



CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
7. Citizen Communication (5 minutes or less)

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

8. Consent Agenda
 - A. Greenhouse Work Truck Purchase
 - B. Pressure Zone 4 System Improvements Design Contract
 - C. Jim Baker Reservoir Aeration System Replacement Project
 - D. Lowell Plaza Redevelopment re Assignment of Purchase Contracts from Everwood Development, LLC
 - E. Second Reading of Councillor's Bill No. 25 re Annual Updates to Title II, Title VIII and Title XI of the W.M.C.
 - F. Second Reading of Councillor's Bill No. 27 re Hyland Village Subdivision Performance Bond Cash Settlement
9. Appointments and Resignations
 - A. Country Club Highlands Metropolitan District Appointment of Directors
10. Public Hearings and Other New Business
 - A. Councillor's Bill No. 28 re Water Tap Fee Increase
 - B. Councillor's Bill No. 29 re Lease Agreement for the Kids Nite Out Program with ABC Entertainment, LLC
 - C. Councillor's Bill No. 30 re Economic Development Agreement with Gmart Westminster, LLC dba HMart
11. Old Business and Passage of Ordinances on Second Reading
 - A. TABLED Councillor's Bill No. 26 re Update to Title XI of the W.M.C. re Accessory Buildings
12. Miscellaneous Business and Executive Session
 - A. City Council
13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

WESTMINSTER HOUSING AUTHORITY MEETING (separate agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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



WESTMINSTER
Strategic Plan
2011-2016
Goals and Objectives

FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

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



STRONG, BALANCED LOCAL ECONOMY

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



Use

SAFE AND SECURE COMMUNITY

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



VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

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



BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

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



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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JULY 23, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor McNally led the Council, Staff and audience in the Pledge of Allegiance and in prayer for the people of Aurora who had suffered the tragic loss of 12 lives and the injury of 58 others in a July 20 shooting at an Aurora movie theatre.

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Mayor Pro Tem Winter, to approve the minutes of the regular meeting of July 9, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that the City had a physical presence in the City of Aurora following the horrific July 20 shooting. Canine Victim Advocates and Public Information Officers from the Police Department were in Aurora to assist. He had communicated with the Aurora City Manager to say that Westminster stood ready to help in any way possible. There was awareness that the incident could have happened in Westminster and that the City of Aurora would have acted in kind and allocated whatever resources were needed.

Following tonight's Council meeting, the Westminster Economic Development Authority Board of Directors would meet. After adjournment of that meeting, the Council would conduct a post-meeting in the Board Room to discuss the Foothills Animal Shelter Intergovernmental Agreement.

In conclusion, Mr. McFall reported that next Monday would be the fifth Monday of the month, and there would be no City Council study session or meeting.

CITY COUNCIL COMMENTS

Councillor Major congratulated staff on the great barbecue held on July 18 for people who volunteered their services in every sector of the City. Volunteer contributions of time, expertise, and labor saved the City more than \$1.2 million the past year. It was wonderful to invite the volunteers and their families to a barbecue and to let them know how much they were appreciated.

Mayor Pro Tem Winter invited everyone to participate in the Council's annual Community Service Project by donating non-perishable food, personal care/hygiene items and cleaning supplies through Thursday, July 26. The items collected would be donated to Have A Heart and distributed to needy families in Adams County School District 50. Donations could be dropped off at City recreation and library facilities, as well as City Hall. City Council would sort items at Have A Heart on Colorado Cares Day, July 28.

Mayor McNally thanked Parks, Recreation and Library personnel that decided not to cancel the "Movies in the Park" event on July 20. Those in attendance needed the camaraderie, the lightheartedness, and the opportunity to enjoy their families and friends after a difficult emotional day.

PRESENTATION OF EMPLOYEE SERVICE AWARDS

Council presented service awards to employees with 20, 25, 30, and 35 years of tenure with the City and thanked them and their families for the years and years of dedication to the organization. Councillor Kaiser presented certificates and pins to Tommy Berdahl and Debbie Sinicki for 20 years of service. Mayor McNally presented certificates, pins and stipends to Karen Layfield, Sharon McDowd, and Jim Wollack for 25-years of service. Councillor Lindsey presented Ron Lamb with a 30-year certificate and pin. Councillor Major presented a certificate and pin to Lonnie Coxsey for 35 years of service to the City.

CITIZEN COMMUNICATIONS

Michael Raber, 1662 Sinton Road in Evergreen, spoke on behalf of Cyclists Have Rights and asked Council to improve safety for cyclists, pedestrians, and motorist by funding the expansion of 100th Avenue between Alkire and Simms to provide four-foot shoulders on both sides of the roadway. The roadway was the route used by most commuter and recreational cyclists to travel between Golden, Arvada and Boulder. The City's traffic engineers had posted "Share the Road" signage along the corridor but had exhausted the improvements they could make within the existing funding allocated.

Larry Pace and Dennis Miller, 9261 Grove Street, described the depths of a neighborhood problem they were experiencing with a hoarder. Smells of trash, animal feces, and rotting food filled the air outside the woman's home, but she continued to scavenge through neighbors' trash, carrying discarded mattresses and junk back to her home. Residents were unable to sit outside on their patios and decks or let their children play outside because of the smell and the number of flies. Code Enforcement had exhausted all avenues available to them in the Westminster Municipal Code. Messrs. Pace and Miller asked Council to strengthen the Code so that Code Enforcement had the tools to encourage their neighbor to cooperate and follow the rules for her safety and the safety of those residing near her.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the Financial Report for June as presented; accept the Second Quarter 2012 Insurance Claims Report; based on the recommendation of the City Manager, find that the public interest would best be served by authorizing a sole source purchase of a Lachat Flow Injection Analyzer from Lachat Instruments – Hach Co. in the amount of \$65,728; award the bid for one Police Department Negotiation Command Post Trailer to Lynch Diversified Vehicles, Inc., in the amount of \$82,455; authorize the City Manager to execute a contract with the low bidder, Colorado Moisture Control, Inc., in the amount of \$429,834 for roof replacement at the Semper Water Treatment Administration Building, authorize a 10% contingency of \$42,983 bringing the total project budget to \$472,817, and authorize the transfer of \$65,317 from project savings in the completed Federal Boulevard Water Line Capital Improvement Account to the Semper Water Treatment Facility Administration Building Roof Replacement Capital Improvement Account; authorize the City Manager to enter into a contract with the low bidder, Brannan Construction Company, for replacing water and sewer lines in 78th Avenue and Stuart Place in the amount of \$977,467 with a 7.5% construction contingency in the amount of \$73,400 and a total construction budget of \$1,050,867, and approve a contract amendment in the amount of \$106,808 for construction management services with J&T Consulting, Inc.; ratify the Fire Department pursuing the 2012 Assistance to Firefighter Grant in the amount of \$180,754 in partnership with the Police Department for the purpose of replacing, enhancing and modernizing Fire personnel portable and mobile radios; authorize the Department of Community Development to pursue two grants from the Adams County Open Space grant program during the 2012 fall cycle for the acquisition of the Bushnell property located at 12620 Zuni Street for open space and for the development of a portion of the Little Dry Creek Park Project located between Federal and Lowell Boulevards; final passage on second reading of Councillor's Bill No. 18 amending the Comprehensive Land Use Plan for the Little Dry Creek property designating the property as City-Owned Open Space; final passage on second reading of Councillor's Bill No. 19 annexing the Little Dry Creek property into the City; final passage on second reading of Councillor's Bill No. 20 establishing zoning of Open (O-1) for the Little Dry Creek property; final passage on second reading of Councillor's Bill No. 23 appropriating

FY2011 carryover funds into the FY2012 budgets of the General, General Fund Stabilization Reserve, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Fleet, General Capital Outlay Replacement, POST and Conservation Trust Funds; and final passage on second reading of Councillor's Bill No. 24 amending various sections of Titles I through IV of the Westminster Municipal Code to remove obsolete and incorrect language or provisions.

