 2010 to August 27, 2010 for a total of 55 trap nights. These trap sites are part of the State wide surveillance system and shall be operated according to the procedures outlined in **Attachment C**.
 - (ii) The five (5) trap locations identified in a) above, shall have a second trap night each week from July 6, 2010 through August 3, 2010 (5 weeks) for a total of 25 trap nights as part of the Mosquito Sentinel Program in accordance with state guidelines. The state mosquito sentinel program is funded by the CDPHF and the attached guidance represents a draft for 2010; the number of trap nights may decrease or increase depending on state funds available and the extent of Arbovirus activity in Colorado.

3. JCPH Adult Mosquito Surveillance Program

- a) The service provider shall provide all supplies, equipment and personnel to operate and maintain for up to **144 trap nights**:
- (i) Six (6) CDC light traps at various sites within the service area. These traps shall be operated one night per week on the same day of the week for a period of 12 weeks from June 7, 2010 to August 27, 2010.
 - (ii) Six (6) gravid traps collected with the 6-CDC light traps (in paragraph a) above. These traps shall be operated one night per week on the same day of the week for a period of 12 weeks from June 7, 2010 to August 27, 2010.

B. Larval Mosquito Surveillance and Control

1. General Requirements For Larval Surveillance and Control (LS&C)

- a) The primary and priority focus of larval control will be to eliminate the mosquitoes that have the potential to transmit diseases such as WNV, SIF, and WEE.
- b) Unless otherwise indicated, the LS&C activities will take place for 13 weeks between June 7, 2010 and September 3, 2010. Environmental conditions, such as weather, may indicate the need to expand LS&C activities before and/or after this time period.
- c) During the 2010 season all sites inspected by the service provider during LS&C activities that are found to be breeding mosquito larvae shall be treated with a larvicide by the service provider.
- d) Each site will be inspected and classified according to the following classifications:
 - Vector mosquito breeding sites,
 - Vector and non-vector mosquito breeding sites
 - Non-vector mosquito breeding sites.
- e) All mosquito complaints shall be thoroughly investigated by the service provider and larval control shall be implemented by the service provider based a balanced evaluation of the risk of human illness, suffering, and impact on quality of life in the community associated with the concurrent mosquito infestation.

Exhibit A
JEFFERSON COUNTY PUBLIC HEALTH
2010 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

- f) Commensurate with the start of the L&S&C program the service provider shall conduct a preliminary assessment of all known PLD sites within the service area. At the end of the 2009 IMM season there were approximately 668 known PLD sites contained in the 161 square mile service area. The 2010 IMM service area and known PLD sites are identified on the Jefferson County Integrated Mosquito Management Service Area Map (**Attachment A**). The purpose of the preliminary assessment is to determine the status of each PLD site and to classify each PLD site as "targeted" or "non-breeding". Targeted PLD sites are those sites which have the highest potential for mosquito breeding. The remaining sites shall be classified as non-breeding PLD sites or removed from the list of PLD sites if the site no longer has the potential to breed mosquitoes. Any new PLD sites identified during the initial inspection and preliminary assessment of PLD sites shall be added to the list of PLD sites and shall be classified as "targeted" or "non-breeding".
 - g) Based on the 2009 end-of season PLD inventory and newly identified PLD sites in 2010, the service provider shall provide an updated PLD list and map on or before June 30, 2010. The list shall include the service provider's recommendations for additions, deletions, and/or revisions to the list of PLD sites
 - h) The contractor will continue to identify and investigate new PLD sites throughout the season and add and label any new sites on the Service Map.
- 2. Routine Larval Surveillance and Control Activities**
- a) Inspect all "targeted" PLD sites at least once per week by visual observation and by dipping any standing water for mosquito larvae.
 - b) Larvae found at each PLD site shall be speciated and labeled as one of the following: vector, vector and non-vector species or non-vector species.
 - c) Inspect all "non-breeding" PLD sites at least once per month to determine if any changes have occurred that would warrant a re-evaluation of their status. Additional inspections over and above the routine monthly inspection of non-breeding PLD sites may be necessary based on changes in climatic conditions.
 - d) Inspect strategically located storm water structures (catch basins, detention ponds, storm water inlet boxes, and the like) found to contain water at least once per week for the presence of mosquito larvae. Storm water structures shall be inspected based on environmental conditions, such as periods of precipitation followed by warm temperatures that promote the development of mosquito larva at such structures. Storm water structures shall be labeled as sites and inspections shall be included in the weekly totals and year to date totals in the weekly reports.
 - e) Identify any additional and/or new PLD sites by documenting any areas of clogged ditches and streams, standing water, etc., that were observed during the course of conducting IMM activities. Inspect and classify each additional and/or new PLD site as a targeted or non-breeding site. All additional and/or new PLD sites shall be mapped and recorded, regardless of their classification. Document areas such as abandoned swimming pools, clogged drains, dammed streams, and the like, which have the potential for supporting larval development, report these features to JCPH, and work with local code enforcement officials to locate, identify, and apply the appropriate IMM measures to those sites as needed.

Exhibit A
JACKSON COUNTY PUBLIC HEALTH
2010 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

- f) Apply the appropriate, federally approved larval control materials, if it is determined that any PLD site is producing mosquitoes and/or mosquito larvae. This is especially important if it is determined that *Culex* sp. or other potential arboviral vector mosquitoes are also present.
- g) Larval control may include the application of larvicide and/or the utilization of other recognized methods of larval control such as source reduction.
- h) Use the most appropriate method for larvicide distribution, such as hand application, backpack broadcasters, All Terrain Vehicle (ATV), etc.
- i) Maintain Material Safety Data (MSD) sheets for all products used and provide such information upon request to employees, the public, and/or JCPH.
- j) Conduct post-treatment quality control inspections within 24 to 48 hours as necessary to assure the larvae population has been controlled. JCPH recommends a post-treatment quality control inspection goal of at least 10% and no more than 20% of the sites treated during routine inspections. If larvae are found during the post-treatment quality control inspection, a second application of control material shall be applied. These activities shall be included in the weekly activity reports.
- k) Develop a method to contact private property land owners and obtain permission to enter property to conduct IMM activities. Entry onto private property shall be by prior authorization of the owner/agent.
- l) Maintain real-time documentation of all PLD site surveillance and larval control activity and enter real-time data into a JCPH approved electronic database. An electronic copy of the database with classifications shall be provided to JCPH on or before October 15, 2010 and/or upon the request of JCPH.

C. Public Education

1. The service provider shall maintain a public education website providing general information on WNV and WEE, including basic disease information, tips for personal protection, information for homeowners on standing water, aerial spraying information (if appropriate), phone numbers to call, links to other websites, etc.
2. In the event that adulticiding or aerial spraying is to be performed, the service provider shall notify all residents in the area to be sprayed who are registered in the State of Colorado Pesticide Sensitive Registry. A minimum of 3 attempts shall be made to reach these persons prior to the spraying or application. The Ultra Low Volume (ULV) insecticide application will be shut off in front of and upwind from sensitive resident's properties. The service provider shall maintain MSD sheets for all products used and shall provide such information upon request to employees, the public, and/or JCPH. The service provider shall provide qualified and licensed staff if adulticide is required. If adulticide spraying is required the service provider shall collaborate with JCPH to coordinate the delivery of these services.

D. Record Keeping

The service provider shall maintain all records and documents pertaining to the services provided under this contract for a period of 3-years. By December 1, 2010 and/or upon the request of JCPH, the service provider shall provide JCPH with copies of any and all records and documents pertaining to the services provided under this contract in an electronic and/or

Exhibit A
JEFFERSON COUNTY PUBLIC HEALTH
2010 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

hard copy format approved by JCPH. Prior to the disposal of any JCPH records the service provider has in its possession, the service provider shall provide JCPH with a thirty (30) day written notice during which time JCPH may take physical possession of same at the storage site.

E. Reporting

1. **Weekly Report:** The service provider shall provide a weekly summary report of IMM service activities. Weekly reports shall include but not limited to:
 - a) The number of PLD site inspections and post-treatment quality control inspections performed and the number these inspections for each municipality and the unincorporated areas of the County.
 - b) The number of vector breeding sites, number of non-vector breeding sites, the number of sites that contain both vector and non-vector larvae and sites not breeding mosquitoes.
 - c) The number of larvicide applications, including products used, amount of larvicide, size of area treated, and application methods.
 - d) The number of mosquitoes caught in each light and gravid trap, including the number of the various Culex or other arboviral vector species.
 - e) The number of inspectors used and the total amount of direct labor hours spent during each week conducting contract work, reported as larval inspection time, mosquito trapping time, and office or support time.
 - f) The number of complaints received, number of areas inspected because of those complaints, the findings of each inspection and actions taken.
2. **Annual Report:** By October 1, 2010 the service provider shall provide a draft of the annual report. By November 1, 2010 the service provider shall provide the final annual report. The annual report shall be provided in a format acceptable to JCPH both electronically and in hard copy (5 copies) and shall include but not limited to.
 - a) All surveillance activities and findings as defined above,
 - b) Total direct labor hours logged by the service provider and its employees broken into the areas defined above,
 - c) Total number of PLD sites inspected, the size of each PLD site in acres, total number of sites treated, total number of mosquito trap nights, etc.
 - d) The end of season map that illustrates the PLD sites identified and inspected during the contract season,
 - e) The GIS shape files or other electronic files used to create the PLD site map,
 - f) A complete list of all PLD sites and their classification and size of each PLD site in acres. The PLD list shall include the service provider's recommendations for additions, deletions, and/or revisions to the list of PLD sites, and
 - g) The number of vector, non-vector, and combination of vector and non vector sites, and non breeding sites inspected during the season.

- F. **Department Employee Training:** Upon request the service provider shall provide training for Department employees.

Exhibit A
JEFFERSON COUNTY PUBLIC HEALTH
2010 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

G. Board of Health Appearances: Upon request the service provider shall appear before the Jefferson County Board of Health to provide updates and/or a year-end report on contract activities.

H. Adult Mosquito Control Service: In the event of a Public Health Emergency, the service provider shall assist JCPH in the timely development and implementation of an adult mosquito control program, such as ground and/or aerial adulticide spraying. The adult mosquito control program shall be conducted in accordance with all state and federal requirements. The costs of this service and/or the adult mosquito control program are not included in this contract.

III. TERM OF SERVICE AGREEMENT

The Service Agreement shall be in effect for the period beginning May 17, 2010 through December 31, 2010. Unless otherwise indicated and directed by JCPH to do so, all field service activities shall commence no later than June 7, 2010 and shall continue until JCPH determines that a specific field service is no longer needed, but no later than September 3, 2010. **Environmental conditions, such as weather, may indicate the need to expand LS&C activities before and/or after this time period.**

IV. WORK PRODUCTS

Any and all maps, reports, spreadsheets, databases, geographical information system (GIS) files, newsletters and other hard copy or electronic documents generated by the service provider in fulfillment of its obligations under this contract shall be the property of JCPH, who shall have sole and complete discretion regarding their use and distribution. All work products shall be delivered to JCPH in a mutually agreed upon hardcopy and/or electronic format suitable for including in reports and folders. The data and weekly reports will be furnished in standard 8 1/2 by 11 inch paper. All reports will include the activity undertaken in each of the cities in the County. **All final deliverable electronic and/or hard copy records, documents, and maps pertaining to 2010 IMM services under this contract shall be delivered by November 15, 2010.**

WORK PRODUCT DELIVERY SCHEDULE

Work Product	Delivery Date
Begin Early Season Larval Surveillance and Control May 17 to June 4, 2010	Per JCPH direction
Begin Regular Season Larval Surveillance and Control	June 7, 2010
Begin Adult Mosquito Surveillance	June 7, 2010
First Weekly Report	10 calendar days after field work begins
Report findings of Preliminary Assessment of Known PLD Sites	June 30, 2010
End Adult Mosquito Surveillance	August 27, 2010
End Larval Surveillance and Control	September 3, 2010
Begin Late Season Larval Surveillance and Control September 7 to September 17, 2010	Per JCPH direction

Exhibit A
JEFFERSON COUNTY PUBLIC HEALTH
2010 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

Last Weekly Report	10 calendar days after field work ends
First draft Annual Report	October 1, 2010
Final Annual Report	November 1, 2010

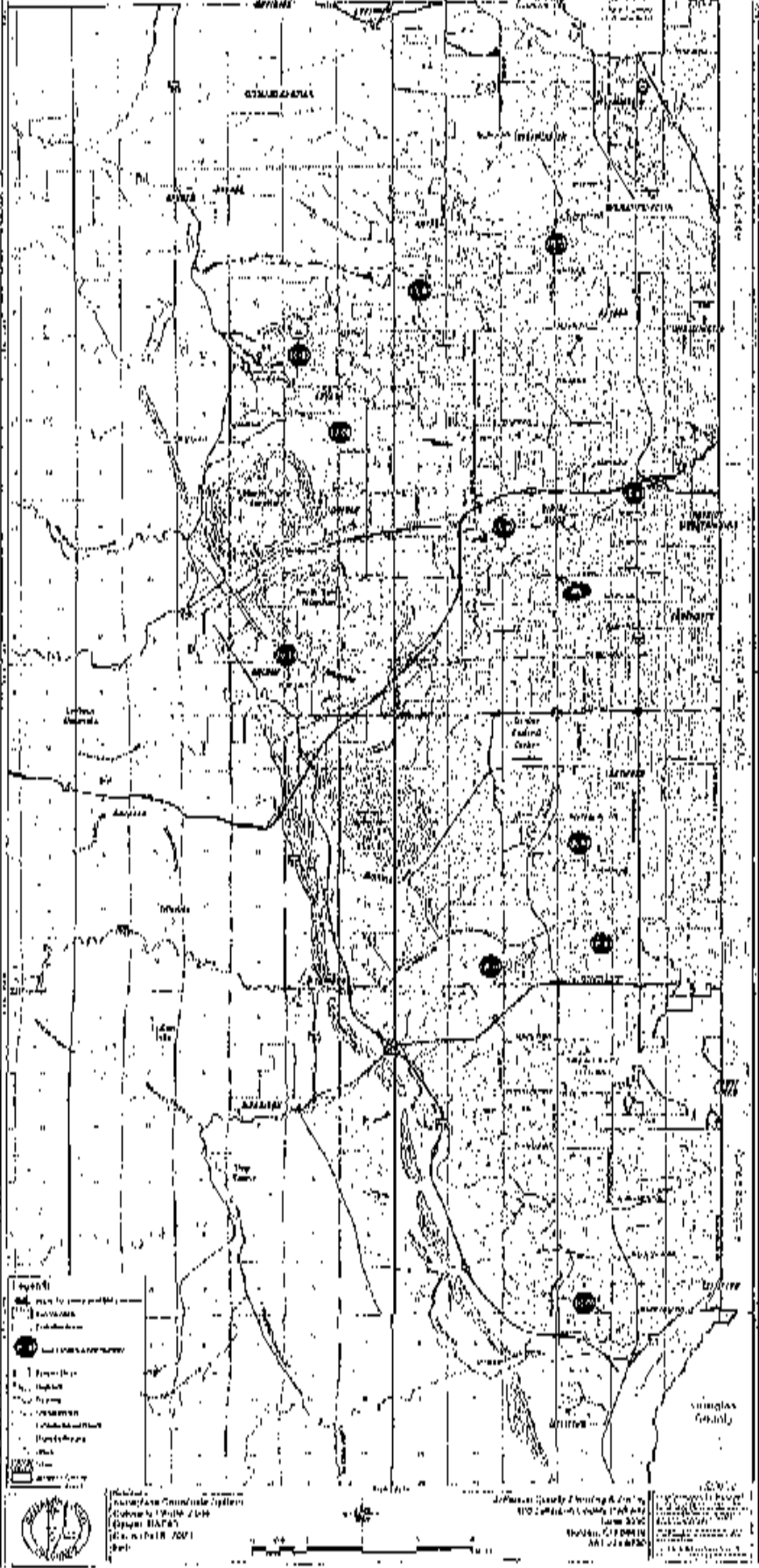
ACRONYMS

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

ATTACHMENTS

- A: Jefferson County 2010 IMM Service Contract Area Map
- B: CDPHE Mosquito Surveillance Plan (most current version)
- C: CDPHE WNV Mosquito Sentinel Guidelines (most current version)

