



CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings (July 28, 2014)
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Recognition of Lao Buddhist Temple Dragon Race Team
 - B. Solar Friendly Communities Certification Presentation
 - C. Denver Metro Healthiest Employer's Award
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. Approval of Extension of Listing Agreements for City Properties near the Promenade
 - B. Gas line Relocation Agreement for the McKay Drainageway Project
 - C. Second Amended Engineering Services Contract for the McKay Lake Drainageway Project
 - D. Emergency and Essential Home Repair Program Contract
 - E. 2014 Sports Officiating Services Contract
 - F. Amendment to Special Water Counsel Legal Services Agreement
 - G. Second Reading of Councillor's Bill No. 20 re Rights-of-way Vacation within East Bradburn Filing No. 1
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Public Hearing on City-initiated PDP Amendments
 - B. Action re 5th Amended Northwest Business Park PDP/1st Amended Axis Development PDP/12th Twelfth Amended Northpoint Center PDP
 - C. Councillor's Bill No. 21 re Proposed Economic Development Agreement with Ball Corporation
 - D. Councillor's Bill No. 22 re 2014 CDBG Fund Appropriation
 - E. Resolution No.17 re Residential Competition Service Commitment Awards
 - F. Resolution No. 18 re FPPA Statewide Defined Benefit Plan Member Contribution Rate Election
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
 - A. City Council
 - B. Executive Session – Discussion of Personnel Matter (review of applicants for City Attorney) Pursuant to Section 1-11-3(C)(1), W.M.C., and Section 24-6-402(4)(f), C.R.S.
13. Adjournment

NOTE: Persons needing an accommodation must notify the City Clerk no later than noon on the Thursday prior to the scheduled Council meeting to allow adequate time to make arrangements. You can call [303-658-2161](tel:303-658-2161)/TTY 711 or [State Relay](mailto:lyeager@cityofwestminster.us) or write to lyeager@cityofwestminster.us to make a reasonable accommodation request.

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.



2014 CITY OF WESTMINSTER STRATEGIC PLAN



VISIONARY LEADERSHIP & EFFECTIVE GOVERNANCE

The City of Westminster has articulated a clear vision for the future of the community. The vision

is implemented through collaborative and transparent decision making.

- Secure a replacement for our retiring City Manager that has the combination of experience, knowledge, style and values that are consistent with City Council vision and organizational values; ensure a smooth transition.



VIBRANT & INCLUSIVE NEIGHBORHOODS

Westminster provides housing options for a diverse demographic citizenry, in unique settings

with community identity, ownership and sense of place, with easy access to amenities, shopping and employment.

- Complete St. Anthony North Hospital (84th Avenue) impact analysis
- Create an Arts District



COMPREHENSIVE COMMUNITY ENGAGEMENT

Westminster is represented by inclusive cultural, business, nonprofit and geographic participation.

Members of the community are involved in activities; they are empowered to address community needs and important community issues.

- Create an Inclusiveness Commission



BEAUTIFUL, DESIRABLE, ENVIRONMENTALLY RESPONSIBLE CITY

Westminster thoughtfully creates special places and settings. The city is an active steward, protecting and enhancing natural resources and environmental assets. The city promotes and fosters healthy communities.

- Develop and implement Open Space Master Plan
- Identify and implement alternative energy options for city facilities
- Achieve “Solar City” designation to benefit both our environment and economy



PROACTIVE REGIONAL COLLABORATION

Westminster is proactively engaged with our partners to advance the common interests of the region.

- Collaborate with counties, school districts and neighboring cities



DYNAMIC, DIVERSE ECONOMY

Westminster is a local government that fosters social, economic, and environmental vitality and cultivates and strengthens a wide array of economic opportunities.

- Construct Westminster Station and develop TOD area
- Identify and pursue FasTracks next step
- Continue North I-25 development
- Proceed with Phase I of the Westminster Center Reinvestment Project
- Advance business attraction strategy
- Encourage the development of chef-owned and/or operated restaurants
- Grow small businesses through incubation



EXCELLENCE IN CITY SERVICES

Westminster leads the region in a culture of innovation that exceeds expectations in all city services – the city is known for “the Westy Way.”

- Analyze Fire/EMS alternative service delivery
- Provide improved collaboration and communication between City Council and employees at all levels of the organization
- Improve planning and permit process to be business friendly and achieve city goals



EASE OF MOBILITY

Westminster pursues multi-modal transportation options to ensure the community is convenient, accessible and connected by local and regional

- transportation options through planning, collaboration, advocacy and execution. Transportation objectives include walkability, bike friendly, drivability and mass transit options.*
- Enhance trail connectivity

VISION: *Westminster is an enduring community – a unique sense of place and identity; we have a choice of desirable neighborhoods that are beautiful and sustainable by design. Westminster residents enjoy convenient choices for an active, healthy lifestyle, are safe and secure, and have ease of mobility within our City and convenient connection to the metro area. Westminster is a respectful, diverse community in which*

residents are engaged. Westminster City Government provides exceptional city services, and has a strong tax base through a sustainable local economy.

MISSION: *Our job is to deliver exceptional value and quality of life through S-P-I-R-I-T (Service, Pride, Integrity, Responsibility, Innovation, Teamwork)*

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JULY 28, 2014, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Herb Atchison, Mayor Pro Tem Faith Winter, and Councillors Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter, and Anita Seitz were present at roll call. Also present were City Manager J. Brent McFall, City Attorney Martin McCullough, and City Clerk Linda Yeager.

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Councillor Baker, to approve the minutes of the regular meeting of July 14, 2014, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reminded members of the audience that if they wished to speak concerning the 2015/2016 Budget, they should wait to address Council until the public meeting on that topic was opened. Others wishing to speak on any other topic would be invited to the podium during Citizen Communication.

Following adjournment of this meeting, the Westminster Economic Development Authority and the Westminster Housing Authority Boards of Directors would meet. Council would then move to the Council Board Room for a post-meeting briefing to discuss 2015/2016 water and wastewater rates; assembly uses in commercial areas; and the 2014 Open Space Stewardship Plan. These discussions were open to the public.

After conclusion of the post-meeting briefing, the Council would conduct executive sessions to receive legal advice from the City Attorney concerning the receipt of notice of intent to circulate a petition under the Colorado Firefighter Safety Act, pursuant to Section 1-11-3(C)(8), Westminster Municipal Code, and Section 24-6-402(4)(b), Colorado Revised Statutes; and to discuss strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and the possible sale, acquisition, trade or exchange of property interests, including future leases, and provide instructions to the Authority's negotiators as authorized by Section 24-6-402(4)(a) and (e), Colorado Revised Statutes.

COUNCIL REPORTS

Councillor Baker urged citizens to participate in the process of developing the 2015/2016 Budget. The City's financial position was healthy and approximately \$7 million was available from sales tax collections and staff's frugal spending. Westminster was a wealthy community and Council wanted to make it an even better community and government. Many of the services most valued by citizens were subsidized by collection of fees and not cash funded. Should excess revenues be used to fund new programs or were citizens more interested in reducing fees they paid to participate in programs and use City facilities? This was the time to speak up before the budget was formally adopted in October. He urged citizens to partner with the Council for the best use of the City's financial resources.

Councillor Briggs paid respectful recognition to Bob June, who had passed away the preceding week. Mr. June had represented the City on the Regional Transportation District Board and had been Chair of the Westminster Transportation Commission. He made a difference in the City; while his legacy would live on in future generations, he would be missed.

Responding to Councillor Baker's comments, Councillor Pinter reported that the Council was intensely interested in hearing from citizens and getting input about the budget. While a complicated financial process, tools were available to assist the public and provide convenient ways to communicate their input. Whether using the backseat budgeter

or any one of the other numerous methods to reach the City Council, she urged participation before September 8 when the budget public hearing would be held.

Councillor Garcia reported that August 9 was going to be a big day for the community, as that was when the City would host the Holy Cow Stampede, the Westy Fest and the City's first Craft Beer Fest. No matter one's age or interests, there was something for everyone to enjoy. He invited the public to come to City Park and enjoy the festivities. Further, the Summer Block Party and Movie in the Park on July 18 had been a wonderful community event that he and his son had enjoyed. He appreciated the involvement of all staff who had organized and participated in making a fun evening.

Mayor Pro Tem Winter encouraged participation at the August 5 National Night Out events that would be held in neighborhoods throughout Westminster. Police Officers, Firefighters and Council members would be attending as many of them as possible.

Mayor Atchison concurred with Councillor Brigg's comments. It had been a pleasure working with Bob June and his family on community events over the years. Bob and his wife, Vi, had served the community well in so many capacities. Bob's presence in the community would be missed.

CITIZEN COMMUNICATION

Linda Cherrington, 9211 Julian Way, requested that the Lowell Boulevard/Raleigh Avenue Bridge be name in honor of Francis M. Day, a pioneer of Westminster whose public service started at the age of 16 in the library and continued in a variety of capacities including that of an elected official and the Mayor. Mr. Day had ensured a bridge was built over the Boulder Turnpike (US Highway 36) so the community would not be split in two when the turnpike was first constructed.

Dave DeMott, 9640 West 106th Way, spoke in support of the Standley Lake Master Planning and Branding Contract scheduled for Council's approval on the consent agenda.

Harry Studer, 2715 West 119th Avenue, and Eric Borcharding, 2735 West 119th Avenue, spoke of language in the Official Development Plan (ODP) for the Ranch Filing No. 6 pertaining to contracting for trash removal being the responsibility of each individual lot owner. Mr. Studer asked Council to protect his rights by verifying the language in the ODP was not ambiguous. Council had approved the ODP and had the authority to translate the language on it and to enforce the language. Mr. Borcharding supported his neighbor's request.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the June 2014 Financial Report; accept the second quarter 2014 Insurance Claims Report; authorize the City Manager to award the bid and execute a contract with the lowest and most qualified bidder, Hamilton Construction Co., in the amount of \$5,016,947.90 for the construction of the 72nd Avenue/Raleigh Street Bridge Replacement Project and authorize a construction contingency of \$450,000; authorize the City Manager to enter into a purchase and sale agreement with Nolan RV (legally registered as JDRE Holdings LLC and Nolan's R.V. Center, Inc.) for an amount not to exceed \$2,350,000, in substantially the same form as attached to the agenda memorandum; based upon the recommendation of the City Manager, find that the public interest would best be served by authorizing the City Manager to enter into a sole source contract with Atkins North America, Inc. in the amount of \$88,574 for the preparation of structural design drawings of architectural enhancements to the Federal Boulevard Bridge over the Burlington Northern/Santa Fe Railroad; and authorize the City Manager to execute a contract with the lowest qualified bidder, Matrix Design Group, Inc., in the amount of \$189,256 for master planning and branding services for Standley Lake Regional Park and authorize an 8% contingency for potential additional services in the amount of \$15,140 for a total project cost of \$204,396.

It was moved by Councillor Garcia, seconded by Councillor Baker, to approve the consent agenda except Agenda Item 8F. The motion passed with all Councillors voting affirmatively.

STANDLEY LAKE MASTER PLANNING AND BRANDING CONTRACT AWARDED

It was moved by Mayor Pro Tem Winter, seconded by Councillor Seitz, to authorize the City Manager to execute a contract with the lowest qualified bidder, Matrix Design Group, Inc., in the amount of \$189,256 for master planning and branding services for Standley Lake Regional Park and authorize an 8% contingency for potential additional services in the amount of \$15,140 for a total project cost of \$204,396. The motion passed by a 6:1 margin with Councillor Baker voting no.

RESOLUTION NO. 14 TO FILL VACANCIES ON BOARDS AND COMMISSIONS

It was moved by Councillor Briggs, seconded by Councillor Baker, to adopt Resolution No. 14 making appointments to fill vacancies on the Special Permit and License Board. At roll call, the motion passed unanimously.

PUBLIC MEETING ON PROPOSED 2015/2016 BUDGET

Mr. McFall announced that the purpose of this public meeting was to gather citizen input concerning the proposed 2015/2016 Budget so it could be incorporated within the budget prior to the formal public hearing in September. Comments could be submitted in a variety of other formats, which he described. The Mayor invited public comment at 7:37 p.m.

Jill Lewis, 3722 West 103rd Avenue, spoke in favor of installing signage to direct people to the Westminster Arts District. She understood that signage was already proposed in the budget and she supported that expenditure.

Linda Graybeal, 6504 West 95th Place and President of the Westminster Historical Society, thanked City Council for the support it had given to the Westminster Historical Society since its 1962 inception and urged continued and expanded funding. Specifically requested was the addition of a staff member to help coordinate historic preservation throughout the community and to assist in preparing the area for future historic and art designations. Additionally, project funding of \$20,000 to hire a part-time staff person at the Bowles House and a part-time historian at the Westminster History Center, to purchase marketing materials to increase awareness about the City's resources to learn its history, and to acquire supplies to preserve historic artifacts.

No others wished to speak. The public meeting was closed at 7:50 p.m.

COUNCILLOR'S BILL NO. 20 VACATING RIGHTS-OF-WAY FOR EAST BRADBURN FILING NO. 1

It was moved by Mayor Pro Tem Winter, seconded by Councillor Garcia, to pass on first reading Councillor's Bill No. 20 vacating the existing rights-of-way within East Bradburn Subdivision, Filing No. 1. At roll call, the motion passed unanimously.

RESOLUTION NO. 15 AWARDING RESIDENTIAL COMPETITION SERVICE COMMITMENTS

Councillor Seitz moved to adopt Resolution No. 15 awarding Category B-4 (Traditional Mixed Use Neighborhood Development) Service Commitments to Crown Point at Standley Lake. The motion, seconded by Councillor Briggs, passed unanimously on roll call vote.

RESOLUTION NO. 16 AUTHORIZING FALL 2014 ADAMS COUNTY GRANT APPLICATIONS

It was moved by Councillor Briggs and seconded by Councillor Seitz, to adopt Resolution No. 16 authorizing the Department of Community Development to pursue two grants from the Adams County Open Space grant program during the 2014 fall cycle in the amount of up to \$576,000 for the acquisition of up to four parcels at 6930, 6940, 6950, and 6960 Lowell Boulevard for the future Little Dry Creek Park area and for \$1,072,779 for the Little Dry Creek Riparian Habitat Improvement project at 72nd Avenue and Raleigh Street to remove the Little Dry Creek concrete channel and provide trail connections. At roll call the motion passed by a 6:1 margin with Councillor Baker voting no.

COUNCILLOR'S BILL NO. 19 APPROPRIATING FY2013 CARRYOVER FUNDS INTO FY2014 BUDGET

Upon a motion by Councillor Garcia, seconded by Councillor Seitz, the Council voted 6:1 at roll call with Councillor Baker casting the dissenting vote to pass on final reading Councillor's Bill No. 19 authorizing appropriation of FY2013 carryover funds into the FY2014 budgets of the General, General Fund Stabilization Reserve, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, General Capital Outlay Replacement, Golf Course, and POST Funds.

ADJOURNMENT

There was no further business to come before the City Council, and, hearing no objections, Mayor Atchison adjourned the meeting at 7:54 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Recognition of Lao Buddhist Temple Dragon Race Team

Prepared By: L. Melissa West, Administrative Secretary

Recommended City Council Action

Mayor Atchison is requested to recognize the Lao Buddhist Temple Dragon Race Team for their 2nd place win at the 2014 Colorado Dragon Boat Festival.

Summary Statement

- The Westminster Lao Buddhist Temple young adults team took Silver medals at this year's Annual Dragonboat Race Festival held in Denver.
- This year the Colorado Dragon Boat Festival was held on July 19-20, 2014, at Sloan's Lake Park.
- The team pushed hard for the gold but fell short by .06 of a second.
- The team has been working out and preparing for this event since late January. There are a total of 25 crew members; 11 women and 14 men, ages ranging from 14 - 32 years of age.
- The City desires to recognize the Lao Buddhist Temple Dragon Race Team for their hard-fought 2nd place finish.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Dragon Boat Festival's roots go back thousands of years in China, as the Duanwu Festival, which remains a traditional holiday in mainland China and Taiwan. Today, it has spread all over the globe. It is a sports competition with 54 corporate and community teams comprised of some 1,350 competitors plus 80,000+ spectators. These hardy boaters clamber aboard intricate and colorful dragon boats and race their way across Sloan's Lake in a thrilling race. There's nothing quite like it in all of Colorado.

Beyond the competition, the Dragon Boat Festival serves as an ethnic celebration of Colorado's rich Pan Asian American heritage, showcasing diverse Asian cuisine and performing artists. Attendees can also spend some time browsing the unique and hard-to-find arts, crafts and vendors that are more likely to be found in the markets of Hong Kong, Tokyo or Manila.

The Lao Buddhist Temple is located at 10685 Dover Street. They will be present Monday night to receive recognition from the Mayor and City Council.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Item 6 B

Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Solar Friendly Communities Certification Presentation

Prepared By: Dave Horras, Chief Building Official

Recommended City Council Action

Councillor Seitz to accept the presentation to the City of Westminster of certification as a Platinum Level Solar Friendly Community from the Colorado Solar Energy Industries Association (COSIEA).

Summary Statement

In July the City of Westminster was certified as a Platinum Level Solar Friendly Community, the first Platinum level community in the State, by the Colorado Solar Energy Industries Association (COSIEA). This certification is based on *The 12 Best Practices: A Roadmap to a Solar Friendly Community* that has been established to identify ways that communities can institute policies and processes to streamline the permitting and inspection process for rooftop solar energy projects.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The City of Westminster has been certified as a Platinum Level Solar Friendly Community by the Colorado Solar Energy Industries Association (COSEIA). Westminster is the first community in Colorado to achieve the Platinum designation from COSEIA as part of its Solar Friendly Communities Program. The program is a unique partnership between local governments, the solar industry and other groups to make it faster, easier and more affordable to residents to go solar.

The certification is earned by communities that are leaders in adopting best practices in permitting, inspection, planning and public education to help residents go solar. The program awards points toward certification based on the “12 Best Practices: A Roadmap to a Solar Friendly Community.” Westminster earned the required 1,400 points of 1,600 possible, making it the first jurisdiction to achieve the Platinum level. Three communities - Denver, Fort Collins and Lafayette - have achieved the Gold level designation (at least 1,100 points). Westminster becomes Colorado's 15th Solar Friendly Community, and together they represent a population of more than 2 million people.

Recent studies have shown that more than half the cost of a typical rooftop solar system comes from elements other than the solar panels-- so called "soft costs" including the local permitting process.

Streamlining the approval and permitting process is a key way to drive down the cost of solar installations.

Westminster has implemented many solar-friendly policies such as allowing permits to be submitted electronically, instituting a low fixed permit fee for all installations, and only requiring a final inspection for standard rooftop solar energy systems. These policies and procedures make it faster, easier and more affordable for Westminster residents to go solar.

A key benefit of the solar friendly certification is there are more than 16 Colorado solar companies that offer a \$500 discount on standard residential solar systems installed in Solar Friendly Communities.

The Westminster City Council will be presented a road sign and a plaque by Rebecca Cantwell, executive director of the Colorado Solar Energy Industries Association during the ceremony.

This certification as a Solar Friendly Community was an objective identified in City Councils' recent strategic planning process and it supports the City's Strategic Plan goals of Visionary Leadership & Effective Governance; Beautiful, Desirable, Environmentally Responsible City; and Excellence in City Services.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Memorandum



City Council Meeting
August 11, 2014

SUBJECT: Denver Metro Healthiest Employer's Award

Prepared By: Debbie Mitchell, General Services Director
Lisa Chrisman, Employee Development and Benefits Manager

Recommended City Council Action

Mayor Atchison will recognize City staff for achieving top honors as one of the Healthiest Employers in the Denver Metro Area.

Summary Statement

- For the past four years, the Denver Business Journal has awarded companies that have made a commitment to making wellness a reality for their employees. This prestigious award is given to employers in small, medium, large and extra-large categories.
- This is the first year the City submitted an application for the award and its attainment represents a significant accomplishment by a public sector employer and its management.
- The City of Westminster placed third in the extra-large category for the 2014 Metro Denver Healthiest Employers award. DaVita took first place honors in this category of 950-plus employees. Other finalists in this category were RK Mechanical, TeleTech and TerumoBCT. Awards were announced July 23 at a luncheon in Denver.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Denver Metro Healthiest Employer's award, sponsored by the Denver Business Journal, recognizes companies that have made a commitment to making wellness a reality for their employees. Now in its fourth year, this prestigious award is given to employers in the small, medium, large and extra-large categories. With 950 benefited employees, the City was placed in the largest category and competed against organizations with 950 plus employees.

Wellness programs have evolved over the years and have become increasingly more popular as management recognizes their worth in controlling sky-rocketing health care costs and as importantly, their value in helping employees improve overall lifestyle and well-being. The City was well ahead of this trend when it initiated its wellness program in the mid 1980's. With strong leadership support and a desire to create an environment and culture that supports the overall well-being of our employees, the wellness program has grown to a comprehensive program that consists of not only traditional wellness initiatives, but also includes a diverse set of programs and benefits that support employees throughout their career at the City.

The goal of the Healthiest Employer's Awards is to allow for employers of all sizes an opportunity to compare their wellness program with other employers locally and nationally. To evaluate employer wellness programs, the Healthiest Employers assessment measures wellness across six key categories:

1. Culture and Leadership Commitment
2. Foundational Components
3. Strategic Planning
4. Communications and Marketing
5. Programming and Interventions
6. Reporting and Analysis

Seventy five questions that encompass these six key areas of worksite wellness were scored on a point value method. The questions include yes/no, multiple choice, ranking lists, and open ended formats. Based on the responses, a Benchmark Score is calculated through a proprietary scoring methodology. The City's overall aggregate Benchmark Score was 81.4 out of 100 possible points. This places the City in a range that indicates we have the basics of a strong wellness program, that we have taken the necessary steps to create a core foundation, and have added components to increase the overall effectiveness of the program. Alongside of the benchmark score, staff received a comprehensive report comparing the city's program to local and national programs in the six key areas of worksite wellness. This report highlights the strengths of our program and will help staff to improve on the effectiveness of worksite wellness efforts.

Human Resources staff is instrumental in the effort to create and promote a culture of wellness and well-being for all employees, and this award represents the hard work and commitment to being an "Employer of Choice." Representing the Human Resources Team this evening are: Debbie Mitchell, General Services Director; Lisa Chrisman, Employee Development and Benefits Manager; Dee Martin, Workforce Planning and Compensation Manager; Nicki Leo, Wellness Coordinator; Jackie June, Employee Development Coordinator; Donna Diaz, Senior Human Resources Analyst; Theresa Booco, Senior Human Resources Analyst; Jodi Cohen, Senior Human Resources Analyst; Marie Martinez, Human Resources Analyst; Jen Prehn, Human Resources Analyst; and Katie Holter, Human Resources Intern.

SUBJECT: Denver Metro Healthiest Employer's Award

Page 3

This recognition confirms Staff's commitment to achieving the City's strategic goal of Excellence in City Services.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Approval of Extension of Listing Agreements for City Properties near the Promenade

Prepared By: Susan Grafton, Economic Development Director

Recommended City Council Action

Authorize the City Manager to execute the Third Amendment to the Exclusive Listing Agreement with The Laramie Company for the sale of the 14-acre parcel referred to as Promenade North and to execute the Exclusive Listing Contract with The Laramie Company for the sale of the 6-acre parcel at the north east corner of Westminster Boulevard and 104th Avenue referred to as Promenade East.

Summary Statement

- The City acquired the parcels known as The Promenade North Parcel (approximately 14 acres) and the Promenade East Parcel (approximately 6 acres) in the late 1990's.
- The Laramie Company currently represents the city in marketing the two parcels for sale.
- The Promenade East listing contract expired on June 15, 2014 and a new contract is now required.
- The Promenade North listing contract has expired and Staff is recommending extension with minor edits as shown on the first attachment to his Agenda Memorandum.
- Staff desires to continue working with The Laramie Company on both parcels.

Expenditure Required: 6% of Sale Price

Source of Funds: Proceeds from Land Sale

Policy Issue

Does Council desire to continue marketing for sale the Promenade North parcel and the Promenade East parcel?

Alternatives

- Do not extend the listing agreements for the two parcels; but change the real estate firm representing the properties for the City. However, since the Promenade North parcel is currently under contract for sale and The Laramie Company is the broker of record on the transaction such an action would simply result in more real estate brokers at the closing.
- Extend the listing agreements for a shorter period of time; and later list the property with a new brokerage company.
- Do not list the property for sale. Since the Promenade North parcel is set for land closing this year, this option would affect the Promenade East parcel only.

Background Information

The 14-acre parcel known as Promenade North is currently under contract by Urban Pacific Properties for the development of a high density apartment project. It is expected to receive entitlements and close within the next couple of months.

The Promenade East parcel just south of the Westin has garnered a lot of attention by potential users; but it has been the City's desire to hold on to the parcel for a more exclusive, "white-table-cloth" type restaurant. It is expected that attention to that site will increase as the economy improves and job growth continues along the US 36 corridor.

The Laramie Company was chosen to represent these two parcels because of their rapport with higher end restaurateurs and their understanding of The Promenade area. They have done a very good job of weeding out buyers with whom the City is not interested in working and of presenting viable projects for both sites.

The approval of these listing agreements is consistent with City Council's goal of "Dynamic, Diverse Economy."

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments:

- Third Amendment to the Exclusive Listing Agreement for the Promenade North property
- Exclusive Right-to-Sell Listing Contract

**THIRD AMENDMENT TO
EXCLUSIVE LISTING AGREEMENT
FOR PROMENADE NORTH**

THE THIRD AMENDMENT TO THAT CERTAIN EXCLUSIVE LISTING AGREEMENT, dated November 1, 2010, attached hereto and incorporated herein by reference, between City of Westminster hereinafter referred to as "Owner" and The Laramie Company LLC, exclusive agent, to assist Owner with the marketing of Promenade North ("Project"), of approximately 15.636 acres of land, located between Westminster Promenade and Circle Point Office Buildings, Westminster, Colorado, is hereby amended by the parties as follows:

- A. Retroactive to June 14, 2014, the following changes shall be made to the attached Exclusive Agreement:
1. Paragraph 7, the words "perspective" shall be changed to "prospective"
 2. Paragraph 15 shall be amended as follows:
 - Replace the words "City and County of Denver" with the words "Jefferson County"
 - The word "form" in the last sentence shall be replaced with the word "from"

All other terms and conditions of the attached Exclusive Listing Agreement shall remain in full force and effect as originally intended.

IN WITNESS WHEREOF, Owner and Broker have executed this instrument by proper persons thereunto duly authorized to do so the day and year hereinabove written.

"OWNER"

"BROKER"

CITY OF WESTMINSTER

THE LARAMIE COMPANY, LLC

AGREED AND ACCEPTED

AGREED AND ACCEPTED

On this ___ day of ____, 2014

On this ___ day of _____, 2014

By: _____

By: _____

Name: J. Brent McFall
City Manager

Name: Mary Beth Jenkins
President

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(LC50-8-13) (Mandatory 1-14)

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY, OR TRANSACTION-BROKERAGE.

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT

SELLER AGENCY TRANSACTION-BROKERAGE

Date: July 14, 2014

1. AGREEMENT. Seller and Brokerage Firm enter into this exclusive, irrevocable contract (Seller Listing Contract) and agree to its provisions. Broker, on behalf of Brokerage Firm, agrees to provide brokerage services to Seller. Seller agrees to pay Brokerage Firm as set forth in this Seller Listing Contract.

2. BROKER AND BROKERAGE FIRM.

2.1. Multiple-Person Firm. If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Seller and to perform the services for Seller required by this Seller Listing Contract is called Broker. If more than one individual is so designated, then references in this Seller Listing Contract to Broker include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

2.2. One-Person Firm. If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this Seller Listing Contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm who serve as the broker of Seller and perform the services for Seller required by this Seller Listing Contract.

3. DEFINED TERMS.

3.1. Seller: City of Westminster

3.2. Brokerage Firm: The Laramie Company, LLC

3.3. Broker: William K. Jenkins

3.4. Property. The Property is the following legally described real estate in the County of Jefferson, Colorado:

known as No. NEC 104th & Westminster Blvd.

Street Address

City

State

Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

3.5. Sale; Lease.

3.5.1. A Sale is the voluntary transfer or exchange of any interest in the Property or the voluntary creation of the obligation to convey any interest in the Property, including a contract or lease. It also includes an agreement to transfer any ownership interest in an entity which owns the Property.

3.5.2. If this box is checked, Seller authorizes Broker to negotiate leasing the Property. Lease of the Property or Lease means any agreement between the Seller and a tenant to create a tenancy or leasehold interest in the Property.