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

RESOLUTION NO. 19 TO FILL VACANCIES ON BOARDS AND COMMISSIONS

It was moved by Councillor Lindsey and seconded by Councillor Atchison to adopt Resolution No. 19 making appointments to fill vacancies on the Environmental Advisory Board and the Planning Commission. On roll call vote, the motion passed unanimously.

PUBLIC MEETING ON THE 2013 AND 2014 CITY BUDGET

At 7:36 p.m., the Mayor opened a public meeting on the 2013-2014 City Budget. Mr. McFall reported that Staff was in the process of preparing the referenced budget for City Council's consideration. An important part of the process was to obtain citizen input. This was the second of three opportunities for the public to comment and suggest projects or programs that needed to be considered for funding. The final opportunity would be at the public hearing on September 10.

Mayor McNally invited the public to speak. Michael Raber reiterated his earlier request under Citizen Communication for funding to allow shoulder improvements on 100th Avenue between Alkire and Simms. No others wished to speak and the Mayor closed the comment period at 7:38 p.m.

RESOLUTION NO. 20 TO REPLACE 87TH AVENUE & WADSWORTH LIFT STATION

Upon a motion by Councillor Briggs, seconded by Council Major, the Council voted unanimously on roll call vote to adopt Resolution No. 20 authorizing City Staff to proceed with the acquisition of fee interests and easements necessary for the 87th Avenue and Wadsworth Boulevard Lift Station Replacement Project, including the use of eminent domain, if necessary, and authorizing all reasonable costs associated with acquiring the properties.

RESOLUTION NO. 21 REFUNDING THE 2009 BONDS ISSUED FOR THE MANDALAY GARDENS URA

Mayor Pro Tem Winter moved, seconded by Councillor Major, to adopt Resolution No. 21 approving documents related to the Westminster Economic Development Authority (WEDA) Series 2012 Revenue Refunding Bonds to refund the WEDA Series 2009 Bonds, to which the City is a party, including the Replenishment Resolution and the City Cooperation Agreement with WEDA. On roll call vote, the motion passed unanimously.

RESOLUTION NO. 22 AWARDING RESIDENTIAL SERVICE COMMITMENTS

Councillor Major moved to adopt Resolution No. 22 awarding Category B-4 Service Commitments to the Bradburn West and the Axis Traditional Mixed Use Neighborhood Development project. Mayor Pro Tem Winter seconded the motion and it passed by unanimous vote on roll call.

COUNCILLOR’S BILL NO. 25 MAKING ANNUAL UPDATES TO TITLES II, VIII, AND XI, W.M.C.

It was moved by Councillor Atchison and seconded by Councillor Major to pass Councillor’s Bill No. 25 on first reading making revisions to sections of Title II, Title VIII and Title XI of the Westminster Municipal Code. At roll call, the motion carried unanimously.

COUNCILLOR’S BILL NO. 26 UPDATING TITLE XI REGARDING ACCESSORY BUILDINGS TABLED

It was moved by Councillor Kaiser and seconded by Councillor Lindsey to table consideration of Councillor’s Bill No. 26 until the Council had another opportunity to review its contents in study session. At roll call, the motion passed by a 4:3 margin with Councillors Atchison, Major and Mayor McNally casting no votes.

COUNCILLOR’S BILL NO. 27 APPROPRIATING HYLAND VILLAGE PERFORMANCE BOND

Councillor Briggs moved, seconded by Councillor Major, to pass Councillor’s Bill No. 27 on first reading to accomplish the supplemental appropriation of the \$1,957,000 cash settlement from the bonding company for McStain Enterprises, Inc. pertaining to uncompleted public and private improvements at Hyland Village Subdivision. At roll call, the motion passed unanimously.

98TH AVENUE DESIGN AND CONSTRUCTION SERVICES CONTRACT

Councillor Kaiser moved to make a finding that the public interest would best be served by authorizing the City Manager to enter into a sole source contract with NV5, Inc. in the amount of \$73,277 for engineering services for 98th Avenue between Ames Street and Westminster Boulevard contingent upon the passage of Councillor’s Bill No. 27 on second reading. Councillor Major seconded the motion and it passed unanimously.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Atchison and seconded by Councillor Kaiser to adjourn. The motion carried and the meeting adjourned at 7:43 p.m.

ATTEST: _____, Mayor

_____, City Clerk



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Greenhouse Work Truck Purchase

Prepared By: Jeffery H. Bowman, Fleet Manager

Recommended City Council Action

Award the bid for one Parks, Recreation and Libraries greenhouse work truck to Transwest Buick GMC Isuzu, in the amount of \$55,187.

Summary Statement

- City Council action is requested to award the bid for one Parks, Recreation and Libraries greenhouse work truck based on the City of Westminster's solicitation to four Denver area dealerships.
- Of the four dealerships that were sent the request for bids, two submissions were received with Transwest Buick GMC Isuzu submitting the lowest price. Their bid meets the specifications in the City's bid request.
- City Council previously approved \$55,000 in the 2012 General Capital Outlay Replacement Fund (GCORF) budget to purchase this vehicle.

Expenditure Required: \$55,187

Source of Funds:	\$55,000	General Capital Outlay Replacement Fund
	\$ 187	Parks, Recreation and Libraries Operating Account

Policy Issue

Should the City proceed with the purchase of one Parks, Recreation and Libraries greenhouse work truck?

Alternatives

1. Reject the City’s recent solicitation to four area dealerships and instruct City Staff to re-bid the truck to additional state dealerships. This is not recommended because the recent City bid reflects a competitive bid process that provided four dealerships the opportunity to compete fairly to provide the work truck.
2. Do not purchase the proposed replacement truck in 2012. This is not recommended because the vehicle has a maintenance history that makes it impractical to keep it in regular service based on Fleet Maintenance recommendations.

Background Information

As part of the 2012 Budget, City Council funded the purchase of one replacement Parks, Recreation and Libraries greenhouse work truck. The approved replacement vehicle identified in the table below has reached a point where it is no longer economically reasonable to maintain in service. Please note, the life-to-date vehicle maintenance costs in the table do not include accident repairs or fuel cost.

General Capital Outlay Replacement Fund					
CITY DEPARTMENT	REPLACEMENT VEHICLE	LIFE-TO-DATE VEHICLE MAINTENANCE COST	NEW VEHICLE MAKE/MODEL	NEW VEHICLE PRICE	BIDDER AWARDED
PR&L	Unit 7026 - 1995 Chevrolet Box Van	\$12,204	Isuzu 2012 with Box	\$55,187	Transwest Buick GMC Isuzu

The current Chevrolet box van has a modified second row seat in the cargo area. The new Isuzu Crew Cab, with a 12' Cargo Body, will provide safe seating for up to six employees. The duties for the replacement truck will include being used as a year-round vehicle with off-season work at the Brauch Property. By adding LED lights and a water tank for perennial plants, the replacement truck can be used to provide water for trees in traffic islands during winter months.