Attachment A
2010 Integrated Mosquito Management Service Area Map





Colorado Department
of Public Health
and Environment

2005 Mosquito Surveillance Plan

3/23/05

A. Introduction:

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

B. Plan Description:

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

Sentinel Traps

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

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

Attachment B

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

Floater Mosquito Traps

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

Permanent Mosquito Traps

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

Surveillance Dates to Remember

Dead bird and mosquito surveillance activities will commence **May 1st**. Initial testing will focus on dead birds as they will be a more sensitive indicator of virus activity early in the season when mosquito populations and infection rates are low. Once virus is detected in an area, mosquito testing should be used to assess the level of risk for human transmission. Dead bird testing should be limited to no more than two or three WNV+ birds from the same area (i.e., approx. 5 mi² area or 1.25 mi. radius). Further bird testing does not provide additional information and expends limited lab resources. **Unlike last season however, corvid bird specimens meeting sampling criteria will be accepted beyond the July 1st deadline date for bird testing if no other WNV+ birds or other surveillance tool indicates virus activity in that area.**

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

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

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

Attachment B

mosquitoes. If a positive, co-mingled pool is detected, subsequent collections specific to a trap may be submitted in order to determine which trap the positive pool came from.

After July 1st, when expanding *Culex* mosquito populations and increasing infection rates should offset the lower sensitivity of VecTest[®], mosquitoes from these floater and permanent traps will be tested by VecTest[®] at the six regional laboratories. If WEE or SLE activity is observed, regional labs will be provided with multi-antigen VecTest[®] kits valid for all three viruses.

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

C. Plan Criteria:

1. Sentinel Mosquito Trap Sites:

a. Obligations:

- 1) Trapping Schedule: weekly from early May through September. In 2005, it is recommended that a trapping frequency of one night per week be observed, adding additional nights if needed due to inclement weather.
- 2) Each site will consist of 2 CDC CO² baited, light traps and one gravid trap.
- 3) Traps shall be properly maintained and baited appropriately (i.e., dry ice for light traps and straw-manure infusion for gravid traps). See "Mosquito Trapping and Handling Protocol" dated 4/29/04.
- 4) Accurate records maintained (date, # trap nights, # mosquitoes by species, *Culex* population density, weather conditions, etc.)
- 5) **Weekly** submission of *Culex* mosquito pools and data to LSD in Denver or if the pools are from Mesa, Delta, and Moffat counties, pools should be sent to the regional lab in Grand Junction.
- 6) Calculation of Infection Rates

b. Site considerations:

- 1) Care should be used in selecting a sentinel trap site so they do not have to be moved to insure continuity of data. Site should be stable and easily accessible.
- 2) Site has a history of significant *Culex* mosquito activity and close proximity to appropriate *Culex* breeding habitat
- 3) Close proximity to human populations
- 4) Availability of resting sites and protection from wind (e.g., culverts, fences, shrubbery, trees, sheds, etc.)
- 5) Away from competing sources of light (light traps) or oviposition sites (gravid traps).
- 6) Avoid areas where heavy, regular adult mosquito and/or insect control are performed.
- 7) History of past arbovirus activity.

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

Attachment B

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

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

2. Floater Mosquito Traps

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

3. Permanent Mosquito Traps

- a. Location preferences: same as those described for *sentinel* and *floater* traps.
- b. Deployment considerations: the selected location has a history of trapping at that site.
- c. Mosquito testing criteria:
 - 1) Many permanent traps have an established history and have collected an abundance of mosquito data over the years, but often have been deployed as a result of nuisance mosquito monitoring, as opposed to arbovirus activity in which case, nuisance mosquito species will not be tested at this time
 - 2) Culex mosquitoes from permanent traps should be tested if the site is within 1.25 mi. of a WNV1 bird, horse or human case, a sustained increase in the Culex mosquito population is noted, and/or the site provides the only arbovirus surveillance data for that area.
- c. Obligations:
 - 1) Trap data (e.g., trap nights, spp. #'s, dates, Culex population density, weather conditions, etc.) maintained.
 - 2) Calculation of Infection Rates
 - 3) "Zone Trapping" see above.



West Nile Virus Mosquito Testing 2010 SENTINEL ZONE PROTOCOL

Sentinel Zone Concept

The goal of surveillance for mosquito-borne viruses (WNV, SLE, WEE) is to determine the human transmission risk in order to implement control and prevention strategies. To facilitate a standardized method of data collection and insure continued operation during budget reductions, the mosquito sentinel site concept was launched in 2004. However, there were concerns that a single site poorly represented the region's mosquito populations and was vulnerable to environmental changes that could reduce its effectiveness.

To address these issues, the program was modified into a "Sentinel Zone" approach. Within a defined "sentinel zone" mosquito traps are set in strategic locations to ensure successful trapping of adequate numbers of mosquitoes throughout the WNV season. In the event your combined trapped mosquito collection numbers for the week are low, it is recommended that they are saved and combined with the following trap night within the same trap week. If one trap or site becomes inoperable, mosquitoes from other traps in the zone can still be tested and the poor trap site can be relocated to another location within the zone.

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

Scope of Work

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

- 2) Trap placement: Each zone will consist of five CO₂ baited light traps. Local agencies can determine where within the zone these traps are located.
 - ❖ Gravid traps or additional light traps can be maintained in the zone, however mosquitoes from other traps cannot be combined with the five zone traps for either testing or calculation of infection rates.
 - ❖ The same location for each trap must be used throughout a season. However, when necessary a non-producing trap can be moved to another location within the zone although this should be minimized and occur early in the season.



ATTACHMENT C

- 3) Trapping schedule: To better reflect the WNV transmission season in Colorado AND ensure the majority of samples ($\geq 60\%$) are tested during the peak of the transmission season the following schedule will be used. This schedule will result in ~ 60 to 90 trap/nights per zone for the season. Agencies can decide which night of the week to use although the same day should be used each week when possible.
- ❖ Weeks of June 14th through July 2nd, 2010 - trap one night per week
 - ❖ Weeks of July 5th through August 6th, 2010
 - for jurisdictions with mosquito control programs where decisions on adulting are made based on trapping & testing results- trap two nights per week
 - for jurisdictions without mosquito control programs- trap one night per week
 - ❖ Weeks of August 9th through August 31st, 2010 - trap one night per week
 - ❖ Agencies can trap mosquito samples/pools prior to June 14th or after August 31st (for identification, internal RAMP), but if these mosquitoes are submitted to CDPHE Laboratory, the submitting agency will be billed.
- 4) Mosquito Submission: The 5 traps within the sentinel zone could be viewed as one large mosquito trap from which the pooled infection rate and vector index will be calculated.
- ❖ All female *Culex* mosquitoes trapped in a sentinel zone must be submitted to the state lab.
 - ❖ Submit mosquitoes in separate pools by *C. tarsalis* and other *Culex* (i.e. *C. pipiens*, *C. erythrorhox*, *C. restuans* combined).
 - ❖ Pool size can be up to 65 mosquitoes per vial.
 - CRITICAL -- the exact number of mosquitoes per vial must be recorded as this affects the infection rate calculations.
 - ❖ *Culex* mosquitoes captured in the 5 zone traps and the captures from the 2 nights per week during the peak of the trapping period should be co-mingled into the minimum number of pools. This will extend limited testing resources.
 - ❖ Agencies can submit mosquito samples/pools prior to June 14th for WNV testing, but the agency will be billed.
- 5) Data Maintenance: Accurate records of trapping results must be maintained to allow year-to-year comparisons and monitor trends in mosquito populations. Dramatic changes in *Culex* population densities can provide an early indication of increasing human risk.
- ❖ It is recommended that all mosquitoes in the traps be identified to species and that population data be maintained for all species. Estimating numbers is acceptable for non-*Culex*
 - ❖ At a minimum, data to maintain should include: trapping dates, // mosquitoes in the zone traps, *Culex* population density by species (*C. tarsalis* and other *Culex* at a minimum), and weather conditions on night of mosquito trapping.
- 6) Other Considerations:
- ❖ Sentinel zones should contain areas that are suitable for *Culex* mosquitoes to breed and are in close proximity to human populations.
 - ❖ Sentinel zone traps should not be located in an area with regular, heavy spraying; operations for adult mosquito or other arthropod control (orchards, tree farms/nurseries, or agriculture areas). Areas with ongoing larviciding are OK.

ATTACHMENT C

- ❖ Traps within a zone should have an availability of mosquito resting sites and protection from wind (i.e. culverts, fences, shrubbery, trees, sheds, etc) and should be placed away from competing sources of light and carbon dioxide (e.g., livestock, including equine, bovine, and swine).
- ❖ Traps should be placed on the leeward side of obstacles if possible. For example, if the prevailing wind is generally from the west just after dusk, try to place the trap on the east side of trees, sheds, etc.

STATE OF COLORADO
CERTIFICATION AND AFFIDAVIT
REGARDING UNAUTHORIZED IMMIGRANTS

A. CERTIFICATION STATEMENT CRS 8-17.5-101 & 102 (HB 08-1343, SB 08-103)

The Vendor, whose name and signature appear below, certifies and agrees as follows:

1. The Vendor shall comply with the provisions of CRS 8-17.5-101 et seq. The Vendor shall not knowingly employ or contract with an unauthorized immigrant to perform work for the State or enter into a contract with a subcontractor that knowingly employs or contracts with an unauthorized immigrant.
2. The Vendor certifies that it does not now knowingly employ or contract with and unauthorized immigrant who will perform work under this contract, and that it will participate in either (i) the "E-Verify Program", jointly administered by the United States Department of Homeland Security and the Social Security Administration, or (ii) the "Department Program" administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired to perform work under this contract.
3. The Vendor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the Vendor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate work for breach and the Vendor shall be liable for damages to the State.

B. AFFIDAVIT CRS 24-70.5-101 (HB 08S-1023)

1. If the Vendor is a sole proprietor, the undersigned hereby swears or affirms under penalty of perjury under the laws of the State of Colorado that (check one):

- I am a United States citizen, or
- I am a Permanent Resident of the United States, or
- I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I am a sole proprietor entering into a contract to perform work for the State of Colorado. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to starting work for the State. I further acknowledge that I will comply with the requirements of CRS 24-70.5-101 et seq. and will produce the required form of identification prior to starting work. I acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under CRS 18-6-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

CERTIFIED and AGREED to this 7th day of May, 2010.

VENDOR:

Ed Fleming Edward M. Fleming
Vendor Full Legal Name

BY: Ed Fleming President
Signature of Authorized Representative Title

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID: 511
OTTER-1

DATE (MM/DD/YYYY)
05/06/10

PRODUCER
Cherry Creek Ins. Agency, Inc.
Suite 500
5660 Greenwood Plaza Blvd.
Greenwood Village CO 80111
Phone: 303-799-0110 FAX: 303-799-0156

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

INSURERS AFFORDING COVERAGE

INSURER A: The Hartford Insurance Group
INSURER B: Pinnacle Administrative
INSURER C:
INSURER D:
INSURER E:

NAIC #

22357
41190

INSURED
Olbert Hill Environmental
Suite 210
10200 West 41st Avenue
Wheat Ridge CO 80033

COVERAGES

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

INSURANCE TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT (MILES \$ PER POLICY) <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> LOG	348BAPC7671	06/23/09	06/23/10	EACH OCCURRENCE LIABILITY (COMBINED) \$ 2,000,000 MEMBERS (Per person) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & AUTO INJURY \$ 2,000,000 OTHER-PAID ADMISSIONS \$ 4,000,000 PRODUCTS - COMMODITY \$ 4,000,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON OWNED AUTOS	348BAPC7671	06/23/09	06/23/10	COMBINED SINGLE LIMIT (Per accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACQUIS \$ OTHER THAN EA ACQ \$ AUTO \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> EXCESSIVE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY EMPLOYEE (EMPLOYEE) OR CONTRACTOR (CONTRACTOR) If yes, describe under SPECIAL PROVISIONS below	4072127	07/01/09	07/03/10	<input checked="" type="checkbox"/> WORKERS COMPENSATION (WORKERS COMPENSATION) <input type="checkbox"/> BOTH B.L. PAY/FACILITY \$ 1,000,000 B.L. DISABILITY PAY/FACILITY \$ 1,000,000 B.L. DISABILITY - POLICY LIMIT \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Jefferson County Government is additional insured regarding the Named Insured's operations for general liability per written contract per form 880008(04/05). Coverage is primary and non-contributory per written contract per form 880008(04/05).