3.6. Listing Period. The Listing Period of this Seller Listing Contract begins on July 1, 2014, and continues through the earlier of (1) completion of the Sale of the Property or (2) June 30, 2015, and any written extensions (Listing Period). Broker must continue to assist in the completion of any Sale or Lease for which compensation is payable to Brokerage Firm under § 7 of this Seller Listing Contract.

3.7. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the date upon which both parties have signed this Seller Listing Contract.

51 **3.8. Day; Computation of Period of Days, Deadline.**

52 **3.8.1. Day.** As used in this Seller Listing Contract, the term "day" means the entire day ending at 11:59 p.m., United
53 States Mountain Time (Standard or Daylight Savings as applicable).

54 **3.8.2. Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is not
55 specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday,
56 Sunday or federal or Colorado state holiday (Holiday), such deadline Will Will Not be extended to the next day that is not
57 a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

58 **4. BROKERAGE RELATIONSHIP.**

59 **4.1.** If the Seller Agency box at the top of page 1 is checked, Broker represents Seller as Seller's limited agent (Seller's
60 Agent). If the Transaction-Brokerage box at the top of page 1 is checked, Broker acts as a Transaction-Broker.

61 **4.2. In-Company Transaction – Different Brokers.** When Seller and buyer in a transaction are working with different
62 brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Seller
63 acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a
64 buyer.

65 **4.3. In-Company Transaction – One Broker.** If Seller and buyer are both working with the same broker, Broker must
66 function as:

67 **4.3.1. Seller's Agent.** If the Seller Agency box at the top of page 1 is checked, the parties agree the following applies:

68 **4.3.1.1. Seller Agency Only.** Unless the box in § 4.3.1.2 (**Seller Agency Unless Brokerage Relationship**
69 **with Both**) is checked, Broker represents Seller as Seller's Agent and must treat the buyer as a customer. A customer is a party to
70 a transaction with whom Broker has no brokerage relationship. Broker must disclose to such customer Broker's relationship with
71 Seller.

72 **4.3.1.2. Seller Agency Unless Brokerage Relationship with Both.** If this box is checked, Broker
73 represents Seller as Seller's Agent and must treat the buyer as a customer, unless Broker currently has or enters into an agency or
74 Transaction-Brokerage relationship with the buyer, in which case Broker must act as a Transaction-Broker.

75 **4.3.2. Transaction-Broker.** If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither
76 box is checked, Broker must work with Seller as a Transaction-Broker. A Transaction-Broker must perform the duties described in
77 § 5 and facilitate sales transactions without being an advocate or agent for either party. If Seller and buyer are working with the
78 same broker, Broker must continue to function as a Transaction-Broker.

79 **5. BROKERAGE DUTIES.** Brokerage Firm, acting through Broker, as either a Transaction-Broker or a Seller's Agent, must
80 perform the following **Uniform Duties** when working with Seller:

81 **5.1.** Broker must exercise reasonable skill and care for Seller, including, but not limited to the following:

82 **5.1.1.** Performing the terms of any written or oral agreement with Seller;

83 **5.1.2.** Presenting all offers to and from Seller in a timely manner regardless of whether the Property is subject to a
84 contract for Sale;

85 **5.1.3.** Disclosing to Seller adverse material facts actually known by Broker;

86 **5.1.4.** Advising Seller regarding the transaction and advising Seller to obtain expert advice as to material matters
87 about which Broker knows but the specifics of which are beyond the expertise of Broker;

88 **5.1.5.** Accounting in a timely manner for all money and property received; and

89 **5.1.6.** Keeping Seller fully informed regarding the transaction.

90 **5.2.** Broker must not disclose the following information without the informed consent of Seller:

91 **5.2.1.** That Seller is willing to accept less than the asking price for the Property;

92 **5.2.2.** What the motivating factors are for Seller to sell the Property;

93 **5.2.3.** That Seller will agree to financing terms other than those offered;

94 **5.2.4.** Any material information about Seller unless disclosure is required by law or failure to disclose such
95 information would constitute fraud or dishonest dealing; or

96 **5.2.5.** Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property.

97 **5.3.** Seller consents to Broker's disclosure of Seller's confidential information to the supervising broker or designee for the
98 purpose of proper supervision, provided such supervising broker or designee does not further disclose such information without
99 consent of Seller, or use such information to the detriment of Seller.

100 **5.4.** Brokerage Firm may have agreements with other sellers to market and sell their property. Broker may show alternative
101 properties not owned by Seller to other prospective buyers and list competing properties for sale.

102 **5.5.** Broker is not obligated to seek additional offers to purchase the Property while the Property is subject to a contract for
103 Sale.

104 **5.6.** Broker has no duty to conduct an independent inspection of the Property for the benefit of a buyer and has no duty to
105 independently verify the accuracy or completeness of statements made by Seller or independent inspectors. Broker has no duty to
106 conduct an independent investigation of a buyer's financial condition or to verify the accuracy or completeness of any statement
107 made by a buyer.

108 5.7. Seller understands that Seller is not liable for Broker's acts or omissions that have not been approved, directed, or
109 ratified by Seller.

110 5.8. When asked, Broker Will Will Not disclose to prospective buyers and cooperating brokers the existence of
111 offers on the Property and whether the offers were obtained by Broker, a broker within Brokerage Firm or by another broker.

112 6. **ADDITIONAL DUTIES OF SELLER'S AGENT.** If the Seller Agency box at the top of page 1 is checked, Broker is
113 Seller's Agent, with the following additional duties:

114 6.1. Promoting the interests of Seller with the utmost good faith, loyalty and fidelity;

115 6.2. Seeking a price and terms that are set forth in this Seller Listing Contract; and

116 6.3. Counseling Seller as to any material benefits or risks of a transaction that are actually known by Broker.

117 7. **COMPENSATION TO BROKERAGE FIRM; COMPENSATION TO COOPERATIVE BROKER.** Seller agrees that
118 any Brokerage Firm compensation that is conditioned upon the Sale of the Property will be earned by Brokerage Firm as set forth
119 herein without any discount or allowance for any efforts made by Seller or by any other person in connection with the Sale of the
120 Property.

121 7.1. **Amount.** In consideration of the services to be performed by Broker, Seller agrees to pay Brokerage Firm as follows:

122 7.1.1. **Sale Commission.** (1) ⁶ _____% of the gross purchase price or (2) _____,
123 in U.S. dollars.

124 7.1.2. **Lease Commission.** If the box in § 3.5.2 is checked, Brokerage Firm will be paid a fee equal to (1) ____% of
125 the gross rent under the lease, or (2) _____, in U.S. dollars, payable
126 as follows: _____.

127 7.1.3. **Other Compensation.** _____

128 7.2. **Cooperative Broker Compensation.** Brokerage Firm offers compensation to outside brokerage firms, whose brokers
129 are acting as:

130 **Buyer Agents:** ³ _____% of the gross sales price or _____, in U.S. dollars.

131 **Transaction-Brokers:** _____% of the gross sales price or _____, in U.S. dollars.

132 7.3. **When Earned.** Such commission is earned upon the occurrence of any of the following:

133 7.3.1. Any Sale of the Property within the Listing Period by Seller, by Broker or by any other person;

134 7.3.2. Broker finding a buyer who is ready, willing and able to complete the Sale or Lease as specified in this Seller
135 Listing Contract; or

136 7.3.3. Any Sale (or Lease if § 3.5.2 is checked) of the Property within ¹⁸⁰_____ calendar days after the Listing
137 Period expires (Holdover Period) (1) to anyone with whom Broker negotiated and (2) whose name was submitted, in writing, to
138 Seller by Broker during the Listing Period (Submitted Prospect). Provided, however, Seller Will Will Not owe the
139 commission to Brokerage Firm under this § 7.3.3 if a commission is earned by another licensed real estate brokerage firm acting
140 pursuant to an exclusive agreement entered into during the Holdover Period and a Sale or Lease to a Submitted Prospect is
141 consummated. If no box is checked in this § 7.3.3, then Seller does not owe the commission to Brokerage Firm.

142 7.4. **When Applicable and Payable.** The commission obligation applies to a Sale made during the Listing Period or any
143 extension of such original or extended term. The commission described in § 7.1.1 is payable at the time of the closing of the Sale,
144 or, if there is no closing (due to the refusal or neglect of Seller) then on the contracted date of closing, as contemplated by § 7.3.1
145 or § 7.3.3, or upon fulfillment of § 7.3.2 where the offer made by such buyer is not accepted by Seller.

146 8. **LIMITATION ON THIRD-PARTY COMPENSATION.** Neither Broker nor Brokerage Firm, except as set forth in § 7,
147 will accept compensation from any other person or entity in connection with the Property without the written consent of Seller.
148 Additionally, neither Broker nor Brokerage Firm is permitted to assess or receive mark-ups or other compensation for services
149 performed by any third party or affiliated business entity unless Seller signs a separate written consent for such services.

150 9. **OTHER BROKERS' ASSISTANCE, MULTIPLE LISTING SERVICES AND MARKETING.** Seller has been advised
151 by Broker of the advantages and disadvantages of various marketing methods, including advertising and the use of multiple listing
152 services (MLS) and various methods of making the Property accessible by other brokerage firms (e.g., using lock boxes, by-
153 appointment-only showings, etc.) and whether some methods may limit the ability of another broker to show the Property. After
154 having been so advised, Seller has chosen the following:

155 9.1. **MLS/Information Exchange.**

156 9.1.1. The Property Will Will Not be submitted to one or more MLS and Will Will Not be submitted
157 to one or more property information exchanges. If submitted, Seller authorizes Broker to provide timely notice of any status
158 change to such MLS and information exchanges. Upon transfer of deed from Seller to buyer, Seller authorizes Broker to provide
159 sales information to such MLS and information exchanges.

160 9.1.2. Seller authorizes the use of electronic and all other marketing methods except: _____.

161 9.1.3. Seller further authorizes use of the data by MLS and property information exchanges, if any.

162 9.1.4. The Property Address Will Will Not be displayed on the Internet.

163 9.1.5. The Property Listing Will Will Not be displayed on the Internet.

164 9.2. **Property Access.** Access to the Property may be by:

165 Manual Lock Box Electronic Lock Box

166 N/A

167 Other instructions: _____

168 9.3. **Broker Marketing.** The following specific marketing tasks will be performed by Broker:

169 Placement of sign on the property. Develop property brochure. Multiple and direct contacts
170 with brokerage community.
171

172 **10. SELLER'S OBLIGATIONS TO BROKER; DISCLOSURES AND CONSENT.**

173 **10.1. Negotiations and Communication.** Seller agrees to conduct all negotiations for the Sale of the Property only through
174 Broker, and to refer to Broker all communications received in any form from real estate brokers, prospective buyers, tenants or any
175 other source during the Listing Period of this Seller Listing Contract.

176 **10.2. Advertising.** Seller agrees that any advertising of the Property by Seller (e.g., Internet, print and signage) must first be
177 approved by Broker.

178 **10.3. No Existing Listing Agreement.** Seller represents that Seller Is Is Not currently a party to any listing
179 agreement with any other broker to sell the Property.

180 **10.4. Ownership of Materials and Consent.** Seller represents that all materials (including all photographs, renderings,
181 images or other creative items) supplied to Broker by or on behalf of Seller are owned by Seller, except as Seller has disclosed in
182 writing to Broker. Seller is authorized to and grants to Broker, Brokerage Firm and any MLS (that Broker submits the Property to)
183 a nonexclusive irrevocable, royalty-free license to use such material for marketing of the Property, reporting as required and the
184 publishing, display and reproduction of such material, compilation and data. This license survives the termination of this Seller
185 Listing Contract.

186 **10.5. Colorado Foreclosure Protection Act.** The Colorado Foreclosure Protection Act (Act) generally applies if (1) the
187 Property is residential (2) Seller resides in the Property as Seller's principal residence (3) Buyer's purpose in purchase of the
188 Property is not to use the Property as Buyer's personal residence and (4) the Property is in foreclosure or Buyer has notice that any
189 loan secured by the Property is at least thirty days delinquent or in default. If all requirements 1, 2, 3 and 4 are met and the Act
190 otherwise applies, then a contract, between Buyer and Seller for the sale of the Property, that complies with the provisions of the
191 Act is required. If the transaction is a Short Sale transaction and a Short Sale Addendum is part of the Contract between Seller and
192 Buyer, the Act does not apply. It is recommended that Seller consult with an attorney.

193 **11. PRICE AND TERMS.** The following Price and Terms are acceptable to Seller:

194 **11.1. Price.** U.S. \$ 2,822,688. or \$12 psf

195 **11.2. Terms.** Cash Conventional FHA VA Other: _____

196 **11.3. Loan Discount Points.** _____

197 **11.4. Buyer's Closing Costs (FHA/VA).** Seller must pay closing costs and fees, not to exceed \$ _____, that Buyer
198 is not allowed by law to pay, for tax service and _____.

199 **11.5. Earnest Money.** Minimum amount of earnest money deposit U.S. \$ 25,000 _____ in the form of Certified Funds

200 **11.6. Seller Proceeds.** Seller will receive net proceeds of closing as indicated: Cashier's Check at Seller's expense;
201 Funds Electronically Transferred (Wire Transfer) to an account specified by Seller, at Seller's expense; or Closing
202 Company's Trust Account Check.

203 **11.7. Advisory: Tax Withholding.** The Internal Revenue Service and the Colorado Department of Revenue may require
204 closing company to withhold a substantial portion of the proceeds of this Sale when Seller either (1) is a foreign person or (2) will
205 not be a Colorado resident after closing. Seller should inquire of Seller's tax advisor to determine if withholding applies or if an
206 exemption exists.

207 **12. DEPOSITS.** Brokerage Firm is authorized to accept earnest money deposits received by Broker pursuant to a proposed Sale
208 contract. Brokerage Firm is authorized to deliver the earnest money deposit to the closing agent, if any, at or before the closing of
209 the Sale contract.

210 **13. INCLUSIONS AND EXCLUSIONS.**

211 **13.1. Inclusions.** The Purchase Price includes the following items (Inclusions):

212 **13.1.1. Fixtures.** The following items are included if attached to the Property on the date of this Seller Listing
213 Contract, unless excluded under Exclusions (§ 13.2): lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV
214 antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings,
215 intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories),
216 garage door openers including _____ remote controls.

217 **Other Fixtures:**

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If any fixtures are attached to the Property after the date of this Seller Listing Contract, such additional fixtures are also included in the Purchase Price.

13.1.2. Personal Property. The following items are included if on the Property, whether attached or not, on the date of this Seller Listing Contract, unless excluded under Exclusions (§ 13.2): storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included: **Water Softeners** **Smoke/Fire Detectors** **Carbon Monoxide Alarms** **Security Systems** **Satellite Systems** (including satellite dishes); and

The Personal Property to be conveyed at closing must be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of closing), liens and encumbrances, except _____.
Conveyance will be by bill of sale or other applicable legal instrument.

13.1.3. Trade Fixtures. The following trade fixtures are included: _____

The Trade Fixtures to be conveyed at closing must be conveyed by Seller, free and clear of all taxes (except personal property taxes for the year of closing), liens and encumbrances, except _____.
Conveyance will be by bill of sale or other applicable legal instrument.

13.1.4. Parking and Storage Facilities. **Use Only** **Ownership** of the following parking facilities: _____
_____ ; and **Use Only** **Ownership** of the following storage facilities: _____.

13.1.5. Water Rights. The following legally described water rights:

Any water rights must be conveyed by Special Warranty _____ deed or other applicable legal instrument. The Well Permit # is _____.

13.1.6. Growing Crops. The following growing crops:

13.2. Exclusions. The following are excluded (Exclusions):

14. TITLE AND ENCUMBRANCES. Seller represents to Broker that title to the Property is solely in Seller's name. Seller must deliver to Broker true copies of all relevant title materials, leases, improvement location certificates and surveys in Seller's possession and must disclose to Broker all easements, liens and other encumbrances, if any, on the Property, of which Seller has knowledge. Seller authorizes the holder of any obligation secured by an encumbrance on the Property to disclose to Broker the amount owing on said encumbrance and the terms thereof. In case of Sale, Seller agrees to convey, by a _____ deed, only that title Seller has in the Property. Property must be conveyed free and clear of all taxes, except the general taxes for the year of closing.

All monetary encumbrances (such as mortgages, deeds of trust, liens, financing statements) must be paid by Seller and released except as Seller and buyer may otherwise agree. Existing monetary encumbrances are as follows: _____.

The Property is subject to the following leases and tenancies: _____.

If the Property has been or will be subject to any governmental liens for special improvements installed at the time of signing a Sale contract, Seller is responsible for payment of same, unless otherwise agreed.

15. EVIDENCE OF TITLE. Seller agrees to furnish buyer, at Seller's expense, unless the parties agree in writing to a different arrangement, a current commitment and an owner's title insurance policy in an amount equal to the Purchase Price as specified in the Sale contract, or if this box is checked, **An Abstract of Title** certified to a current date.

16. ASSOCIATION ASSESSMENTS. Seller represents that the amount of the regular owners' association assessment is currently payable at approximately \$ _____ per _____ and that there are no unpaid regular or special assessments against the Property except the current regular assessments and except _____. Seller agrees to promptly request the owners' association to deliver to buyer before date of closing a current statement of assessments against the Property.

17. POSSESSION. Possession of the Property will be delivered to buyer as follows: _____, subject to leases and tenancies as described in § 14.

18. MATERIAL DEFECTS, DISCLOSURES AND INSPECTION.

272 **18.1. Broker's Obligations.** Colorado law requires a broker to disclose to any prospective buyer all adverse material facts
273 actually known by such broker including but not limited to adverse material facts pertaining to the title to the Property and the
274 physical condition of the Property, any material defects in the Property, and any environmental hazards affecting the Property which
275 are required by law to be disclosed. These types of disclosures may include such matters as structural defects, soil conditions,
276 violations of health, zoning or building laws, and nonconforming uses and zoning variances. Seller agrees that any buyer may have
277 the Property and Inclusions inspected and authorizes Broker to disclose any facts actually known by Broker about the Property.

278 **18.2. Seller's Obligations.**

279 **18.2.1. Seller's Property Disclosure Form.** Disclosure of known material latent (not obvious) defects is required by
280 law. Seller Agrees Does Not Agree to provide a Seller's Property Disclosure form completed to Seller's current, actual
281 knowledge.

282 **18.2.2. Lead-Based Paint.** Unless exempt, if the improvements on the Property include one or more residential
283 dwellings for which a building permit was issued prior to January 1, 1978, a completed Lead-Based Paint Disclosure (Sales) form
284 must be signed by Seller and the real estate licensees, and given to any potential buyer in a timely manner.

285 **18.2.3. Carbon Monoxide Alarms.** Note: If the improvements on the Property have a fuel-fired heater or appliance, a
286 fireplace, or an attached garage and one or more rooms lawfully used for sleeping purposes (Bedroom), Seller understands that
287 Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the
288 entrance to each Bedroom or in a location as required by the applicable building code, prior to offering the Property for sale or lease.

289 **18.2.4. Condition of Property.** The Property will be conveyed in the condition existing as of the date of the sales
290 contract or lease, ordinary wear and tear excepted, unless Seller, at Seller's sole option, agrees in writing to any repairs or other
291 work to be performed by Seller.

292

293 **19. RIGHT OF PARTIES TO CANCEL.**

294 **19.1. Right of Seller to Cancel.** In the event Broker defaults under this Seller Listing Contract, Seller has the right to cancel
295 this Seller Listing Contract, including all rights of Brokerage Firm to any compensation if the Seller Agency box is checked.
296 Examples of a Broker default include, but are not limited to (1) abandonment of Seller, (2) failure to fulfill all material obligations
297 of Broker and (3) failure to fulfill all material Uniform Duties (§ 5) or, if the Seller Agency box at the top of page 1 is checked, the
298 failure to fulfill all material Additional Duties Of Seller's Agent (§ 6). Any rights of Seller that accrued prior to cancellation will
299 survive such cancellation.

300 **19.2. Right of Broker to Cancel.** Brokerage Firm may cancel this Seller Listing Contract upon written notice to Seller that
301 title is not satisfactory to Brokerage Firm. Although Broker has no obligation to investigate or inspect the Property, and no duty to
302 verify statements made, Brokerage Firm has the right to cancel this Seller Listing Contract if any of the following are
303 unsatisfactory (1) the physical condition of the Property or Inclusions, (2) any proposed or existing transportation project, road,
304 street or highway, (3) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the
305 Property or its occupants, or (4) any facts or suspicions regarding circumstances that could psychologically impact or stigmatize
306 the Property. Additionally, Brokerage Firm has the right to cancel this Seller Listing Contract if Seller or occupant of the Property
307 fails to reasonably cooperate with Broker or Seller defaults under this Seller Listing Contract. Any rights of Brokerage Firm that
308 accrued prior to cancellation will survive such cancellation.

309 **20. FORFEITURE OF PAYMENTS.** In the event of a forfeiture of payments made by a buyer, the sums received will be
310 divided between Brokerage Firm and Seller, one-half thereof to Brokerage Firm but not to exceed the Brokerage Firm
311 compensation agreed upon herein, and the balance to Seller. Any forfeiture of payment under this section will not reduce any
312 Brokerage Firm compensation owed, earned and payable under § 7.

313 **21. COST OF SERVICES AND REIMBURSEMENT.** Unless otherwise agreed upon in writing, Brokerage Firm must bear all
314 expenses incurred by Brokerage Firm, if any, to market the Property and to compensate cooperating brokerage firms, if any.
315 Neither Broker nor Brokerage Firm will obtain or order any other products or services unless Seller agrees in writing to pay for
316 them promptly when due (examples: surveys, radon tests, soil tests, title reports, engineering studies, property inspections). Unless
317 otherwise agreed, neither Broker nor Brokerage Firm is obligated to advance funds for Seller. Seller must reimburse Brokerage
318 Firm for payments made by Brokerage Firm for such products or services authorized by Seller.

319 **22. DISCLOSURE OF SETTLEMENT COSTS.** Seller acknowledges that costs, quality, and extent of service vary between
320 different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

321 **23. MAINTENANCE OF THE PROPERTY.** Neither Broker nor Brokerage Firm is responsible for maintenance of the
322 Property nor are they liable for damage of any kind occurring to the Property, unless such damage is caused by their negligence or
323 intentional misconduct.

324 **24. NONDISCRIMINATION.** The parties agree not to discriminate unlawfully against any prospective buyer because of the
325 race, creed, color, sex, sexual orientation, marital status, familial status, physical or mental disability, handicap, religion, national
326 origin or ancestry of such person.

327 **25. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Seller acknowledges that Broker
328 has advised that this document has important legal consequences and has recommended consultation with legal and tax or other
329 counsel before signing this Seller Listing Contract.

330 **26. MEDIATION.** If a dispute arises relating to this Seller Listing Contract, prior to or after closing, and is not resolved, the
331 parties must first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an
332 impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The
333 parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable
334 mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, will terminate in the event
335 the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party
336 to the other at the other party's last known address.

337 **27. ATTORNEY FEES.** In the event of any arbitration or litigation relating to this Seller Listing Contract, the arbitrator or court
338 must award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

339 **28. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate
340 Commission.)

341 Item 12. Earnest funds will be deposited only with Title Company.

342 Item. 7.1.1. If sale is completed on a direct basis with co-broker, fee will be 5% of sales price.
343

344 **29. ATTACHMENTS.** The following are a part of this Seller Listing Contract:
345
346

347 **30. NO OTHER PARTY OR INTENDED BENEFICIARIES.** Nothing in this Seller Listing Contract is deemed to inure to the
348 benefit of any person other than Seller, Broker and Brokerage Firm.

349 **31. NOTICE, DELIVERY AND CHOICE OF LAW.**

350 **31.1. Physical Delivery.** All notices must be in writing, except as provided in § 31.2. Any document, including a signed
351 document or notice, delivered to the other party to this Seller Listing Contract, is effective upon physical receipt. Delivery to Seller
352 is effective when physically received by Seller, any signator on behalf of Seller, any named individual of Seller or representative
353 of Seller.

354 **31.2. Electronic Delivery.** As an alternative to physical delivery, any document, including a signed document or written
355 notice, may be delivered in electronic form only by the following indicated methods: **Facsimile** **Email** **Internet**. If no
356 box is checked, this § 31.2 is not applicable and § 31.1 governs notice and delivery. Documents with original signatures will be
357 provided upon request of any party.

358 **31.3. Choice of Law.** This Seller Listing Contract and all disputes arising hereunder are governed by and construed in
359 accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state
360 for property located in Colorado.

361 **32. MODIFICATION OF THIS SELLER LISTING CONTRACT.** No subsequent modification of any of the terms of this
362 Seller Listing Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

363 **33. COUNTERPARTS.** This Seller Listing Contract may be executed by each of the parties, separately, and when so executed
364 by all the parties, such copies taken together are deemed to be a full and complete contract between the parties.

365 **34. ENTIRE AGREEMENT.** This agreement constitutes the entire contract between the parties, and any prior agreements,
366 whether oral or written, have been merged and integrated into this Seller Listing Contract.

367 **35. COPY OF CONTRACT.** Seller acknowledges receipt of a copy of this Seller Listing Contract signed by Broker, including
368 all attachments.

369 Brokerage Firm authorizes Broker to execute this Seller Listing Contract on behalf of Brokerage Firm.

Seller's Name: City of Westminster

Broker's Name: Mary Beth Jenkins

Seller's Signature _____ Date _____

Broker's Signature _____ Date _____

Address: _____

Address: 730 17th Street

Phone No.: _____

Phone No.: 303-573-1009

Fax No.: _____

Fax No.: _____

Electronic Address: _____

Electronic Address: MB@Laramiecompany.com

Brokerage

Firm's Name: The Laramie Company, LLC

Address: 730 17th Street

Suite 840, Denver, CO 80202

Phone No.: 303 573 5007

Fax No.: _____

Electronic Address: _____

370



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Gas line Relocation Agreement for the McKay Drainageway Project

Prepared By: David W. Loseman, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to execute an agreement with Kerr McKee Gathering, LLC in the amount of \$124,551 for the relocation of this company's gas pipeline at the site of the McKay Drainageway Improvements Project, located between I-25 and Huron Street at the approximate 142nd Avenue alignment; and authorize a contingency of \$15,000 for unanticipated costs relating to this relocation.

Summary Statement

The McKay Drainageway Project refers to a planned system of drainage facilities in the general area between 136th Avenue and 144th Avenue, conveying flows east from Zuni Street to Big Dry Creek at Washington Street in Thornton. The only remaining unimproved portion of the drainageway lies between I-25 and Huron Street (see Project Map) where a wide shallow floodplain still exists. This floodplain is a significant constraint to development of one of the larger vacant sites in the City.

The preliminary design of the drainage improvements necessary to reduce the width of this floodplain was casually pursued until 2009 when development interest in the adjacent sites waned. In the past year, that interest has increased, and the City recently received the right-of-way needed to install the drainage improvements from the private property owners.

The planned regional detention pond located immediately upstream of I-25 is sited on top of a gas pipeline owned by Kerr McKee Gathering, LLC. Company officials will not allow anyone other than their own crews relocate their facilities, and the cost for this relocation is \$124,551. The requested construction contingency may be needed to pay for any additional pipe that must be relocated or other unforeseen items of additional work.

Expenditure Required: \$139,551

Source of Funds: General Capital Improvement Fund—McKay Lake Outfall Drainage account

Policy Issue

Should the City enter into an agreement with Kerr McGee Gathering, LLC for the relocation of this company's gas line?

Alternative

The alternative is to not enter into this agreement. Staff does not recommend this alternative since the Kerr McGee gas line must be relocated in order to proceed with the McKay Drainageway Improvements Project.

Background Information

The McKay Lake basin contains approximately 1800 acres and extends from its confluence with Big Dry Creek at 140th Avenue and Washington Street upstream through Westminster to the southern portions of Broomfield. The planning and construction of the improvements needed to reduce the size of the floodplain of the McKay Lake Drainageway have been implemented in phases over a fifteen year period. Completed phases of the project include the rehabilitation of the dam at the McKay Lake open space, the construction of a channel through the Huntington Trails subdivision and, most recently, the installation of a culvert under I-25 and the channelization the drainageway from that point to Big Dry Creek. With the completion of that most recent phase of the project in 2010, only the portion of the basin located between I-25 and Huron Street (see Project Map) remains unimproved, and those adjacent properties are still encumbered by a wide, shallow floodplain that constrains development within portions of the North Huron Planned Unit Development.