No similar vehicles are available on the Colorado State bid, resulting in the City of Westminster soliciting the replacement from four Colorado dealers. Two dealers offered bids. Transwest Buick GMC Isuzu was the lowest bid, \$23 less than the next dealership. A summary of the bid results is as follows:

Vendor Name	Bruckner’s Trucks	Rush Trucks	Transwest Trucks	Weld County Garage
Base Price	No Bid	\$50,584	\$50,561	No Bid
Options Price		\$4626	\$4626	
Model & Year		Isuzu HB3 2012	Isuzu HB3 2012	
Box		Supreme 12’	Supreme 12’	
Delivery Time		30/60 Days	60/90 Days	
Warranty		3Yr/Unlimited Miles 5Yr / 75K Powertrain	3Yr/Unlimited Miles 5Yr / 75K Powertrain	
Total Price	N/A	\$55,210	\$55,187	N/A

SUBJECT: Greenhouse Work Truck Purchase

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This recommended purchase meets Council's Strategic Plan goals of Financially Sustainable City Government and a Beautiful and Environmentally Sensitive City by keeping a highly dependable fleet of vehicles on the street and obtaining the best possible price for these vehicles.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Pressure Zone 4 System Improvements Design Contract

Prepared By: Kent W. Brugler, Senior Engineer
Steve Grooters, Senior Projects Engineer

Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest is best served by authorizing the City Manager to execute a contract with HDR Engineering, Inc. in the amount of \$420,410 with a ten percent contingency of \$42,041 for a total project budget of \$462,451 for design and bidding services related to Pressure Zone 4 System Improvements project.

Summary Statement

- Pressure Zone 4 is generally located west of Wadsworth Boulevard between West 86th Avenue and West 92nd Avenue, and is currently served by a single water source, the Silo Pump Station.
- The Water Master Plan Update completed in 2011 recommended the construction of a redundant supply to the zone.
- Recently completed hydraulic modeling confirmed that a pipeline located just east of Standley Lake can serve as the redundant supply by connecting Pressure Zone 4 to the Countryside and Zone 5 Pump Stations. The analysis concluded that this pipeline is more cost-effective than an additional new pump station.
- This project also includes recommended pipeline improvements within Zone 4 to increase pressures in the higher elevation areas of the zone and improve fire flows.
- The attached map shows an overview of the improvements proposed as part of this project.
- Staff prepared a Request for Proposals for the completion of the design and bidding phase services and distributed it to four engineering firms qualified to perform this work. Of the four proposals received, Staff believes HDR Engineering, Inc. (HDR) presented the best proposal and provides the best value to the City.
- Staff recommends awarding the contract to HDR based on their competitive pricing, proposed scope of work, familiarity with the City's infrastructure and the successful experience of their proposed project team.

Expenditure Required: \$462,451

Source of Funds: Utility Fund Capital Improvement
- Zone 4 Pump Station Replacement Project

Policy Issue

Should the City execute a contract with HDR for design and bidding phase services for the Pressure Zone 4 Water Distribution System Improvements?

Alternatives

1. The City could award the contract to another firm but Staff does not recommend this alternative since HDR presented the best and most qualified proposal and will provide the best value to the City.
2. The City could choose to not proceed with the project and maintain the Silo Pump Station as the single source of water supply to Pressure Zone 4. Staff does not recommend this alternative as it does not address the current vulnerability to the City's ability to provide adequate water service to Pressure Zone 4 during events when the Silo Pump Station is taken off-line.

Background Information

Pressure Zone 4 (PZ4) is located generally west of Wadsworth Boulevard between West 86th Avenue and West 92nd Avenue, extending west to Garrison Street south of West 88th Avenue and to Standley Lake north of West 88th Avenue (see attached map). Drinking water for PZ4 flows from the Semper Water Treatment Facility, but must be pumped to increase flow and pressure to PZ 4 customers. This boost in pressure and flow happens through a single pump station, the Silo Pump Station. This single source of supply represents a vulnerability to the City's ability to provide adequate water service to PZ4 during events when the Silo Pump Station is taken off-line. The City completed a Water Master Plan in 2011 that highlighted the need to provide redundant water feeds to PZ4. The main driver for this project is to develop a new primary source of supply for PZ4 and to recommission the Silo Pump Station as a back-up, redundant supply. Certain additional pipeline improvements within PZ4 are also recommended to improve overall pressures and fire flows in the zone.

Following completion of the Master Plan Update in 2011, City Staff identified several additional alternatives to provide redundant water supply for PZ4. The alternatives included options for an elevated storage tank in PZ4 or in the Countryside Neighborhood area, a new pump station in PZ4, and/or a 24-inch interconnect pipeline between Pressure Zones 4 and the Countryside and Zone 5 Pump Stations. The City performed a hydraulic performance analysis of these alternatives along with a comparison of life cycle costs. The analysis showed that an interconnect pipeline can deliver adequate flows and pressures to PZ4 from a connection made near the Countryside Tank site. Using this approach, the Silo Pump Station could take on the role of the secondary redundant supply. The analysis also concluded that this pipeline would provide the needed redundancy more cost-effectively than any of the other alternatives.

Staff prepared a Request for Proposals (RFP) for design of improvements to PZ4 and sent it to four engineering firms who specialize in this type of water distribution system analysis and design. Four proposals were received on June 5, 2012.

Staff recommends that HDR be selected for this work based on their response to the following criteria as outlined in the Request for Proposals:

- Response to specific requirements in RFP, clarity and presentation of proposed scope, tasks and fee.
- The firm's background and expertise in completing pipeline projects of similar size, scope, and complexity.
- Firm's references related to the ability to complete project requirements on schedule and within budget.
- Firm's reputation with the City and familiarity with City codes, policy, procedures, and regulations.
- Professional background and experience of each key person of the project team.
- Key team member availability and commitment to the project.
- Level of effort, competitive firm fee schedule and competitive hourly rates for staff assigned to this project relative to their experience level.

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

HDR	\$124 to \$200/hr
Black & Veatch Corporation	\$129 to \$224/hr
Burns & McDonnell Engineering Co, Inc.	\$144 to \$193/hr
URS Corporation	\$124 to \$201/hr

Engineering fees were based on each firm's proposed approach and ranged from \$337,440 to \$478,817 with HDR submitting the second lowest and most complete proposal. Of the firms that proposed, the HDR approach and team experience were the best and most qualified for the project, and their level of effort and fee were competitive for the desired project scope of work. Staff negotiated a final scope of work with HDR to include City-requested additional work, including a third party surge analysis, expanded computer modeling of the adjacent distribution system, inclusion of electrical and instrumentation control work, and conducting two public meetings during the design process. These items were not addressed by any of the firms, but were identified by City Staff as necessary for the successful completion of the project. HDR's fee was negotiated to include these additional items, resulting in a final contract amount of \$420,410. In addition, a 10% contingency in the amount of \$42,041 is requested for a total design and bidding phase budget of \$462,451. In Staff's opinion, retaining HDR to complete these design and bidding services will result in a better end product and provide the best value to the City. The overall project with construction is currently estimated to cost \$5,980,000 and is estimated to be completed by the end of 2014.