CERTIFICATE HOLDER

Jefferson County Government
15200 W 6th Ave
Golden CO 80401

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
Elizabeth Hart

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID: 01
OTTRK-1

DATE (MM/DD/YYYY)
05/06/10

PRODUCER
Cherry Creek Ins. Agency, Inc.
Suite 500
5660 Greenwood Plaza Blvd.
Greenwood Village CO 80111
Phone: 303-799-0110 Fax: 303-799-0156

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

INSURED

Cortextail Environmental
9444th 210
10200 West 44th Avenue
Wheat Ridge CO 80033

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: The First Great Commercial Group

22357

INSURER B: Pinnacle Assurance

41190

INSURER C:

INSURER D:

COVERAGES

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

INSURANCE TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	348BAPC7671	06/23/09	06/23/10	FACH OCCURRENCE DAMAGE TO RENTED PREMISES (On occurrence) \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL OR RETAIL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				\$ 300,000
	GENERAL AGENT'S LIABILITY				\$ 10,000
	PERSONAL & ADVISORY				\$ 2,000,000
	CERIAL AGENT'S LIABILITY				\$ 4,000,000
	PROFESSIONAL LIABILITY				\$ 4,000,000
A	AUTOMOBILE LIABILITY	348BAPC7671	06/23/09	06/23/10	COMMERCIAL SINGLE LIMIT (Per accident) \$ 2,000,000
	<input type="checkbox"/> ANY AUTO				PERSONAL INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				PERSONAL INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				
	ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN AUTO ONLY: EA ACCIDENT \$
					AUTO ONLY: EA ACCIDENT \$
	EXCESS COMMERCIAL LIABILITY				FACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
	DEDUCTIBLE \$				\$
	RETENTION \$				\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	4072127	07/01/09	07/01/10	<input checked="" type="checkbox"/> WORKERS COMPENSATION LIMITS \$ 1,000,000
	ANY EMPLOYER'S LIABILITY \$ 1,000,000				
	EMPLOYERS' LIABILITY \$ 1,000,000				
	OTHER				EMPLOYERS' LIABILITY \$ 1,000,000

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

CERTIFICATE HOLDER

CANCELLATION

Jefferson County Dept of Health and Environment
Attn: Beth Lipscomb
1801 19th Street
Golden CO 80401

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

ACCEPTED AND AGREED BY:

Beth Lipscomb



WESTMINSTER
COLORADO

Agenda Item 8 F-H

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Second Reading of Councillor’s Bills No. 18, 19, and 20 re the Annexation, Comprehensive Land Use Plan Amendment and Zoning for the 144th Avenue and Tejon Street Property

Prepared By: Walter Patrick, Planner I

Recommended City Council Action

1. Pass Councillor’s Bill No. 18 on second reading annexing the 144th Avenue and Tejon Street property into the City.
2. Pass Councillor’s Bill No. 19 on second reading amending the Comprehensive Land Use Plan for the 144th Avenue and Tejon Street property changing the designation from unincorporated Adams County to City Owned Open Space. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
 - a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
 - b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
 - c) The proposed amendment is compatible with existing and planned surrounding land uses; and
 - d) The proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems.
3. Pass Councillor’s Bill No. 20 on second reading approving the rezoning of the 144th Avenue and Tejon Street property from Adams County A-1 to City of Westminster Open District O-1. This recommendation is based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code have been met.

Summary Statement

- This annexation was originally brought before the Council on May 10, 2010. However, due to a newspaper publication error the hearing was continued to June 28, 2010. The publication error has been corrected.
- The 144th Avenue and Tejon Street annexation area contains 1.122 acres and consists of right-of-way area along 144th Avenue and a City-owned parking area used for the adjacent City Open Space lands.
- In a 2009 Intergovernmental Agreement (IGA) with Adams County, the City agreed to annex the right-of-way areas between Tejon Street and Zuni Street.
- The surrounding Adams County zoning designations are primarily designed for pasturage and large lot residential uses. Open Space uses on this property are compatible with the Adams County zoning designations.
- These Councillor’s Bills were approved on first reading by City Council on June 28, 2010.

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

Respectfully submitted,

J. Brent McFall
City Manager
Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **18**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Dittman - Winter

A BILL

**FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF
CONTIGUOUS UNINCORPORATED TERRITORY IN THE NORTHWEST QUARTER OF
THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 68 WEST,
6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO, KNOWN AS THE 144th AVENUE
AND TEJON STREET PROPERTY**

WHEREAS, pursuant to the laws of the State of Colorado, there was presented to and filed with the City Council of the City of Westminster a written application for annexation to and by the City of Westminster of the hereinafter-described contiguous, unincorporated territory situate, lying and being in the County of Adams, State of Colorado; and

WHEREAS, the Council of the City of Westminster has held the required annexation hearing in conformance with all statutory requirements; and

WHEREAS, the Council of the City of Westminster has satisfied itself concerning the conformance of the proposed annexation to the annexation policy of the City of Westminster.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. That the parcel of land, below described, meets the requirements of Sections 31-12-104(a) and 31-12-105, C.R.S. and annexation of the following described contiguous unincorporated territory, situate, lying and being in the County of Adams, State of Colorado, is hereby accomplished by and to the City of Westminster, State of Colorado:

The 144th Avenue and Tejon Street Property:

A parcel of land located in the northwest quarter of the northwest quarter of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian, County of Adams, State of Colorado being more particularly described as follows:

Commencing at the northwest corner of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian thence N89°57'07"E along the northerly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 1309.53 feet to the northeast corner of the northwest quarter of the northwest quarter of said Section 21; thence S00°19'35"E along the easterly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 30.00 feet to the Point of Beginning; thence S00°19'35"E along said easterly line a distance of 50.13 feet; thence S35°01'57"W a distance of 29.16 feet; thence S35°19'56"W a distance of 125.59 feet; thence S89°58'53"W a distance of 4.86 feet; thence N00°01'07"W a distance of 10.00 feet; thence S89°58'53"W a distance of 166.00 feet; thence N00°01'07"W a distance of 116.76 feet; thence S89°57'11"W a distance of 207.51 feet; thence N00°02'53"W a distance of 49.54 feet; thence N89°57'07"E along a line which is 30 feet southerly of and parallel to the northerly line of the northwest quarter of the northwest quarter of said Section 21, a distance of 467.54 feet to the Point of Beginning.

Said parcel contains 1.122 acres (48,880 sq. ft.), more or less.

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 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **19**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Dittman - Winter

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That the City has initiated an amendment to the Westminster Comprehensive Land Use Plan, pursuant to W.M.C. §11-4-16(D), for the property described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from Unincorporated Adams County to "City-Owned Open Space" for the 1.122 acre property located on 144th Avenue and Tejon Street.

b. That such amendment has been referred to the Planning Commission, which body held a public hearing thereon on April 13, 2010, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendment.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. §11-4-16(B).

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

e. That the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly the goal that encourages the enhancement of the City's open space system to preserve and protect natural areas, vistas, and view corridors, and to complete the open space and trail system.

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

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

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

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

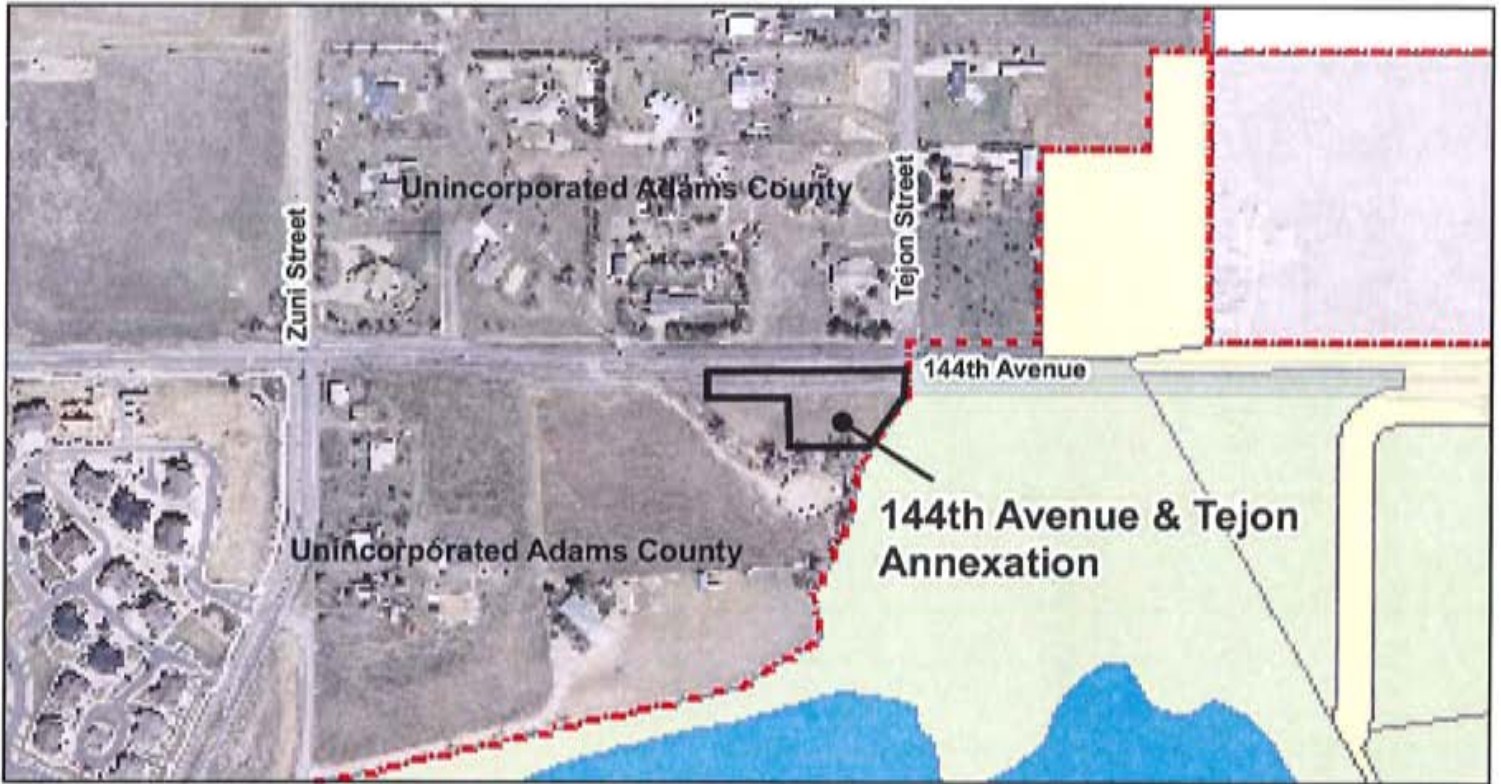
City Attorney's Office

**Legal Description
144th Avenue and Tejon Street**

A parcel of land located in the northwest quarter of the northwest quarter of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian, County of Adams, State of Colorado being more particularly described as follows:

Commencing at the northwest corner of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian thence N89°57'07"E along the northerly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 1309.53 feet to the northeast corner of the northwest quarter of the northwest quarter of said Section 21; thence S00°19'35"E along the easterly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 30.00 feet to the Point of Beginning; thence S00°19'35"E along said easterly line a distance of 50.13 feet; thence S35°01'57"W a distance of 29.16 feet; thence S35°19'56"W a distance of 125.59 feet; thence S89°58'53"W a distance of 4.86 feet; thence N00°01'07"W a distance of 10.00 feet; thence S89°58'53"W a distance of 166.00 feet; thence N00°01'07"W a distance of 116.76 feet; thence S89°57'11"W a distance of 207.51 feet; thence N00°02'53"W a distance of 49.54 feet; thence N89°57'07"E along a line which is 30 feet southerly of and parallel to the northerly line of the northwest quarter of the northwest quarter of said Section 21, a distance of 467.54 feet to the Point of Beginning.

Said parcel contains 1.122 acres (48,880 sq. ft.), more or less.



Change From: Outside City Limits

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

Change To: City Owned Open Space



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **20**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Dittman - Winter

**A BILL
FOR AN ORDINANCE AMENDING THE ZONING OF
THE 144th AVENUE AND TEJON STREET PROPERTY, A 1.122 ACRE PARCEL
LOCATED AT 144th AVENUE AND TEJON STREET, ADAMS COUNTY, COLORADO
FROM A-1 (ADAMS COUNTY) TO O-1**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That a rezoning of the property generally located along the southwest corner of 144th Avenue and Tejon Street, as described in attached Exhibit A, incorporated herein by reference, from the Adams County A-1 zone to an O-1 zone is desirable because:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.

b. That the notice requirements of W.M.C. §11-5-13 have been met.

c. That such rezoning has been referred to the Planning Commission, which body held a public hearing thereon on April 13, 2010, and has recommended approval of the requested amendment.

d. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code and has considered the criteria in W.M.C. §11-5-3.

e. That based on the evidence produced at the public hearing, a rezoning to the proposed O-1 zoning complies with all requirements of Westminster Municipal Code, including, but not limited to, the provisions of W.M.C. §11-4-3, requiring compliance with the Comprehensive Land Use Plan, and the criteria of W.M.C. §11-5-3.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property, described in Exhibit A, attached hereto and incorporated herein by reference, from the Adams County A-1 zoning district to the O-1 zoning district, as depicted on Exhibit B, attached hereto.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. 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 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

**Legal Description
144th Avenue and Tejon Street**















A parcel of land located in the northwest quarter of the northwest quarter of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian, County of Adams, State of Colorado being more particularly described as follows:

Commencing at the northwest corner of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian thence N89°57'07"E along the northerly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 1309.53 feet to the northeast corner of the northwest quarter of the northwest quarter of said Section 21; thence S00°19'35"E along the easterly line of the northwest quarter of the northwest quarter of said Section 21 a distance of 30.00 feet to the Point of Beginning; thence S00°19'35"E along said easterly line a distance of 50.13 feet; thence S35°01'57"W a distance of 29.16 feet; thence S35°19'56"W a distance of 125.59 feet; thence S89°58'53"W a distance of 4.86 feet; thence N00°01'07"W a distance of 10.00 feet; thence S89°58'53"W a distance of 166.00 feet; thence N00°01'07"W a distance of 116.76 feet; thence S89°57'11"W a distance of 207.51 feet; thence N00°02'53"W a distance of 49.54 feet; thence N89°57'07"E along a line which is 30 feet southerly of and parallel to the northerly line of the northwest quarter of the northwest quarter of said Section 21, a distance of 467.54 feet to the Point of Beginning.

Said parcel contains 1.122 acres (48,880 sq. ft.), more or less.



Description of Change: Adams County A-1 to O-1

Legend									
	B-1		O-1		R-1		R-5		T-1
	C-1		PUD		R-2		R-A		Outside City Limits
	M-1		R-3		R-4		R-E		

Teeples Property New Zoning Designation = O-1





WESTMINSTER

COLORADO
Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Second Reading of Councillor’s Bills No. 21, 22, and 23 re the Annexation, Comprehensive Land Use Plan Amendment and Zoning for the 144th Avenue and Zuni Street Property

Prepared By: Walter Patrick, Planner I

Recommended City Council Action

1. Pass Councillor’s Bill No. 21 on second reading annexing the 144th Avenue and Zuni Street property into the City.
2. Pass Councillor’s Bill No. 22 on second reading amending the Comprehensive Land Use Plan for the 144th Avenue and Zuni Street property changing the designation from unincorporated Adams County to City Owned Open Space. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
 - a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
 - b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
 - c) The proposed amendment is compatible with existing and planned surrounding land uses; and
 - d) The proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems.
3. Pass Councillor’s Bill No. 23 on second reading approving the rezoning of the 144th Avenue and Zuni Street property from Adams County (A-3) to Open District (O-1). This recommendation is based on a finding that the criteria set forth in Section 11-5-3 Westminster Municipal Code have been met.