The preliminary design of the McKay Drainageway was being coordinated with the North Huron PUD developers up until 2009 when economic factors dampened their interest. Recently, that interest has increased, and development proposals that call for modifications to the preliminary plan for the drainageway have been received. The owners of the PUD properties have recently agreed to dedicate the necessary right-of-way for the drainage improvements across their land. The Foster family, owners of the southern portion of undeveloped property in the PUD, have also provided a deed for the improvements on their property.

The next step in preparation for the construction of this project is to clear all utilities within the project limits. The Kerr McGee gas line is one of the utilities that has to be relocated. Once this line is relocated, the construction of the project may proceed. The construction of this final phase of work is currently anticipated to begin in early September 2014 and be completed in December 2014.

The approval of this agreement supports several of City Council's strategic objectives including Excellence in City Services by providing Exceptional Services by investing in well-maintained and sustainable City infrastructure. The McKay Drainageway Improvements Project will also contribute to a Dynamic, Diverse Economy by increasing the land available for mixed-use development in accordance with the City's Comprehensive Land Use Plan.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager
Attachments

- Agreement
- Project Map



Kerr-McGee Gathering LLC
501 North Division Blvd.,
Platteville, CO 80651

June 18, 2014

David W. Loseman P.E., L.S.
Assistant City Engineer
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031

Orchard Lakes LLC
310 East 5th Street
Loveland, Colorado 80537

Re: Proposed Pipeline Relocation Project
Township 1 South, Range 68 West, 6th P.M.
Section 22: W1/2
Adams County, Colorado

Dear Mr. Loseman:

This letter agreement sets out the initial specifications and initial estimate of costs for the proposed pipeline relocation as mutually agreed between Kerr-McGee Gathering LLC (hereinafter referred to as “KMG”) and City of Westminster (hereinafter referred to as “City”), and Orchard Lakes LLC. “KMG” will conduct pipeline construction operations in order to relocate a 4” steel pipeline. Said estimate (attached) will include the removal of and installation of up to 1,000 feet of pipeline by Kerr-McGee and reconnect of said pipeline.

Upon your review and approval of the attached specifications and estimate, please have this letter agreement signed by an authorized representative of “City,” who by such signature has agreed to be responsible for all reasonable pipeline relocation costs.

Please return an executed version of this letter agreement along with a check for \$124,551.00 payable to Kerr-McGee Gathering LLC, ATTN: Jeff Berghorn, 501 North Division Blvd., Platteville, CO 80651. The amount of the check reflects the current estimate of the costs to perform the pipeline relocation services. A final billing will be sent based upon our actual costs incurred to perform the relocation operations. If the actual relocation costs are less than the amount of the check sent with the signed copy of this letter agreement, “KMG” will issue a refund to “City” for the difference. If the actual relocation costs exceed the amount estimated in this letter agreement, an additional invoice will be issued for the balance due and that amount, if reasonable, will be paid by “City” within thirty (30) days of the date of the invoice. In no event will the “City” be billed for an amount in excess of ten

[10%] percent of the current estimated costs, unless approved by the City by an amendment to this letter agreement, signed prior to the actual incurring of such costs by "KMG".

"City" will have its engineers stake the route and depth of our pipeline at the points that are required to comply with the final grade of the project. During the relocation of the pipeline, "City" will have a representative available daily by phone to inspect the relocation project and will verify the vertical and horizontal accuracy of the relocated pipeline prior to "KMG" filling in the pipeline trench. "KMG" will notify the representative twenty-four [24] hours prior to filling in the trench. This verification releases "KMG" from any future liability based on assertions that the pipeline was relocated inaccurately. An as-built survey will be provided to the City after our installation of the relocated pipeline.

This letter agreement may be executed in counterparts, each of which will be considered an original and all of which together shall be one and the same agreement.

Thank you for your cooperation in this matter. If you have any questions please feel free to contact me at (970) 515-1235 or by e-mail at jeff.berghorn@anadarko.com.

Very Truly Yours,

Kerr-McGee Gathering LLC

Accepted and Agreed:

City of Westminster

By: _____
Ronald Olsen
Agent & Attorney-In-Fact

By: _____
J. Brent McFall
City Manager

Orchard Lakes LLC

By: _____
Fred Cooke

STATE OF COLORADO)
)SS.
COUNTY OF ADAMS)

Subscribed and sworn to before me this ____ day of _____, 2014,
by _____,
_____,
for the City of Westminster.

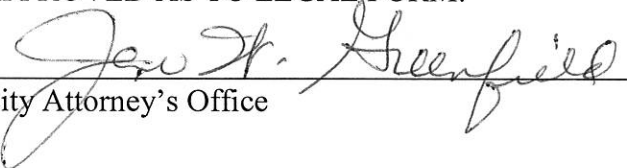
as

WITNESS my hand and official seal.

My commission expires:

NOTARY PUBLIC

APPROVED AS TO LEGAL FORM:



City Attorney's Office

STATE OF COLORADO)
)SS.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2014, by Fred Cooke, owner
of Orchard Lakes LLC.

WITNESS my hand and official seal.

My commission expires:

NOTARY PUBLIC

STATE OF COLORADO)
)SS.
COUNTY OF DENVER)

Subscribed and sworn to before me this ____ day of _____, 2014, by Ronald Olsen,
Agent and Attorney-In-Fact for Kerr-McGee Gathering LLC.

WITNESS my hand and official seal.

My commission expires:

NOTARY PUBLIC



July 31, 2014

David W. Loseman P.E., L.S.
Assistant City Engineer
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031

Re: Proposal of Pipeline Relocation McKay Lakes 4" Pipeline
TOWNSHIP 1 SOUTH, RANGE 68 WEST, 6TH P.M.
SECTION 22: NW1/4
ADAMS COUNTY, COLORADO

Dear Mr. Loseman,

Kerr-McGee Gathering LLC ("KMGG") proposes to conduct pipeline construction operations for relocation of a 4" steel pipeline. Said estimate (attached) will include the removal of and installation of up to 1,000 feet of pipeline by Kerr-McGee and reconnect of said pipeline. The total estimate cost is \$124,551.00.

Please prepare a check in the amount of \$124,551.00 as payment for the estimate cost to install the above described relocation. The final billing will be based upon actual costs for the operations performed. City of Westminster agrees to be responsible for all reasonable construction and survey costs involved in the pipeline relocate, as more fully described in the enclosed agreement letter dated June 18, 2014. If you accept the terms of this estimate, please sign and return in the enclosed envelope.

Thank you for your cooperation in this matter. If you have any questions contact me at (970) 515-1235 or by email at jeff.berghorn@anadarko.com.

Sincerely,

Kerr-McGee Gathering LLC

CITY OF WESTMINSTER, COLORADO

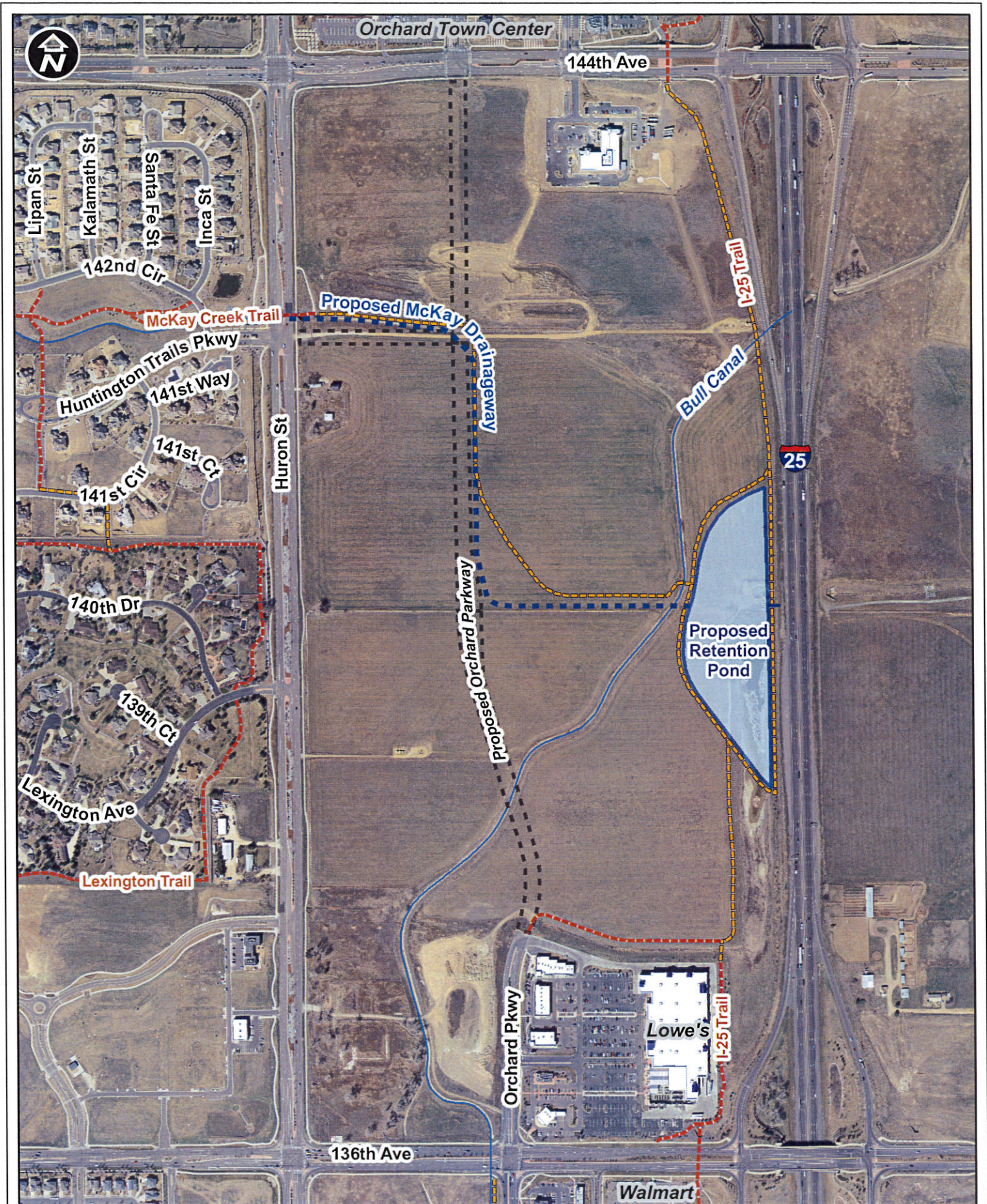
BY: _____

Jeff Berghorn
Contract Landman

AGREED AND ACCEPTED THIS _____ day of June, 2014.

ATTEST:

BY: _____



- Existing Trails
- Proposed Trails

Project Map

0 250 500 1,000 Feet



Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Second Amended Engineering Services Contract for the McKay Drainageway Project

Prepared By: David W. Loseman, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to execute an amended contract with Merrick and Company in the amount of \$32,104 to provide engineering design services for the McKay Drainageway improvements, located south of 144th Avenue between I-25 and Huron Street.

Summary Statement

The McKay Drainageway project is a planned system of storm drainage facilities that are located in the general area between 136th Avenue and 144th Avenue, conveying flows east from McKay Lake near Zuni Street to Big Dry Creek near Washington Street in Thornton. The only remaining unimproved portion of the drainageway lies between I-25 and Huron Street (see Project Map) where a wide, shallow floodplain still exists. This floodplain is a significant constraint to the development of one of the largest vacant sites in the City.

On September 23, 2013, Council authorized the execution of a contract with Merrick and Company in the amount of \$193,394 to prepare the design of the channel improvements to this unimproved segment. After that time, it became apparent to City staff that a previously proposed permanent detention pond/lake as originally designed would not be feasible for this project due to the cost of the water rights (estimated at \$400,000) that would be needed to maintain a constant level of water in the lake. Because of this, on June 9, 2014, Council authorized a \$76,904 amendment to Merrick's design contract with \$47,962 of that amount being used to make revisions to the plans necessitated by the elimination of the permanent pond. The other \$28,942 of the first amendment amount was requested to pay for the design of certain trails that were added to the scope of work.

In the past month, Urban Drainage and Flood Control District (UDFCD) staff have reviewed the plans and are requiring significant revisions that were totally unanticipated by City staff. Since UDFCD approval of the City's design is necessary to qualify these drainage improvements for the potential receipt of future maintenance funding from the District, staff strongly recommends that this amended contract with the consultant be authorized. The City has enjoyed the benefit of hundreds of thousands of dollars of UDFCD maintenance funding over the past 20 to 30 years on numerous City drainage improvement projects, and similar assistance from the District in the future on this McKay Drainageway Project would be most helpful.

Expenditure Required: \$32,104

Source of Funds: General Capital Improvement Fund—McKay Lake Outfall Drainage account

Policy Issue

Should a second amendment to the contract with Merrick and Company for the final design of the McKay Drainageway improvements and Open Space trail connections be approved?

Alternative

Council could elect not to approve this contract amendment. Staff does not recommend this alternative. This drainage project, which is vital to the area since it will remove all of the developable land along the McKay channel from the 100-year regulatory floodplain, will eventually require maintenance work. Financial assistance from the UDFCD at that time would be very beneficial to the City.

Background Information

The planning and various phases of the construction of the improvements needed to reduce the floodplain of the McKay Lake Drainageway have been underway for more than fifteen years. The McKay basin contains approximately 1800 acres and extends from its confluence with Big Dry Creek at 140th Avenue and Washington Street in Thornton upstream to the southern portions of Broomfield. Completed projects include the rehabilitation of the dam at the McKay Lake Open Space, a channel through the Huntington Trails Subdivision and, most recently, a culvert under I-25 with channelization from that point to Big Dry Creek. With the completion of that most recent project in 2010, only the portion of the basin located between I-25 and Huron Street (see Project Map) within Westminster remains unimproved. The properties located within that reach are still covered by a wide, shallow floodplain that constrains development within the North Huron Planned Unit Development (PUD) between 136th Avenue and 144th Avenue.

The preliminary design of the McKay Drainageway was being coordinated with the North Huron PUD developers up until 2009 when economic factors dampened the development interest. Recently, that interest has increased, and development proposals that call for modifications to the preliminary plan for the drainageway have been received by staff. The owners of the PUD properties have already dedicated the necessary rights-of-way for the drainage improvements.

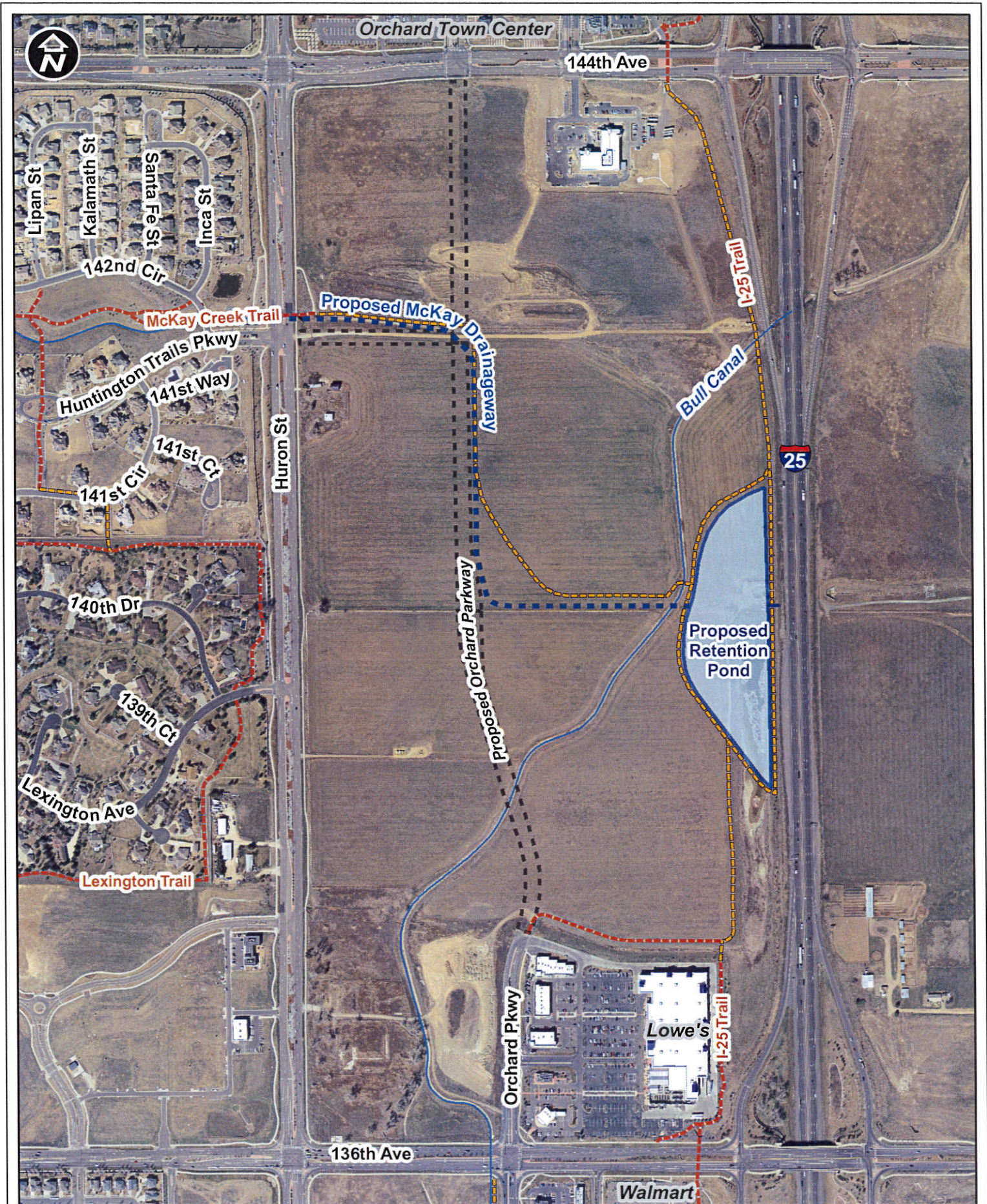
The original design of the project called for the construction of a retention/detention pond located adjacent to I-25, which was to include a permanent pool of water as an amenity for the surrounding properties. As staff pursued this option, it became evident that a permanent source of water was difficult to obtain. If the City could obtain the needed water shares, they would be costly, estimated in the amount of \$400,000. Therefore, staff recommended a redesign of this pond to a “dry” bottom without a permanent water surface. This will allow for the completion of the project in a timely manner and yet not preclude the option of creating a permanent water pool in the future if the water shares become available at a more reasonable cost. The cost of this redesign effort is \$47,962. A second amendment to Merrick’s design contract is now needed to pay for significant comments from the UDFCD staff that were not anticipated in the first amendment proposal from Merrick. Even with this second amendment, Merrick’s total fee is approximately 7.5% of the anticipated cost of constructing this \$4M project. By comparison, design fees for similar projects generally average 8% of the cost of construction.

This proposed contract amendment furthers several of City Council's strategic objectives including a Dynamic, Diverse Economy by investing in well-maintained and sustainable City infrastructure. The McKay Drainageway improvement project and associated trails will also contribute to Ease of Mobility by enhancing trail connectivity along the I-25 corridor as well as along the McKay Drainageway.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments – Project Vicinity Map



- - - - - Existing Trails
- - - - - Proposed Trails

Project Map



9/12/2013



Agenda Memorandum

City Council Meeting

August 11, 2014



SUBJECT: Emergency and Essential Home Repair Program Contract

PREPARED BY: Heather Ruddy, Community Development Program Planner

Recommended City Council Action:

Authorize the City Manager to enter into a contract, in substantially the same form as attached, with Jefferson County Housing Authority (JCHA) to administer the Emergency and Essential Home Repair Program.

Summary Statement

- The City Council authorized an assignment of \$90,000 in Community Development Block Grant (CDBG) funds to continue the Emergency and Essential Home Repair Program (previously known as the Minor Home Repair Program).
- Given the imminent expiration of the City's current contract with Brothers Redevelopment, Inc. for the administration of the Minor Home Repair Program, City Council authorized staff to issue a Request for Qualifications (RFQ) from entities with the capacity to administer the program.
- Nine prospective partners were identified and sent the RFQ including:
 - Adams County Community Development (did not respond)
 - Broomfield Housing Authority (response received)
 - Brothers Redevelopment (response received)
 - Denver Urban Renewal Authority (did not respond)
 - HF Services, LLC (responded in conjunction with Broomfield Housing Authority)
 - Kingston Construction Consulting (did not respond)
 - Jefferson County Housing Authority (response received)
 - Rebuilding Together (did not respond)
 - Veterans Green Jobs (did not respond)
- Upon review of the qualification statements, staff determined that Jefferson County Housing Authority (JCHA) has the best capability and track record to administer both an emergency and essential home repair program.
- Staff is recommending that the City enter into a contract with JCHA to administer the City's program for the 2014 funding year.

Expenditure Required: \$90,000

Source of Funds: \$75,000 in 2014 CDBG funds; \$15,000 in surplus CDBG funds from previous years

Policy Issue

Should the City enter into contract with Jefferson County Housing Authority to administer the City's Emergency and Essential Home Repair Program?

Alternatives

1. The City Council may choose to administer the program directly with current City staff. Staff recommends Council not pursue this alternative because the City's staffing capacity and rehabilitation expertise is very limited, which could compromise the success of the program and put the City in poor standing with HUD.
2. The City Council may choose another qualified candidate to administer the program. After careful consideration and review of the three responding candidates, staff feels Jefferson County Housing Authority's experience and expertise in administering and managing both minor and emergency home repair programs best meets the needs of the City's program.

Background Information

At the May 5, 2014 City Council Study Session, the City Council authorized staff to proceed with the issuance of a Request for Qualifications (RFQ) for the administration of the Emergency and Essential Home Repair Program. For the 2014 CDBG program year, City Council authorized a total of \$90,000 for the program comprised of \$75,000 in 2014 CDBG funds and another \$15,000 in surplus funds from previous years to be directed towards providing emergency home repairs.

Over the past three years, the City has contracted with Brothers Redevelopment, Inc. (BRI) to administer the program. While BRI provided a reasonable level of service in administering the program, much of the contractually agreed to administrative services to be provided by BRI relevant to applicant intake and qualification was being assumed more and more by City staff for a variety of reasons. Moreover, the City had to assume the responsibility for providing required "environmental clearances," because BRI does not have the capacity to provide this service. BRI also did not have the means to adequately respond to emergency home repairs, which staff believes is critical to the well-being of some Westminster residents and a critical element in the upcoming program year.

Given the pending expiration of the contract with BRI and the changing needs of the program, more particularly the need to provide emergency housing repair services, staff proceeded to issue an RFQ to solicit proposals from a range of qualified agencies that could more fully serve the needs of the community.

Upon thorough review of the three proposals from the entities that responded to the RFQ, including the current vendor Brother's Redevelopment, Inc., staff believes that the Jefferson County Housing Authority has the best capability and track record to administer and operate the City's program for the CDBG program year 2014.

The Jefferson County Housing Authority (JCHA) has operated a Homeowner Housing and Rehabilitation Program since 1994 using CDBG and HOME funds provided from Jefferson County Community Development. In 2002 JCHA also began administering the rehab program for the City of Lakewood under their CDBG program, in much the same way that they would administer Westminster's program if an agreement is finalized.

JCHA is a desirable candidate in that it has an established presence and interest in Westminster as one of the two county housing authorities that serve the City. JCHA expresses no concerns with working in the Adams County portions of the City and noted in its RFQ response that a Memorandum of Understanding would be prepared for Westminster and Adams County allowing

rehab work throughout the City. Moreover, JCHA is offering an all-encompassing full-service administration of the program. JCHA would be responsible for marketing, client intake and phone inquiries, document verification including income, environmental review, inspection, lead based paint testing, work write-ups, bid documents and contractor selection, and more.

A significant difference between JCHA's proposal and BRI's is that JCHA will conduct the environmental review, whereas BRI would require that the City handle this responsibility, thereby requiring a substantial amount of City personnel time. Relinquishing this responsibility to JCHA will free up staff resources to focus on other critical aspects of the CDBG program.

JCHA is also equipped to handle requests for emergency repairs utilizing CDBG funds. In emergencies, JCHA can often income qualify clients and document the necessary verifications onsite and immediately call a qualified contractor or sub-contractor to address the emergency work without bidding while still meeting all HUD requirements.

JCHA is offering to provide the administration of the program for a lump sum fee of 20 percent of the CDBG allocation, which equates to \$18,000 in total for the 2014 program year. With this fee the City could accomplish approximately 12 essential home repairs based on the maximum outlay of \$5,000 for each unit, and six emergency repairs at \$2,000 each. BRI's proposed budget is approximately 17 percent of the CDBG allocation, or \$15,000, but does not include the services related to environmental review. BRI is also proposing a lower level of service and has virtually no experience in providing emergency home repairs utilizing CDBG funds.

Please note that the third submittal, being from the Broomfield Housing Authority, did not provide responses to the minimum required submittal contents of the RFQ and was submitted late. Although their response did not meet the minimum requirements staff did review and consider their proposal. However, it was determined that the housing authority did not provide compelling evidence that it can effectively manage a rehab program outside its boundaries.

The Emergency and Essential Home Repair Program supports the City's Strategic Plan Goal of ensuring "Vibrant and Inclusive Neighborhoods" whereby financially challenged residents will be provided a means of accessing resources to make essential repairs to their homes, promoting ownership and stability throughout the community. The program further promotes the goal of "Proactive Regional Collaboration" by partnering with the Jefferson County Housing Authority, a quasi-governmental entity in a new and proactive way.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Proposed Contract

ATTACHMENT
AGREEMENT TO FURNISH PROFESSIONAL AND CONSULTING SERVICES
TO THE CITY OF WESTMINSTER FOR THE EMERGENCY AND ESSENTIAL HOME
REPAIR PROGRAM,
a Project funded in part by the Federal Government

THIS AGREEMENT, made and entered into this ___ day of _____, 20___, between the CITY OF WESTMINSTER, hereinafter called the “City,” and JEFFERSON COUNTY HOUSING AUTHORITY, a quasi-governmental entity organized pursuant to the laws of the State of Colorado, hereinafter called the “Consultant,” is as follows:

WHEREAS, the City wishes to continue the operation of an emergency and essential home repair program using Community Development Block Grant (CDBG) funds in accordance with federal requirements; and

WHEREAS, the City desires to engage the Consultant to render the professional services described in this Agreement and the Consultant is qualified and willing to perform such services; and

WHEREAS, sufficient authority exists in City Charter and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained; and

WHEREAS, the City will obtain funds for this project from the Federal Government and the City’s General Capital Improvement Fund.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the City and the Consultant agree as follows:

I. THE PROJECT

The Project consists of operating and administering the City of Westminster Emergency and Essential Home Repair Program, as more specifically described in Appendix A, attached hereto and incorporated herein by this reference (hereinafter, the “Project.”)

II. CONSULTANT’S SERVICES AND RESPONSIBILITIES

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to complete the Project.

The Consultant further agrees to provide the following and any other facilities or resources necessary to provide the professional and technical Services as described in Appendix A, and in accordance with Supplementary Conditions as described in Appendix B, attached hereto and incorporated herein.

III. ADDITIONAL SERVICES

When authorized by the City, the Consultant agrees to furnish or obtain from others, additional professional services in connection with the Project due to changes in the scope of the

Project or its design, subject to mutual agreement as to additional compensation for additional services.

IV. CONSULTANT'S FEE

Alternate No. 1 - Lump Sum As compensation for the Project described in this Agreement, the Consultant shall be paid a lump sum fee of Eighteen Thousand Dollars (\$18,000), which shall constitute full and complete payment for said Project and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

V. COMMENCEMENT & COMPLETION OF PROJECT

The Consultant understands and agrees that time is an essential requirement of this Agreement. The Project shall be completed as soon as good practice and due diligence will permit. In any event, the Project shall be completed within eighteen (18) months after the Consultant receives notice to proceed, exclusive of time lost or due to delays beyond the control of the Consultant.

VI. TERMINATION

This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all work previously authorized and completed prior to the date of termination plus any services the City deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the City all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing the Project included in this Agreement, whether completed or in progress.

VII. INSURANCE

Consultant shall maintain an Automobile Liability policy of \$500,000 per person/\$1,000,000 per occurrence and a Commercial General Liability policy of \$500,000 per person/\$1,000,000 per occurrence; or alternatively, Consultant shall maintain an Automobile Liability policy and a Commercial General Liability policy each with a \$1,000,000 per occurrence combined single limit. The City shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by the City. These coverages shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees. The Consultant shall provide certificates of insurance to the City indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the City in writing within two (2) days of the cancellation of or substantive change to any insurance policy set out herein, and failure to do so shall be a breach of this Agreement.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant represents that it will require a similar affirmation of

nondiscrimination in any contract it enters into with a subcontractor as part of the performance of this Agreement.