This project helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods In One Livable Community" by contributing to the objectives of well-maintained City infrastructure and facilities and maintaining neighborhood infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager

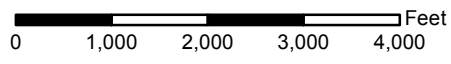
Attachment – Project Map



Pressure Zone 4 System Improvements



City of Westminister





Agenda Item 8 C

Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Jim Baker Reservoir Aeration System Replacement Project

Prepared By: Josh Nims, Water Resources Engineering Coordinator
Bob Krugmire, Water Resources Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder, Keeton Industries, in the amount of \$45,493 for the Jim Baker Reservoir Aeration System Replacement Project; authorize a construction contingency in the amount of \$4,549 for a total construction amount of \$50,042; and authorize the transfer of \$13,317 from savings in the completed Federal Boulevard Water Line Replacement account to fully fund the construction contract and other associated costs.

Summary Statement

- Jim Baker Reservoir is a 955 acre-foot water storage facility constructed by the City of Westminster in 1996.
- At the time of construction, Westminster entered into an Intergovernmental Agreement (IGA) with Adams County allowing the County access and use of the reservoir property for passive recreation. Under the IGA, Westminster agreed to protect the lake’s water quality and establish a fishery through an agreement with the Colorado Division of Wildlife.
- In order to comply with these various requirements and agreement conditions, Westminster installed an aeration system. This system, which has served Westminster since 1996, is now in need of replacement as a result of normal system wear and tear.
- The Request for Bids for the construction of this project was sent to four qualified contractors and was advertised on the City’s bid web page. Bids were opened on June 25, 2012. Two bids were received with the lowest bidder being Keeton Industries with a bid of \$45,493.
- Staff has reviewed the bids and recommends awarding this construction contract to Keeton Industries. A 10% contingency is also recommended in the amount of \$4,549.
- Staff is also requesting the transfer of funds in the amount of \$13,317 to cover all associated costs to complete this project. These funds are available as savings in the Federal Boulevard Water Line Replacement Account.

Expenditure Required: \$50,042

Source of Funds: Utility Fund – JBR Aeration Capital Account;
Federal Boulevard Water Line Capital Account

Policy Issue

1. Should the City proceed with the Jim Baker Reservoir aeration system replacement project?
2. Should Council authorize the transfer of funds to fully the project?

Alternative

1. Council could choose to postpone the construction of this project. Staff does not recommend this alternative since delay in replacement of the aeration system could negatively impact the overall lake water quality.
2. Council could choose to abandon the project. Staff does not recommend this alternative since the City has entered into agreements with Adams County that include requirements of the installation of a functioning aeration system to protect lake water quality.
3. Council could choose not to transfer funds. Without transferring funds into the aeration project, there would be insufficient funds to complete the project. This project is a requirement of the City’s IGA with Adams County, and savings are available in the completed Federal Boulevard Water Line Replacement account.

Background Information

Westminster owns and operates Jim Baker Reservoir as a water storage and exchange facility. The City has entered into agreements with Adams County to allow for use of the property as a passive recreation amenity, including shoreline fishing. As part of the overall recreation IGA with Adams County, as well as specific water quality conditions placed on Westminster through the Conditional Use Permit granted by Adams County, Westminster completed installation of an aeration system as part of the reservoir construction. The aeration system provides a direct benefit to the overall water quality of the reservoir, including increasing the dissolved oxygen that directly benefits the fish stocking program. This aeration system has served Westminster since completion of the lake construction in 1996. However, normal wear and tear over the past 17 years has resulted in a need to replace the equipment associated with the aeration system.

Following review of the previous system, requests for bids for the construction of this project were sent to four qualified construction firms. Bids were opened on June 25, 2012. The bid results are as follows:

<u>Contractor</u>	<u>Submitted Bid</u>
Liley Fisheries and Aquatic Consulting	No Submittal
Aquatics Associates, Inc.	No Submittal
Aqua Sierra, Inc	\$49,995
Keeton Industries	\$45,493

Staff has reviewed the results of the bidding procedure and recommends that the low bidder, Keeton Industries, be awarded the contract for construction in the amount of \$45,493. Staff was very impressed with the overall direction of the planned design by Keeton Industries and is confident that they are very capable of constructing this project. A 10% percent contingency in the amount of \$4,549 is requested for a total construction budget of \$50,042.

The project account is currently funded with \$36,725, and the total anticipated project cost is \$50,042. Staff is requesting the transfer of \$13,317 to complete the construction contract. These additional funds are needed to complete the full scope of the project and are available as project savings in the completed Federal Boulevard Water Line Replacement capital account.

SUBJECT: Jim Baker Reservoir Aeration System Replacement Project

Page 3

The replacement of the Jim Baker Reservoir aeration system helps achieve the City Council's Strategic Plan goals of "Financially Sustainable City Government Providing Exception Services" and "Beautiful and Environmentally Sensitive City" by continuing to protect the City's long-term water supply as well as taking steps to protect the water quality of its owned facilities.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Lowell Plaza Redevelopment re Assignment of Purchase Contracts from Everwood Development, LLC

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Authorize the City Manager to accept the assignment of purchase contracts from Everwood Development, LLC relative to land acquisitions for the Lowell Plaza redevelopment project in the 7200 block of Lowell Boulevard, and to proceed with acquisitions pursuant to the development agreement with Renaissance I, LLLP approved by City Council on May 14, 2012.

Summary Statement

- On May 14, 2012, the City Council approved a development agreement with Renaissance I, LLLP, (Developer), of which Everwood Development LLC, has a majority ownership, to redevelop a 1.5 acre site in the 7200 block of Lowell Boulevard.
- The Developer is proposing to develop a mixed use project of up to 3-stories that would include up to 6,700 square foot of commercial space at ground level, of which about half the space would accommodate a community theater, and up to 48 affordable apartments above. The project has not yet received rezoning or Official Development Plan approval.
- The estimated cost of the project is \$11,233,709 of which about \$1.5 million is the estimated cost for land acquisition, environmental remediation, and demolition and removal of existing structures.
- The Developer is under contract to acquire the three privately-owned properties needed for the redevelopment project at a cost of \$735,900 and proposes to assign the contracts to the City, thereby allowing the City to proceed with acquisitions as agreed to in the development agreement with Renaissance I, LLLP approved by City Council on May 14, 2012. Staff believes the agreed to purchase prices to be fair and reasonable relative to appraised values.
- Per the approved development agreement, the City would use proceeds from a \$2.53 million Section 108 loan pool approved by the U.S. Department of Housing and Urban Development. The City has been approved an initial draw down of \$1.5 million to be used for acquisition and site preparation for the Lowell Plaza project. Proceeds are expected to be made available by HUD in August, 2012.
- The City would be able to use these Section 108 loan proceeds to acquire the properties and prepare the site for development. The repayment terms approved by HUD are a 20 year repayment with the first 15 years set at interest-only payments, and principal repaid over the remaining 5-years. The interest rate would be set at 3%. Under the agreement with HUD, the City can use its annual CDBG allocation to make the debt payments if needed. The City must spend a significant portion of its Section 108 loan prior to September 30, 2012, or lose its entire \$2.53 million allocation from HUD.
- Per the development agreement, the Section 108 loan would be assigned to the Developer upon the project receiving plan approvals, at which time the Developer will be obligated to repay both the principal amount and interest.