Summary Statement

- This annexation was originally brought before the Council on May 10, 2010. However, due to a newspaper publication error the hearing was continued to June 28, 2010. The publication error has been corrected.
- The 144th Avenue and Zuni Street annexation area contains about 5.902 acres and consists of right-of-way area along 144th Avenue as well as the former Barnett property, which the City purchased for Open Space, located at the southeast corner of Zuni Street and 144th Avenue.
- In a 2009 Intergovernmental Agreement (IGA) with Adams County, the City agreed to annex the right-of-way areas between Tejon Street and Zuni Street.
- The surrounding Adams County zoning designations are primarily designed for pasturage and large lot residential uses. Open Space uses on this property are compatible with the Adams County zoning designations.
- These Councillor’s Bills were approved on first reading by City Council on June 28, 2010.

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

Respectfully submitted,

J. Brent McFall
City Manager
Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **21**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Briggs - Major

A BILL

**FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF
CONTIGUOUS UNINCORPORATED TERRITORY IN THE SOUTHEAST QUARTER AND
THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, AND
THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21,
TOWNSHIP 1 SOUTH, RANGE 68 WEST, 6TH P.M., COUNTY OF ADAMS, STATE OF
COLORADO, KNOWN AS THE
144th AVENUE AND ZUNI STREET PROPERTY**

WHEREAS, pursuant to the laws of the State of Colorado, there was presented to and filed with the City Council of the City of Westminster a written application for annexation to and by the City of Westminster of the hereinafter-described contiguous, unincorporated territory situate, lying and being in the County of Adams, State of Colorado; and

WHEREAS, the Council of the City of Westminster has held the required annexation hearing in conformance with all statutory requirements; and

WHEREAS, the Council of the City of Westminster has satisfied itself concerning the conformance of the proposed annexation to the annexation policy of the City of Westminster.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. That the parcel of land, below described, meets the requirements of Sections 31-12-104(a) and 31-12-105, C.R.S. and annexation of the following described contiguous unincorporated territory, situate, lying and being in the County of Adams, State of Colorado, is hereby accomplished by and to the City of Westminster, State of Colorado:

The 144th Avenue and Zuni Street Property:

A parcel of land located in the southeast quarter and the southwest quarter of the southwest quarter of Section 16, and the northwest quarter of the northwest quarter of Section 21, Township 1 South, Range 68 West of the Sixth Principal Meridian, County of Adams, State of Colorado being more particularly described as follows:

commencing at the southwest corner of Section 16, Township 1 South, Range 68 West of the Sixth Principal Meridian thence N89°57'07"e along the southerly line of the southwest quarter of the southwest quarter of section 16 a distance of 50.00 feet to a point on the easterly right-of-way line of Zuni street extended and the point of beginning; thence N00°22'19"W along said easterly right-of-way line of Zuni street a distance of 60.00 feet to a point on the northerly right-of-way line of West 144th avenue; thence along said northerly right-of-way line the following seven (7) consecutive courses; 1.) N89°57'07"E a distance of 604.68 feet; 2.) thence S00°27'07"E a distance of 20.00 feet; 3.) thence N89°57'07"E a distance of 599.70 feet; 4.) thence N00°32'16"W a distance of 15.00 feet; 5.) thence N89°57'07"E a distance of 55.00 feet to a point on the easterly line of the southwest quarter of the southwest quarter of

said section 16; 6.) thence N89°57'07"E a distance of 80.00 feet; 7.) thence S00°32'16"E a distance of 25.00 feet; thence S89°57'07"W a distance of 80.00 feet to a point on the easterly line of the southwest quarter of the southwest quarter of said section 16; thence S00°32'16"E along said easterly line a distance of 30.00 feet to the southeast corner of the southwest quarter of the southwest quarter of said section 16; thence S00°19'35"E along the easterly line of the northwest quarter of the northwest quarter of said section 21 a distance of 30.00 feet; thence S89°57'07"W along a line which is 30 feet southerly of and parallel to the northerly line of the northwest quarter of the northwest quarter of said section 21 a distance of 467.54 feet; thence S00°02'53"E a distance of 49.54 feet; thence S89°57'07"W a distance of 8.00 feet; thence S00°02'49"E a distance of 32.50 feet; thence S89°57'11"W a distance of 82.88 feet; thence N00°02'49"W a distance of 32.50 feet; thence S89°57'11"W a distance of 100.40 feet; thence 135.45 feet along the arc of a curve to the right, having a radius of 991.50 feet, a central angle of 07°49'38" and a chord which bears N86°08'00"W a distance of 135.34 feet to a point on the westerly line of Barnett Estates recorded July 28th, 1995 at File No. 17, Map No. 409, Reception No. C0091433; thence along the westerly and northerly line of said Barnett Estates the following two (2) consecutive courses 1.) S00°15'12"E a distance of 217.81 feet; 2.) thence S89°57'48"W a distance of 475.58 feet to a point on the easterly right-of-way line of Zuni street; thence along said easterly right-of-way line the following three (3) consecutive courses; 1.) N00°15'12"W a distance of 258.01 feet; 2.) thence N89°56'37"E a distance of 10.00 feet; 3.) thence N00°15'12"W a distance of 30.00 feet to the Point of Beginning.

Said parcel contains 5.607 acres (244,254 sq. ft.), more or less.

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 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **22**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Briggs - Major

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That the City has initiated an amendment to the Westminster Comprehensive Land Use Plan, pursuant to W.M.C. §11-4-16(D), for the property described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from Unincorporated Adams County to "City-Owned Open Space" for the 5.607 acre property located on 144TH Avenue and Zuni Street.

b. That such amendment has been referred to the Planning Commission, which body held a public hearing thereon on April 13, 2010, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendment.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. §11-4-16(B).

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

e. That the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly the goal that encourages the enhancement of the City's open space system to preserve and protect natural areas, vistas, and view corridors, and to complete the open space and trail system.

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

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

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

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

ATTEST:

Mayor

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

EXHIBIT A

**Legal Description
144th Avenue and Zuni Street**

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBE AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 16, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN THENCE N89°57'07"E ALONG THE SOUTHERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16 A DISTANCE OF 50.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF ZUNI STREET EXTENDED AND THE POINT OF BEGINNING; THENCE N00°22'19"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF ZUNI STREET A DISTANCE OF 60.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 144TH AVENUE; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING SEVEN (7) CONSECUTIVE COURSES; 1.) N89°57'07"E A DISTANCE OF 604.68 FEET; 2.) THENCE S00°27'07"E A DISTANCE OF 20.00 FEET; 3.) THENCE N89°57'07"E A DISTANCE OF 599.70 FEET; 4.) THENCE N00°32'16"W A DISTANCE OF 15.00 FEET; 5.) THENCE N89°57'07"E A DISTANCE OF 55.00 FEET TO A POINT ON THE EASTERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 16; 6.) THENCE N89°57'07"E A DISTANCE OF 80.00 FEET; 7.) THENCE S00°32'16"E A DISTANCE OF 25.00 FEET; THENCE S89°57'07"W A DISTANCE OF 80.00 FEET TO A POINT ON THE EASTERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 16; THENCE S00°32'16"E ALONG SAID EASTERLY LINE A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 16; THENCE S00°19'35"E ALONG THE EASTERLY LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 21 A DISTANCE OF 30.00 FEET; THENCE S89°57'07"W ALONG A LINE WHICH IS 30 FEET SOUTHERLY OF AND PARALLEL TO THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 21 A DISTANCE OF 467.54 FEET; THENCE S00°02'53"E A DISTANCE OF 49.54 FEET; THENCE S89°57'07"W A DISTANCE OF 8.00 FEET; THENCE S00°02'49"E A DISTANCE OF 32.50 FEET; THENCE S89°57'11"W A DISTANCE OF 82.88 FEET; THENCE N00°02'49"W A DISTANCE OF 32.50 FEET; THENCE S89°57'11"W A DISTANCE OF 100.40 FEET; THENCE 135.45 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 991.50 FEET, A CENTRAL ANGLE OF 07°49'38" AND A CHORD WHICH BEARS N86°08'00"W A DISTANCE OF 135.34 FEET TO A POINT ON THE WESTERLY LINE OF BARNETT ESTATES RECORDED JULY 28TH, 1995 AT FILE NO. 17, MAP NO. 409, RECEPTION NO. C0091433; THENCE ALONG THE WESTERLY AND NORTHERLY LINE OF SAID BARNETT ESTATES THE FOLLOWING TWO (2) CONSECUTIVE COURSES 1.) S00°15'12"E A DISTANCE OF 217.81 FEET; 2.) THENCE S89°57'48"W A DISTANCE OF 475.58 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF ZUNI STREET; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) CONSECUTIVE COURSES; 1.) N00°15'12"W A DISTANCE OF 258.01 FEET; 2.) THENCE N89°56'37"E A DISTANCE OF 10.00 FEET; 3.) THENCE N00°15'12"W A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 5.607 ACRES (244,254 SQ. FT.), MORE OR LESS.



Change From: Outside City Limits

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

Change To: City Owned Open Space



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **23**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

Briggs - Major

A BILL

**FOR AN ORDINANCE AMENDING THE ZONING OF
THE 144th AVENUE AND ZUNI STREET PROPERTY, A 5.607 ACRE PARCEL LOCATED
ALONG 144th AVENUE BETWEEN TEJON STREET AND ZUNI STREET, ADAMS COUNTY,
COLORADO FROM A-3 (ADAMS COUNTY) TO O-1**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That a rezoning of the property generally located along 144th Avenue between Tejon Street and Zuni Street, as described in attached Exhibit A, incorporated herein by reference, from the Adams County A-3 zone to an O-1 zone is desirable because:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.

b. That the notice requirements of W.M.C. §11-5-13 have been met.

c. That such rezoning has been referred to the Planning Commission, which body held a public hearing thereon on April 13, 2010, and has recommended approval of the requested amendment.

d. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code and has considered the criteria in W.M.C. §11-5-3.

e. That based on the evidence produced at the public hearing, a rezoning to the proposed O-1 zoning complies with all requirements of Westminster Municipal Code, including, but not limited to, the provisions of W.M.C. §11-4-3, requiring compliance with the Comprehensive Land Use Plan, and the criteria of W.M.C. §11-5-3.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property, described in Exhibit A, attached hereto and incorporated herein by reference, from the Adams County A-3 zoning district to the O-1 zoning district, as depicted on Exhibit B, attached hereto.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. 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 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

EXHIBIT A

**Legal Description
144th Avenue and Zuni Street**

LEGAL DESCRIPTION:















A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBE AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 16, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN THENCE N89°57'07"E ALONG THE SOUTHERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16 A DISTANCE OF 50.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF ZUNI STREET EXTENDED AND THE POINT OF BEGINNING; THENCE N00°22'19"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF ZUNI STREET A DISTANCE OF 60.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 144TH AVENUE; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING SEVEN (7) CONSECUTIVE COURSES; 1.) N89°57'07"E A DISTANCE OF 604.68 FEET; 2.) THENCE S00°27'07"E A DISTANCE OF 20.00 FEET; 3.) THENCE N89°57'07"E A DISTANCE OF 599.70 FEET; 4.) THENCE N00°32'16"W A DISTANCE OF 15.00 FEET; 5.) THENCE N89°57'07"E A DISTANCE OF 55.00 FEET TO A POINT ON THE EASTERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 16; 6.) THENCE N89°57'07"E A DISTANCE OF 80.00 FEET; 7.) THENCE S00°32'16"E A DISTANCE OF 25.00 FEET; THENCE S89°57'07"W A DISTANCE OF 80.00 FEET TO A POINT ON THE EASTERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 16; THENCE S00°32'16"E ALONG SAID EASTERLY LINE A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 16; THENCE S00°19'35"E ALONG THE EASTERLY LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 21 A DISTANCE OF 30.00 FEET; THENCE S89°57'07"W ALONG A LINE WHICH IS 30 FEET SOUTHERLY OF AND PARALLEL TO THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 21 A DISTANCE OF 467.54 FEET; THENCE S00°02'53"E A DISTANCE OF 49.54 FEET; THENCE S89°57'07"W A DISTANCE OF 8.00 FEET; THENCE S00°02'49"E A DISTANCE OF 32.50 FEET; THENCE S89°57'11"W A DISTANCE OF 82.88 FEET; THENCE N00°02'49"W A DISTANCE OF 32.50 FEET; THENCE S89°57'11"W A DISTANCE OF 100.40 FEET; THENCE 135.45 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 991.50 FEET, A CENTRAL ANGLE OF 07°49'38" AND A CHORD WHICH BEARS N86°08'00"W A DISTANCE OF 135.34 FEET TO A POINT ON THE WESTERLY LINE OF BARNETT ESTATES RECORDED JULY 28TH, 1995 AT FILE NO. 17, MAP NO. 409, RECEPTION NO. C0091433; THENCE ALONG THE WESTERLY AND NORTHERLY LINE OF SAID BARNETT ESTATES THE FOLLOWING TWO (2) CONSECUTIVE COURSES 1.) S00°15'12"E A DISTANCE OF 217.81 FEET; 2.) THENCE S89°57'48"W A DISTANCE OF 475.58 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF ZUNI STREET; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) CONSECUTIVE COURSES; 1.) N00°15'12"W A DISTANCE OF 258.01 FEET; 2.) THENCE N89°56'37"E A DISTANCE OF 10.00 FEET; 3.) THENCE N00°15'12"W A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