IX. PROHIBITED INTEREST

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

X. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Project, the Consultant shall act as an independent contractor and not as agent of the City except to the extent the Consultant is specifically authorized to act as agent of the City.

B. Books and Records. The Consultant's books and records with respect to the Project and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and according to Section XI(A) of this Agreement. Books and records will be made available for the City's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Project.

C. Ownership of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of the City and Consultant. Upon completion of the Project, or at such other time as the City may require, the Consultant shall deliver to the City a complete corrected set of drawings, in hard copy and in an electronic format acceptable to the City, and such additional copies thereof as the City may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to the City for any loss, damages or costs incurred by the City for the repair, replacement or correction of any part of the Project which is deficient or defective as a result of any failure of the Consultant to comply with this standard.

2. Indemnification. To the fullest extent permitted by law and except for all professional liability claims, damages, losses and expenses, the Consultant shall indemnify, defend, and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the City and its agents and employees from and against all professional liability claims,

damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph D.2. The City may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the City on account of such injuries.

In any and all claims against the City or any of its agents or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph D.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

The Consultant further agrees to indemnify, defend, and hold harmless the City and City's agents and employees against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of the City's implied warranty of the adequacy of the design and plans prepared by the Consultant.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the respective Project representatives of the City and the Consultant who will be designated by the parties promptly upon commencement of the Project.

All other notices and communications in writing required or permitted hereunder shall be delivered personally to the respective representatives of the City and the Consultant set forth below or shall be mailed by registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. Notices hereunder shall be effective three (3) days after mailing.

F. Assignment. The Consultant shall not assign this Agreement in whole or in part, including the Consultant's right to receive compensation hereunder, without the prior written consent of the City; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Consultant's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Consultant of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Consultant's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado and the Charter of the City of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

H. Remedies. Consultant agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000) shall not serve as a limitation on the

City's right to pursue tort remedies in addition to other remedies it may have against Consultant. Such rights and remedies shall survive the Project or any termination of this Agreement.

I. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Project.

J. Subcontracting. Except subcontractors clearly identified and accepted in the Consultant's Proposal, Consultant may employ subcontractors to perform the Project only with City's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

K. Enforcement of Agreement. In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

L. Authorization. The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

M. Immigration Compliance. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall notify the subcontractor and the City within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Consultant shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement. Further, to the extent required by C.R.S. § 8-17.5-102(1), the Consultant certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that Consultant will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Consultant shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

N. This Agreement is expressly contingent upon the approval of the City of Westminster's City Council of all the terms set forth herein. In the event this Agreement is not approved in its entirety by City Council, neither Party shall be bound to the terms of this Agreement.

XI. COMPLIANCE WITH FEDERAL REGULATIONS

A. Retention of Records; Monitoring. The Consultant shall maintain a complete file of all records, documents, communications, and other written materials that pertain to the operation of programs or the delivery of services under this Agreement, and shall maintain such records for a period of three (3) years after the date of termination of this Agreement or final payment hereunder, whichever is later, or such further period as may be necessary to resolve any matter that may be pending. Consultant shall permit the City to inspect, review and monitor such records, documents, communications and other written materials in order to confirm performance and coordinate the services provided under this Agreement; provided, however, that the City's inspection, review and monitoring shall be performed by in a manner that does not unduly interfere with the Consultant.

B. OMB Circular A-133 Compliance. Consultant shall follow the requirements contained within OMB A-133 (available from the Office of Management and Budget: http://www.whitehouse.gov/omb/circulars_default/), which include but are not limited to, conducting single audits.

C. Federal Civil Rights Obligations. Consultant understands that this project will be funded in part by the Federal Government. Therefore, in compliance with Title VI of the Civil Rights Act of 1964, the Consultant, for itself, its assignees and successors in interest, and for each and every subcontractor with which Consultant contracts for the performance of any portion of this Agreement agrees as follows:

Nondiscrimination. The Consultant, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the grounds of race, color, sex, mental or physical handicap, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. Consultant shall require the same from any subcontractor.

Information and Reports. The Consultant shall provide all information and reports required by applicable federal regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Federal Government to be pertinent to ascertain compliance with such regulation, order and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Federal Government and shall set forth what efforts have been made to obtain the information.

Sanction for Noncompliance. In the event of the Consultant's noncompliance with the nondiscrimination provisions of the Agreement, if applicable, the Federal Government may impose such contract sanctions as it may determine to be appropriate, including but not limited to withholding of payments to the Consultant under the Agreement until the Consultant complies, or cancellation, termination or suspension of the Agreement in whole or in part.

D. Labor Standards. The Consultant shall comply with the requirements of the Davis-Bacon Wage Act (the "Act") and shall indemnify the City from liability for any failure to pay wages in compliance with the Act. The Consultant is referred to "A Contractor's Guide to Prevailing

Wage Requirements for Federally-Assisted Construction Projects” and HUD Form 4010, which can be reviewed at <http://www.hud.gov/offices/olr/>. Consultant shall pay the wage rate in effect as of the date the Contract is awarded. The Consultant shall cooperate with the City by providing information in the form and frequency requested by the City concerning the type of work performed, the number of hours worked, and the hourly rates paid for the various types of work performed by all workers on the Project. The Consultant shall allow City staff to conduct on-site wage interviews and shall post information concerning the Act as requested by the City.

1. The City is required to report to the U.S. Department of Housing & Urban Development concerning participation in the Project by minority-owned businesses and woman-owned businesses. The Consultant shall promptly provide to the City all information necessary for the City to comply with its requirement.

2. The Consultant is encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities in this Project to low – and very low-income persons and business concerns, or to businesses which employ low- and very low-income persons, including homeless persons and residents of public housing.

3. The Consultant shall provide documentation proving that all iron, steel and manufactured goods used in construction, alteration of this public works project have been produced in the United States.

E. Patent Rights (Federal Funds). If any invention, improvement, or discovery of the Consultant or any of its subconsultants or subgrantees is conceived or first actually reduced to practice in the course of or under this contract work, and if such is patentable, the Consultant shall notify the City immediately and provide a detailed written report. The rights and responsibilities of the Consultant, third party contractors, and the City with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations in existence on the date of execution of this Agreement which define consultant title, right to elect title, Federal Government “march in” rights, and the scope of the Federal Government’s right to a nonexclusive, irrevocable, paid-up license to use the subject invention for its own. The Consultant shall include the requirements of this paragraph in its third party contracts for the performance of the work under this Agreement.

F. Rights in Data and Copyright (Federal Reserved Rights). Except for its own internal use, the Consultant shall not publish or reproduce any data/information, in whole or part, that is recorded in any form or medium whatsoever and that is delivered or specified to be delivered under this Agreement, nor may it authorize or permit others to do so, without the written consent of the Federal Government, through the City, until such time as the Federal Government may have released such data/information to the public. As authorized by 49 C.F.R 18.34, the Federal Government, through the City, reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize the City and others to use:

1. Any work developed under this Agreement or a resulting third party contract irrespective of whether it is copyrighted; and
2. Any rights of copyright to which a contractor, or third party contractor purchases ownership with federal assistance.

G. Consultant Progress Reports. The Consultant shall submit monthly progress reports to the City. Failure to submit a progress report may result in non-payment to the Consultant for the month. The progress report will be reviewed by the City and, after deemed satisfactory by the City, will be used as justification for billing. The progress report shall contain, but not limited to the following:

1. Report on progress of each work activity or milestone identified in the Agreement, to show the amount of work accomplished during the current month and the amount of work accomplished overall.
2. A report on the time scheduled for each work activity or milestone identified in the Agreement to show planned time completion and actual time used to do the work.
3. A description of the cause for delays beyond the planned completion time of work activities or milestones contained in the Agreement.
4. A report on the cost incurred to date on each work activity or milestone contained in the Agreement and a comparison to the cost estimates for such activity or milestone.
5. A description of possible remedies to get activities or milestones that are behind schedule, back on schedule, and to get activities or milestones that are exceeding cost estimates, back within planned costs.
6. Documentation of meetings that were held during the subject time period.
7. Omitted

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO _____ DEPARTMENT, ATTENTION: _____.

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SIGNATURE

PAGE

FOLLOWS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

JEFFERSON COUNTY HOUSING AUTHORITY

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Address:

Address:

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

City Clerk

APPROVED AS TO LEGAL FORM

By: _____

City Attorney

Rev. 03/2014

APPENDIX A

City of Westminster Emergency and Essential Home Repair Program

The City seeks to continue its already established home rehabilitation program to assist owner occupied, very low income households in making repairs deemed essential to preserving the health, safety, and welfare of the occupants.

Project Goals

The primary goal of the Emergency and Essential Home Repair Program is to improve the health, safety, and sanitary conditions of homes owned by very low income homeowners within the corporate limits of the City of Westminster. Up to \$5,000 of eligible essential and emergency home repairs are made free of charge to owner-occupied, income qualified households. By virtue of this financial support, essential maintenance and improvements can be made thereby ensuring continued occupancy by the household and protection against irreversible deterioration and/or abandonment contributing to blighted community conditions.

Amount Available Per Home:

The maximum funding amount provided by the City for repairs per residential unit shall not exceed \$5,000 in a five-year period. Homeowners may receive assistance multiple times until they reach this cap (or as many times as allowed per the specific Consultant program guidelines). In those cases where an emergency home repair need arises (failed furnace or hot water heater) City staff has the authority to approve awards in excess of \$5,000 for such emergency matters to those households at or below 50 percent AMI.

Qualification and Eligibility

In order to qualify for the program, applicants must go through two approval phases: Program and Work Scope Qualifications.

Program Qualifications

Applicants must meet the following criteria and provide supporting documentation with their completed application to determine "Qualified Income Status:" HUD Income Limits for very low income households for those earning no more than 50 percent of area median income (AMI). Currently the 2014 household income limits are as follows:

One-person household	\$26,850
Two-person household.....	\$30,700
Three-person household.....	\$34,550
Four-person household	\$38,550
Five-person household.....	\$41,450
Six-person household.....	\$44,500

- The applicant must live in and have owned the residential unit proposed for repair for a minimum of one year prior to application.
- Only owner-occupied real or personal property (i.e. mobile home) is eligible.
- The property must be free and clear of property tax liens.
- The household must be current on all City utility payments.
- The applicant must be a resident of the City of Westminster.
- The applicant must be a legal resident of the United States.
- The property must be free and clear of any citations or judgments for City Code violations.
- The property must be covered by a current homeowner's insurance policy.

- The property must not be in the foreclosure process.
- Specific requirements as required by the Consultant as applicable.

City staff will refer any inquiries to JCHA. JCHA will be responsible for coordinating and conducting intake of the applicant. JCHA will consult with the City to confirm city residency and financial “standing” of the applicant relative to payment of City utilities as well as confirmation that the property is clear of any judgments for City Code violations. Upon the City’s confirmation of applicant eligibility, JCHA will complete the income eligibility screening including collection of supporting documentation. JCHA will make determination on final approval and upon approval shall proceed with development of the work scope for making improvements to the residential unit.

Work Scope Qualifications

Upon approval of eligibility, the Consultant will perform an on-site visit to determine the work scope. Per CDBG requirements, work related to minor or emergency repairs must address the health, safety and sanitary conditions of the home. Repair costs are limited to up to \$5,000 of City funds per household unless otherwise authorized by the City. JCHA may supplement the City funds from other sources, as applicable and solely at their discretion that could take the project cost above \$5,000.

Following an evaluation of the work required, JCHA will make its recommendation to the City prior to finalizing the final work scope. JCHA will then prepare the final work scope and present it to the City for final approval. The City will give JCHA written authorization to proceed with the repairs in accordance with the authorized work scope. JCHA shall secure a signature authorization for all work that may be transmitted via fax or PDF attached to email. The scope and signature approvals will be kept with the applicant file as supporting documentation.

Eligible Improvements

General Allowances

Eligible essential repair activities associated with scheduled and/or emergency repairs may include, but are not limited to, the following:

- **Plumbing**
 - Repair leaking plumbing and faucets
 - Repair burst pipes
 - Repair/replace defective toilets and/or sinks
 - Repair/replace defective hot water heaters
- **Carpentry**
 - Repair/replace defective window and door locks
 - Repair/rebuild broken steps/stairs
 - Repair/replace broken windows, window panes, door hinges
 - Repair/replace broken/unsafe home access doors (excluding storm/screen doors)
 - Repair exterior porches and stairs when they serve as essential to home ingress and egress
 - Flooring repairs – eligible only if it is a health or safety issue (tripping hazard), repair of the hazard is favored over replacement of the flooring
- **Electrical**
 - Install/replace smoke/carbon monoxide detectors
 - Replace broken light switches, outlets, fixtures
 - Repair unsafe wiring and/or electrical systems
- **External Home Repairs**
 - Gutter replacement when required to preserve the health, safety, and welfare of the residence and/or the structural integrity of the home

- Removal of dead trees or trimming of limbs determined to be hazardous to the general public or pose a significant threat to the structural integrity of the residence. The City Forester is required to make a determination that the tree is hazardous.
- **Thermal Environment Repairs/Improvements**
 - Furnace repair/replacement
 - Air conditioner/swamp cooler installation (only if deemed medically necessary as directed by a letter submitted by a qualified doctor). The cost cannot exceed \$5,000 maximum. Portable units are not eligible.

Accessibility Improvements

For the purpose of this program a disabled person is one who has a disability that:

- Is expected to be of a long-continued and indefinite duration;
- Substantially impedes his or her ability to live independently; and
- Is of such a nature that the disability could be improved by a more suitable housing condition

The disability may also be developmental. Documentation of disability status is required. Eligible improvements may include the following:

- Installation of ramps, grab bars, levers, railing
- Installation of devices for the hearing and sight impaired
- Installation of accessible showers, bathtubs, sinks, and toilets
- Doorway widening
- Installation of stair lifts

Other Health/Safety Concerns

- At the discretion of City staff, repairs may be made outside the scope of the above listed eligible repairs when it is deemed that conditions exist that have an impact on the occupants' health, safety, and welfare.

Ineligible Repairs – Repairs excluded from the program include but are not limited to:

- Maintenance items such as annual furnace checks and drain cleaning
- Sewer line repairs or replacement from outside wall of house to street
- Fence repairs or replacement, including debris removal
- Common area repairs, such as exterior painting of townhome units in a complex.
- Roofing repairs or replacement
- Exterior siding repairs or replacement, unless necessary to protect the structural integrity of the home
- New windows for the primary purpose of energy efficiency enhancement or for the entire home
- Appliance (e.g. dishwasher, refrigerator, stove, washer/dryer) repair or replacement. This includes appurtenances not considered permanent fixtures such as lamps, space heaters, portable air conditioning units, and similar devices.
- Interior and exterior remodeling not required for health, safety, and welfare and considered purely aesthetic improvements.
- Structural additions
- Water softening systems
- Carpet cleaning
- Replacement of cabinets and countertops not made in conjunction with accessibility improvements
- Repairs to garages or accessory structures
- Non-essential or “luxury” costs such as remodeling, swimming pools, spas, and new fence construction
- Any repairs that may be covered by a homeowners insurance policy
- In general, cosmetic improvements that are not essential to the long-term structural soundness of the dwelling or not necessary to the health and safety of the occupants will not be authorized and will not be eligible for the program. Cosmetic improvements are defined as higher-than-

standard-grade fixtures; items required only for decoration or aesthetic improvement; replacement of carpet, vinyl or other items, which are currently in good condition, etc.

Restrictions on Improvements for Residential Units Over 50 Years Old

Homes having been constructed less than 50 years may be improved without limitation within the parameters set forth in the paragraph above. For projects on buildings fifty years old or older, work will not be performed on these properties and buildings unless the work is described as exempt below. For work on homes that are more than 50 years old, all work must be justified in writing as falling under the specific exemptions provided below. This written documentation is required by the City in order to file its annual report with the State Historic Preservation Office and shall include the project address, the date of construction, nature of the work completed by JCHA and referencing the appropriate exempted activity as detailed below.

For purposes of this section, in-kind replacement is defined as installation of a new element that duplicates the material, dimensions, configuration and detailing of the original element. The duplication may take into account technical advances in materials and design while maintaining or exceeding the durability, appearance and function of the original element, while also meeting required energy conservation standards and/or in accordance with mandated health and safety requirements (i.e. lead hazard mitigation or building code egress requirements).

In the event of discovery of historic or prehistoric archaeological resources during ground-disturbing activities, work should stop immediately and the contractor must call the City's historic preservation staff, who will consult with the State Historic Preservation Officer.

Site Work Exemptions:

- Installation or repair of retaining walls, driveways, curbs and gutters, and parking areas. However, repair of existing rock retaining walls is not an exempt undertaking;
- Installation or in-kind repair/replacement of brick or stone sidewalks and alleys;
- In-kind repair/replacement of site improvements, including, but not limited to fences, retaining walls, landscaping and steps not attached to any building;
- Installation, repair or replacement of gas, sanitary and storm sewer, water, electrical, cable or underground utilities within previously developed land and public rights-of-way;
- Installation, repair or replacement of park and playground equipment, excluding buildings; and
- Installation of temporary construction-related structures such as scaffolding, screening, fences, protective walkways or dust hazard containment enclosures.

Exterior Rehabilitation Exemptions:

- Installation of exterior storm windows and storm doors, provided they conform to the shape and size of the historic windows and doors, and that the meeting rails of storm windows coincide with that of existing sash;
- Removal of exterior paint by non-destructive means, provided that the removal method on buildings and components is consistent with provisions of HUD Office of Healthy Homes and Lead Hazard Control (24 C.F.R. Part 35) and EPA's Lead-Based Paint Renovation, Repair and Painting Program—RRP (40 C.F.R. Part 745).
- Application of exterior paint and caulking, other than on previously unpainted masonry;
- All lead paint abatement or mitigation that does not involve removal or alteration of exterior features and/or windows;
- Repair or partial in-kind replacement (or adding of matching, in-kind elements for safety/code requirements) of existing porch elements such as columns, flooring, floor joists, ceilings, railings, balusters and balustrades, and lattice;

- Maintenance, repair and in-kind replacement to code of roof shingles, roof cladding and sheeting, gutters, soffits, and downspouts with no change in roof pitch or configuration;
- Weatherizing of historic doors and windows, including caulking, insulation and weather stripping of existing frames, and installation of clear glass in existing sashes, including retrofitting for energy efficient, sealed, double, low-e glazing.
- Placement and installation of exterior HVAC mechanical units, vents and exterior electrical and plumbing modifications not on the front elevation;
- Installation, replacement, or repair of basement bulkhead doors.
- Installation of additional decorative or security lights as long as the installation does not damage historic material;
- Securing or mothballing a property by boarding over window and door openings, making temporary roof repairs, and/or ventilating the building.

Interior Rehabilitation Exemptions:

- Installation, replacement or repair of plumbing (including non-historic bath and kitchen fixtures, cabinetry and appliances), HVAC systems and units, electrical and fire protection systems, provided no structural alterations are involved;
- Repair or partial in-kind replacement of historical interior surface treatment, such as floors, walls, ceilings, plaster and woodwork. If covering historic features, such as wood floors, carpet and other flooring shall be installed in a reversible manner, either through tacking or with an underlayment so historic floors shall not be irreversibly damaged;
- Blown-in insulation in ceilings, attic spaces or interior insulation of basement or crawlspace areas (blown-in insulation in exterior walls is prohibited without authorization of SHPO);
- Restroom improvements for handicapped access, including doorways, provided the work is contained within the existing restroom walls;
- Installation or repair of concrete basement floor in an existing basement;
- Structural repairs to sustain the existing structure that does not alter the existing building configuration;
- Lead, asbestos or other hazardous material abatement, remediation or mitigation that does not involve removal or alteration of interior historic features.

Denial of an Application

City staff may deny an application for any of the following reasons:

- Does not meet eligibility requirements as stated above.
- The residential unit, and/or building within which the unit is located, has been deemed “unsafe” due to hazardous conditions which may include but are not limited to unsanitary and crowded conditions, unsafe roofs or entry ways, severe structural problems, or any other safety related or code issues.
- Work that exceeds the scope of the program either in cost or that falls under “major” home repair.
- In such cases, written documentation will be provided to support the denial.

Process and Responsibilities

Following are the Program responsibilities for the City of Westminster and Jefferson County Housing Authority respectively.

Description	Responsible Entity	
	CITY	JCHA

Create/update program guidelines, applications and supporting documentation.	X	X
Conduct public outreach to inform citizens, churches, community groups, and businesses about the availability of funding and technical assistance for volunteer-based home improvement funding.	X	X
Identify potential homeowner/participants – homeowners can nominate themselves or can be nominated by family, friends, caregivers, churches, community groups, service organizations, etc.	X	X
Receive applications for assistance and screen homeowners for income eligibility.		X
Confirm Residency and financial standing of applicant (current on City utility payments)	X	
Confirm property has no outstanding City Code judgments.	X	
Program Qualification – 1st Approval. Initially approve applications in accordance with program requirements.		X
Conduct environmental review and approval.		X
Inspect home for needed repairs and determine whether repairs are within the funding parameters of the program.		X
Create work scope including cost estimate for materials and labor and forward to The City Staff. Or forward subcontractor estimates for skilled or emergency repairs.		X
Work Scope Qualification – 2nd Approval. Authorize repairs to be performed on each home to ensure compliance with CDBG regulations.	X	X

Apply to The City Building Division for necessary permits and inspections.		X
Coordinate and oversee all work performed by subcontractors.		X
Purchase materials for use in repairs if not provided by subcontractor.		X
Comply with federal lead-based paint regulations.		X
Complete home repairs in accordance with The City approved list of eligible activities. With the completion of the work performed obtain applicant signature as final signoff.		X
Submit invoices to City staff for reimbursement for subcontractors, materials purchased, hours worked, and other associated fees paid.		X
Provide monthly and end of the year reports to City staff.		X
Provide before and after pictures (based upon a small random sample) of repairs that are larger in nature.		X
Periodic review of the ongoing programs to insure that they meet City's current goals and needs.	X	X
Update City Council on impact of program.	X	

Reporting Requirements:

The consultant will be responsible for submitting the following reports to the City.

Monthly invoices are due the first of every month for projects completed in the previous month. Invoices should include a list of work performed and pictures (before and after) to confirm work completion.

End of the year reports and copies of complete files shall be submitted by the end of January.

Budget and Payment Schedule:

- The City shall provide up to 20 percent of the total program budget of \$90,000 (not to exceed \$18,000) as compensation for the project described in this Agreement.
- Upon completion of part or all of the described services to the satisfaction of the City, the Consultant will be reimbursed for services paid within the Contract period for the program.

- Payments will be made upon the submission of invoices and other required reporting by Consultant, which shall include relevant backup documentation. The City shall not be obligated to make payment less than 30 days from date of invoice.

APPENDIX B

SUPPLEMENTARY CONDITIONS (CDBG)

ARTICLE I

FEDERAL REQUIREMENTS

The following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Agreement

- A. "The City" means City of Westminster or a person authorized to act on its behalf.
- B. "Consultant" means the entity who has entered into an Agreement with The City under which the entity will receive federal funds under the Community Development Block Grant Program. "subconsultant" means any person or entity who enters into an agreement or contract with Consultant.
- C. "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.
- D. "Construction Contract or Agreement" means a Contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Housing and Community Development Act of 1974. This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 CFR 570 et seq., and 24 CFR 85 et seq. as may be determined as applicable.

Sec. 102. Uniform Administrative Requirements. The contractor shall comply with the provisions of 24 CFR Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," as follows:

Part 85.20 Standards for Financial Management Systems
Part 85.22 Allowable Costs citing OMB Circular A-87 requirements
Part 85.25 Program Income
Part 85.30 Budget/Program revisions
Part 85.31, 32, 33 Changes in Real Property, Equipment and Supplies
Part 85.43 Enforcement/Termination for Cause
Part 85.50 Close-Out

This Agreement is subject to the requirements of U.S. Office of Management and Budget (OMB) Circular Nos. A-87, A-110, A-122, A-128, and A-133, and applicable sections of 24 CFR Parts 84 and 95 as they relate to the acceptance and use of Federal funds and applicable regulations at 24 CFR Part 44 containing audit requirements for units of local government receiving federal assistance.

Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.

- A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 CFR Part 1, prohibiting discrimination on the

basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Consultant shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, disability, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that Consultant and the United States are beneficiaries of and entitled to enforce such covenant. Consultant agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968.

This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, disability, sex, or national origin. Consultant agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975. This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (P.L. 94-135) and implementing regulations of the U.S. Department of Health and Human Services. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. Consultant will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 CFR Section 570.607), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion, disability or sex under any program or activity funded in whole or in part under Title I of the Act, and Section 504 of the rehabilitation Act of 1973 (29 U.S.C. 794) which prohibits discrimination based on handicap.

Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063. This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 CFR Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, disability, sex or national origin in the sale or rental of housing built with federal assistance.

Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973. This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and regulations at 24 CFR Part 8, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

Sec. 109. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.

A. The work to be performed under this Contract is subject to the requirements of section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by

HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. Consultant agrees to send to each labor organization or representative of workers with which Consultant has a collective bargaining Agreement or other understanding, if any, a notice advising the labor organization or workers' representative Consultant's commitments under this Section 3 clause, and will post copies of this notice in conspicuous places at the Work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the Work shall begin.

D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. Consultant will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD-assisted contracts.

Sec. 110. Relocation Assistance and Property Acquisition Requirements. If Consultant is a department, agency or instrumentality of a State or of a political subdivision of the State, then this Agreement is subject to the relocation and acquisition requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42, and 24 CFR 570.606.

Sec. 111. Conflict of Interest.

A. Conflicts Prohibited.

1. Except for the use of CDBG funds to pay salaries or other related administrative or personnel costs, no employees, agents, Consultants, officers, or elected or appointed officials of Consultant or of the City who exercise or have exercised any functions or responsibilities in connection with activities funded under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain any personal or financial interest or benefit from the proceeds of this Agreement for themselves, their families or business associates during their tenure and for one year thereafter. Such prohibited interests include the acquisition and disposition of real property; all subcontracts or Agreements for

goods or services; and any grants, loans or other forms of assistance provided to individuals, businesses and other private entities out of proceeds of this Agreement.

2. Consultant's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from subcontractors, or potential subcontractors.

3. No employee, officer or agent of Consultant shall perform or provide part-time services for compensation, monetary or otherwise, to a Consultant or other subcontractor that has been retained by Consultant under this Agreement.

4. In the event of a real or apparent conflict of interest, the person involved shall submit to Consultant and the City a full disclosure statement setting forth the details of the conflict of interest in accordance with 24 CFR 570.611(d), relating to exceptions by HUD. In cases of extreme and unacceptable conflicts of interest, as determined by The City and/or HUD, The City reserves the right to terminate the Agreement for cause, as provided in Article V below. Failure to file a disclosure statement shall constitute grounds for termination of this Agreement for cause by the City.

B. Interest of Certain Federal Officials. No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

Sec. 112. Political Activity Prohibited Under the Hatch Act. None of the services to be provided by the Contractor shall be used for any partisan political activity or to further the election or defeat of any candidate for public office. The Contractor shall adhere to the provisions of the Hatch Act (5 U.S.C. 1501 *et seq.*), which limits political activities by employees whose principal employment is in connection with an activity, which is financed in whole or in part by federal funds.

Sec. 113. Lobbying Prohibited. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

Sec. 113(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and CERTIFICATION. Section 319, P.L. 101-121. Any Contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Sec. 114. Copyrights. If this Agreement results in a book or other copyright material, the author is free to copyright the Work, but HUD and The City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted, in furtherance of this Agreement.

Sec. 115. Patents. Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 116. Program Income. Unless otherwise specified in Part I of this Agreement, all program income as defined by HUD at 24 CFR Part 570.500(a) shall be returned to the City. Any program income on hand when this Agreement expires, or received after this Agreement expires shall be paid to The City.

ARTICLE II

DISBURSEMENTS AND ACCOUNTING

Sec. 201. Eligible and Ineligible Costs. Costs under this Agreement are governed by OMB Circular A-87 or A-122 as applicable. All costs incurred Consultant using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (A) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (B) Be no more liberal than policies, procedures and practices applied uniformly to activities of The City, both Federally assisted and non-Federally assisted; (C) Not be allocable to or included as a cost of any other Federally financed program; (D) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (E) Be fully documented.

The following costs or expenditures by Consultant are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

Sec. 202. Documentation of Costs. All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. Charges Against Project Account.