Expenditure Required: \$735,900
Source of Funds: HUD Section 108 Loan proceeds

Policy Issue

Should the City accept assignment of the purchase contracts and proceed with acquisitions using proceeds from HUD Section 108 loan?

Alternative

The City could choose not to accept the assignment and wait to pursue acquisition at a future date. Staff recommends that this alternative not be pursued as the City will need to renegotiate the acquisitions with no guarantee that the property owners will be willing to sell at the same or lower price. Further, HUD would rescind the \$2.53 million Section 108 loan pool should the City not spend down a substantial portion of the proceeds prior to September 30, 2012.

Background Information

A prospective development team comprised of Everwood Development LLC, a for-profit developer out of Minneapolis, Minnesota, and Community Resources and Housing Development Corporation (CRHDC), a non-profit affordable housing provider based in Westminster, Colorado, is proposing to construct a vertically mixed use project along the west side of Lowell Boulevard, immediately south of 73rd Avenue. The project proposes the demolition of four one-story structures and one two-story structure built in the 1950's; each structure is in severe decline and disrepair. The locally landmarked (historic) two-story Penguin Building would remain in place with the new development occurring on both the north and south side of the building. The proposed development would comprise about 6,700 square feet of ground floor commercial space along with up to 48 affordable apartments on two levels above the commercial space along 73rd Avenue and Lowell Boulevard. In addition to the commercial space, three live/work units are proposed fronting Lowell Boulevard on the ground floor. The new buildings would be three levels in height. The new buildings would be built to the edge of the public sidewalk along Lowell Boulevard. The plan further contemplates converting the existing parking lot in front of the Penguin Building into a public plaza. Parking for both the new development and the Penguin Building would be provided on the back side of the development accessed by the city-owned alley.

In anticipation of proceeding with the project, Everwood Development LLC initiated acquisition negotiations with the owners of three parcels of land needed for the redevelopment project. After several months of negotiation with the owners, Everwood entered into contracts relative to the purchase of each of the properties, as shown in Attachment A, in March of 2012. Below are each of the properties under contract by Everwood, the agreed to sales price, and values based on appraisals prepared on behalf of the City (see attached map). The contracts give Everwood the right to assign them to another party.

Owner	Address	Appraised Value	Contract Price
Russell Sisler	7247 Lowell Boulevard	\$240,000 - \$250,000	\$220,900
Estate of Albert Minton	7277 Lowell Boulevard	\$510,000 - \$545,000	\$300,000
Goldstein Estate, et al	7253 Lowell Boulevard	\$275,000 - \$290,000	\$215,000
Total		\$1,025,000 - \$1,085,000	\$735,900

On May 14, 2012, the City Council approved a development agreement relative to the Lowell Plaza project, whereby the City is responsible for acquiring all of the property necessary for the redevelopment project using the proceeds from a Section 108 loan approved by the U.S. Department of Housing and Urban Development (HUD) in September, 2011. The City received a total allocation of \$2.53 million in loan pool funds that are to be used to facilitate new development in South Westminster. The City must spend a substantial portion of the funds (in the range of \$250,000 minimum) prior to September 30, 2012. Failure to expend funds by this date will result in HUD rescinding all \$2.53 million of the Section 108 loan pool award.

Following approval of the development agreement, Staff sought HUD approval to use \$1.5 million from the loan pool for the purpose of land acquisition and site preparation for the Lowell Plaza project. HUD has approved the project for a \$1.5 million draw down to be used in conjunction with this project. HUD's agreed to loan terms and conditions are as follows:

- The loan amount will total \$1.5 million;
- The interest rate will be set at 3% annually;
- Repayment in the first 15 years shall be interest-only; and,
- The principal balance with interest shall be repaid in years 16-20.

With this approval, the City could see the Section 108 proceeds as early as August, 2012.

Given HUD's Section 108 funding approval for the project, Everwood is proposing to assign the purchase contracts to the City. Upon acceptance of the assignments, the City can proceed to close on the acquisitions pursuant to the approved development agreement. The development agreement provides for the City to use the HUD Section 108 loan of \$1.5 million for purchase of the properties, environmental cleanup, building demolition, tenant relocations, and other eligible site improvements. The Section 108 loan would be assigned to the project Developer (Renaissance I, LLLP) upon development plan approval. The Developer will assume the debt in exchange for conveyance of the land by the City. At such time the Developer assumes the loan, the only financial obligation of the City remains pledging its annual CDBG allocation as a guarantee.

The Developer has yet to receive zoning or Official Development Plan (ODP) approval from the City, but is proceeding diligently towards plan approval and finalizing the private financing for the construction. In the event the Developer does not receive ODP approval, the land would remain in possession of the City and could be made available to another prospective developer in a development-ready state (i.e. cleared of blighted buildings). Until such time as the loan is assigned to a developer, the City would be obligated to make the annual debt payments of about \$45,000 per year (interest-only payment), but can choose to make such payments from its annual CDBG allocation.

Acceptance of the purchase contracts and proceeding with the acquisitions in support of the Lowell Plaza redevelopment project supports the following Strategic Plan Goals and Objectives of the City:

Goal: Strong, Balanced Local Economy

- Maintaining and expanding a healthy retail base, increasing sales tax receipts;
- Development of business supportive mixed use development;
- Retention and expansion of current businesses; and,
- Development of a reputation as a great place for small and/or local businesses.

Goal: Vibrant Neighborhoods in One Livable Community

- Maintaining and improving neighborhood infrastructure and housing;
- Developing Westminster as a cultural arts community; and,
- Providing a range of quality homes for all stages of life.



The acquisitions and removal of blighted buildings, along with the redevelopment, will further contribute towards the continued reinvestment in the south Westminster area, particularly those improvements and investments made along Lowell Boulevard and Meade Street. The project when completed will provide one more visual feature that will lead to further interest in investment and redevelopment activity.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment A
Acquisition Parcels



 Properties Under Contract  Project Boundary





Agenda Item 8 E

Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Second Reading of Councillor's Bill No. 25 re Annual Updates to Title II, Title VIII and Title XI of the Westminster Municipal Code

Prepared By: Walter Patrick, Planner II

Recommended City Council Action

Pass Councillor's Bill No. 25 on second reading making revisions to sections of Title II, Title VIII and Title XI of the Westminster Municipal Code.