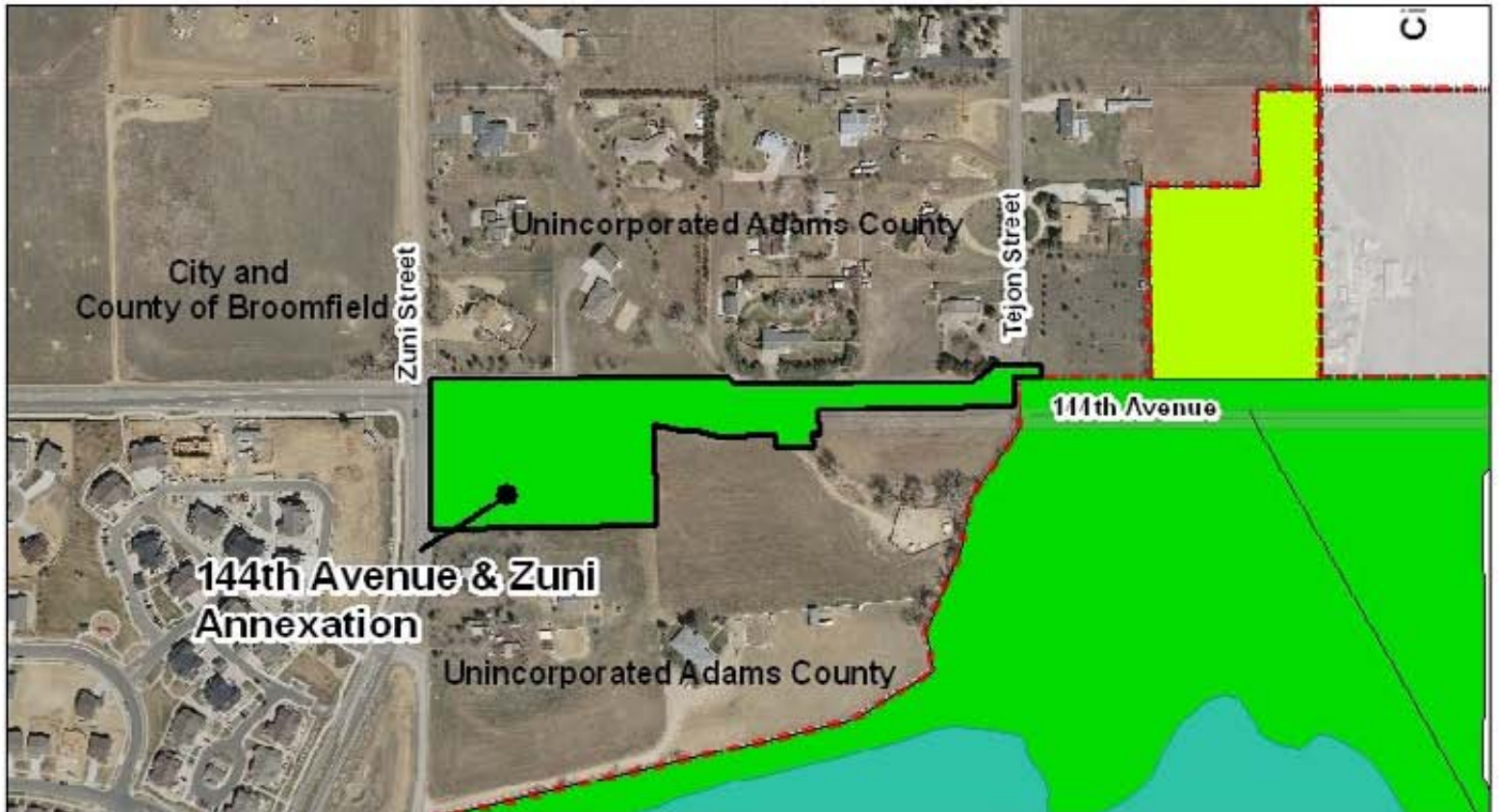
SAID PARCEL CONTAINS 5.607 ACRES (244,254 SQ. FT.), MORE OR LESS.



Description of Change: Adams County A-3 to O-1

Legend									
	R-1		O-1		R-1		R-5		T-1
	C-1		PUD		R-2		R-A		Outside City Limits
	M-1		R-3		R-4		R-E		

New Zoning Designation = O-1





Agenda Item 8 L

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Second Reading of Councillor's Bill No. 32 re Revisions to Title XI of the Westminster Municipal Code Regarding Screening of Trash Storage Areas and Off Street Parking Standards

Prepared By: Walter Patrick, Planner I

Recommended City Council Action

Pass Councillor's Bill No. 32 on second reading making revisions to Title XI of the Westminster Municipal Code regarding Screening of Trash Storage Areas and Off Street Parking Standards.

Summary Statement

- Staff proposes revisions to Title XI of the Westminster Municipal Code related to Trash Storage Areas and Off Street Parking Standards. These changes are intended to address missing or outdated information, and correct inconsistencies between City Code and the City's Design Guidelines.
- This Councillor's Bill was approved on first reading by City Council on June 28, 2010.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment
- Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **32**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

Major - Dittman

A BILL

FOR AN ORDINANCE AMENDING SECTION 11-4-6 AND 11-7-4 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING SCREENING OF TRASH STORAGE AREAS AND OFF STREET PARKING STANDARDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Section 11-4-6, subsection (M)(1), W.M.C., is hereby AMENDED as follows:

11-4-6: SPECIAL REGULATIONS: (2534 2841 2975 3497)

(M) SCREENING OF TRASH STORAGE AREAS IN ALL ZONE DISTRICTS.

(1) Trash storage for multi-unit dwellings, institutional buildings, and all business and industrial buildings or uses shall be accommodated within the structure, or if located outside, shall be screened so as not to be visible from adjacent public streets or from adjacent residential development within one hundred feet (100') of the trash storage area. Screening shall be an opaque decorative wall or fence ~~not to exceed~~ built to a minimum of six feet (6') in height and shall be constructed of materials compatible with building materials of the structure such that the enclosure or screen wall or fence will be protected from damage by normal removal and replacement of the dumpster by a trash truck by incorporation of protective pipe bollards and concrete curbs outside and inside of the enclosure.

(2) One and two-family dwellings and accessory uses, except for temporary construction purposes, shall not be permitted to maintain large trash dumpsters one (1) cubic yard or larger, as such dumpsters are of a size and type normally associated with commercial uses.

(3) In no instance shall trash enclosures be permitted to encroach into sight distance triangles for driveways or street corners. No such enclosure shall displace required parking spaces.

(4) The requirements of this Section shall apply to all new development prior to a certificate of occupancy. In addition, all such trash storage areas in existence as of the date of adoption of this ordinance (August, 1997) shall come into conformance within one (1) year of the adoption hereof. For the purpose of enforcement, the land owner shall be held legally responsible for compliance with this law.

Section 2: Section 11-7-4, subsections(C) and (E), W.M.C., are hereby AMENDED as follows:

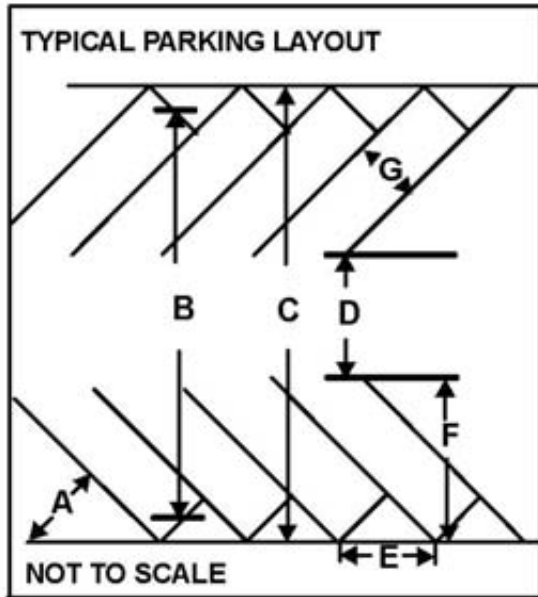
11-7-4: OFF-STREET PARKING STANDARDS: (2534 2678 3084)

(C) CONSTRUCTION AND MAINTENANCE STANDARDS.

1. Each off street parking space being at an angle of ninety (90) degrees to the drive aisle shall not be less than nine feet (9') wide, nineteen feet (19') long, and that any cover be at least seven feet (7') high. Angled parking spaces shall be per the typical parking layout standards. (See figure 1 below) Each space shall be surfaced with asphalt or other permanent material; shall be properly graded and drained; shall be provided with surfaced vehicular access to an improved public right of way.

Parking Lot Standards (Figure 1)

	A	B	C	D	E	F	G
A – Parking angle (degrees)	45°	46.2°	52.6°	13°	12.7°	19.8°	9°
B – Stall Center (FT.)	50'	47.0'	52.8'	12'	11.7'	20.4'	9'
C – Minimum Overall Double Row With aisle between (FT.)	60'	55.5'	60.0'	18'	10.4'	21.0'	9'
D – Aisle Width (FT.)	70'	57.9'	61.0'	19'	9.6'	21.0'	9'
E – Curb Length (FT.)	80'	62.7'	64.6'	24'	9.1'	20.3'	9'
F – Stall to Curb (FT.)	90'		62.0'	24'	9'	19.0'	9'
G – Stall Width (FT)							



2. Each off street parking space shall conform with the City Standard Specifications for Design and Construction.

3. All required off street parking spaces and access drives shall be improved with asphalt pavement or an equivalent surface installed in conformance with the "Westminster Standard Specifications for the Construction of Public Works Projects." This requirement shall not apply to City open space properties and parks.

4. All off street parking areas shall be maintained in good condition, free of weeds, dust, trash and debris and major surfacing defects.

5. No parking area shall be used for the storage, sale, repair, dismantling or servicing of any vehicles, equipment, materials, or supplies.

6. All off street parking spaces (excluding single and/or duplex units) shall be outlined by white or yellow stripes not less than four inches (4") wide, painted on the surface area or an alternative judged equally effective by the City Manager or his designee. All non parking spaces such as loading zones, emergency lanes or spaces in front of doorways/entrances, shall be clearly delineated.

7. All parking areas shall be provided with ingress and egress to an improved public right of way so located as to promote safety and minimize traffic congestion; shall be provided with necessary internal circulation drives and aisles, layout of parking spaces consistent with the "Westminster Standard Specifications for the Construction of Public Works Projects." Prior to the issuance of a building permit, the layout of the required parking area (excluding single and duplex units) shall be approved by the City Manager or his designee.

8. All access drives and required parking spaces (excluding single and duplex units) facing and abutting a building, wall, fence, property line or walkway shall be provided with installed curb and gutter, bumper or wheel stops. Such devices shall be constructed and installed in conformance with the "Westminster Standard Specifications for the Construction of Public Works Projects."

9. Parking areas (excluding single and duplex units) shall be screened so as to prevent disturbance to adjacent residential development due to the maneuvering of vehicles entering and leaving the parking area. Screening design and materials shall be in conformance with the "Westminster Standard Specifications for the Construction of Public Works Projects" prior to issuance of a building permit.

10. Parking areas (excluding single and duplex units) shall be provided with night lighting for security and safety and adequate visibility for maneuvering to emphasize entrances and exits and hazards. Lighting structures and their location shall conform to the "Westminster Standard Specifications for the Construction of Public Works Projects" and shall be designed so as not to unreasonably disturb occupants of adjacent residential structures.

11. All parking areas shall be designed in conformance with the City of Westminster Landscape Regulations and Commercial Standards.

12. Parking spaces may be designed with a two foot (2') overhand over landscaped areas and walks, provided that the minimum widths of the affected landscape or walk is increased by two feet (2').

13. For parking spaces located within a parking structure, the Planning Manager may reduce the dimensions of the parking spaces from the code requirement, provided that an acceptable parking study has been submitted to the City. In no event may a parking space be less than eight feet (8') wide.

(E) BICYCLE PARKING.

1. Bicycle Parking Standards.

(a) Bicycle parking facilities shall include provisions for storage and locking of bicycles, either in lockers or secure racks or equivalent installation in which the bicycle frame ~~or wheels~~ and at least one wheel may be locked by the user.

(b) The ground surface surrounding and underneath the bicycle storage facility shall be surfaced in a manner which prevents mud or dust.

(c) Bicycle spaces shall consist of racks or lockers anchored so that they cannot be easily removed. Racks shall be designed that ~~a at least one~~ wheel ~~or~~ and the frame of a bicycle can be locked securely to it with a heavy chain, cable, or padlock. Lockers shall be so designed to minimize the possibility of an unauthorized person removing a bicycle.

(d) Fixed objects which are intended to serve as bicycle racks but not obviously intended for such purposes shall be labeled as available for bicycles.

(e) Bicycle lockers should be harmonious with their environment both in color and design as approved by the City. Parking device designs should be incorporated wherever possible into building design or street furniture. There should be sufficient space between devices so that the use of one does not interfere with the other bicycles or devices. The parking device selected should allow maximum flexibility in grouping and placement.

(f) The City shall have the authority to review and approve bicycle parking devices for design with respect to safety and convenience.

(g) Parking ~~and for~~ bicycles shall be provided on the same lot, tract or parcel as the use served.

(h) Bicycle parking areas shall be lighted and located as near to the building or facility entrance as possible, without interfering with pedestrian traffic.

2. Amount of Off-street Bicycle Parking Spaces Required. The minimum number of bicycle parking spaces shall be required as follows for all zones except P.U.D.; however, during the development review process, City staff may determine that a greater number of spaces than those listed below are necessary. For P.U.D. zones, the following list shall be used as a guideline:

(a) Multiple Family Dwellings: .25 bicycle parking space for each dwelling unit.

(b) Non Residential Uses: One bicycle parking space per each twenty (20) required automobile parking spaces, with no less than two (2) spaces per premise, with the following exceptions:

(1) Private or Commercial Indoor Recreation Facility: One bicycle parking space for each twelve (12) persons capacity.

(2) Community Facilities Including Public Parks, Libraries, Recreation or Activity Centers: One bicycle parking space per twelve (12) persons capacity.

(3) Drive In Theatres, Auto Service Stations, Automobile Repair and Service: None.

(4) Mortuaries: None.

~~(5) Motels, Hotels, Lodging: None.~~

Section 3: 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 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Second Reading of Councillor’s Bill No. 33 re Lease of City Property

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Pass Councillor’s Bill No. 33 on second reading authorizing the execution of a 2 year lease in substantially the same form as the attached agreement for the JHRBarnum, LLC (“Barnum”) property located at 6899 Grove Street, Denver, CO 80221.