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of Consultant, and written approval from the Planning and Development Office.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to Consultant are subject to correction in accordance with the audit findings of the City or HUD. Consultant shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, Consultant shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by Consultant at the termination of the Agreement for any cause shall be returned to the City within the time specified the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

Sec. 204. Method of Payment and Disbursements. Consultant must submit properly executed invoices and requests for payment to the City. The City agrees to establish a payment procedure that will provide funds in a timely manner, and which will include, among other things, the requirement for retainage to be withheld by the City in accordance with State statutes. Consultant agrees to disburse funds within seventy-two (72) hours of receiving payment from The City.

Sec. 205. Travel Expenses. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses the City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. Designation of Depository. Consultant shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. Consultant is encouraged to use minority or female-owned banks.

Sec. 207. Refunds. Consultant agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to Consultant.

Sec. 208. Examination of Records. Consultant agrees that the Comptroller General of the United States, the U.S. Department of Housing and Urban Development, the City, or any of their duly authorized representatives shall, until the expiration of seven (7) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions related to this Agreement.

Sec. 209. If Community Development Block Grant funds are being provided to primarily religious organizations, it must be in accordance with HUD's guidance on **Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program**

Participants, Final Rule, as published in the **Federal Register (Vol. 68, No. 189)** on September 30, 2003, on Pages 56396-56408, effective October 30, 2003.

ARTICLE III
CONSTRUCTION CONTRACTS AND LABOR STANDARDS

Sec. 301. Lead-Based Paint Hazards. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 CFR Part 570.608. Consultant is responsible for the inspections and certifications required.

Sec. 302. Davis-Bacon Act. Except for the rehabilitation of residential property that contains not less than eight (8) units, Consultant and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-5, and applicable regulations of the Department of Labor under 29 CFR Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010.

Sec. 303. Contract Work Hours and Safety Standards Act. All federally assisted construction contracts of more than \$2,000.00 and all other contracts employing mechanics or laborers of more than \$2,500.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327 et seq.) and Department of Labor regulations (29 CFR 5), requiring that wages be paid at not less than one and one-half times the basic wage rates for all hours worked in excess of forty in a work week. No mechanic or laborer shall be required to work under conditions which are unsanitary, hazardous or dangerous to health and safety.

Sec. 304. Anti-Kickback Act. If this Agreement involves construction or repair, then it is subject to the Copeland "Anti-Kickback" Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 CFR Part 5), prohibiting and prescribing penalties for "kickbacks" of wages. Wages must be paid at least once a week in accordance with the requirements of 29 CFR 5.5.

Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended. If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 CFR Part 130, and the Department of Labor Regulations at 41 CFR Chapter 60.

Consultant agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 CFR Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if Consultant is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

Consultant agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

"During the performance of this Agreement, Consultant agrees as follows:

1. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex or national origin. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, disability, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all employment is without regard to race, color, religion, disability, sex or national origin.
3. Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Consultant will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
5. Consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and Consultant may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, Consultant may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

Consultant agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

Consultant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, Consultant agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to Consultant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from Consultant; and refer the case to the Department of Justice for appropriate legal proceedings."

Sec. 306. The American with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), which prohibits discrimination against disabled individuals in private and public employment, public accommodations, public transportation, government services, and telecommunications. The contractor shall include this requirement in agreements with subrecipients and applicable provisions of the Architectural Barriers Act (42 U.S.C. 4151-4157).

Sec. 307 Regulations at 41 CFR 60-250, implementing the Vietnam Veterans Act, which requires affirmative action obligations of contractors and subcontractors for disabled veterans and veterans of the Vietnam era.

Sec. 308 Drug-Free Workplace Requirements. In carrying out this agreement, the contractor agrees to comply with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and to certify that contractor will comply with drug-free workplace requirements in accordance with the Act and with HUD rules found at 24 CFR part 24, subpart F.

ARTICLE IV

ENVIRONMENTAL AND HISTORIC CONDITIONS

Sec. 401. Environmental Clearance. No funds under this Agreement may be obligated or spent for acquisition or construction until the Consultant has received written environmental clearance from the City. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. Compliance with Clean Air and Water Acts. If this Agreement provides assistance in excess of \$100,000, then Consultant and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. Additional Environmental and Historic Conditions. This Agreement is also subject to the following statutes, executive orders and regulations, when Consultant is so instructed by The City or the United States of America.

A. National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24 CFR Part 58) and the Council on Environmental Quality regulations (40 CFR Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse affect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 CFR Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

ARTICLE V

TERMINATION

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development; as such, funds or any part thereof are subject to being properly appropriated by the Westminster City Council. If funds are not properly appropriated by the Westminster City Council, the City may immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever Consultant materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default of any obligation or condition, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to Consultant's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. Consultant and the City may terminate this Agreement by agreeing upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated.

Sec. 504. Payment After Termination. Consultant shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. Reversion of Assets. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under Consultant's control that was acquired or improved with more than \$25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 CFR 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

ARTICLE VI

MISCELLANEOUS

Sec. 601. Personnel. Consultant represents that it has or will secure all personnel required in performing its services under this Agreement. All services required Consultant will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and enforced in accordance with Colorado law and the Westminster City Code. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the County of Adams, Colorado.

Sec. 603. Contractual Relationship. Consultant shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of Consultant shall be that of an independent contractor.

Sec. 604. When Rights and Remedies Not Waived. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of Consultant, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. Development and Building Related Fees, Sales and Use Taxes.

As a project paid for using City CDBG funds, the improvement projects shall be exempt from payment of City development and building related fees, and City sales and use tax. The Consultant shall pay any other sales and use taxes imposed by other State and local taxing authorities. The Consultant shall obtain a building permit when necessary and applicable inspections and shall secure and pay for all other easements, permits, governmental fees, licenses and inspections by other jurisdictions necessary for the proper execution and completion of the home improvements.

Sec. 606. Assignment. Consultant shall not assign this Agreement without the prior written consent of the City.

Sec. 607. Patented Devices, Materials, and Processes. If Consultant employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. Consultant shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 608. No Third Party Beneficiary Rights. The City is not obligated or liable to any party other than Consultant.

Sec. 609. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 610. Notices. All notices shall be given by certified mail. Notices to the City shall be separately addressed to the Contract Manager. Either of the parties may designate in writing substitute addresses or persons to receive notices.

Sec. 611. Published Information and Announcements. Consultant agrees to coordinate with the City to assure that the activity financed in whole or in part by this agreement is properly referenced by Consultant in press releases, brochures, annual reports, speeches and other published information and announcements.



Agenda Item 8 E

Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: 2014 Sports Officiating Services Contract

Prepared By: Sean Layfield, Recreation Supervisor/Sports

Recommended City Council Action

Authorize the City Manager to execute a one-year contract with the option to renew for two additional one-year terms with Professional and Recreational Officials of Sports, Inc. (P.R.O.S, Inc.) for officiating and related services in an amount not to exceed \$85,000 annually.

Summary Statement

- The City's Purchasing Officer issued formal bids through Demand Star for sports officiating services on June 16, 2014. In addition, three vendors were mailed hard copies of the bid packet. Those vendors were Professional and Recreational Officials of Sports, Inc. (P.R.O.S. Inc.), Metro Sports, and Aurora Sports Officials. P.R.O.S., Inc., was the only vendor to submit a complete bid. Aurora Sports Officials and Metro Sports did not submit a bid.
- The proposed agreement between the City of Westminster and P.R.O.S., Inc., includes the terms and conditions for P.R.O.S. to provide officiating services for senior and adult programs that are provided by the City.
- The 2014 Recreation Programs Division operating budget contains the necessary funds to contract these professional officiating services. The services to be provided by P.R.O.S., Inc., amount to a maximum of \$85,000 per year for adult and senior sports and is based on a per-game charge. This amount is dependent upon the number of teams that participate in each of the City's sports programs during the year. Under this proposed contract, charges for services cannot exceed \$85,000 per year.
- Revenues for these sports totaled \$235,000 in 2013 and revenues of \$240,000 are projected in 2014.
- Adequate funds are appropriated within the Recreation Programs Division operating budget for this expense.

Expenditure Required: Not to exceed \$85,000 annually

Source of Funds: General Fund – Recreation Programs Division Operating Budget

Policy Issue

Should the City accept a bid from P.R.O.S., Inc., and enter into a contract for officiating services for the City's recreational leagues?

Alternative

Council could choose not to award the officiating services contract to P.R.O.S., Inc. and ask Staff to re-bid the officiating services in hopes of receiving a lower bid. Staff does not recommend this as the bid received meets all of the City's criteria as well as the officiating needs of the leagues.

Background Information

The City offers ongoing athletic programs for senior citizens and adult sports leagues in the Westminster community. Basketball and softball programs provide recreational opportunities for over 7,200 participants each year. The City of Westminster has had a working relationship with P.R.O.S., Inc., for the past 20 years. Staff is recommending the City enter into a one-year contract, with the option to renew for up to two additional one-year terms, with P.R.O.S, Inc. for officiating and related services.

P.R.O.S., Inc. is responsible for training, certifying, and scheduling the officials for the following municipalities or recreation districts: Adams County YMCA; Apex; the Cities of Broomfield, Commerce City, Edgewater, Lafayette, Northglenn, and Thornton; the Hyland Hills Park and Recreation District; and the Town of Superior. P.R.O.S., Inc.'s current charges for services are \$25.00 per game per official for basketball, \$28.00 per game per official for softball, and \$28 per game per official for volleyball. An additional fee is charged for a one-game schedule of \$10. Charges are paid on an as-used basis.

These fees are very competitive and Staff is confident that P.R.O.S., Inc. will continue to provide quality officiating services for the City.

This contract supports the City's Strategic Plan Goal of "*Excellence in City Services.*"

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Amendment to Special Water Counsel Legal Services Agreement

Prepared By: Sharon I. Williams, Water Resources Engineering Coordinator
Mike Happe, Utilities Planning and Engineering Manager

Recommended City Council Action

Based on the recommendation of the City Manager, determine that the public interest will best be served by authorizing the City Manager to execute an amendment to the current two-year sole source fee agreement with Carlson, Hammond, and Paddock, LLC for special water counsel services in 2013 and 2014. The amendment would increase the 2014 budget for the contract from \$250,000 to \$400,000.

Summary Statement

- Westminster's water supply is an extremely valuable asset that requires constant protection from water quality and water quantity degradation.
- Colorado's water rights system requires judicial action for many water matters, requiring the City to retain expert legal counsel specializing in water rights and water quality.
- City Council approved a two-year fee agreement with Carlson, Hammond, and Paddock, LLC (CHP) for special water counsel services on December 12, 2012 for calendar years 2013 and 2014.
- In 2013, the budget was \$250,000 and legal expenses under this agreement were \$196,000.
- In 2014, there was an extraordinary increase in demand for special water counsel services. There were several factors, the primary being a water court trial and increased State scrutiny and oversight that involved aggressive challenges to the yields of water rights owned by the City. We prepared for a trial set to begin June 30, 2014, but in early June the trial was postponed to 2016.
- In addition, the City incurred legal expenses associated with the purchase of FRICO-Standley Division shares and obtaining water rights for Little Dry Creek Park Pond.
- To date, \$201,900 of the \$250,000 budget has been expended this year. The recommended amendment would increase the budget by \$150,000 for a total of \$400,000 so that the City can continue to obtain legal services to protect its water supply assets.

Expenditure Required: Not to exceed \$400,000 (\$150,000 additional expense)
Source of Funds: Stormwater Utility Fund - (\$22,000)
Utility Fund - (\$128,000)

Policy Issue

Should the City amend the current agreement with Carlson, Hammond, and Paddock, LLC (CHP) for special water counsel services to increase the 2014 budget from \$250,000 to \$400,000?

Alternatives

1. The City could choose not to amend the agreement for special water counsel and cease legal work to protect the City's water supply assets when the current budget of \$250,000 has been expended.
2. The City could choose not to amend the agreement for special water counsel and try to undertake the related legal work in-house. However, the City Attorney's Office does not have specialized expertise in water rights and water quality matters and currently defers water related legal questions to CHP.
3. The City could alternatively seek out new special water counsel and attempt to obtain services at lower cost; however the City and CHP have a good, long-term professional relationship and the costs of representation by CHP are reasonable and competitive.

Staff does not recommend the above alternatives.

Background Information

CHP's principals have a long history of representing the City on water matters. Today, Mary Hammond and Lee Johnson are the principal attorneys representing the City and they have been working on Westminster water matters for 35 years and 24 years, respectively.

Over the many years of our partnership, CHP has developed a thorough knowledge of Westminster's water supply and water quality issues and is a key player in helping develop and protect Westminster's raw water supply.

Staff budgeted for CHP expenses in both the Operating and Capital budgets for 2013 and 2014. Historically the work requested has not exceeded \$250,000 per year. However, in 2014 the City acted to defend its water supply assets by actively preparing for a water court trial scheduled for June 2014. In early June, the trial was postponed until 2016. This was the first water court trial the City has participated in at this level since 2002. In addition, the City incurred legal expenses associated with the purchase of FRICO-Standley Division shares and obtaining water rights for Little Dry Creek Park Pond.

To date, \$201,896.84 of the \$250,000 budget has been expended in 2014. Funding is available for the recommended \$150,000 increase to the budget in the 2014 Public Works and Utilities Operating and Capital Budgets and Stormwater Utility Fund Capital Improvements funds.

This supports the Council's Strategic Plan Goal of Excellence in City Services securing and developing a long-term water supply.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments:

- Existing agreement with Carlson, Hammond, and Paddock, LLC for special water counsel services
- Proposed amendment to the existing agreement, with documentation of CAO review

CARLSON, HAMMOND & PADDOCK, L.L.C.
ATTORNEYS AT LAW

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LEE H. JOHNSON
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(1940-1992)

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Senders' Email:

mhammond@chp-law.com

ljohnson@chp-law.com

December 12, 2012

Mr. J. Brent McFall
City Manager
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80030

Re: Carlson, Hammond & Paddock Representation.

Dear Brent:

As you know, Carlson, Hammond & Paddock, L.L.C. has represented the City as Special Water Counsel since the formation of the firm in 1986. In fact, John Carlson, one of the founding members of this firm, represented the City in water matters from the mid-1970's until his untimely death in 1992. In short, we have had a long term relationship with the City -- a relationship that has been immensely satisfying to us as lawyers. We sincerely value Westminster as a client and hope to continue to represent the City for many years to come.

In the past, we have not operated under any type of formal written agreement. In 2002, however, the City requested that we enter into a more formal written agreement. We were, of course, perfectly willing to comply with this request and operated pursuant to two year letter agreements since that time. We understand that the City wishes to renew the letter agreement approach for the coming two year period. Accordingly, this letter agreement is written to set forth the terms for the firm's representation of the City in 2013 and 2014.

As in the past, in 2013 and 2014, Carlson, Hammond & Paddock, L.L.C., will continue to work closely with City staff and represent the City on water matters, including but not limited to water rights and water quality, and related matters that may arise in the course of the year. As in the past, our work will be carried out at the direction of the relevant City staff, and we will continue to consult with water resources staff and city attorney staff in connection with this representation. Our representation will be consistent with the requirements of the Colorado Rules of Professional Conduct.

For our work during the 2013 calendar year, we will charge a flat rate of \$210.00 per hour for attorney time. During the 2014 calendar year, we will charge a flat rate of \$215.00 per hour. This

CARLSON, HAMMOND & PADDOCK, L.L.C.

Mr. Brent McFall
December 12, 2012
Page 2

does represent a slight increase over our prior year's hourly rate. We believe this is a very competitive rate as compared to other firms' billing rates in the metro area. We also occasionally employ law clerks and we currently bill for their time at \$60.00 per hour. We bill for all time spent in pursuit of a client's business, including necessary travel time. In addition, we also bill for expenses such as computerized legal research, copies, messenger services, extraordinary postage and out-of-town mileage, lodging and food, and other like items. We will not charge the City for faxes. We understand that our representation in calendar year 2013 is subject to an upper budget limit of \$250,000.00. We understand that our representation in calendar year 2014 is subject to an upper budget limit of \$250,000.00. Although we do not anticipate that the time and expenses associated with our representation of the City would exceed these amounts in either calendar year, if unforeseen circumstances arise, and our charges begin to approach this total, we will promptly notify the City and work with staff and the City to address the funding issues. To the extent that the City does not authorize additional payments, we will suspend our services. Carlson, Hammond & Paddock, LLC, acknowledges that nothing in this Agreement shall be construed or deemed as creating a multiple-year fiscal obligation of the City. All obligations of the City pursuant to this Agreement are subject to prior annual appropriation by the City Council. The City agrees to exercise utmost good faith and use its best efforts in making any appropriations required by the City to meet its obligations under this Agreement.

From time to time we find it necessary to raise our hourly rates to reflect our increasing costs and the increasing level of experience of our legal staff. Pursuant to this letter agreement, however, we agree that the flat rate for calendar year 2013 will remain \$210.00 per hour and for calendar year 2014 will remain \$215.00 per hour. We do reserve the right to raise rates in future years.

As we have done in the past, we will send monthly itemized statements setting forth our charges and expenses. It is our policy to charge interest at the rate of 1% per month on any balance that remains unpaid after 30 days. And, as you might anticipate, we do reserve the right to suspend work on behalf of a client when payment of statements is delinquent.

To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Carlson, Hammond & Paddock, LLC shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Carlson, Hammond & Paddock, LLC shall not enter into a contract with a subcontractor that fails to certify to the firm that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Carlson, Hammond & Paddock, LLC hereby certifies that as of the date of this letter, it does not knowingly employ or contract with an illegal alien who will perform work under this

CARLSON, HAMMOND & PADDOCK, L.L.C.

Mr. Brent McFall
December 12, 2012
Page 3

Agreement, and that it will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Carlson, Hammond & Paddock, LLC has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the e-verify program or department program. Carlson, Hammond & Paddock, LLC shall not use either the e-verify program or the department program procedures to undertake pre employment screening of job applicants while the services contemplated under this Agreement are being performed.

If Carlson, Hammond & Paddock, LLC obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Carlson, Hammond & Paddock, LLC shall notify the subcontractor and the City within three (3) days that it has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Carlson, Hammond & Paddock, LLC shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Carlson, Hammond & Paddock, LLC shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

In connection with the provision of legal services contemplated under this agreement, Carlson, Hammond & Paddock, LLC shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

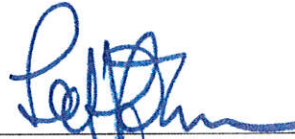
It is very important to us that our clients be satisfied with our services. We believe that open communication is essential, and therefore urge you to contact us with any questions you may have concerning our services, our policies, or our bills, at any time. Please feel free to call us if you have any questions

We sincerely appreciate the opportunity to continue our work with the City. As in the past, we will strive at all times to provide you with the highest quality of legal service for a fair price. Please do not hesitate to call us if you have any questions or concerns regarding our ongoing work for the City of Westminster. Finally, if the terms outlined in this letter are acceptable to the City, please so indicate by executing this letter in the space provided, and return a copy to us.

CARLSON, HAMMOND & PADDOCK, L.L.C.

Mr. Brent McFall
December 12, 2012
Page 4

Yours very truly,



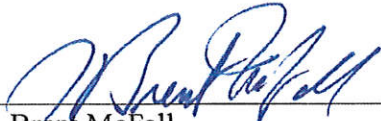
Mary M. Hammond
Lee H. Johnson

CARLSON, HAMMOND & PADDOCK, L.L.C.

Approved for the Year 2013 and 2014:

CITY OF WESTMINSTER

By: _____



J. Brent McFall
City Manager

CARLSON, HAMMOND & PADDOCK, L.L.C.
ATTORNEYS AT LAW

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WILLIAM A. PADDOCK
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July 16, 2014

Mr. J. Brent McFall
City Manager
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80030

Re: Carlson, Hammond & Paddock Representation.

Dear Brent:

I am writing with respect to our firm's ongoing representation of the City of Westminster on water matters. As you know, our representation of the City in calendar year 2014 is subject to the terms and conditions set forth in a letter agreement dated December 12, 2012, (the "Letter Agreement"), which expires by its own terms at the end of 2014. A copy of the Letter Agreement is attached. The annual upper budget limit for our firm's fees and expenses in calendar year 2014 is \$250,000. Over the years, we have consistently operated under the relevant annual budget limits. During the first part of 2014, a particularly important Water Court litigation, Case No. 12CW303, involving aggressive challenges to the yields associated with the Farmers' High Line Canal and the Church Ditch water rights, among others, required a significant investment of time, energy and legal expense on the City's behalf. I am happy to report that trial in Case No. 12CW303 was recently postponed and the active litigation efforts in that particular matter are not likely to recommence in 2014. Regrettably, these aggressive challenges have caused us to incur costs and legal fees in excess of usual amounts. Although we have yet to exceed the budget limit for 2014, we are obligated by the terms of the Letter Agreement to notify you in advance of any such exceedance. This letter is written to advise you of that potential for 2014. With this in mind, we have been in ongoing discussions with City Staff regarding a potential amendment to the Letter Agreement to increase the annual upper budget limit for 2014. In consultation with City Staff, we are now proposing to amend the Letter Agreement to increase the upper budget limit for 2014 to a not to exceed total of \$400,000. Specifically, the sentence commencing on line 8 of page 2 of the attached Letter Agreement, is hereby amended to read as follows:

"We understand that our representation in calendar year 2014 is subject to an upper budget limit of \$400,000.00."

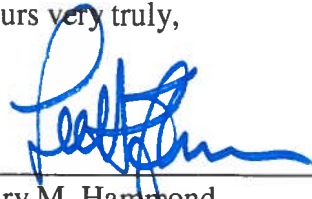
All other terms of the Letter Agreement remain unchanged.

CARLSON, HAMMOND & PADDOCK, L.L.C.

J. Brent McFall
July 16, 2014
Page 2

We sincerely appreciate the opportunity to continue our work with the City. As in the past, we will strive at all times to provide you with the highest quality of legal service for a fair price. Please do not hesitate to call us if you have any questions or concerns regarding our ongoing work for the City of Westminster. Finally, if the terms outlined in this amendment to the Letter Agreement are acceptable to the City, please so indicate by executing this letter in the space provided, and return a copy to us.

Yours very truly,



Mary M. Hammond
Lee H. Johnson

CARLSON, HAMMOND & PADDOCK, L.L.C.

Amendment Approved for Year 2014:

CITY OF WESTMINSTER

By: _____
J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Second Reading of Councillor's Bill No. 20 re Rights-of-way Vacation within East Bradburn Filing No. 1

Prepared By: Melanie Walter, P.E. Senior Engineer

Recommended City Council Action

Pass Councillor's Bill No. 20 on second reading vacating the existing rights-of-way within East Bradburn Filing No. 1.

Summary Statement

- City Council action is requested to pass the attached Councillors Bill on second reading, which will vacate the existing rights-of-way within the East Bradburn Filing No. 1 Subdivision. Appropriate rights-of-way will be dedicated at a later date to conform with the new street alignments and utility locations consistent with the most current Official Development Plan.
- This Councillor's Bill was passed on first reading on July 28, 2014.

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

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Councillor's Bill No. 20

BY AUTHORITY

ORDINANCE NO. **3732**

COUNCILLOR'S BILL NO. **20**

SERIES OF 2014

INTRODUCED BY COUNCILLORS
Winter - Garcia

**A BILL
FOR AN ORDINANCE VACATING RIGHTS OF WAY LOCATED IN EAST BRADBURN
SUBDIVISION FILING NO 1**

WHEREAS, Bradburn Village Homes, LLC, the owner of property located at the SW corner of West 120th Avenue and Lowell Blvd. and specifically described as East Bradburn Subdivision Filing No. 1, has requested the City vacate all public rights-of-way within said subdivision; and

WHEREAS, the City Council finds that all requirements for roadway vacation contained in the Westminster Municipal Code and applicable state statutes have been met.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. City Council determines that no present or future public access need exists for the area proposed for vacation.

Section 2. The area described in Exhibit A, attached hereto and incorporated herein by this reference, is hereby vacated, pursuant to section 43-2-303(3), C.R.S..

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.

Section 4. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of June, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of August, 2014.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

NE 1/4, SECTION 6, TOWNSHIP 2 SOUTH, RANGE 68 WEST 6th P.M.
 -----CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO-----

PROPERTY DESCRIPTION

SEVEN (7) PARCELS OF LAND BEING A PORTION OF EAST BRADBURN FILING NO. 1, A PLAT RECORDED AT RECEPTION NO. 20060714000712670 IN THE OFFICE OF THE ADAMS COUNTY CLERK AND RECORDER, LOCATED IN THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE ASSUMED AND ARE BASED UPON THE EASTERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION 6, AS BEARING S00°27'46"E BETWEEN THE NORTHEAST CORNER OF SAID SECTION 6, BEING A FOUND 3-1/4" ALUMINUM CAP IN RANGE BOX, STAMPED PLS# 13225 AND THE EAST QUARTER CORNER OF SAID SECTION 6, BEING A FOUND 2-1/2" ALUMINUM CAP FLUSH WITH THE GROUND, STAMPED LS# 10717.

PARCEL 1 (NORTH MEADE COURT)

BEGINNING AT THE SOUTHEAST CORNER OF LOT 12, BLOCK 9 OF SAID EAST BRADBURN FILING NO. 1; THENCE ALONG THE WESTERLY, NORTHERLY, EASTERLY AND SOUTHERLY RIGHT-OF-WAY OF NORTH MEADE COURT AS SHOWN ON SAID EAST BRADBURN FILING NO. 1 THE FOLLOWING EIGHT (8) COURSES:

1. N00°02'54"W A DISTANCE OF 468.00 FEET;
2. THENCE N89°57'06"E A DISTANCE OF 1.00 FEET;
3. THENCE N00°02'54"W A DISTANCE OF 160.00 FEET;
4. THENCE N89°57'06"E A DISTANCE OF 44.00 FEET;
5. THENCE S00°02'54"E A DISTANCE OF 144.00 FEET;
6. THENCE S11°21'30"E A DISTANCE OF 35.69 FEET;
7. THENCE S00°02'54"E A DISTANCE OF 449.00 FEET;
8. THENCE S89°57'06"W A DISTANCE OF 52.00 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 31,365 SQUARE FEET (0.720 ACRES), MORE OR LESS.

PARCEL 2 (NORTH MEADE STREET)

BEGINNING AT THE SOUTHEAST CORNER OF LOT 7, BLOCK 8 OF SAID EAST BRADBURN FILING NO. 1; THENCE ALONG THE WESTERLY, NORTHERLY, EASTERLY AND SOUTHERLY RIGHT-OF-WAY OF NORTH MEADE STREET AS SHOWN ON SAID EAST BRADBURN FILING NO. 1 THE FOLLOWING EIGHT (8) COURSES:

1. N00°02'54"W A DISTANCE OF 449.00 FEET;
2. THENCE N11°15'41"E A DISTANCE OF 35.69 FEET;
3. THENCE N00°02'54"W A DISTANCE OF 144.00 FEET;
4. THENCE N89°57'06"E A DISTANCE OF 44.00 FEET;
5. THENCE S00°02'54"E A DISTANCE OF 186.00 FEET;
6. THENCE S01°09'00"E A DISTANCE OF 52.01 FEET;
7. THENCE S00°02'54"E A DISTANCE OF 390.00 FEET;
8. THENCE S89°57'06"W A DISTANCE OF 52.00 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 31,313 SQUARE FEET (0.719 ACRES), MORE OR LESS.


REVISION DESCRIPTION	EAST BRADBURN FILING NO. 1	
MERRICK PROJECT NO. 65117616	RIGHT-OF-WAY VACATION	
DRAWN KGO	DATE: MAY 19, 2014	SHEET 1 OF 3
 MERRICK® & COMPANY 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 Telephone: 303-751-0741	SCALE: N/A	

EXHIBIT A

NE 1/4, SECTION 6, TOWNSHIP 2 SOUTH, RANGE 68 WEST 6th P.M.
 -----CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO-----

PROPERTY DESCRIPTION

PARCEL 3 (WEST 119TH AVENUE)

BEGINNING AT THE SOUTHEAST CORNER OF LOT 5, BLOCK 7 OF SAID EAST BRADBURN FILING NO. 1; THENCE ALONG THE EASTERLY, SOUTHERLY, WESTERLY AND NORTHERLY RIGHT-OF-WAY OF WEST 119TH AVENUE AS SHOWN ON SAID EAST BRADBURN FILING NO. 1 THE FOLLOWING FOUR (4) COURSES:

1. S00°27'46"E A DISTANCE OF 52.00 FEET;
2. THENCE S89°57'06"W A DISTANCE OF 192.34 FEET;
3. THENCE N00°02'54"W A DISTANCE OF 52.00 FEET;
4. THENCE N89°57'06"E A DISTANCE OF 191.96 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 9,992 SQUARE FEET (0.229 ACRES), MORE OR LESS.