Summary Statement

- Each year Staff proposes updates to the Westminster Municipal Code to remain current with development trends and 'stay ahead of the curve' with regard to zoning regulations and requirements.
- A detailed list of items is outlined in the background section of the July 23rd agenda memorandum.
- Councillor's Bill No. 25 was passed on first reading by City Council on July 23, 2012.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2012

COUNCILLOR'S BILL NO. **25**
INTRODUCED BY COUNCILLORS
Atchison - Major

**A BILL
FOR AN ORDINANCE AMENDING SECTIONS 2-2-2, 2-2-8, 8-6-12, 11-1-3, 11-3-2, 11-4-6, 11-4-11, 11-5-4, 11-5-10, 11-5-16, 11-6-4, 11-9-3 AND 11-11-8 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING ANNUAL LAND USE REGULATION CODE UPDATES**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 2-2-2, subsection (F), W.M.C., is hereby AMENDED and a new subsection (H) is ADDED as follows:

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2-2-2: POWERS AND DUTIES: (319 1741 1970 2068 3495 3497 3599) The powers and duties of the Planning Commission shall include, but not be limited to, the following:

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(F) The review and determination of appeals from the Planning Manager's interpretation of the Zoning Map and the Zoning District boundary lines thereon, under Section 11-4-2, W.M.C.

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(G) The review and determination of all special use permit applications.

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(H) -The review of a request from one individual lot owner in a detached single family housing development for a variance from an ODP requirement affecting said lot, as provided in Section 11-5-10 (A)(1), W.M.C.

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Section 2. Section 2-2-8, W.M.C., is hereby AMENDED as follows:

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2-2-8: VARIANCE PROCEDURE AND STANDARDS: (3495)

(A) In addition to any procedural hearing requirements the Commission may adopt by rule, the Commission shall conduct hearings and make decisions in accordance with the following requirements:

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(1) The public, the applicant and the Planning Commission shall be given notice, as provided in Section 11-5-13, W.M.C. of all variance hearings and, except as provided by subsection 2-1-6(A), W.M.C., all hearings shall be open to the public.

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(2) The Commission shall render written decisions, accompanied by findings of fact and conclusions based thereon. Conclusions based on any provision of this Chapter, Code, or any City rules or regulations shall contain a reference to such provision, rule or regulation and shall also contain the reason the conclusion is deemed appropriate in light of the facts found.

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(3) All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record.

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(4) The Commission shall decide on any matter within thirty-five (35) days after date of hearing thereon. Decision in favor of any applicant shall be approval of the matter requested and shall be an order to the Chief Building Inspector to carry out such action, subject to any conditions imposed by the Commission.

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(B) The Commission may grant a variance if it finds that all of the following requirements are satisfied, where applicable:

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(1) That the strict application of the provisions of Title XI of this Code would result in practical difficulties or unnecessary hardship that is inconsistent with the general purpose and intent of this Code.

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(2) That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property.

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(3) That these unusual circumstances or conditions do not exist throughout the neighborhood or district in which the property is located.

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(4) That because of such physical circumstances or conditions, the property cannot be reasonably developed in conformity with the provisions of this Code.

(5) That the special conditions and circumstances do not result from the present or prior actions of the applicant.

(6) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property.

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Any application not meeting such criteria shall be denied. In approving an application meeting the above criteria, the Commission may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of ~~this~~ Title XI or the various adopted codes.

(C) Decisions of the Commission are final subject only to an appeal to district court.

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~~Section 3.~~ Section 8-6-12, W.M.C. is hereby AMENDED as follows:

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8-6-12: ADOPTION OF STATE PROVISIONS: The provisions of Colorado Revised Statutes ~~of 1973~~, as amended, Sections 25-7-115 through 25-7-118 inclusive are hereby adopted and incorporated herein by reference thereto as though herein set out in full, so far as applicable. ~~Wherever therein a hearing or other board action is called for, such hearing or action shall be held or taken by or before the Board of Adjustment.~~ (1051 1999)

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~~Section 4.~~ Section 11-1-3, W.M.C., is hereby AMENDED as follows:

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11-1-3: VIOLATIONS: (2534 2797 3491 3497)

(A) Unless otherwise permitted by this Code, it shall be unlawful for any person to:

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~~Section 5.~~ Section 11-3-2, subsection (D), W.M.C., is hereby AMENDED as follows:

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11-3-2: DEFINITIONS: (2534 2571 2651 2714 2735 2975 3091 3561) For the purpose of this article, certain terms and words are hereby defined as follows:

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(D) ~~"Build-Out Development"~~ shall mean ~~A~~ proposed residential development which does not meet the active residential definition but does meet all of the following:

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(1) There is an existing, City-approved Official Development Plan and plat for the site; and

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(2) The proposed land use and density comply with the Comprehensive Land Use Plan; and

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(3) The project is located on land where at least 50% of the housing units within the Official Development Plan have received a certificate of occupancy or at least 50% of the required public improvements, as determined by the City Engineer, have been accepted as complete ~~Planned Unit Development which is at least 50% developed~~; and

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(4) Existing public improvements (water lines, sewer lines, streets, etc.) are adjacent to the site; and

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(5) The undeveloped site for the proposed development does not exceed ten (10) acres; and

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(6) The project will meet or exceed all of the City's minimum design standards and guidelines; and

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(7) The project will offer incentive items detailed within the City's competition guidelines and will, at a minimum, meet the lowest score of the project(s) awarded service commitments for the most recent residential competition for that project type. The project may offer different incentive items than those chosen by the comparable project, but the total of incentive points offered must meet or exceed the score of the comparable project.

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An Official Development Plan (ODP) amendment (bringing the project into compliance with City Design Guidelines) and plat must be submitted for review and are subject to City Manager approval. If the project is unable to meet all of the minimum and incentive design requirements and all other ODP requirements, the project will be subject to Planning Commission review and approval or denial.

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Section 6. Section 11-4-6, subsections (L) and (R), W.M.C., are hereby AMENDED as follows:

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11-4-6: SPECIAL REGULATIONS: (2534 2841 2975 3497 3531 3599) The following additional regulations apply as indicated below.

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(L) **MEASUREMENT OF THE MAXIMUM HEIGHT OF BUILDINGS:** Shall be as determined pursuant to ~~the currently adopted building code of the City in Section 409 of the Uniform Building Code as adopted by this Title.~~

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(R) **CITY EXEMPTION FROM COMPLIANCE:** All property, uses, structures, and facilities owned or operated by the City for the purpose of providing municipal services are exempt from complying with all zoning regulations and are exempt from all Preliminary Development Plan, Official Development Plan, and platting procedures contained in this Code. In addition, the acquisition of land, wherever located, by the City for open space, park, rights-of-way, or other public purposes is exempt from complying with all zoning regulations and all Preliminary Development Plan and Official Development Plan requirements contained in this Code.

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Section 7. Section 11-4-11, subsections (C) and (D), W.M.C., are hereby AMENDED as follows:

11-4-11: ANTENNAS, TOWERS AND TELECOMMUNICATION FACILITIES: (2534 3135 3555 3586)

(C) **DEFINITIONS:**

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"Alternative Tower Structure" ~~means~~ shall mean man-made trees, clock towers, bell steeples, light poles, buildings, and similar alternative design mounting structures that are compatible with the natural

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setting and surrounding structures, and camouflages or conceals the presence of antennas or towers. This term also includes any antenna or antenna array attached to the alternative tower structure.

“Antenna” means shall mean any exterior transmitting or receiving device mounted on a tower, building, or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals.

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“Co-Location” means shall mean the placement of antennas or other telecommunications facilities by two or more telecommunications providers in the same location or on the same tower or alternative tower structure.

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“Eligible Facilities Request” means shall mean a request for modification of an existing wireless tower or existing base station that involves co-location of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.