Summary Statement

- City Council approved the purchase of the Barnum property at its May 10, 2010 meeting. The City plans to close on the 3.53-acre Barnum property on July 15, 2010. This property will be acquired as part of the new Little Dry Creek Park.
- The City entered into a Purchase and Sale Agreement with Barnum Inc. to acquire the property. The Purchase and Sale Agreement included the right for Barnum to lease the property from the City after the purchase for a period of two years to allow the owners to continue operation of their company through July 15, 2012 at this site. Per the Purchase and Sale Agreement terms, the Seller will pay one dollar per year to lease the property. The terms of the lease will allow JHRBarnum to sublease the building to Barnum Printing and Publishing.
- Included in the City Council approval was the statement that staff would present a proposed ordinance approving the lease of the property back to Barnum, per the City Charter requirements, prior to closing on this acquisition so that Barnum can continue its current use of the property. The form of lease has been approved by the City Attorney’s Office and by Barnum. The lease will not be executed until after the property closing has occurred.
- This Councillor’s Bill was approved on first reading by City Council on June 28, 2010.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance & Form of Lease

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **33**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

Briggs – Major

A BILL

FOR AN ORDINANCE APPROVING A LEASE AGREEMENT FOR THE LEASE OF THE JHRBARNUM, LLC PROPERTY LOCATED AT 6899 GROVE STREET, DENVER, CO 80221

WHEREAS, the City of Westminster will purchase the JHRBarnum, LLC property located at 6899 Grove Street, Denver, CO 80221. JHRBarnum, LLC has requested that the City allow it to remain on this property and continue its current use of the facility on the property through July 15, 2012; and

WHEREAS, JHRBarnum, LLC negotiated the right to remain on the property through July 15th, 2012 as part of the Purchase 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 JHRBarnum, LLC and the City for the property located at 6899 Grove Street in substantially the form attached to this Ordinance, is approved, 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 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day of July, 2010, between the **CITY OF WESTMINSTER**, a Colorado home rule municipality (the "City"), and **JHRBARNUM, LLC.**, whose address is 6899 GROVE STREET, DENVER, CO 80221 (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 for a period of time not to exceed two (2) years 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 15, 2010, and ending on July 16, 2012, at 12:00 p.m. MST, provided, however, Lessee may terminate this Lease upon thirty (30) days advance written notice to the City. Subparagraphs 5, 7, 8, and 11 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 its existing printing and publishing business, 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 County.
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 shall maintain commercially reasonable casualty, liability and other insurance as may be acceptable to City in City's reasonable discretion.

9. Subletting. To sublet no part of the Property, or assign this lease or any interest therein except that Lessee is expressly permitted to assign this Lease to Barnum Printing and Publishing Co.

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 the electrical panels/subpanels, internal transformers and other electrical components appurtenant to the operation of the printing equipment.

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. JHRBarnum, LLC shall maintain in good repair, at its 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 at its current location and any public improvements constructed or caused to be constructed by City shall be constructed in such a manner so as not to 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 County.

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 60 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:

I.V. Rosenberg
6899 Grove Street
Denver, CO 80221

With a Copy To:

Fairfield and Woods, P.C.
Attn: Rita Connerly
1700 Lincoln St., Suite 2400
Denver, CO 80203

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. Barnum shall be responsible for paying all sales, use, property, and other taxes associated with Barnum’s lease, possession, and use of the property during the Lease, including any possessory interest taxes.

21. Jurisdiction. During the term of this Lease, the Property shall remain within unincorporated Adams County. City agrees not to initiate or act upon any annexation petition that would cause the City’s sales, use or property taxes to be assessed or imposed on the Property, or any personal property on the Property.

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

CITY OF WESTMINSTER

LESSEE: JHRBARNUM, LLC

By: _____
J. Brent McFall
City Manager

By: _____
Its: _____

ATTEST:

By: _____
Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney

EXHIBIT A

Lot 2, Block 1,
Feighner Subdivision,
County of Adams,
State of Colorado.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Second Reading of Councillor's Bill No. 37 re Amendment to Title VI of the Westminster Municipal Code Adopting a New Chapter 17 Concerning the Residency of Sexually Violent Predators

Prepared By: Jane W. Greenfield, Assistant City Attorney
Mac Cummins, Planning Manager

Recommended City Council Action

Pass Councillor's Bill No. 37 on second reading amending the City Code by the addition of a new Chapter 6-17 entitled "Residency of Sexually Violent Predators."

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill on second reading.
- Staff prepared and recommended this ordinance placing residency restrictions on sexual predators located within the Westminster City limits as a necessary health and safety regulation.
- The proposed ordinance places residency restrictions on sexually violent predators of 1,000 feet from schools, parks, recreation centers, swimming pools, and state-licensed day care centers and a 500-foot restriction from any publicly-created trail corridor; and prohibits a landlord from renting a residence to a sexually violent predator in violation of these distance limitations.
- This Councillor's Bill was passed on first reading on June 28, 2010.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **37**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Winter - Major

**A BILL
FOR AN ORDINANCE AMENDING TITLE VI OF THE WESTMINSTER MUNICIPAL CODE
BY THE ADDITION OF A NEW CHAPTER CONCERNING RESIDENCY OF SEXUALLY
VIOLENT PREDATORS**

WHEREAS, the City Council has reviewed evidence from the Colorado Department of Public Safety and the U.S. Department of Justice regarding sex offenders; and

WHEREAS, the City Council has been provided with evidence of the following facts:

- due to the nature of sexual crimes, less than 30% of its victims report the commission of those crimes to law enforcement;
- most sex offenders have committed multiple sexual crimes against both adults and children;
- sex offender research indicates sexual offending is a behavioral disorder that cannot be “cured”;
- the Colorado General Assembly and the Sex Offender Management Board of the state have concluded that sex offenders are dangerous because of the degree of harm they cause to victims and their risk of re-offending; and
- Colorado statutes have recognized a particular category of sex offender, namely, violent sexual predators, who pose a greater risk to society because of the nature of their offenses and an individualized analysis of the offender’s likelihood of recidivism.

NOW, THEREFORE, based on the foregoing reasons,

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title VI is hereby AMENDED BY THE ADDITION OF A NEW CHAPTER 17 as follows:

CHAPTER 17

RESIDENCY OF SEXUALLY VIOLENT PREDATORS

- 6-17-1: PURPOSE AND INTENT**
- 6-17-2: DEFINITIONS**
- 6-17-3: PROHIBITIONS**
- 6-17-4: EXCEPTIONS**
- 6-17-5: MEASUREMENT**
- 6-17-6: PENALTIES**

6-17-1: PURPOSE AND INTENT:

(A) The City Council hereby finds that persons who have been determined to be sexually violent predators, pursuant to §18-3-414.5, as amended from time to time, present an extreme threat to the public safety, and in particular, to children. Sex offenders have a high rate of recidivism, making the cost of sex offender victimization to society at large extremely high. Removing such offenders from regular

proximity to places where children congregate and limiting the frequency of contact between this category of sex offenders and children is likely to reduce the risk of a re-offense.

(B) This Section is intended to serve the City's compelling interest to promote, protect and improve the public health, safety and welfare by creating areas around locations where children regularly congregate in concentrated numbers where certain sexual predators are prohibited from establishing temporary or permanent residences.

6-17-2: DEFINITIONS:

(A) The following words, terms, and phrases, when used in this Title VI, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Child care center" means a facility that is maintained for the care of five or more children under the age of eighteen years for less than 24-hour programs of care, as more specifically defined at §26-6-102(1.5), C.R.S.

(2) "Park" means any publicly owned park, including playgrounds.

(3) "Permanent Residence" means a place where a person abides, lodges or resides for five (5) or more consecutive days.

(4) "Recreation Center" means a publicly owned recreation center.

(5) "School" means any public, private, parochial, charter or other school attended by students generally under the age of eighteen (18), except for home schools.

(6) "Sexual Predator" means any person who has been found to be a sexually violent predator pursuant to Section 18-3-414.5, C.R.S.

(7) "Swimming Pool" means a publicly owned outdoor water-filled structure used for the purpose of swimming or other water activities, including splash parks. As used in this Chapter, "swimming pool" shall not include any water-filled structures located at private, single-family residences.

(8) "Temporary Residence" means a place where a person abides, lodges or resides for a period of five (5) or more days in an aggregate calendar year and which is not the person's permanent residence; or a place where a person routinely abides, lodges or resides for a period of five (5) or more consecutive or nonconsecutive days in any month and which is not the person's permanent address.

6-17-3: PROHIBITIONS:

(A) It shall be unlawful for a sexual predator to establish a permanent or temporary residence within one thousand (1000) feet of any school, park, recreation center, swimming pool or state-licensed child care center or within five hundred (500) feet of the centerline of any public trail established by the City on open space or parklands.

(B) It shall be unlawful to let or rent any portion of any property, room, place, structure, trailer or other living space to a sexual predator with the knowledge that it will be used as a permanent or temporary residence in violation of this Chapter.

6-17-4: EXCEPTIONS:

(A) A sexual predator is not guilty of a violation of this Chapter if:

(1) The sexual predator had established the permanent or temporary residence prior to the effective date of this Chapter; provided, however, that this exception shall not apply if the sexual predator committed and was subsequently convicted of an offense, for which registration under the Colorado Sex Offender Registration Act is required, after the effective date of this Chapter;

(2) The sexual predator is placed in the residence pursuant to a state-licensed foster care program; or

(3) The school, park, swimming pool, state-licensed child care center, recreation center or trail was opened after the sexual predator established the permanent or temporary residence.

(B) A person who lets or rents any portion of any property, room, place, structure, trailer or other living space to a sexual predator with the knowledge that it will be used as a permanent or temporary residence in violation of this Chapter is not guilty of a violation of this Chapter if:

(1) The person let or rented the property, room, place, structure, trailer or other living space to the sexual predator prior to the effective date of this Chapter;

(2) The person lets or rents the property, room, place, structure, trailer or other living space to a sexual predator pursuant to a state-licensed foster care program; or

(3) The person let or rented the property, room, place, structure, trailer or other living space to the sexual predator prior to the opening of any school, park, swimming pool, state-licensed child care center, recreation center or trail.

6-17-5: MEASUREMENT: For the purpose of determining the minimum distance separation required herein, the measurement shall be made by following a straight line from the centerline of any trail or the outer property line of the property on which the park, school, recreation center, swimming pool or state licensed child care center is located to the nearest point of the structure or place of permanent or temporary residence, unless the facility and the residence are separated by a natural or man-made barrier that would preclude access from one point to the other. In the case of such physical barrier, the City Manager may determine based upon reasonable evidence that the measurement requirements have or have not been met. If any portion of a dwelling unit used as a temporary or permanent residence falls within the measurement area, the entire dwelling unit is presumed to be the residence. Geographic information system (GIS) data regarding the locations in question shall be prima facie evidence of the actual distance.

6-17-6: PENALTIES: Any violation of this chapter shall be deemed a criminal violation of this Code, punishable by a fine or imprisonment or both in accordance with the provisions of Section 1-8-1, W.M.C.

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 28th day of June, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of July, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Item 9 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Resolution No. 25 re Appointments to the Board of Building Code Appeals

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 25 making appointments to fill alternate memberships on the Board of Building Code Appeals.

Summary Statement

- The Westminster Municipal Code establishes the membership composition of the Board of Building Code Appeals, requiring that a certain number of the members have experience in construction-related industries.
- Annual recruitment efforts have not produced qualified applicants to fill two vacant alternate memberships on this Board, and City Council requested a special recruitment be conducted targeting the specific membership requirements.
- Following the recruitment, Council conducted interviews of the applicants and verified their experience and interest in serving.
- If adopted, the attached resolution officially appoints two qualified citizens of Westminster to vacant alternate positions on the Board of Building Code Appeals.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council wish to fill vacancies on the Board of Building Code Appeals so a full complement of members with construction-related experience satisfying Westminster Municipal Code provisions can fulfill established duties?

Alternative

None identified

Background Information

The Westminster Municipal Code's provisions about Boards and Commissions occasionally contain specific industry-related experience for membership composition to ensure knowledge of matters that come before the Board. With the recent exception of specialization requirements to fill vacancies on the Board of Building Code Appeals, annual recruitment efforts have produced applicants with the qualifications and interest to satisfy the Code's provisions. Knowing that the Board could not meet its responsibilities with its present composition, the City Council requested that a recruitment focusing exclusively on the qualifications needed to serve on this Board be conducted.

The proposed resolution will, if adopted, name Greg Gruno and Nancy Partridge the 1st and 2nd alternate, respectively. Mr. Gruno and Ms. Partridge possess the construction-related experience necessary to satisfy the Code's provisions so the Board can function properly. Their terms of office will expire December 31, 2011.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **25**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

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

WHEREAS, vacancies exist on the City's Board of Building Code Appeals ("the Board") because of profession-specific qualifications required by the Westminster Municipal Code to serve on the Board; and

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

WHEREAS, City Council interviewed citizens who satisfy requirements for appointment to the Board and expressed personal interest in serving via application.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that Greg Gruno and Nancy Partridge are hereby appointed the 1st and 2nd alternate members, respectively, of the Westminster Board of Building Code Appeals to terms of office that will expire on December 31, 2011.

PASSED AND ADOPTED this 12th day of July, 2010.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Public Hearing and Councillor’s Bill No. 38 re Exclusion of .25 Acres of Undeveloped Residential Property from the 144th Avenue General Improvement District

Prepared By: Martin R. McCullough, City Attorney

Recommended City Council Action

1. Hold a public hearing to determine if there are any objections to the proposed exclusion of .25 acres of undeveloped residential property from the 144th Avenue General Improvement District.
2. Pass Councillor’s Bill No. 38 on first reading granting the petition filed by the owner, Forest City Town Center, Inc., to exclude .25 acres of undeveloped residential property from the 144th Avenue General Improvement District.

Summary Statement

- The 144th Avenue General Improvement District was established on August 30, 2004.
- The purpose of the District is to assist in the financing of the 144th Avenue interchange, as well as a variety of public improvements (e.g., streets, waterlines, sewer lines, etc.) necessary to support commercial development within the North Huron Urban Renewal Area, including the Orchard Town Center.
- The bonds for these improvements are paid for from property tax and sales tax revenues accruing as a result of the construction of the regional development.
- The 144th Avenue GID was established by City Council in August of 2004, for the purpose of supporting debt service on the tax increment bonds issued by the Westminster Economic Development Authority (WEDA) for the public improvements for this project.
- The property proposed for the exclusion is owned by Forest City. From its inception, the intent of the General Improvement District was to tax only the commercial property in the Orchard Town Center. This exclusion is essentially a minor correction to the boundaries of the District to exclude what has since been identified as a small piece of property that is part of the proposed residential piece of the project.
- C.R.S. § 31-25-618 requires the adoption of an ordinance to grant a petition for inclusion or exclusion of property within a general improvement district.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council, as ex officio Board of Directors of the 144th Avenue General Improvement District, approve the proposed exclusion?

Alternative

Do not approve this exclusion. This is not recommended because the proposed exclusion has no significant effect on the District's tax base or the project's financing, and the exclusion will facilitate Forest City's efforts to develop the residential portion of this important economic development project.