PARCEL 4 (WEST 119TH PLACE-EAST)

BEGINNING AT THE SOUTHEAST CORNER OF LOT 6, BLOCK 2 OF SAID EAST BRADBURN FILING NO. 1; THENCE ALONG THE EASTERLY, SOUTHERLY, WESTERLY AND NORTHERLY RIGHT-OF-WAY OF WEST 119TH PLACE AS SHOWN ON SAID EAST BRADBURN FILING NO. 1 THE FOLLOWING FOUR (4) COURSES:

1. S00°27'46"E A DISTANCE OF 52.00 FEET;
2. THENCE S89°57'06"W A DISTANCE OF 190.55 FEET;
3. THENCE N01°09'00"W A DISTANCE OF 52.01 FEET;
4. THENCE N89°57'06"E A DISTANCE OF 191.17 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 9,925 SQUARE FEET (0.228 ACRES), MORE OR LESS.

PARCEL 5 (WEST 119TH PLACE-WEST)

BEGINNING AT THE NORTHEAST CORNER OF LOT 32, BLOCK 8 OF SAID EAST BRADBURN FILING NO. 1; THENCE ALONG THE SOUTHERLY, WESTERLY, NORTHERLY AND EASTERLY RIGHT-OF-WAY OF WEST 119TH PLACE AS SHOWN ON SAID EAST BRADBURN FILING NO. 1 THE FOLLOWING FOUR (4) COURSES:

1. S89°57'06"W A DISTANCE OF 207.12 FEET;
2. THENCE N00°02'54"W A DISTANCE OF 35.00 FEET;
3. THENCE N89°57'06"E A DISTANCE OF 207.12 FEET;
4. THENCE S00°02'54"E A DISTANCE OF 35.00 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 7,249 SQUARE FEET (0.166 ACRES), MORE OR LESS.


REVISION DESCRIPTION	EAST BRADBURN FILING NO. 1	
MERRICK PROJECT NO. 65117616	RIGHT-OF-WAY VACATION	
DRAWN KGO	DATE: MAY 19, 2014	SHEET 2 OF 3
 MERRICK® & COMPANY 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 Telephone: 303-751-0741	SCALE: N/A	

EXHIBIT A

NE 1/4, SECTION 6, TOWNSHIP 2 SOUTH, RANGE 68 WEST 6th P.M.
 -----CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO-----

PROPERTY DESCRIPTION

PARCEL 6 (WEST 119TH COURT)

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 3, OF SAID EAST BRADBURN FILING NO. 1; THENCE ALONG THE NORTHERLY, EASTERLY, SOUTHERLY AND WESTERLY RIGHT-OF-WAY OF WEST 119TH COURT AS SHOWN ON SAID EAST BRADBURN FILING NO. 1 THE FOLLOWING FOUR (4) COURSES:

1. N89°57'06"E A DISTANCE OF 221.12 FEET;
2. THENCE S11°15'41"W A DISTANCE OF 35.69 FEET;
3. THENCE S89°57'06"W A DISTANCE OF 207.12 FEET;
4. THENCE N11°21'30"W A DISTANCE OF 35.69 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 7,494 SQUARE FEET (0.172 ACRES), MORE OR LESS.

PARCEL 7 (WEST 119TH DRIVE)

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 3, OF SAID EAST BRADBURN FILING NO. 1; THENCE ALONG THE WESTERLY, NORTHERLY, EASTERLY AND SOUTHERLY RIGHT-OF-WAY OF WEST 119TH DRIVE AS SHOWN ON SAID EAST BRADBURN FILING NO. 1 THE FOLLOWING FOUR (4) COURSES:

1. N00°02'54"W A DISTANCE OF 44.00 FEET;
2. THENCE N89°57'06"E A DISTANCE OF 221.12 FEET;
3. THENCE S00°02'54"E A DISTANCE OF 44.00 FEET;
4. THENCE S89°57'06"W A DISTANCE OF 221.12 FEET TO THE **POINT OF BEGINNING**;

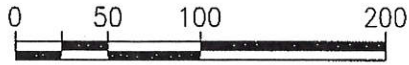
CONTAINING 9,729 SQUARE FEET (0.223 ACRES), MORE OR LESS.



KENNETH G. OUELLETTE, PLS 24673
 DATE: MAY 19, 2014
 JOB NO. 65117616
 FOR AND ON BEHALF OF MERRICK & COMPANY

REVISION DESCRIPTION	EAST BRADBURN FILING NO. 1	
MERRICK PROJECT NO. 65117616	RIGHT-OF-WAY VACATION	
DRAWN KGO	DATE: MAY 19, 2014	SHEET 3 OF 3
MERRICK® & COMPANY 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 Telephone: 303-751-0741	SCALE: N/A	

ILLUSTRATION FOR EXHIBIT A

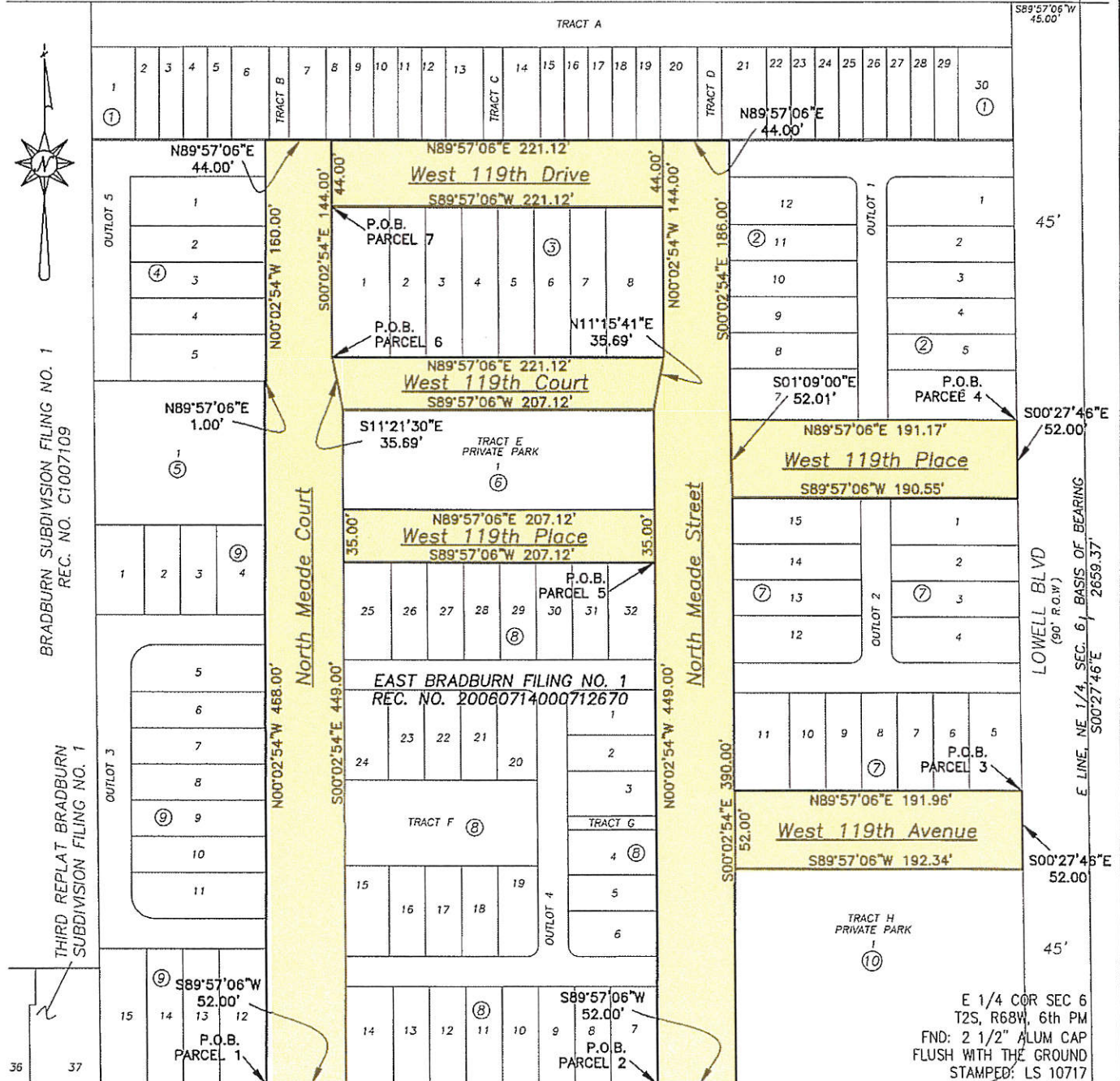


1 inch = 100 ft.

WEST 120TH AVENUE

NE COR SEC 6
T2S, R68W, 6th PM
FND: 3 1/4" ALUM CAP
IN RANGE BOX
(CAP DAMAGED)
STAMPED: PLS 13225

165.00'



E LINE, NE 1/4, SEC. 6, BASIS OF BEARING
S00°27'46"E 2659.37'

E 1/4 COR SEC 6
T2S, R68W, 6th PM
FND: 2 1/2" ALUM CAP
FLUSH WITH THE GROUND
STAMPED: LS 10717

This illustration does not represent a monumented survey. It is intended only to depict the attached property description.

REVISION DESCRIPTION	EAST BRADBURN FILING NO. 1
MERRICK PROJECT NO. 65117616	
DRAWN KGO	
MERRICK® & COMPANY 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 Telephone: 303-751-0741	RIGHT-OF-WAY VACATION
	DATE: MAY 19, 2014
	SCALE: 1"=100'
	SHEET 1 OF 1



Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Public Hearing and Action on the Fifth Amended Northwest Business Park Preliminary Development Plan, First Amended Axis Development Preliminary Development Plan and the Twelfth Amended Northpoint Center Preliminary Development Plan

Prepared By: Natalie Winsen, Planner

Recommended City Council Action

- 1) Hold a public hearing.
- 2) Approve the Fifth Amended Northwest Business Park Preliminary Development Plan, First Amended Axis Development Preliminary Development Plan and the Twelfth Amended Northpoint Center Preliminary Development Plan. This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met.

Summary Statement

- The Westminster Municipal Code Section 11-5-9(A)(2)(b) allows the City to initiate a Preliminary Development Plan amendment and these proposed Preliminary Development Plan (PDP) amendments are in conformance with those requirements.
- These PDP amendments are a City initiated action to correct identified boundary discrepancies within the area generally located east of US36 between 103rd Avenue and 112th Avenue. These discrepancies include multiple PDPs overlapping and one instance where an area is not included in any PDP. This not only creates complications for applicants and staff when trying to identify which PDP boundary is relevant, but also will present additional issues in the future for the area not covered under a PDP. Staff has proactively endeavored to resolve these issues in order to ensure seamless Preliminary Development Plan boundaries.

Expenditure Required: \$0

Source of Funds: N/A

Planning Commission Action

The Planning Commission met on Tuesday July 22, 2014 to consider the Fifth Amended Northwest Business Park Preliminary Development Plan, First Amended Axis Development Preliminary Development Plan and the Twelfth Amended Northpoint Center Preliminary Development Plan and voted unanimously (5-0) in favor of approving the proposed amendments. No one spoke in favor of or opposition to the proposal.

Policy Issues

- 1) Should the City initiate amendments to the Northwest Business Park, Axis Development and Northpoint Centre Preliminary Development Plans (PDPs) based on the criteria set forth in the Westminster Municipal Code (WMC) Section 11-5-9(A)(2)(b)?
- 2) Should the City approve amendments to the boundaries of the Northwest Business Park, Axis Development and Northpoint Center PDPs?

Alternatives

- 1) Deny the proposed amendments to the Northwest Business Park, Axis Development and Northpoint Center PDPs based on the criteria set forth in the Westminster Municipal Code (WMC), Section 11-5-9(A)(2)(b). This alternative is not recommended as some of the existing PDP boundary issues occur on City owned property and consequently, there is an accompanying obligation to resolve these issues.
- 2) Deny the amendments to the Northwest Business Park, Axis Development and Northpoint Center PDPs to adjust PDP boundaries. This alternative is not recommended because current incongruities will complicate future PDP amendments for the City and other property owners.

Background Information

Nature of Request

The area generally bounded by US36, 112th Avenue, Westminster Boulevard, City Park and the Mercedes Benz of Westminster dealership south of 104th Avenue is currently covered by the Northwest Business Park, Axis Development, Ryan Development Property, Northpoint Center, and the Westminster Promenade East PDPs.

Over time, the PDPs listed above have been added to and amended without sufficient cross-referencing, resulting in a number of overlapping issues and one instance where City owned property is not included in any PDP.

As shown in Attachment A, the Northwest Business Park, Axis Development and Ryan Development Property PDP boundaries are unique, and partially overlap. The Northpoint Center PDP does not experience overlapping; however, Westminster Promenade East PDP is situated in the middle of the Northpoint Center PDP and the parcel of land between the Ryan Development Property PDP and Northpoint Center PDP is not covered by a PDP at all.

The City Code allows the City to initiate an amendment to an existing PDP if it is determined that the initiative meets criteria listed in WMC 11-5-9(A)(2)(b), and staff believes that this City initiative meets those criteria. In February 2014, action was taken by City staff to commission the engineering firm Martin & Martin to clean-up and simplify these PDP boundaries to ensure seamless boundary closure and eliminate overlapping boundaries. As a result, the City can avoid complications in the planning process for future applicants wishing to amend the PDPs for this area.

With guidance from Martin & Martin, it was determined that the most effective solution was to amend three PDPs, namely, Northwest Business Park, Axis Development and Northpoint Center making them adjoin and span over the entire area. These PDPs would then supersede any previous PDP for this area.

Specific details regarding the changes to the PDPs are as follows:

Fourth Amended Northwest Business Park PDP

The Fourth Amended Northwest Business Park PDP proposes to update the southern PDP boundary to reflect the exclusion of Lot 5, Tract D3, Tract E2 and Tract F which are now covered under the First Amended Axis Development PDP. See Attachment B.

First Amended Axis Development PDP

The First Amended Axis Development PDP extends the southern boundary to incorporate the new road proposed by Axis and also proposes to include a portion of a City owned parcel to the west of the site that is currently unplatted and without a PDP. See Attachment C.

Twelfth Amended Northpoint Center PDP

The Twelfth Amended Northpoint Center PDP proposes the Westminster Promenade East PDP be reintegrated to allow for an uninterrupted PDP region. The amendment also proposes to extend the PDP boundary north over the City owned parking lot, adjacent vacant parcel east of the Fat Cats Bowling Center as well as incorporating a segment of the Fat Cats development and a portion of a City owned parcel to the west that are all presently without a PDP. The new northern PDP boundary abuts the boundary of the First Amended Axis Development PDP. See Attachment D.

The parcels listed above that are proposed to assimilate into the Northpoint Center PDP are all currently zoned Planned Unit Development (PUD) and have the Comprehensive Plan (CP) designation of Mixed Use Center, which is congruent with Promenade East and Promenade West. Their incorporation will result in the adoption of the standards listed in the original and amended Northpoint Center PDPs. As some setbacks, parking requirements and architectural guidelines were lot specific in the Northpoint Center PDP, these elements would be determined for the newly integrated lots at the time of individual PDP/ODP submittal.

Location

The Northwest Business Park PDP is bounded by US36, 112th Avenue, Westminster Boulevard and the Axis Development. The Axis Development PDP is bounded by Circle Point to the north, the Burlington Northern/Santa Fe Railroad right-of-way to the west and Westminster Boulevard to the east. The Northpoint Center PDP is bounded by the Axis Development PDP and the southern boundary of the Sheridan Green subdivision to the north, US36 to the west, Mercedes Benz of Westminster, The Butterfly Pavilion and Big Dry Creek open space to the south and City Park to the east.

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before City Council shall be published at least four days prior to City Council public hearings. Notice for the City Council hearing was published in the Westminster Window on July 31, 2014.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Three signs were posted on the property on July 24, 2014.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant (the City) shall mail individual notices by first-class mail to property owners and homeowner's associations registered with the City within 300 feet of the subject property. WMC 11-5(D) requires that for City-initiated PDP amendments that the property owners within the PDP be notified by registered mail and that the notice set "forth the grounds for the proposed amendment and a statement that a copy of the proposed amended PDP is on file and available for inspection in the office of the Director of Community Development." The required notices were mailed on June 10, 2014.

Applicant

City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031

Property Owners

NORTHWEST BUSINESS PARK PDP

CATELLUS MIXED LAND, LLC
66 Franklin Street
Suite 200
Oakland, California 94607

CIRCLE POINT PROPERTIES, LLC
1101 30th Street
Suite 15
Washington DC, 20007

CITY OF WESTMINSTER
4800 West 92nd Avenue
Westminster, CO 80031

AXIS DEVELOPMENT PDP

CITY OF WESTMINSTER
4800 West 92nd Avenue
Westminster, CO 80031

NORTHPOINT CENTER PDP

CITY OF WESTMINSTER
4800 West 92nd Avenue
Westminster, CO 80031

WILLOW PROPERTIES, LLC
216 The Knoll
Orinda, CA 94563

WESTCOL CENTER, LLC
909 Walnut, Suite 200,
Kansas City, MO 64106

WESTCOL THEATRE, LLC
909 Walnut, Suite 200,
Kansas City, MO 64106

EMERUS DEVELOPMENT COMPANY, LLC
10077 Grogans Mill Road, Suite 100,
The Woodlands, TX 77380

ROCKY MOUNTAIN BUTTERFLY CONSORTIUM
6252 W. 104th Avenue
Westminster, CO 80020

WESTMINSTER PROMENADE DEVELOPMENT CO, LLC
 PO BOX 351979
 Westminster, CO 80035

WESTMINSTER BOULEVARD FINANCE, LLC
 1050 17th Street, Suite 2300,
 Denver, CO 80265

TT OF WESTMINSTER INC.
 505 S. Flagler Drive, Suite 700,
 West Palm Beach, FL 33401

WESTMINSTER PROMENADE CO. II, LLC
 10650 Westminster Blvd
 Westminster, CO 80030

Surrounding Land Use and Comprehensive Plan Designation

NORTHWEST BUSINESS PARK

Development Name	Zoning	Comprehensive Plan Designation	Use
City and County of Broomfield	N/A	Office/Flex Light Industrial	Vacant
US36; West	N/A	N/A	N/A
Sheridan Green; East	PUD	R-3.5 Residential	Residential
Axis, South	PUD	R-36 Residential	Vacant

AXIS DEVELOPMENT

Development Name	Zoning	Comprehensive Plan Designation	Use
Circle Point; North	PUD	Office/R&D High Intensity	Office
Burlington Northern / Sante Fe Railroad ROW/ US36; West	N/A	N/A	N/A
Sheridan Green; East	PUD	R-3.5 Residential	Residential
City owned parking lot, South	PUD	Mixed Use Center	Retail Commercial

NORTHPOINT CENTER

Development Name	Zoning	Comprehensive Plan Designation	Use
Axis; North	PUD	R-36 Residential	Vacant
US36; West	N/A	N/A	N/A
Westminster City Park; East	O-1	Public Parks	Parks and Recreation
Semper Gardens, South	PUD	City owned open space, Service Commercial	Vacant

Project Information

The following information provides an explanation of compliance with the City's land development regulations and the criteria contained in Sections 11-5-9(A)(2)(b) and 11-5-14 of the Westminster Municipal Code (attached).

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies. *The proposed PDP amendments only correct boundary discrepancies.*
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles. *Staff believes that the PUD exhibits the application of sound, creative, innovative, and efficient planning principles with the modification of PDP boundaries.*
3. Any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan. *No exceptions from the standard Code requirements are proposed with these PDP amendments.*
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area. *The proposed boundary changes have no effect on the compatibility or harmony with existing public and private development in the surrounding area.*
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development. *The provisions within the existing PUD that provide for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development (landscape, buffering, and fencing) are not proposed to be modified.*
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area. *Staff believes that the PUD changes will have no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.*
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic. *The proposed boundary modifications to the PDPs will not affect any of the existing or proposed traffic items in the PDPs.*
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City. *The proposed boundary modifications to the PDPs will not require any additional street width or additional easements, or additional public land.*
9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans. *The proposed boundary modifications to the PDPs will not affect any of the existing utility systems and storm drainage facilities.*
10. Performance standards are included that insure reasonable expectations of future Official Development Plans (ODP) being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15. *No changes to the performance standards are proposed with the PDP boundary modifications. The existing standards insure reasonable expectations of future ODPs being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15.*
11. The applicant is not in default or does not have any outstanding obligations to the City. *The applicant is the City, but the City is not aware of any of the landowners being now in default, nor having any outstanding obligations to the City.*

Traffic and Transportation

No changes to traffic and transportation are proposed with these PDP amendments.

Site Design

No changes to the site design are proposed with these PDP amendments.

Architectural Design

No changes to the existing PDP architectural design requirements are proposed with these PDP amendments.

Landscape Design

No changes to the existing PDP landscape design requirements are proposed with these PDP amendments.

Public Land Dedication

No public land dedication is required for these PDP amendments.

Park Development Fee

No park development fee is required for these PDP amendments.

School Land Dedication

No school land dedication or fee is required for these PDP amendments.

Signage

No changes to the signage standards are required for these PDP amendments.

Strategic Plan

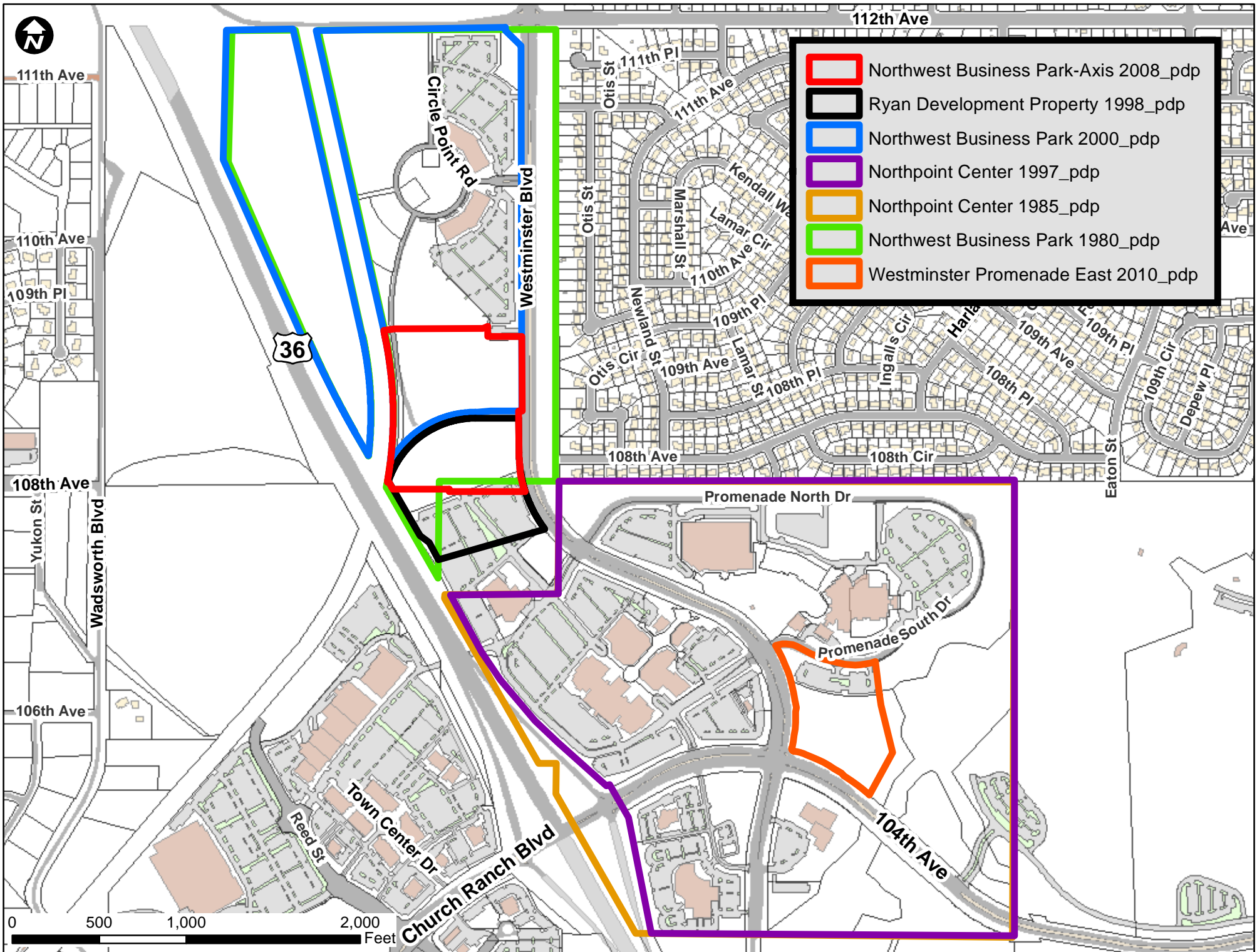
The PDP amendments meet the City Council's Strategic Plan goal of *Excellence in City Services*. The proactive resolution of identified PDP boundary incongruities will remove complications for the City and other property owners at the time of future PDP amendments within this area.