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“Landowner” means shall mean a natural person or persons, partnership, company, corporation or other legal entity recorded, in the records of the Adams or Jefferson County Clerk and Recorder, as the owner of the real property upon which the telecommunications facility is located or proposed to be located. For the purposes of a telecommunications facility located on a building or other existing structure that is owned by a different legal entity than the owner of the real property, both the real property owner and the owner of the building or structure will be considered to be landowners.

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“Screen Wall” means shall mean an opaque structure, typically located on top of, but integrated with the design of, a building that conceals mechanical, telecommunications or other equipment from view from the surrounding rights-of-ways and properties.

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“Substantially Change” means shall mean any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the initial approval for the tower or base station that individually or cumulatively produces:

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1. any increase in the height of any component;
2. more than a 10% increase in the width or depth of any equipment, pad, or component;
3. a change in the color of any visible component or equipment that causes it to appear larger or more visible;
4. -a change in the physical dimension of a camouflaged wireless facility, where the changes would be inconsistent with the design of the camouflaged wireless facility, or make the wireless towers more visible;
5. a change in the physical dimensions that requires work that would intrude upon the public right of way, or any environmentally sensitive area;
6. an increase in radio frequency emissions that causes the site to exceed federal radio frequency emissions standards; or
7. a change in the mounting of new or replacement transmission equipment that will involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the wireless tower or base station or that will require installation of a new cabinet or enclosure.

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“Telecommunications Facilities Or Facility” means shall mean the base station, plant, equipment, and personal property, including but not limited to, cables, wires, conduits, ducts, pedestals, antenna, towers, alternative tower structures, electronics and other appurtenances used to transmit, receive, distribute, provide, or offer telecommunication services.

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“Telecommunications Provider” means shall mean a person, partnership, company, or corporation that constitutes the business entity who owns or will own, once constructed, the telecommunications facilities that are proposed for review and approval under this Section.

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“Telecommunications Support Facilities” ~~means~~ shall mean support building structures, and equipment cabinets containing electrical and mechanical equipment and devices used for the reception of or transmission of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities.

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“Tower” ~~means~~ shall mean any structure designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, and monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, and other similar structures. This term also includes any antenna or antenna array attached to the tower structure.

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(D) REVIEW AND APPROVAL PROCESS:

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(1) Except as provided in ~~S~~ subsection (J) below, a use of land for a telecommunication facility must be approved in an Official Development Plan (ODP), amended ODP, or ODP waiver, including facilities located on public rights of way. If the applicable ODP does not include a height limitation for the principal structure, an ODP amendment or waiver to specify the permitted height for the facility shall be required.

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(2) A telecommunication facility must receive a building permit, and be in compliance with the building code adopted by the City.

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(3) An application may be approved by the City Manager or his designee(s) with the exception of telecommunication facilities proposed to be located above-ground on public rights-of-way, which must be approved at a public hearing before the Planning Commission pursuant to the procedures set forth in Title 11, Chapter 5.

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(4) Consistent with federal law, the City will review and approve an application for an eligible facilities request when the application does not seek to substantially change the physical dimensions of the existing tower or the existing base station.

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Section 8. Section 11-5-4, subsection (C), W.M.C., is hereby AMENDED as follows:

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11-5-4: PRELIMINARY DEVELOPMENT PLAN (PDP) REQUIREMENT: (2534)

(C) Except as provided herein, it# shall be unlawful for the owner, or the agent of the owner, of any unplatted or unsubdivided land located within the City to transfer, sell, agree to sell, or negotiate to sell any portion less than the whole of all contiguous land under or substantially under the same ownership prior to the approval by the City and the recording in the Office of the County Clerk and Recorder of a Preliminary Development Plan or a final plat for all contiguous land under the same or substantially the same ownership. This provision shall not apply to an owner or the agent of the owner transferring or selling land to the City pursuant to Section 11-4-6(R), W.M.C.. A Preliminary Development Plan may be used as the basis for a subdivision and subsequent sale or transfer of land under this paragraph, provided that said Preliminary Development Plan contains legally defined and described boundaries of the parcels being created by the subdivision.

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Section 9. Section 11-5-10 subsection (A), W.M.C., is hereby AMENDED as follows:

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11-5-10: FORMAT AND APPROVAL PROCESS FOR AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS (ODP'S): (2534 3599)

(A) APPLICATION PROCEDURES FOR ODP AMENDMENTS:

(1) Applicants shall consult with the City prior to submitting an application for approval of an ODP amendment to discuss the project concept and to gather information regarding City policies, codes, standards and procedures. Applicants may propose an amendment to an ODP for all or only a portion of the entire land area within the previously approved ODP, except that an amendment to a residential ODP for an individual single family lot within a detached single family housing development, which does not add a new use or change the density, shall proceed under the variance process set forth in Section 2-2-8, W.M.C.

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(2) Following the initial discussion, an applicant may submit a concept plan and shall submit an application for review in a format specified in the Community Development Department's guidelines for submittal, a copy of which is available in the Planning Division offices.

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(3) Following the concept plan review, if any, the applicant shall submit a formal application for approval and prepare a detailed submittal for technical review of the proposed plans in the format specified in the Community Development Department's guidelines for submittal, a copy of which is available in the Planning Division offices. Comments shall be prepared and returned to the applicant.

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Additional submittals may be required at the option of the City. Staff review and feedback concerning a concept plan shall not be construed as a type of approval or pre-approval of any aspect of the submittal.

(4) Following the concept plan review, if any, and prior to commencing any technical review of a proposed ODP amendment, the applicant shall complete the neighborhood notification process described in the Community Development Department's guidelines for neighborhood notification, a copy of which is available in the Planning Division offices. The City Manager or the Manager's designee may waive this requirement for neighborhood notification if the Manager determines, based upon the project's likely and foreseeable impacts on the surrounding neighborhood, that no neighborhood notification is required.

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(5) Prior to any review of a proposed ODP amendment, the applicant shall provide:

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(a) Either the written consent of the owner(s) of the property in the area proposed for ODP amendment or evidence otherwise satisfactory to the Planning Manager of the applicant's authority to represent the owner(s) of such property;

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(b) Evidence of ownership and encumbrances satisfactory to the City and such other information as may be reasonably required to evaluate the proposed development;

(c) A non-refundable application fee, as specified in the Planning and Engineering Development Review Fee Schedule set forth in Section 11-1-6, shall be paid at the time of application for any proposed ODP amendment. In addition, all recording fees shall also be paid for all plans and plats that have been approved by the City prior to their recording.

(6) City may initiate an application for an ODP amendment without the consent of the property owner or owners for any redevelopment project within an Urban Renewal Area; provided, however, the approval of any such application shall be conditional and not effective until such time as all property covered by the ODP has been acquired by the Westminster Economic Development Authority or its designated redeveloper for the project. In such event, the above application procedures of this ~~S~~subsection (A) shall not be applicable.

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(7) An amendment to an ODP may be initiated by:

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(a) The owner of the area covered by the proposed amendment, except as provided in Ssubsection (A)(1) above; or

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(b) The City when the City Council determines:

(i) That approved land uses for the Planned Unit Development are no longer appropriate due to changed conditions in the vicinity, revisions to the City's Comprehensive Plan, any incompatibilities between an existing land use and surrounding

zoning or development, or Council finds that the ODP no longer meets the requirements of Section 11-5-15;

- (ii) That public facilities are inadequate or do not meet current standards; or
- (iii) That natural hazards or other environmental problems exist which threaten the public health, safety or welfare.