Background Information

To facilitate the north I-25 retail project, the 144th Avenue GID was established in order to assist with the financing of public improvements and the 144th Avenue interchange to support the commercial development of The Orchard Town Center. In November of 2004, the GID obtained voter authorization from Forest City, as owner of this development, to impose a mill levy equal to 20 mills against the commercial portion of the project to assist with this financing. The revenues from the 144th Avenue GID are paid over to WEDA pursuant to an Intergovernmental Agreement between the GID and WEDA, and the revenues so received by WEDA are applied to pay off the Authority's bonds, which were issued to finance the interchange and other public improvements related to this portion of the development.

This proposed exclusion is consistent with the original financing plan for The Orchard project, which was to use the General Improvement District to finance the 144th Avenue Interchange and the public infrastructure related to the commercial portion of the project, and to use a Special Metropolitan District to assist with the finance of the public improvements related to the residential portion of the project.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **38**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE EXCLUDING PROPERTY FROM THE BOUNDARIES
OF THE CITY OF WESTMINSTER
144TH AVENUE GENERAL IMPROVEMENT DISTRICT**

WHEREAS, a Petition for the Exclusion of Property from the City of Westminster 144th Avenue General Improvement District (the "Petition") has been filed with the Board of Directors (the "Board") of the City of Westminster 144th Avenue General Improvement District (the "District"); and

WHEREAS, the Petition states that it has been signed by the fee title owner of the property that the petitioner seeks to have excluded from the boundaries of the District; and

WHEREAS, the Petition has been reviewed by the City Clerk and the City Attorney; and

WHEREAS, notice of filing of the Petition has been given and published pursuant to Section 31-25-618, Colorado Revised Statutes; and

WHEREAS, the Board has heretofore conducted a hearing at which all persons having objections to the Petition were given an opportunity to appear and show cause why the Petition should not be granted.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS, BY AND THROUGH ITS CITY COUNCIL, AS THE EX OFFICIO BOARD OF DIRECTORS OF THE CITY OF WESTMINSTER 144TH AVENUE GENERAL IMPROVEMENT DISTRICT:

Section 1. Findings and Determinations. The Board hereby finds and determines as follows:

a. In accordance with Section 31-25-618, Colorado Revised Statutes, the owner of the property described below (the "Property") has filed a petition with the Board requesting that the Property be excluded from the boundaries of the District.

PARCEL DESCRIPTION

A PARCEL OF LAND LOCATED IN A PORTION OF LOT 2B, SECOND REPLAT, THE ORCHARD AT WESTMINSTER FILING NO. 1, RECORDED AT RECEPTION NUMBER 200700006994 IN THE ADAMS COUNTY CLERK AND RECORDER'S OFFICE, SITUATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 15, AS MONUMENTED BY A RECOVERED 3-1/4" ALUMINUM CAP IN A RANGE BOX, STAMPED PLS 24960, WHENCE THE CENTER QUARTER CORNER OF SAID SECTION 15, AS MONUMENTED BY A RECOVERED 3-1/4" ALUMINUM CAP, STAMPED LS 23904, BEARS S 89°30'46" E, A DISTANCE OF 2628.39 FEET PER SAID SECOND REPLAT, THE ORCHARD AT WESTMINSTER FILING NO. 1 AND THE ORCHARD AT WESTMINSTER FILING NO. 2, RECORDED AT RECEPTION NUMBER 200800001009 IN SAID COUNTY CLERK AND RECORDER'S OFFICE;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 15, S 89°30'46" E, A DISTANCE OF 1574.61 FEET;

THENCE DEPARTING AND PERPENDICULAR TO SAID NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 15; S 00°29'14" W, A DISTANCE OF 210.52 FEET TO A NORTHWESTERLY CORNER OF SAID LOT 2B, AND THE POINT OF BEGINNING;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 2B, S 89°37'55" E, A DISTANCE OF 95.20 FEET;

THENCE S 22°39'49" W, A DISTANCE OF 250.94 FEET TO A POINT ON THE EAST LINE OF PARCEL 3, THE ORCHARD AT WESTMINSTER FILING NO. 2;

THENCE ALONG THE SAID EAST LINE OF PARCEL 3 AND THE EASTERLY LINE OF PARCEL 4, THE ORCHARD AT WESTMINSTER FILING NO. 2, N 00°22'05" E, A DISTANCE OF 232.18 FEET TO A NORTHWESTERLY CORNER OF SAID LOT 2B AND THE POINT OF BEGINNING;

CONTAINING AN AREA OF 11,052 SQUARE FEET OR 0.254 ACRES, MORE OR LESS.

- b. The Petition accurately describes the Property and such legal description has been verified by the City Clerk.
- c. The signatory for the petitioner is authorized to execute the Petition.
- d. The Board agrees to waive the costs of the exclusion proceeding for the Petition.
- e. The City Clerk, as ex officio secretary of the Board, has caused notice of the Petition to be given and published, according to the requirements of the pertinent provisions of Title 31, Article 25, Part 6, Colorado Revised Statutes.
- f. The notice states the filing of the Petition, the name of the Petitioner, the description of the Property sought to be excluded, and the request of the petitioner. The notice notifies all persons having objections to appear at the office of the Board at the time stated in the notice and show cause why the Petition should not be granted.
- g. The Board, at the time and place stated in the notice, has heard the Petition and all objections presented by any person showing cause why the Petition should not be granted and overrules any such objections.
- h. The Board has determined to grant the Petition.

Section 2. Exclusion of Property. The Board hereby grants the Petition.

Section 3. Filing of Ordinance. Within ten days after final publication of this ordinance, the City Clerk, as ex officio secretary of the Board, shall file a certified copy of this ordinance with the County Clerk and Recorder of Adams County. Thereupon the Property shall be excluded from the boundaries of the District.

Section 4. Severability. If any section, subsection, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall in no manner affect any remaining provisions of this ordinance, the intent being that the same are severable.

Section 5. Repealer. All orders, resolutions, bylaws, ordinances or regulations of the City, or parts thereof, inconsistent with this ordinance are hereby repealed to the extent only of such inconsistency.

Section 6. Recording and Authentication. Immediately on its passage, this ordinance shall be authenticated by the signature of the Mayor, as ex officio President of the Board, and by the attestation of the City Clerk, as ex officio Secretary of the Board, and shall be published in full. Affidavits of publication shall be retained with the ordinance in the District's records.

Section 7. Effective Date. This ordinance shall take effect upon its passage after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12th day of July, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of July, 2010.

Mayor ex officio President

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk ex officio Secretary

Attorney to the District



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Councillor’s Bill No. 39 re New Chapter 10 to Title V of the Westminster Municipal Code Prohibiting Medical Marijuana Centers, Optional Premises Cultivations Operations and Medical Marijuana-Infused Products Manufacturing

Prepared By: Jeffrey M. Betz, Assistant City Attorney

Recommended City Council Action

Adopt Councillor’s Bill No. 39 as an emergency ordinance adding a new Chapter 10 to Title V of the Westminster Municipal Code prohibiting medical marijuana centers, optional premises cultivations operations and medical marijuana-infused products manufacturing.

Summary Statement

- In 2000, the voters of Colorado passed Amendment 20 to the Colorado Constitution decriminalizing the limited use and possession of marijuana for medical purposes.
- In response to Amendment 20, there have been a significant number of medical marijuana dispensaries that have opened for business as caregivers who acquire, possess, transport and sell medical marijuana for use by the patients.
- Irrespective of Amendment 20, the acquisition, sale and distribution of marijuana remain criminal under federal law.
- In November 2009, City Council made a determination to ban medical marijuana dispensaries within the City limits and amend the City Code to prohibit land uses that are unlawful under state and federal law. See Agenda Memorandum dated November 23, 2009, regarding this Council action attached hereto as Exhibit A.
- Recently the Colorado legislature passed legislation known as the Colorado Medical Marijuana Code (“CMMC”) that clarifies Colorado law regarding the scope and extent of Amendment 20 and specifically authorizes a municipality to prohibit the operation of medical marijuana centers (often referred to as dispensaries,) optional premises cultivation operations, and medical marijuana infused product manufacturer’s licenses based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana. The CMMC is consistent with the voters’ intent of Amendment 20 (as expressed in the “Blue Book” that preceded its passage) that Amendment 20 did not create a constitutional right to engage in these types of commercial operations.
- Consistent with City Council’s previous position on medical marijuana dispensaries, Staff recommends that City Council exercise the authority granted under the CMMC and adopt an ordinance specifically prohibiting any uses associated with medical marijuana centers, optional premises cultivation operations and medical marijuana infused product manufacturing within the City limits.
- This ordinance specifically provides that it is not intended to repeal, modify or negate any provision of W.M.C. Section 11-1-3(7) regarding prohibited land uses.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council adopt an ordinance prohibiting medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturing?

Alternative

Do not pass this Councillor's Bill. Staff does not recommend this for all the reasons expressed by Staff previously in connection with Council's adoption of Westminster Municipal Code section 11-1-3(7).

Background Information

In 2000, the voters of Colorado passed Amendment 20 to the Colorado Constitution decriminalizing the limited use and possession of marijuana for medical purposes. Amendment 20 protects patients, primary caregivers, and doctors from criminal prosecution for the acquisition, possession, production, use or transportation of medical marijuana and related paraphernalia under certain circumstances.

Recently the Colorado legislature passed the CMMC that clarifies Colorado law regarding the scope and extent of Amendment 20, and at the same time, authorizes a regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a medical marijuana center and further authorizes licensing mechanisms known as an optional premises cultivation operations and a medical marijuana infused products manufacturers' license. The CMMC authorizes municipalities such as the City to prohibit medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers' licenses.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **39**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE ADDING A NEW CHAPTER 10 TO TITLE V OF THE WESTMINSTER MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURING

WHEREAS, the Colorado Legislature has adopted, and the Governor has signed into law, legislation that, in pertinent part, added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code (“CMMC”); and

WHEREAS, the CMMC clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution, Article XVIII, § 14, and, at the same time, authorizes a regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana-Infused Products Manufacturers' License"; and

WHEREAS, C.R.S. § 12-43.3-106 of the CMMC specifically authorizes in part that the governing body of a municipality may “vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses”; and

WHEREAS, C.R.S. § 12-43.3-310 of the CMMC further specifically authorizes a municipality in part “to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses . . . based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article;” and

WHEREAS, C.R.S. § 12-43.3-308(1)(c) of the CMMC also provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the CMMC “for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county”; and

WHEREAS, the City Council has carefully considered the provisions of the CMMC, Article XVIII, Section 14 of the Colorado Constitution, and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses on the health, safety and welfare of the City and the inhabitants thereof, and has determined as an exercise of its local land use authority that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses shall not be located within the corporate limits of the City; and

WHEREAS, the City Council hereby determines that medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing shall not be located within the corporate limits of the City.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1: Title V, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW CHAPTER 10 to read as follows:

**CHAPTER 10
MEDICAL MARIJUANA**

- 5-10-1: DEFINITIONS**
- 5-10-2: FINDINGS**
- 5-10-3: USES PROHIBITED**
- 5-10-4: PROHIBITED LAND USES NOT AFFECTED**
- 5-10-5: SEVERABILITY**
- 5-10-6: PENALTY; NUISANCE DECLARED**

5-10-1: DEFINITIONS: The following words, terms and phrases, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

(A) “Medical marijuana center,” “medical marijuana-infused products manufacturer,” and “optional premises cultivation operation” shall have the same meanings as set forth in the Colorado Medical Marijuana Code, Article 43.3, C.R.S., as the same may, from time to time, be amended.

(B) “Patient” and “primary caregiver” shall have the same meanings as set forth in Article XVIII, Section 14(1) of the Colorado Constitution.

5-10-2: FINDINGS: The City Council makes the following findings:

(A) The Colorado Medical Marijuana Code, C.R.S. section 12-43-3-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Article XVIII, Section 14 of the Colorado Constitution.

(B) This ordinance is necessary to protect and is enacted in furtherance of the public health, safety and welfare of the City.

(C) This Chapter is intended to apply and shall apply to all property, businesses, and business enterprises operating within the City, whether stationary, mobile, or virtual.

5-10-3: USES PROHIBITED: It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation, or a medical marijuana-infused products manufacturing facility in the City.

5-10-4: PROHIBITED LAND USES NOT AFFECTED: This ordinance is not intended to repeal, modify or negate any provision of W.M.C. section 11-1-3(7) regarding prohibited land uses.

5-10-5: SEVERABILITY: If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

5-10-6: PENALTY: NUISANCE DECLARED:

(A) It is unlawful for any person to violate any of the provisions of this Chapter. Any such violation is hereby designated a criminal offense, and any person found guilty of violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine or imprisonment or both pursuant to Section 1-8-1 of this Code. Each day that a violation of any of the provisions of this Chapter continues to exist shall be deemed a separate and distinct violation.

(B) The conduct of any activity or business in violation of this Chapter is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisance provided for in Chapter 4 of Title VIII of this Code.

Section 2. Emergency. In order to implement the City's authority pursuant to the Colorado Medical Marijuana Code to prohibit medical marijuana centers, infused products manufacturing and cultivation operations for the protection of the public health, safety and welfare of the City as immediately as possible following the July 1, 2010, effective date of said Code, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on July 12, 2010, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

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

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 12th day of July, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Item 10 B

EXHIBIT A

Agenda Memorandum

City Council Meeting
November 23, 2009



SUBJECT: Councillor's Bill No. 41 re Medical Marijuana Dispensaries .

Prepared By: Martin R. McCallough, City Attorney
Mac Cummins, Planning Manager

Recommended City Council Action

Adopt Councillor's Bill No. 41 on first reading expressly prohibiting any land uses that are unlawful under state or federal law.

Summary Statement

- On September 14, 2009, City Council enacted a 90-day temporary moratorium on the submission, acceptance, processing, approval or denial of any application for any permit, license or plan approval related to the business and or operation of a medical marijuana dispensary ("MMD").
- Council requested that staff develop options for Council to consider regarding possible changes to the City Code to address the recent explosion of MMD's and related facilities and operations in Colorado.
- The recent surge in MMD's in Colorado follows the announcement by the Obama administration that it would not enforce federal laws prohibiting the sale and distribution of marijuana for medical use, provided the marijuana was being sold and distributed in accordance with state medical marijuana laws.
- Unfortunately, the state has yet to establish any regulations pertaining to MMD's.
- Staff is recommending the adoption of the proposed ordinance that would expressly prohibit any land uses in the City that are unlawful under state or federal law. This would apply to MMD's.
- MMD's would remain unlawful in the City for so long as they remain unlawful under federal law.
- Staff believes the issue of selling and dispensing of marijuana for medical use should be addressed at the state and federal level.

Expenditures Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City Council prohibit land uses within the City that are unlawful under state or federal law?