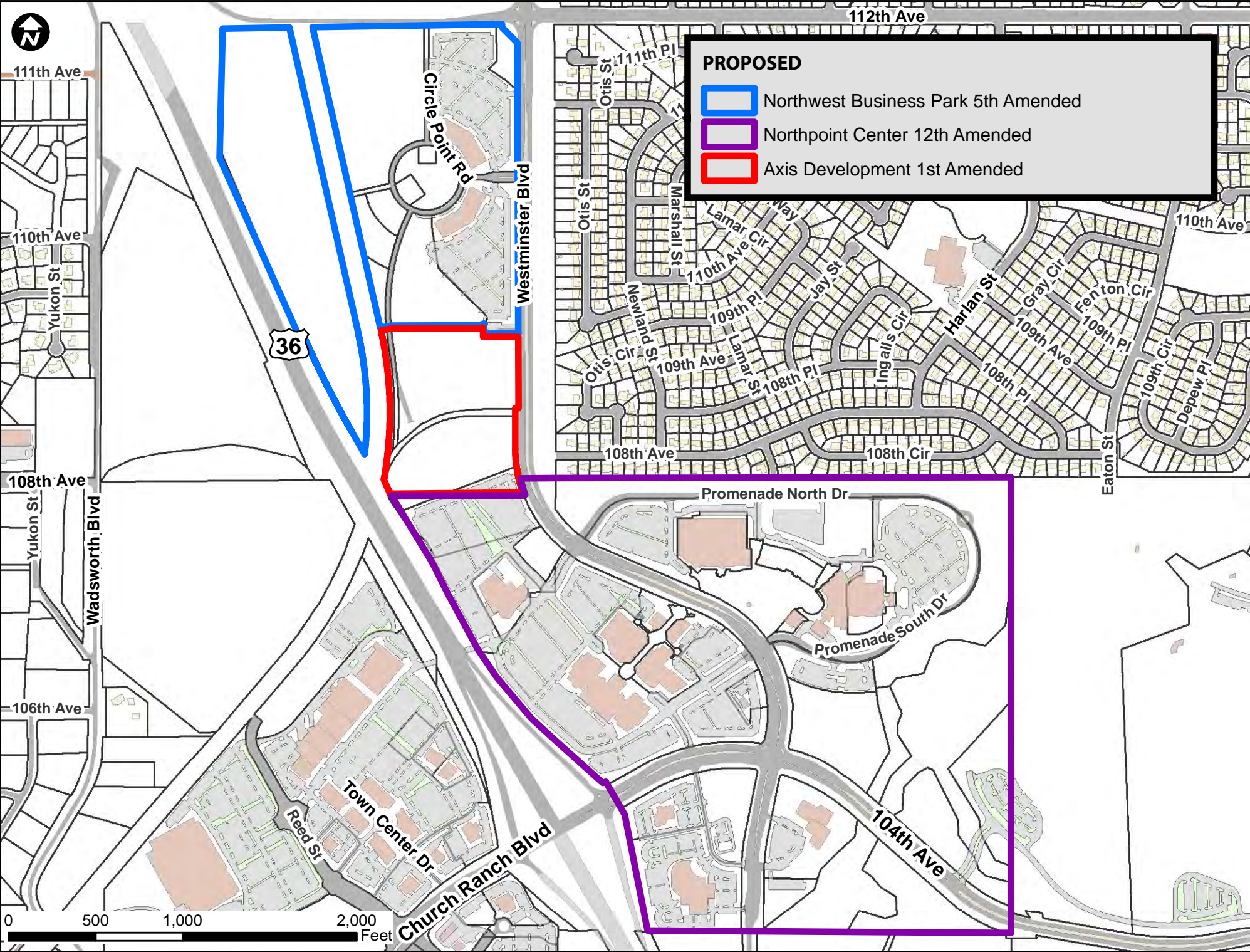
Respectfully submitted,

Stephen P. Smithers
Acting City Manager

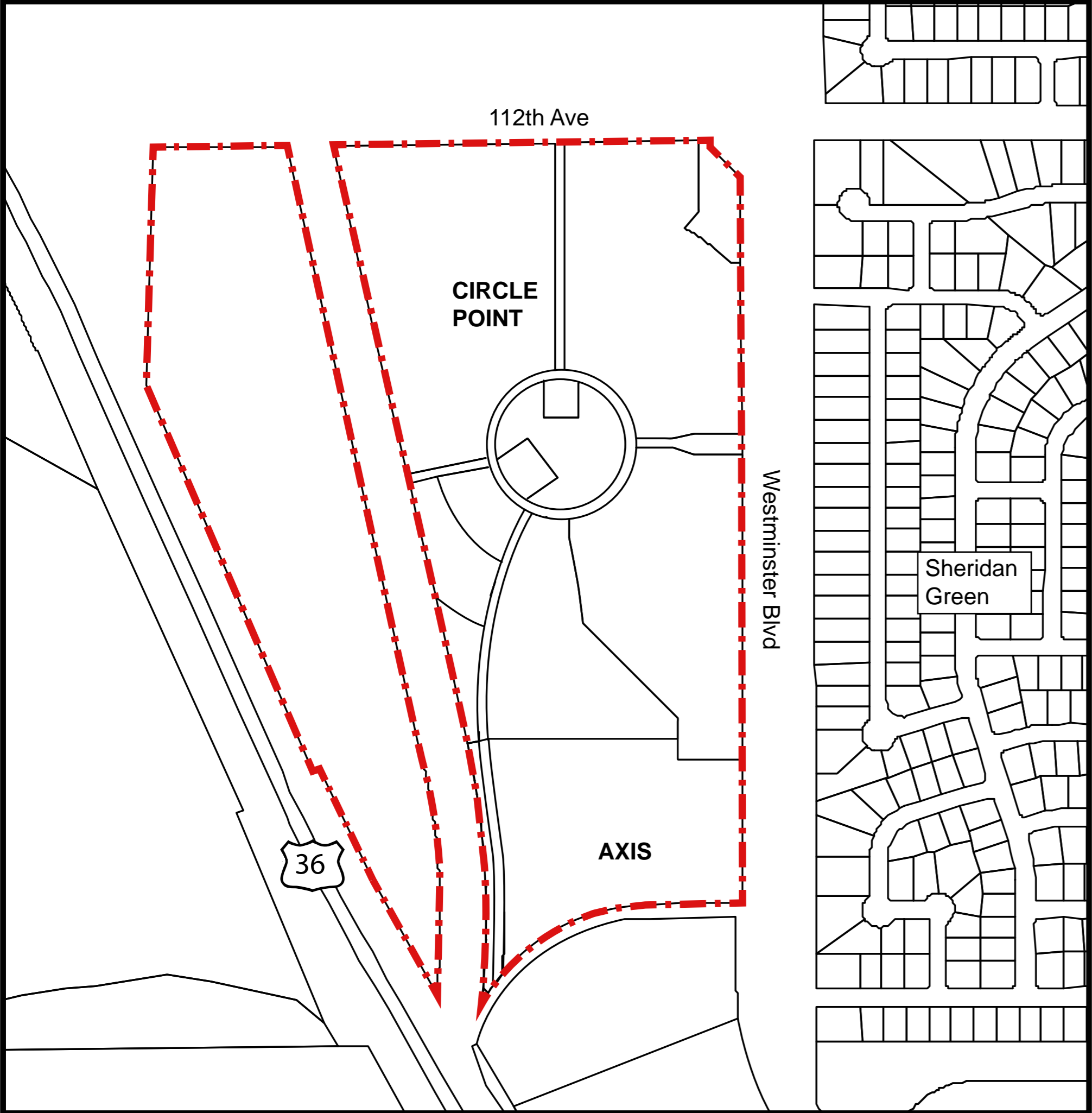
Attachments

- Attachment A: Existing PDP Map, Proposed PDP Map
- Attachment B: Northwest Business Park PDP
- Attachment C: Axis Development PDP
- Attachment D: Northpoint Center PDP

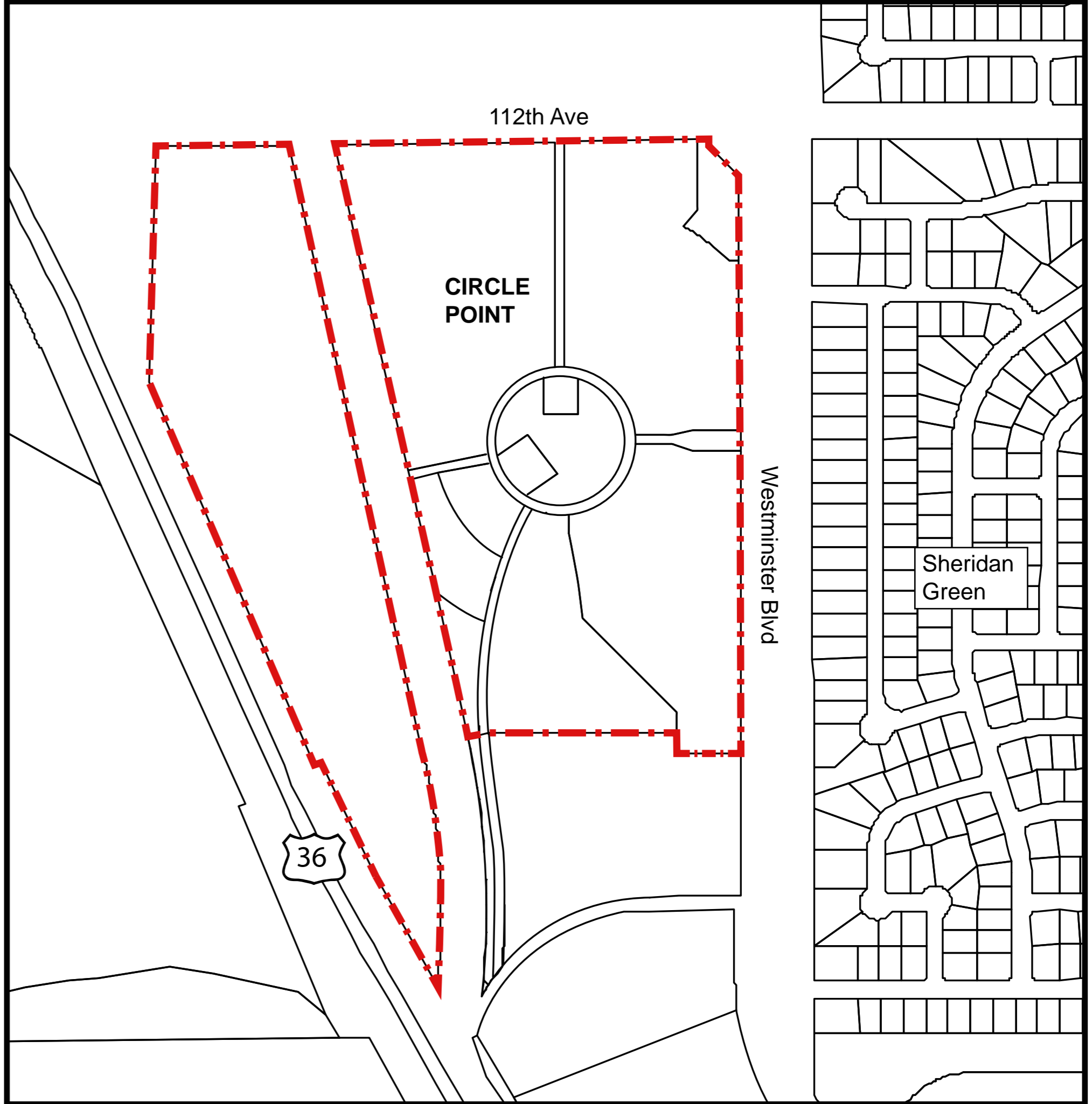




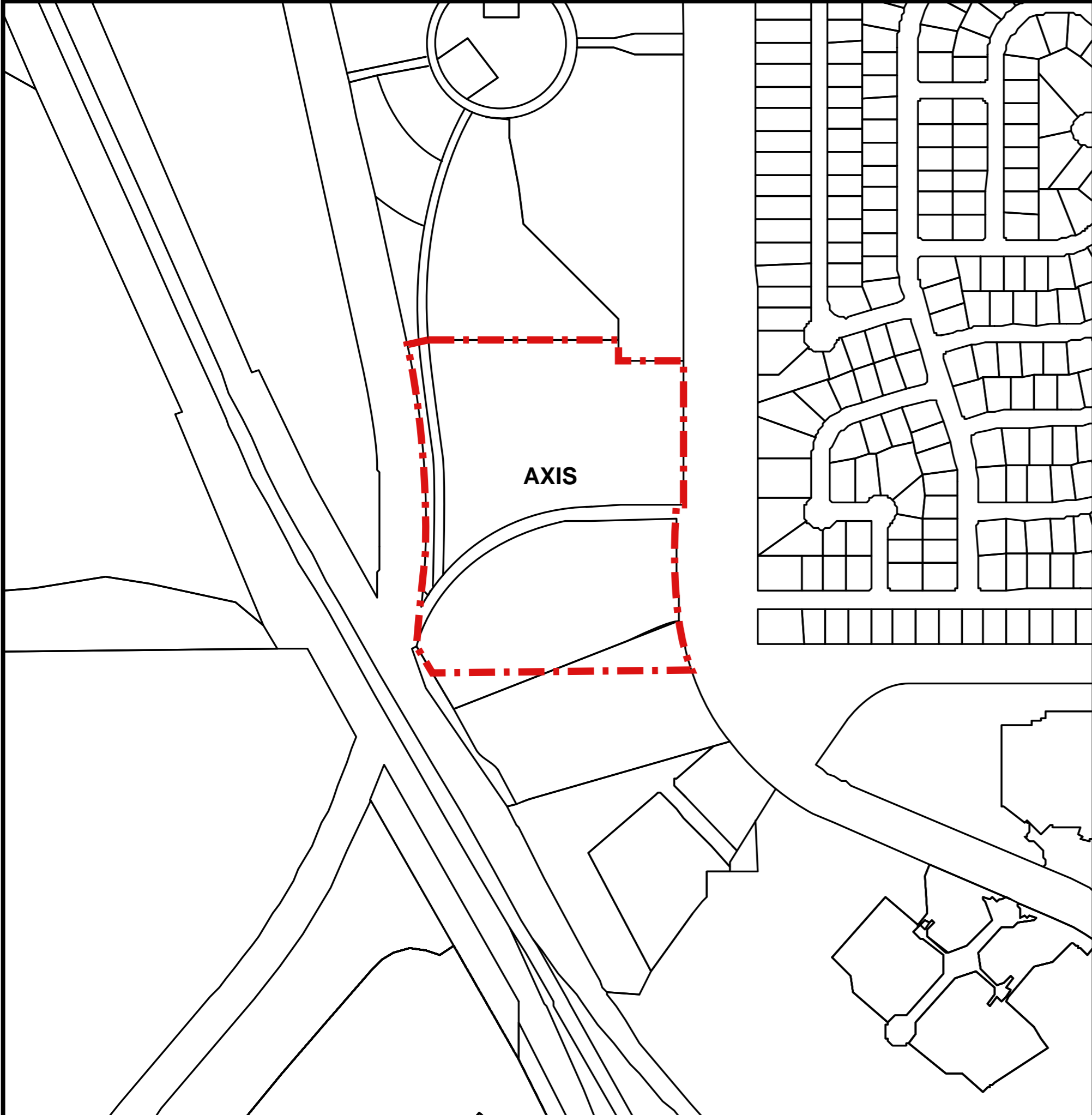
Fourth Amended Preliminary Development Plan - Northwest Business Park (Existing)



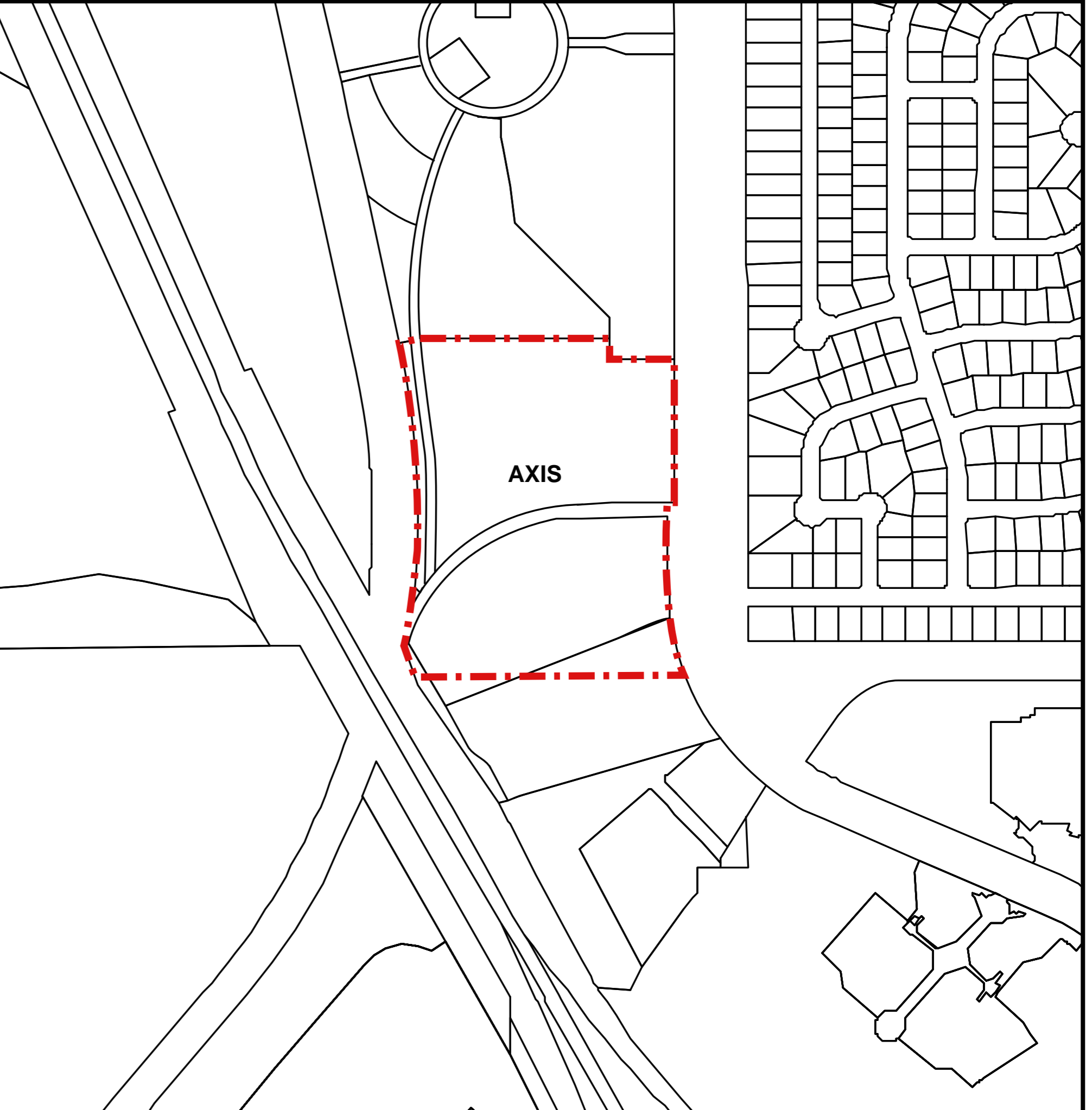
Fifth Amended Preliminary Development Plan - Northwest Business Park (Proposed)



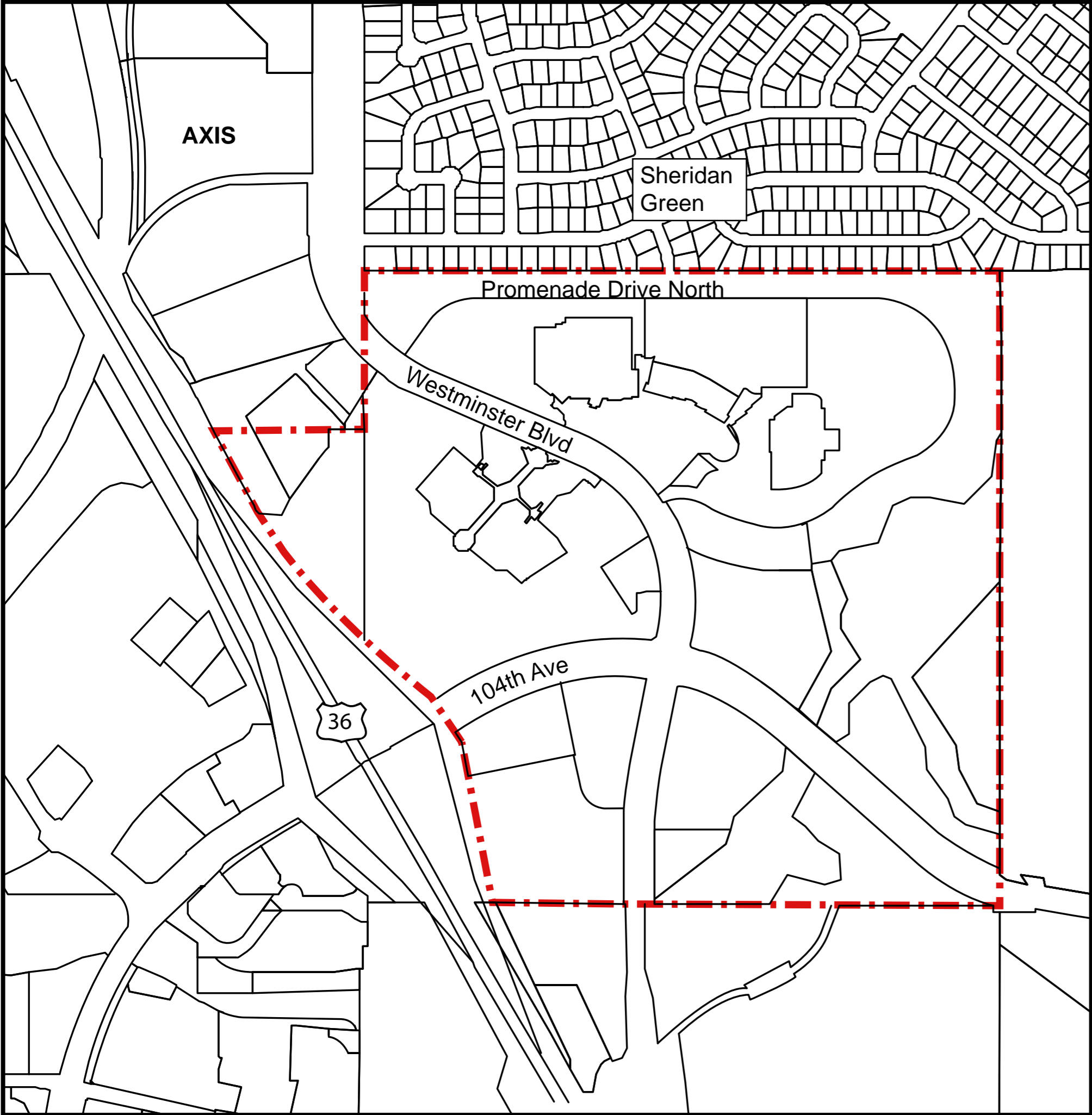
Preliminary Development Plan - Axis Development (Existing)



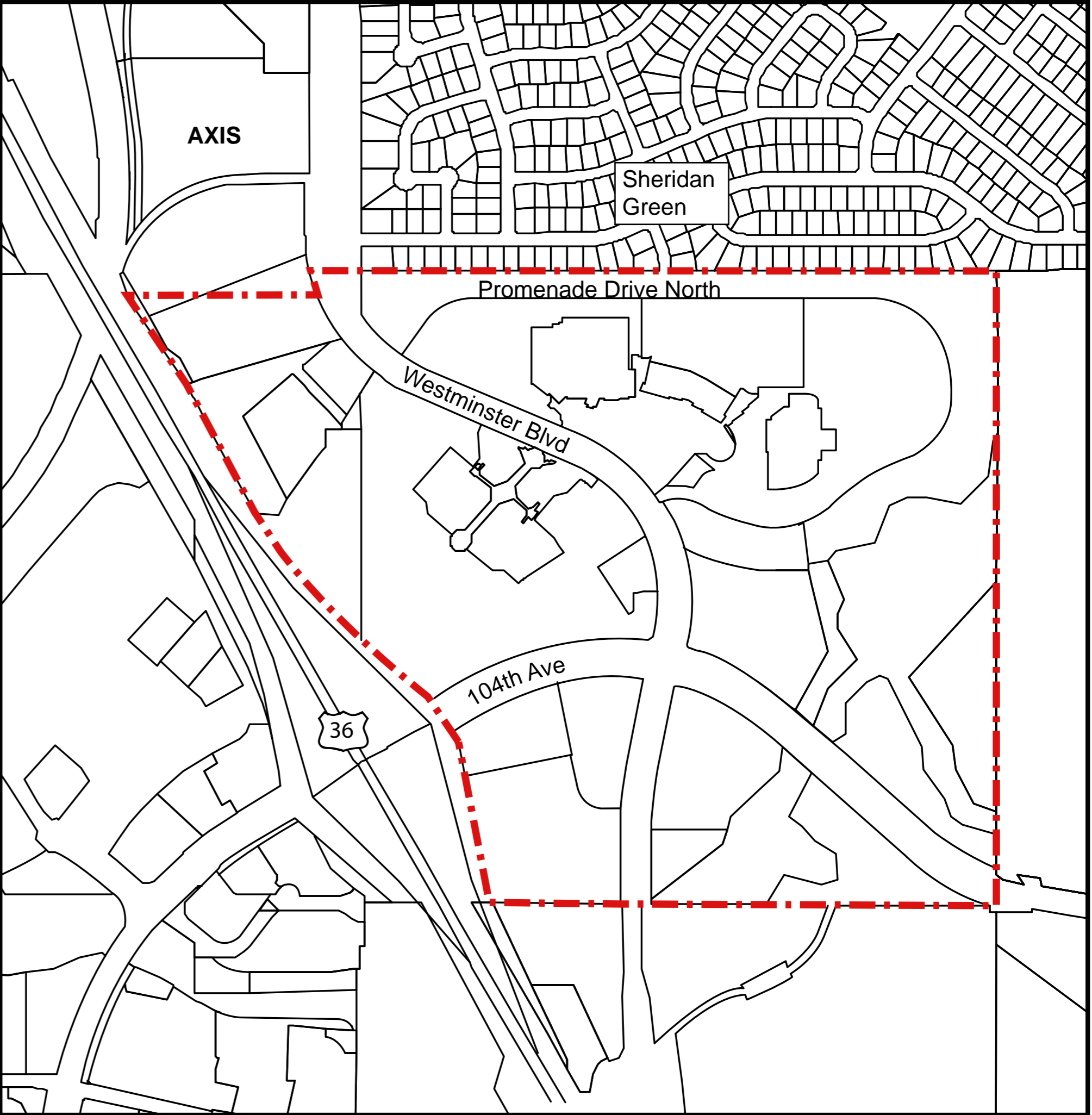
First Amended Preliminary Development Plan - Axis Development (Proposed)



Eleventh Amended Preliminary Development Plan - Northpoint Center (Existing)



Twelfth Amended Preliminary Development Plan - Northpoint Center (Proposed)





Agenda Item 10 C

Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Councillor's Bill No. 21 re Proposed Economic Development Agreement with Ball Corporation

Prepared By: Chris Gray, Economic Development Officer

Recommended City Council Action

Pass Councillor's Bill No. 21 on first reading authorizing the City Manager to execute and implement an Economic Development Agreement (EDA) with Ball Corporation.

Summary Statement

- Ball Corporation owns and operates packaging and aerospace businesses that operate throughout the world.
- Ball is the city's largest private primary employer with 934 employees that work in the company's packaging, aerospace and corporate organizations.
- Ball is currently developing a business services entity that will provide finance, human resources and information technology services internally to Ball's business operations worldwide. Ball intends to locate the new business services office at Circle Point in Westminster.
- The function will employ 80 individuals drawn from throughout Ball's system at average wages of \$90,625 annually.
- Assistance is based on the City's desire to attract and retain high paying primary jobs and to fill existing vacant office space.
- Should Ball decide to move this new service center out of Westminster within five years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.

Expenditure Required: Approximately \$35,000 (Rebates and up to \$4,000 in expenses)

Source of Funds: The EDA with Ball Corporation will be funded through revenue received from permit fees, construction use tax, and use tax on equipment, furniture and fixture purchases for the Ball Corporation project, as well as from funds allocated in the Economic Development General Fund account for business support.

Policy Issue

Should the City provide assistance to Ball Corporation based upon the City’s objectives to create and maintain a dynamic, diverse economy as well as filling existing vacant space?

Alternatives

Do Nothing: One alternative to offering the above business assistance package is to offer nothing to this company. Though the City may not lose the project if assistance is not provided, the result would be that the City’s values of attracting quality companies and filling existing vacant space would not be supported.

Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended assistance package represents 1.63% of the company’s total investment in tenant improvements, equipment, furniture and fixtures and is considered modest.

Provide More: A third alternative would be to provide a greater amount of assistance than recommended. Staff has recommended an assistance package that is 52% of the total 5-year projected revenue. There is room for additional funding. However, it is Staff's opinion that additional assistance is not needed.

Background

Ball Corporation is a provider of packaging, aerospace and other technology products to commercial and government customers. The company has been in business for 133 years. It has 14,500 employees in 90 locations worldwide. It has annual revenues and assets valued at \$8.47 billion and \$7.82 billion respectively. The company employs 3,000 workers in Colorado and 934 in Westminster.

Ball is planning to consolidate several of its worldwide internal corporate services like finance, human resources and information technology, into one entity. After an extensive location search nationally, internationally and in Colorado, Ball decided to house the new organization in 31,000 square feet of office space at Circle Point in Westminster. The company will lease space for five years with options to renew the lease in five-year increments.

Attracting the new Ball enterprise to Westminster will bring 80 jobs and an annual payroll of \$7,250,000 to the City. The average annual wage will be \$90,625. Plus, Ball will invest \$1.9 million in new furniture, fixtures and equipment immediately and another \$200,000 over the next five years.

It is estimated that the company will generate \$65,885 in direct new fee and tax revenues for the City over the next five years.

Based on the five-year projection of revenue and a desire to have Ball Corporation’s global services office in Westminster, Staff recommends the following assistance:

Proposed Assistance

**Approximate
Value**

Building Permit-Fee Rebate

\$ 7,449

60% of the building related fees (excluding water & sewer tap fees) will be rebated (\$12,415 x 60% = \$7,449)

Construction Use Tax Rebate

\$10,800

60% of the General Use Tax (excludes the City’s .25% Open Space Tax and .60% Public Safety Tax) on construction materials for this project will be rebated (\$1,200,000 construction valuation x 50% x 3% x 60% = \$10,800)

Equipment, Furniture and Fixtures Use Tax Rebate \$12,600
For the period 3 months prior and the 12 months after Ball obtains the Certificate of Occupancy for the new Westminster facility, the City will rebate 60% of the General Use Tax (excludes the City's .25% Open Space Tax and .60% Public Safety Tax) collected on the furnishings, fixtures and equipment purchased to furnish the new facility (\$700,000 new equipment x 3% Use Tax x 60% = \$12,600)

Expedited Plan Review Fee \$ 4,000
Should an outside agency be needed for expedited service, the extra cost will be covered by the City

Total Proposed Assistance Package **\$34,849**

Conclusion

This assistance package is based upon the City's goal of a "Dynamic, Diverse Economy" and will help create goodwill with Ball Corporation. As a primary employer, Ball Corporation will help strengthen the City's basic employment base.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments

- Ordinance
- Exhibit A – Agreement
- Location Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **21**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT
WITH BALL CORPORATION**

WHEREAS, the successful attraction and retention of expanding primary businesses in the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for businesses to expand or relocate in the City; and

WHEREAS, Ball Corporation plans to open a new 31,000 square-foot global services office at 11080 Circle Point Road in Westminster; and

WHEREAS, a proposed Economic Development Agreement between the City and Ball Corporation is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with Ball Corporation in substantially the same form as the one attached as Exhibit "A" and, upon execution of the Agreement, to fund and implement said Agreement.

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

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 11th day of August, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of August, 2014.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Exhibit "A"
ECONOMIC DEVELOPMENT AGREEMENT
FOR
BALL CORPORATION

THIS ECONOMIC DEVELOPMENT AGREEMENT is made and entered into this ___ day of _____, 2014, between the CITY OF WESTMINSTER (the "City") and BALL CORPORATION, an Indiana Corporation (the "Company").

WHEREAS, the City wishes to provide assistance to aid in the expansion of the Company to the City; and

WHEREAS, the Company plans to lease and occupy 31,000 square feet of office space located in the building at 11080 Circle Point Road (the "new facility") for the purpose of setting up a new global services office, thus providing primary job growth within the City; and

WHEREAS, City Council finds the execution of this Economic Development Agreement will provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below, the City and the Company agree to the following:

1. Building Permit Fee Rebates. The City shall rebate to the Company 60% of the building permit fees that are otherwise required under W.M.C. Section 11-10-3 (E) for the remodeling and improvements in the new facility. This rebate excludes water and sewer tap fees. The permit fee rebate will be approximately \$7,449.

2. Use Tax Rebate-Construction. The City shall rebate to the Company 60% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on construction materials collected from the remodeling and improvements in the new facility that are otherwise required under W.M.C. Sections 4-2-9 and 4-2-3. The use tax rebate will be approximately \$10,800.

3. Sales and Use Tax Rebate – Furniture and Fixtures. For the period of 3 months prior and 60 months after the Company obtains a Certificate of Occupancy or passes a final inspection for the new facility, the City will rebate 60% of the Westminster General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on equipment and furnishings purchased by the Company for the new facility. The rebate will be approximately \$12,600.

- a. The rebate shall include use tax payments paid directly to the City by the Company, and/or sales tax collected from the Company and remitted to the City by City licensed businesses.
- b. Rebates will be based on the documentation prescribed by the City and provided by the Company which illustrates purchases or delivery of any such furnishings, fixtures, or equipment that occurred within the City of Westminster for the 11080 Circle Point facility and that taxes were paid to and collected by the City.

4. Expedited Plan Review Fee. Should an outside agency be retained for expedited plan review service related to the Company's building permit application, the extra cost will be paid by the City Economic Development Office up to a maximum of \$4,000.

5. Payment of Rebates – The Company will file returns and pay City sales and use taxes due no less frequently than on a calendar quarter. Rebates shall be calculated for each calendar quarter based upon revenue actually collected and received by the City in connection with the opening and operation of the new facility.

- a. If the total amount of a quarterly rebate due to the Company is at least \$100, the rebate will be paid within thirty (30) days following the end of the calendar quarter.
- b. If the total amount of a quarterly rebate due to the Company is less than \$100, such rebate will be added to the next quarterly rebate due until the total amount to be rebated is at

least \$100. The accumulated amount of such rebates will then be paid within thirty (30) days following the end of the most recent calendar quarter reported.

- c. Payments shall commence for the calendar quarter during which final occupancy approval is granted.
- d. No payment shall be made until the Company has obtained a City of Westminster business license for the new facility.
- e. All payments by the City shall be made electronically to the Company's designated financial institution or other account.

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

7. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if the Company has not secured additional space and moved into the new facility by March 1, 2015 or should the Company not comply with the City regulations or code.

8. Business Termination. In the event the new facility ceases to conduct business operations within the City at any time prior to October 31, 2019, then the Company shall pay to the City the total amount of fees and taxes that were paid by or for the Company for the new facility to the City and were subsequently rebated by the City to the Company pursuant to this Agreement within sixty (60) days of business termination.

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

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

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

BALL CORPORATION

CITY OF WESTMINSTER

J. Brent McFall
City Manager

ATTEST:

ATTEST:

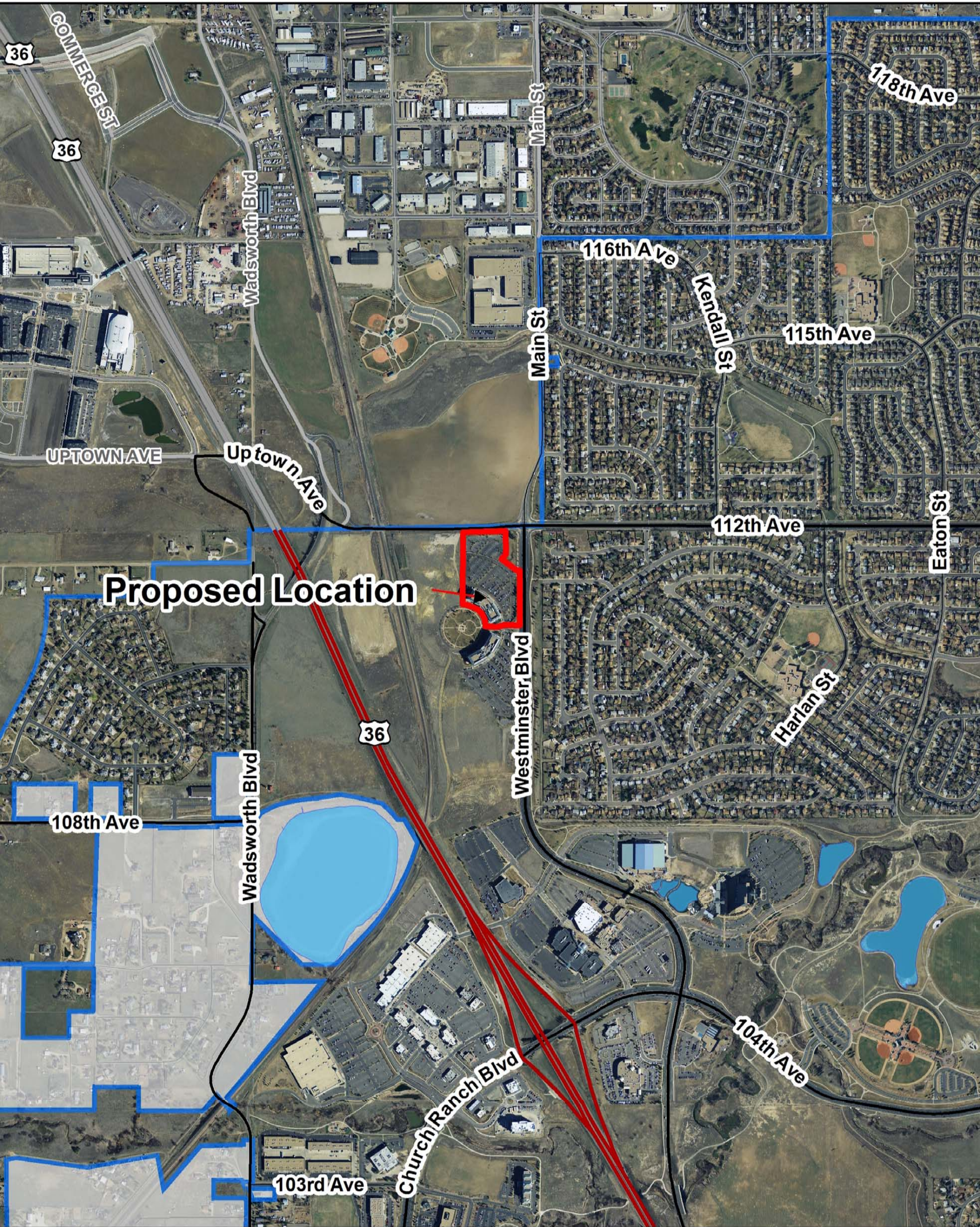
Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.

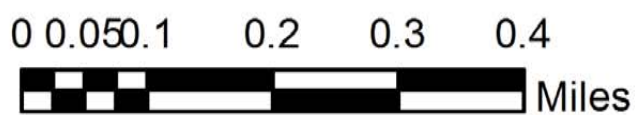
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City of Westminister





Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Councillor's Bill No. 22 re 2014 Community Development Block Grant (CDBG) Fund Appropriation

Prepared By: Heather Ruddy, Community Development Program Planner

Recommended City Council Action

Pass Councillor's Bill No. 22 on first reading appropriating funds received from the United States Department of Housing and Urban Development, Community Development Block Grant program, in the amount of \$614,010.

Summary Statement

- City Council action is requested to pass the attached Councilor's Bill on first reading appropriating the City's 2014 Community Development Block Grant (CDBG) funds in the amount of \$614,010, awarded by the U.S. Department of Housing and Urban Development (HUD).
- The 2014 CDBG allocation was designated to fund the 2014 CDBG projects, pursuant to City Council approval on December 9, 2013. Project funding includes \$75,000 towards the Emergency and Essential Home Repair Program, \$150,000 towards the Rodeo Market Park Phase II Community Garden, \$25,000 towards the Bradburn Boulevard Stump Removal and Tree Replacement Program, \$206,208 towards the Bradburn Boulevard Decorative Lighting Installation project, \$35,000 towards the Westminster Grange/Rodeo Market Facility Improvement Strategy-Phase II project, and \$122,802 towards administration.
- The amount awarded to the City represents a three percent increase over the City's 2013 award of \$591,925.

Expenditure Required: \$ 614,010

Source of Funds: 2014 Community Development Block Grant Funds

Policy Issue

Should the 2014 CDBG funds in the amount of \$614,010 be appropriated to support 2014 CDBG eligible projects?

Alternative

Do not appropriate the 2014 CDBG funds in the amount of \$614,010. This alternative is not recommended because CDBG funds assist in funding much needed improvements in South Westminster.

Background Information

The 2014 CDBG budget and projects were developed from input provided by Westminster residents and City staff. Public notices and community meetings were used to solicit community input on the development of the 2014 CDBG Action Plan. CDBG funds are used for community development projects that primarily benefit the City's low- to moderate-income populations.

2014 CDBG Program Administration \$122,802

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

Emergency and Essential Home Repair Program \$75,000

The Emergency and Essential Home Repair Program (previously known as the Minor Home Repair Program) will provide up to \$5,000 per household in eligible essential and emergency home repairs free of charge to income qualified households located within Westminster.

Rodeo Market Park Phase II Community Garden \$150,000

This project will continue improvements to the area north of the Rodeo Market Community Arts Center located on 73rd Avenue, west of Osceola Street with land acquisition and improvements for the development of a community garden.

Bradburn Boulevard Stump Removal and Tree Replacement Program \$25,000

Over the past several years, the tree-lined streets of Bradburn Boulevard and a portion of Newton Street has realized a decimation of many of the trees growing along the public right-of-way. Disease, weather, and the age of the trees have all been contributing factors to this decimation. Many of the dead and dying trees have been cut down by homeowners who have left large and unsightly tree stumps in the right-of-way. This project will fund a stump removal and tree replacement program to enhance the appearance of the neighborhood.

Bradburn Boulevard Decorative Street Lighting Installation \$206,208

This project will improve safety and accessibility along Bradburn Boulevard through the installation of decorative street lighting in the general three block area of Bradburn Boulevard from 73rd Avenue to 76th Avenue depending on cost. The street light design would match that used for street lights along Lowell Boulevard and 73rd Avenue.

Westminster Grange/Rodeo Market Facility Improvement Strategy- Phase II

\$35,000

The City continues to proceed with the preparation of plans evaluating a possible merging of the Westminster Grange Hall (3935 73rd Avenue) and the Rodeo Market Community Arts Center (3915 73rd Avenue) into an arts/cultural based community center that would enhance accessibility and activity programming for the neighborhood. This project will produce a market study/business development plan that will serve as a basis for identifying funding needs and sources.

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Block Grant-CDBG	7600.40610.0025	\$0	<u>\$614,010</u>	\$614,010
Total Change to Revenues			<u>\$614,010</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
CDBG Block Grant	80576030722.80400.8888	\$618,467	<u>\$614,010</u>	\$1,232,477
Total Change to Expenses			<u>\$614,010</u>	

The appropriation of the 2014 Community Development Block Grant funds meets the City Strategic Plan goal of Vibrant and Inclusive Neighborhoods.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Councillor’s Bill

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **22**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE INCREASING THE 2014 BUDGET OF THE COMMUNITY
DEVELOPMENT BLOCK GRANT (CDBG) FUND AND AUTHORIZING A SUPPLEMENTAL
APPROPRIATION FROM THE 2014 ESTIMATED REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2014 appropriation for the CDBG Fund, initially appropriated by Ordinance No. 3655, is hereby increased by \$614,010. This appropriation is the amount approved by the U.S. Department of Housing and Urban Development (HUD) for the City for 2014.

Section 2. The \$614,010 increase in the CDBG Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10D, dated August 11, 2014 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

CDBG Fund	<u>\$614,010</u>
Total	<u>\$614,010</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 11th day of August, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of August, 2014.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Resolution No. 17 re Residential Competition Service Commitment Awards

Prepared By: Grant Penland, Principal Planner

Recommended City Council Action

Adopt Resolution No.17 awarding 1.5 additional Category B-4 (Traditional Mixed Use Neighborhood Development) Service Commitments to AXIS.

Summary Statement

- In 2012, City Council awarded 225 Service Commitments (SC) to the AXIS project in Traditional Mixed Use Neighborhood Development (B-4) Category.
- Through the development review process, it was determined that the AXIS project is able to successfully develop three more residential units than originally anticipated on the site.
- The attached resolution will award an additional 1.5 SCs for new residential development (TMUND), bringing the total SCs awarded for all projects in 2014 to 626.5. The resolution relates to the City's Growth Management Program and are based criteria set forth in guidelines adopted by Resolution of City Council.
- The attached resolution is contingent upon ultimate City approval of any necessary documents and does not commit the City to approve any document or project as a result of these awards.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City award an additional 1.5 Service Commitments to the AXIS project as outlined below?

Alternative

Council has the option of not awarding additional Service Commitments to the AXIS project. In this event, the property owners/developer can make a request during next year’s residential competition. The most significant outcome of this alternative will be that the project would be delayed until the next competition cycle, which can result in discontinued interest in the site by the developer.

Background Information

Council authorized the 2014 competition for all new residential and senior housing projects in October 2013. As indicated in the table below, the following projects were previously awarded SCs for the year 2014.

Project Type	Project Name	Developer	Acres	Gross DU/Acre	# of SCs Awarded	Units Based on Award
SFD B-1	Amberwood Estates	TBD	4.54	2.86	13	13
MULTI B-3	Park 12 Hundred	Crescent Communities	26.3	12.17	160	320
SFD B-1	Trails at Tanglewood Creek	Century Communities	86	2.44	210	210
TMUND	Westminster Promenade	TBD	31.86	22	175	350
TMUND	Crown Point at Standley Lake	TBD	13.01	4.92	64	64

TOTALS **148.7** **622** **957**

The applicant, Urban Pacific Group of Companies, has requested Council’s consideration to award an additional 1.5 SCs for the AXIS project. If awarded, the total number of SCs for the AXIS project will increase to 226.5, for the 453 multi-family dwelling units proposed. The Comprehensive Plan designates the property R-36, or a maximum of 36 dwelling units per acre. The proposed density for the project is 28.85 dwelling units per acre. Staff supports the award of an additional 1.5 SCs, since the proposal will conform to the Comprehensive Plan.

The Service Commitment competition meets Council's Strategic Plan Goals of "Vibrant and Inclusive Neighborhoods" and "Beautiful, Desirable, Environmentally Responsible City," by balancing growth with the City's ability to provide water and sewer services, preserving the quality of life for the existing Westminster residents, and providing a balance of housing types.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

- Resolution (Category B-4)

RESOLUTION

RESOLUTION NO. **17**

INTRODUCED BY COUNCILLORS

SERIES OF 2014

**A RESOLUTION CONCERNING
CATEGORY B-4 (TRADITIONAL MIXED USE NEIGHBORHOOD DEVELOPMENT)
COMPETITION AND SERVICE COMMITMENT AWARDS**

WHEREAS, the City of Westminster has adopted, by Ordinance No. 3561, a Growth Management Program for the period 2011 through 2020; and

WHEREAS, the goals of the Growth Management Program include balancing growth with the City’s ability to provide water and sewer services, preserving the quality of life for the existing Westminster residents, and providing a balance of housing types; and

WHEREAS, within the Growth Management Program there is a provision that Service Commitments for residential projects shall be awarded in Category B (new residential) on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked within each standard by the degree to which it meets and exceeds the said criteria; and

WHEREAS, the City’s ability to absorb and serve new Traditional Mixed Use Neighborhood Development (Category B-4) is limited, and the City of Westminster has previously adopted Resolution No. 30, Series of 2006, specifying the various standards for new Traditional Mixed Use Neighborhood Development projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City of Westminster has previously awarded 225 Service Commitments for the AXIS project in 2012; and

WHEREAS, the City Council of the City of Westminster desires to award an additional 1.5 Service Commitments for the year 2014 for use in servicing new residential developments in Category B-4, based on the criteria set forth in guidelines adopted by Resolution of City Council.

NOW, THEREFORE, be it resolved by the City Council of the City of Westminster, that:

- 1. Additional Category B-4 Service Commitment awards are hereby made to the specific projects listed below as follows:

Service Commitment Category	Project Name (Location)	Award
Traditional Mixed Use Neighborhood Development, Category B-4	AXIS (108 th and Westminster Blvd.)	1.5
	TOTAL	1.5

- 2. These Service Commitment awards to the projects listed above are conditional and subject to the following:
 - a. If applicable, the applicant must successfully amend the Comprehensive Plan.
 - b. The applicant must complete and submit an amended Preliminary Development Plan for the required development review processes.

- c. The applicant must complete and submit proposed development plans in the form of an amendment to the Official Development Plan to the City for the required development review processes. All minimum requirements and all incentive items indicated by the applicant as specified within the competition shall be included as part of the proposed development and listed on the Official Development Plan for the project.
 - d. Service Commitment awards for the projects listed above may only be used within the projects specified above.
 - e. These Service Commitment awards shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.
 - f. Each Service Commitment award is conditional upon City approval of the project listed above and does not guarantee City approval of any project, proposed density or proposed number of units.
 - g. The City of Westminster shall not be required to approve any Annexation, Establishment of Zoning, Preliminary Development Plan or amendment, Official Development Plan or amendment necessary for development of property involved in any Category B-4 award nor shall any other binding effect be interpreted or construed to occur in the City as a part of the Category B-4 award.
 - h. Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.
 - i. The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. During the competition process the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that significant changes to any such plans will be required once the City's development review process begins for any project.
 - j. Awards shown for the year 2014 are effective as of the date of this Resolution (August 11, 2014) and a project must demonstrate continued progress or the service commitment award will expire unless extended by City Council.
 - k. In order to demonstrate continued progress on a project, the following deadlines and expiration provisions apply:
 - 1) The project must proceed with the development review process and receive approval for a Comprehensive Plan amendment, if required, by December 31, 2015.
 - 2) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2015, or the entire Service Commitment award for the project shall expire.
 - 3) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (no later than December 31, 2018), or the entire Service Commitment award for the project shall expire.
 - 4) Following the issuance of the first building permit for the project, all remaining Service Commitments for a project shall expire if no new building permit is issued for vertical improvements for the project during any consecutive 12-month period and the project is not deemed an "Active" development.
 - l. If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the Service Commitment supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.
 - m. This award resolution shall supersede all previous Service Commitment award resolutions for the specified project locations.
3. The Category B Service Commitment awards shall be reviewed and updated each year. If it is shown that additional or fewer Service Commitments are needed in the year specified, the City reserves the right to make the necessary modifications.

PASSED AND ADOPTED this 11th day of August, 2014.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: _____
City Attorney's Office



Agenda Memorandum

City Council Meeting
August 11, 2014



SUBJECT: Resolution No. 18 re FPPA Statewide Defined Benefit Plan (SWDB) Member Contribution Rate Election

Prepared By: Debbie Mitchell, General Services Director
Doug Hall, Fire Chief
Tammy Hitchens, Finance Director

Recommended City Council Action

Adopt Resolution No. 18 to vote in favor of increasing the employee contribution rate for the Statewide Defined Benefit Plan, by an additional 4% over the next eight years.

Summary Statement

- During the month of June 2014, active members in FPPA's Statewide Defined Benefit Plan (SWDB) voted on two proposals with respect to increasing the employee contribution rate.
- FPPA presented the following proposal: To increase the employee contribution rate of ½% per year implemented over 8 years, for a total increase of 4% after 8 years.
- FPPA presented a contingent proposal in the event that the primary proposal did not pass: To increase the employee contribution rate by ½% per year over 4 years for a total increase of 2% after 4 years.
- The FPPA board created a task force of the membership to research and recommend to the board whether an election should be held on an increase in the employee contribution rate. Therefore, the proposals did not include the employer contribution rate for SWDB Plan.
- In order for the employee contribution rate to increase, the proposal must be approved by at least 65% of the voting active members in the SWDB Plan and a majority (50%+1) of the voting employers who have active members in the plan.
- In June 2014, the active members in the SWDB Plan voted in favor of the primary proposal to increase the employee contribution rate to the SWDB Plan by 4%, phased in at ½% per year over 8 years.
- Employers vote by submitting to FPPA a resolution from City Council indicating whether or not the Employer supports the proposed change to the employee contribution rate.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

As a result of the active members in the Statewide Defined Benefit Plan (SWDB) voting in favor of increasing the employee contribution rate by 4%, phased in at ½% per year over 8 years, should the City vote in favor of this employee contribution rate increase?

Alternative

Council has the option of voting against increasing the employee contribution rate; however, the Employer election will pass if a majority of those Employers voting in the Employer election approve the proposal.

Background Information

The Statewide Defined Benefit Plan administered by the Fire & Police Pension Association (FPPA) was created by the Colorado legislature in 1980. The Pension Reform Commission found that various local plans were poorly funded and created FPPA to take over the investment management of these local plans. The contribution rate was set at 8% for employees and 8% for employers. These contribution rates remain unchanged to this date.

In 2003, legislation was enacted to allow departments that opted to leave the SWDB plan to re-enter the SWDB Plan. In 2004, firefighters at the City of Westminster voted to re-enter FPPA. As a result, firefighters employed by the City at the time of re-entry have an additional contribution rate set at 4%, of which 2% the employee contributes and 2% the City contributes for a total contribution rate of 10%. Firefighters hired after 2004 at the City of Westminster have an 8% employee contribution rate and the City contributes 8%.

In 2010, the Colorado legislature passed legislation to allow a member election to increase the member contribution rate in the SWDB Plan. The FPPA board of directors believed this change could protect the SWDB plan from potential future benefit reductions in the event of another financial crisis. This legislation did not provide any authority with respect to the employer contribution rate.

In 2011, FPPA established a task force to review contribution rates and report back to the board with a recommendation. As part of the task forces' work they reviewed the history of the SWDB Plan's funding status and actuarial history of the SWDB Plan.

Historically, the SWDB Plan had not had an unfunded liability until most recently. In fact, over the years, the SWDB Plan generated a surplus. The surplus provided protection in the event of an economic downturn. The financial meltdown in 2008 took away the surplus.

Year	Funded Ratio %
2013	97.9%
2012	96.4%
2011	102.9%
2010	100.0%
2009	101.0%
2008	119.4%

The SWDB went below 100% funding status in 2012 due to an actuarial study in which the nominal investment return assumption was reduced from 8.0% to 7.5%. The investment return assumption was reduced to reflect lowered expected investment returns due to the current low interest rate environment. In addition, the mortality assumptions were revised to reflect improvements in generational mortality; where younger members of the Plan are expected to live longer in retirement than current retirees. These assumption changes, plus some other minor changes, had an immediate downward impact of approximately 6% on the funded ratio of the SWDB Plan.

While the SWDB Plan and base benefits remain well funded, there is little excess to pay for benefit adjustment increases (commonly referred to as COLA's or cost-of-living-adjustments) for current and future retirees. There will need to be substantial recovery in the financial markets to provide future benefit adjustments without contribution increases. The base benefit provided in the SWDB Plan does not have any form of automatic adjustment for inflation. COLAs are important because inflation over time erodes the buying power of a pension without benefit adjustment increases.

In the event the SWDB Plan were to become actuarially unsound, the FPPA Board has the authority to:

- Eliminate any surplus held to pre-fund future discretionary benefit adjustments
- Reduce or eliminate plan amendments voted in by the membership
- Reduce or eliminate the Separate Retirement Accounts (SRA)

Increase the normal retirement age incrementally up to age 60 (Current normal retirement age is 55). FPPA does not anticipate needing additional contributions to maintain the actuarial soundness of the plan. However, additional contributions will provide additional security to the basic benefits provided, increase the likelihood of meaningful benefit adjustment increases (COLAs), and greatly reduce the likelihood of needing to engage in the safeguards mentioned above.

Based on the review, the Task Force presented the following primary proposal: To increase the employee contribution rate of ½% per year implemented over 8 years, for a total increase of 4% after 8 years beginning in January 2015.

In March and April, FPPA conducted several regional meetings to inform FPPA members of the proposed change to the contribution rates. After several FPPA member meetings, the FPPA Board agreed to present a contingent proposal.

The Task Force still recommended the primary 4% proposal and presented a contingent proposal in the event that the primary proposal did not pass: To increase the employee contribution rate of ½% per year implemented over 4 years for a total increase of 2%.

In order for the employee contribution rate to increase, the proposal must be approved by at least 65% of the voting active members in the SWDB Plan and a majority (50%+1) of the voting employers who have active members in the plan.

During the month of June, members in the SWDB voted on the two proposals. Of the members who voted, 68% approved to increase the employee contribution rate to the SWDB by 4%, phased in at ½% per year over 8 years. In particular, of those who voted under Westminster fire, 74% were in favor of the 4% increase, phased in at ½% per year over 8 years.

The increase in the employee contribution rate shall not be subject to negotiation for payment by the Employer, per statute C.R.S. 31-31-408 (1.5) (b).

Employers vote by submitting to FPPA a resolution from the city council indicating whether or not the employer supports the proposed change.

If the increase in the employee contribution rate passes, the implementation begins January 2015 and the contribution rate change will be fully implemented by 2022.

City Council was provided with information on the FPPA Statewide Defined Benefit Plan Member Contribution election at the August 4, 2014 Study Session.

FPPA's Statewide Defined Benefit Plan provides an employee retirement benefit that directly impacts the ability to meet City Council's goal of Excellence in City Services. The vote of the proposed member contribution rate election provides an opportunity to enhance employee opportunities.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Resolution

RESOLUTION

RESOLUTION NO. **18**

INTRODUCED BY COUNCILLORS

SERIES OF 2014

**A RESOLUTION CONCERNING
FPPA EMPLOYER ELECTION REGARDING MEMBER CONTRIBUTIONS TO THE
STATEWIDE DEFINED BENEFIT PLAN**

WHEREAS, Section 31-31-408(1.5), C.R.S., as amended, authorizes the Board of Directors of the Fire and Police Pension Association (“the FPPA Board”) to increase the member contribution rate for pension benefits for participating public safety officers with respect to the members of the Statewide Defined Benefit Plan (“the Plan”), as established pursuant to Section 31-31-402, C.R.S., upon the meeting of certain conditions; and

WHEREAS, pursuant to FPPA Resolution No. 2014-05, the FPPA Board has directed an election of the participating Employers in the plan be conducted with regard to an increase in the member contribution rate for the Plan by an additional 4% of base salary, to be implemented by an annual increase in the member contribution of ½% of base salary paid beginning in 2015. The member contribution rate shall be increased by an additional ½% of base salary paid in each of the following 7 years, through 2022, until the cumulative increase in the member contribution rate is 4% of base salary paid; and

WHEREAS, employees in the Employer’s fire department earn service credit towards retirement and are thereby members of the Plan administered by FPPA; and

WHEREAS, the City of Westminster is thereby eligible to vote in the Employer election concerning the membership contribution rate, being conducted at the direction of the FPPA Board.

NOW, THEREFORE, be it resolved by the City Council of the City of Westminster, that the City:

_____ Votes in FAVOR of increasing the member contribution rate for the Statewide Defined Benefit Plan, by an additional 4% of base salary paid.

_____ Votes AGAINST increasing the member contribution rate for the Statewide Defined Benefit Plan, by an additional 4% of base salary paid.

The City of Westminster’s clerk is directed to file an original or a certified copy of this resolution with the Fire and Police Pension Association.

PASSED AND ADOPTED this 11th day of August, 2014.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: _____
City Attorney’s Office