Alternatives

At the November 16, 2009 Study Session, two other options were presented for Council's consideration, including: (1) allowing MMD's as permitted land uses, the approval of which could be applied for under substantially the same terms and conditions as other permitted land uses (such as retail sales, pharmacies and chiropractic medicine); and (2) allowing MMD's as permitted land uses but requiring them to meet certain yet-to-be developed licensing requirements, in addition to being approved as a land use. The latter option would be analogous to how liquor-related businesses are treated in Westminster and throughout Colorado. Because there is no comprehensive state code for MMDs like what exists for liquor-related businesses, the City would have to draft its own for MMDs. Staff does not recommend either option given the total lack of information available at this time concerning the potential impacts of MMD's and the lack of any state or federal guidance, data, or studies on which to base a local MMD regulatory scheme.

Background Information

Section 14 of Article XVIII of the Colorado Constitution (hereinafter referred to as the Medical Marijuana Initiative or MMI) was adopted by the voters of Colorado in 2000. There remains a lot of confusion about what the MMI did and did not do from a legal perspective. Part of the confusion stems from the fact that the MMDs contemplated by the MMI did not immediately materialize because the possession and distribution of marijuana was - and in fact, remains - illegal under federal law. However, following the announcement by the US Attorney's Office under the Obama administration that it would not enforce federal laws against state authorized MMDs, there has been a literal explosion of MMDs in Colorado and other states that have passed laws similar to Colorado's MMI.

The MMI exempts from state criminal prosecution patients, primary care-givers, and physicians meeting certain criteria related to the use of marijuana by a patient to alleviate a debilitating medical condition. A patient or primary care-giver charged with a violation of the Colorado's state criminal laws related to the patient's medical use of marijuana will be deemed to have established an affirmative defense to such allegation where:

- The patient was previously diagnosed by a physician as having a debilitating medical condition;
- The patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and
- The patient and his or her primary care-giver were in possession of amounts of marijuana only as permitted under the MMI.

The MMI does not confer a constitutional right to obtain medical marijuana or the right to operate a medical marijuana dispensary. The MMI only provides that a patient or his primary care-giver using, possessing, or prescribing medical marijuana has a defense to a criminal charge under Colorado criminal law. Currently, medical marijuana dispensaries are not regulated by the State.

Since the adoption of Colorado's MMI, there has been no attempt by the State Legislature or any state agencies to comprehensively regulate, license, or otherwise oversee the implementation of the MMI. The Colorado Department of Public Health and Environment ("CDPHE") is only responsible for creating and maintaining a confidential registry of patients who have applied for and are entitled to receive a registry identification card. CDPHE is designated to implement the confidential registry of authorized patients and enact rules to administer the program; however, there are no current rules implemented by CDPHE to regulate medical marijuana dispensaries or primary caregivers.

SUBJECT:

Councillor's Bill re Medical Marijuana Dispensaries

Page 3

Without guidance from the state regarding the implementation of the MMI, local jurisdictions are left to deal with the issue of medical marijuana dispensaries and how to implement zoning and/or land use control to regulate the location of medical marijuana dispensaries, and whether to license them.

There have already been at least two burglaries at the two medical marijuana dispensaries in the City. These dispensaries began operating without disclosing to the City that they would be selling and dispensing marijuana. The Police Department has been in close contact with the Department of Community Development and the City Attorney's office regarding these burglaries. Marijuana remains a federal banned substance. Its attraction and black-market value to recreational users may create additional incentive for crime. If MMD's were allowed, the need for increased police resources could be expected. In addition, police officers would be required to differentiate between cultivation, possession, and use contemplated under the state constitutional amendment, compared with illegal cultivation, possession, and use under the federal banned substance act. While the constitutional amendment provides for a positive defense for someone consuming or possessing marijuana for medical use by a registered patient and his or her care-giver(s), distinguishing legitimate and illegitimate marijuana use and possession would require significant police resources, including training, and would expose police officers to potential legal liability if they were to arrest someone who was later determined to be protected by the MMI.

The City's Department of Community Development has one half-time Code Enforcement Officer who is responsible for enforcing the City's zoning regulations. If MMDs were to be allowed, additional zoning code enforcement officers would also be required.

Of particular concern is the corresponding development of unregulated "grow houses." The MMI provides that each qualifying "patient" is allowed to possess up to 6 marijuana plants, and purchase up to 2 ounces each time a purchase is made. One of the effects of the MMI phenomenon thus far has been that patients have been handing over their "rights" to the six marijuana plants to their primary care-giver. This "care-giver" is usually the MMD itself, meaning that the MMD might have 6 plants per patient. Some MMD's in the Denver area have up to 500 patients, which means that, in such a dispensary, the potential would exist for up to 3,000 marijuana plants to be kept on site. The potential impact of storing very large quantities of marijuana, regulating its cultivation and distribution, and assuring that the resulting distribution is consistent with the MMI are matters best suited for state regulation. Currently, growers appear to be assuming they qualify as "care providers" under the requirements of the MMI. This is highly suspect in light of a recent Court of Appeals opinion that held that, to be an authorized caregiver under the MMI, one must be doing more than supplying the user with marijuana. There are currently no regulations concerning marijuana "grow houses." Finally, most MMD's allow on-site consumption. As with on-site consumption of beer and liquor, the on-site consumption of medical marijuana needs to be addressed through regulation.

Respectfully submitted,



J. Brent McFall
City Manager

Attachment



Agenda Item 10 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Councillor's Bill No. 40 Regarding Extension of Comcast Cable Franchise

Prepared By: David Puntteney, Information Technology Director

Recommended City Council Action

Pass Councillor's Bill No. 40 extending the current franchise held by Comcast of Colorado IX, LLC until December 31, 2013.

Summary Statement

- The current franchise held by Comcast of Colorado IX, LLC (Comcast) is due to expire on October 1, 2010.
- During the February 9th, 2009 Study Session, staff recommended and City Council concurred, that the City should send a formal letter to Comcast requesting their approval to extend the City of Westminster's Franchise Agreement with Comcast.
- The City's current franchise agreement with Comcast is set to expire on October 1, 2010. The intent of the extension request is to align the City of Westminster's franchise expiration with those of other cities, including Denver, so that the cities could negotiate a regional model franchise agreement.
- Staff advised Council in a May 17th Staff Report that Comcast had not agreed to extend the agreement in 2009, but is now considering franchise extension requests. As indicated in the Staff Report, staff once again sent a letter to Comcast asking for consideration of a franchise extension.
- Comcast has now indicated a willingness to extend the current City of Westminster franchise expiration date to December 31, 2013.
- Using a regionally developed and negotiated model agreement at the time of franchise renewal will benefit the City of Westminster and save significant time and costs as compared with hiring legal counsel to assist with development and negotiation of an independent franchise agreement.
- Using a regionally developed model does not eliminate the ability for the City to negotiate specific franchise terms if needed.
- There are no critical or time sensitive terms in the current franchise agreement needing to be addressed before December, 2013.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the current franchise agreement with Comcast of Colorado IX be extended to and including December 31, 2013?

Alternative

The City could elect not to adopt the proposed Ordinance. This is not recommended, as the terms negotiated in a regional model agreement may be more favorable than those that the City could achieve independently and the cost of developing and negotiating an independent agreement would be much greater.

Background Information

During the February 9th, 2009 Study Session, staff recommended and City Council concurred, that the City send a formal letter to Comcast requesting their approval to extend the current City of Westminster's Franchise Agreement with Comcast. Staff sent a letter to Comcast, and contacted them afterwards, to request the extension. Comcast did not reply to the City's request in 2009.

At the April 22, 2010 GMTC meeting, staff learned that the GMTC legal counsel and Comcast has now agreed that Comcast would be willing to extend the franchise expiration date to as late as December 31, 2013 for those communities whose franchises are set to expire prior to December 31, 2012. Comcast responded favorably to the City's May 19, 2010 letter and indicated interest in extending the franchise agreement.

The City of Westminster is a member of the Greater Metro Telecommunications Consortium (GMTC), a board of local governments formed in 1992 with representatives comprising 30 communities in the greater metropolitan Denver, Colorado area. Originally, the group was formed to facilitate franchise agreements with local cable television companies, and now has bargaining strength and recognition in all areas of telecommunications expertise.

Most individual GMTC communities have a cable franchise agreement with Comcast. Historically, the first "model" agreement was negotiated with TCI in the mid-1990s and the second "model" was based upon Denver's agreement with AT&T Broadband in 2000. Different jurisdictions' franchises came up for renewal at different times. Each time an individual franchise renewal was negotiated; few changes were usually made with the language of the then-current model franchise. After Comcast acquired the metro area cable systems, it raised a number of concerns with certain terms of the model, and has been moving further away from that document in subsequent franchise renewals. GMTC's goal is to negotiate a model agreement with Comcast, which could then be used by the City of Westminster and other communities as the template for their final negotiations with Comcast.

Staff will volunteer to participate in the GMTC model franchise agreement subcommittee and negotiations at the appropriate time.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **40**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND COMCAST TO EXTEND THE TERM OF
THE FRANCHISE**

WHEREAS, in 1995, the Westminster City Council adopted Ordinance No. 2355 approving the grant of a nonexclusive Franchise Agreement to Mountain States Video, Inc. d/b/a TCI of Colorado ("TCI") for its construction and operation of a cable television system within the City; and

WHEREAS, Comcast is the successor in interest to TCI; and

WHEREAS, Section 2.4 of the Franchise Agreement provides that the franchise granted to TCI will expire on October 10, 2010; and

WHEREAS, Comcast has preserved its right of renewal by timely filing a request with the City/County to activate the formal process for renewing the Franchise pursuant to the provisions of the Cable Communications Policy Act of 1984 ("Cable Act"); and

WHEREAS, Comcast, City staff and Comcast of Colorado IX, LLC ("Comcast") representatives have discussed the renewal of the franchise and both parties have agreed that their respective interests will be served by an extension of the existing Franchise Agreement; and

WHEREAS, the City Council is therefore agreeable to extending the existing term of the Franchise Agreement from October 10, 2010, until December 31, 2013.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. That the Mayor is hereby authorized to enter into, on behalf of the City, an amendment to the Franchise Agreement with Comcast to extend the term of the Franchise Agreement from October 10, 2010 until December 31, 2013.

Section 2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.

Section 3. Neither party waives any right which it enjoys under law as a result of agreeing to this Franchise extension, and Comcast shall not be required to file any additional request or document in order to preserve its right of renewal under Section 626 of the Cable Act.

Section 4. 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 12th day of July, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of July, 2010.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Item 10 E

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 12, 2010



SUBJECT: Resolution No. 26 re Fall 2010 Adams County Open Space Grant Applications

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Adopt Resolution No. 26 authorizing the Department of Parks, Recreation and Libraries to pursue a grant with Adams County Open Space during the 2010 fall cycle for phase one renovations at the Swim and Fitness Facility.

Summary Statement

- The Department of Parks, Recreation and Libraries wishes to pursue a grant from Adams County Open Space for funding assistance regarding the proposed renovation of the Swim and Fitness Facility (see attached plan).
- Staff recommends requesting a grant for up to \$1 million.
- The City has budgeted POST bond and CIP funds in the amount of \$472,000 for renovation of this facility. Renovations will include updating the shower facilities, provide family changing rooms and move the sauna, steam room and hot tub to more accessible and visibly secure locations.
- This item was discussed with City Council at the June 28th study session.

Expenditure Required: \$472,000

Source of Funds: Parks, Open Space and Trails Bond Fund
CIP Fund

Policy Issue

Should the City attempt to seek assistance for the renovation of the Swim and Fitness Center by pursuing grant monies from the Adams County Open Space Grant Program?

Alternative

Council could choose not to pursue additional funding for the Swim and Fitness Renovation-Phase One and wait until City funding becomes available to complete the first phase. Staff does not recommend the alternative since potential funding for this phase could be available through the Adams County Open Space grant process.

Background Information

The Departments of Parks, Recreation and Libraries and Community Development have been successful in applying for and receiving grants for the development of parks, trails, and open space from a variety of sources in the past. In recent years, the City has received grant money from Adams County Open Space for park and trail development projects as well as open space acquisitions. The City has developed a strong partnership with Adams County in its successful use of these grant funds. Recent Adams County grants include: Westminster Center Park for \$543,492; two grants in the spring of 2007 for Cheyenne Ridge Park and Big Dry Creek Park for \$80,000 and \$500,000 respectively; a 2005 grant in the amount of \$600,060 for Westfield Village Park; a 2005 grant in the amount of \$775,000 for Tanglewood Creek Open Space Acquisition; and three grants in 2003 and 2004 for the Metzger Farm Open Space Acquisition totaling \$1,502,500.

Originally, the Swim and Fitness Center renovation project was allocated \$1 million from the 2007 POST bond proceeds, but in April of 2009 \$750,000 was reallocated to the City Park Recreation Center Aquatics Renovation and remodel project. That left \$250,000 remaining in the Swim and Fitness Center renovation Capital Improvement account. The 2008 Carryover Appropriation into FY 2009 allocated an additional \$327,200 for the Swim and Fitness Center Expansion project to assist in building back up the budget necessary to complete the phase I expansion project as originally proposed. These funds were from Parks and Open Space and Trails (POST) 2007 bond interest earnings accrued during 2008 of \$159,818, and \$167,382 of higher than anticipated Adams County Open Space attributable share funds. A contract was approved for Sink, Combs, Dethlefs architects to work with Staff and provide a conceptual facility master plan and construction documents for a phase one renovations of the locker rooms.

Phase One of this project would concentrate on upgrading the current restroom and shower facilities and include family changing rooms, rearrange and redesign circulation for better patron access to lockers and pool area. The sauna, steam room and hot tub will be replaced and moved to help with user conflicts from the tot pool and front lobby.

This grant request and project supports the City's Strategic Plan Goals of "Financially 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 new community park and increased open space.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **26**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**GRANT REQUESTS FOR THE
Fall 2010 ADAMS COUNTY OPEN SPACE GRANT PROGRAM**

WHEREAS, Adams County has established a local government grant application process to assist municipalities and special districts within the County with the development of recreation capital improvements and open space acquisition; and

WHEREAS, the City of Westminster has budgeted for renovations for Swim and Fitness Center and;

WHEREAS, grant money received from Adams County would significantly enhance the improvements for the above-mentioned project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that City of Westminster Staff shall submit grant applications to the Adams County Open Space Grant Program for the fall funding cycle of 2010, requesting funding in an amount up to \$1,000,000 to enhance the renovation of the Swim and Fitness Center.

PASSED AND ADOPTED this 12th day of June 2010.

Mayor

ATTEST

APPROVED AS TO LEGAL FORM

City Clerk

City Attorney