(8) The City Manager may, in his or her sole discretion, on a case-by-case basis, waive any of the normal submittal requirements for amendments to ODP's within his or her administrative approval authority that the City Manager deems to be minor in substance and scope and reduce the fee for such minor amendments.

Section 10. Section 11-5-16 is AMENDED by the ADDITION of the following subsection (B):

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11-5-16: STANDARDS FOR APPROVAL OF FINAL PLATS: (2534)

(B) The City Manager may approve a Final Plat prepared solely for the subdivision of land to accomplish the acquisition of land by the City for open space, parks, rights-of-way, or other public purposes, upon a finding that such platting is the most efficient method of creating separate ownership parcels.

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Section 11. Section 11-6-4, subsection (A), W.M.C., is hereby AMENDED as follows:

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11-6-4: PUBLIC AND PRIVATE IMPROVEMENT AGREEMENTS AND SURETY REQUIREMENTS: (2534)

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(A) Except as provided in Section 11-5-16 (B), W.M.C., bBefore the City Manager shall approve a final plat or, in the event that a final plat is not required, prior to issuing a building permit, the developer shall have submitted the following agreements and surety for the construction of public and private improvements for the development:

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Section 12. Section 11-9-3, subsection (E), W.M.C., is hereby AMENDED as follows:

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11-9-3: PERMITS AND FEES: (3327 3541)

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(E) FEES AND TAXES:

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(1) General. A permit shall not be valid until the prescribed fees have been paid. Fees shall be assessed in accordance with the provisions of this ~~S~~subsection.

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- (a) Building use tax shall be paid in accordance with this Code.
- (b) Park development fees shall be paid in accordance with this Code.
- (c) Water and sanitary sewer tap fees shall be paid in accordance with this Code.
- (d) School Land Dedication fees shall be paid in accordance with this Code.

(2) Permit Fees. A fee for each building permit shall be paid to the City of Westminster as specified in the "Building Permit Fee Schedule" as adopted by Resolution of the City Council; except that, the City, the Counties of Adams and Jefferson, the State of Colorado, the United States Government, and all agencies and departments thereof, shall be exempt from payment of building permit fees for the construction or repair of buildings or structures owned wholly by such agencies and departments and devoted to governmental use. ~~Fees shall be reduced by twenty percent (20%) for building permits issued for work within the boundaries of the urban renewal area of the city.~~

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EXCEPTION: The Building Official shall indefinitely waive the permit fees and use tax for the conversion of existing non-conforming solid fuel burning devices to gas, electric, EPA certified phase II, Colorado Phase III, or devices meeting the emission standard for solid fuel burning devices established under the State statutes and/or regulations promulgated by the Colorado Department of Public Health and Environment, as demonstrated by a test by an EPA accredited laboratory. This exemption shall be in effect for those devices purchased or installed on or after September 1, 1993.

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Section 13. Section 11-11-8, W.M.C., is hereby AMENDED as follows:

11-11-8: VARIANCES (2862)

(A) **SIGNS IN PLANNED UNIT DEVELOPMENTS:** All signs proposed for or within a planned unit development may apply for modifications to the requirements of this sign code by making application to the planning commission using the procedures specified in Section 11-5-8 or 11-5-10 of this Code. Such variances may be granted administratively if the provisions of this Code are not exceeded by more than 20%. Such variances shall consider items 1 through 5 under ~~sub~~Section (B) below.

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(B) **SIGNS NOT IN PLANNED UNIT DEVELOPMENTS:** All signs within any zone district other than planned unit development may apply for modifications to the requirements of this sign code by making application to the ~~planning commission~~~~board of adjustments~~ using the procedures specified in Section ~~2-6-42-8~~ of this Code. In considering a request for a variance to the sign code, the ~~planning commission~~~~board of adjustment~~ and appeals shall determine that:

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(1) There are special circumstances or conditions such as the existence of buildings, topography, vegetation, sign structures, or other matters on adjacent lots or within the adjacent public right of way which would substantially restrict the effectiveness of the sign in question provided, however, that such special circumstances or conditions must be peculiar to the particular business or enterprise to which the applicant desires to draw attention and do not apply generally to all businesses or enterprises.

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(2) The variance, if authorized, will weaken neither the general purpose of the sign code nor the zoning regulations prescribed for the zoning district in which the sign is located.

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(3) The variance, if authorized, will not alter the essential character of the zoning district in which the sign is located.

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(4) The variance, if authorized, will not substantially or permanently injure the appropriate use of adjacent conforming property.

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(5) The ~~planning commission~~~~board of adjustment~~ may not grant any application for a type of sign that would not otherwise be permitted under this Code.

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Section 14. 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.

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INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of July, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of August, 2012.

ATTEST:

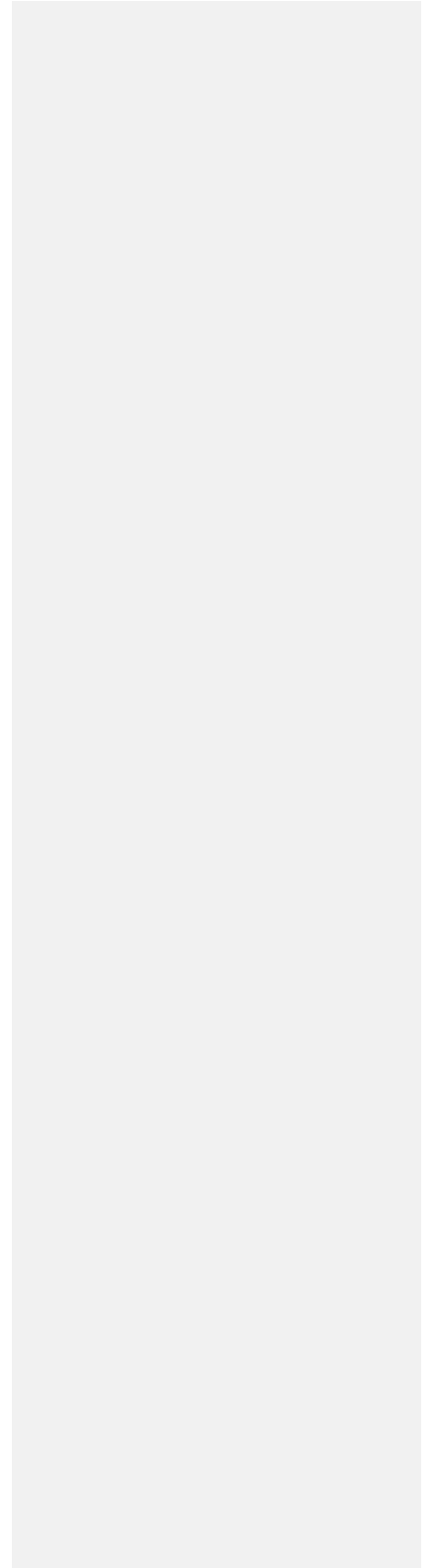
City Clerk

|

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office





Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Second Reading of Councillor's Bill No. 27 re Supplemental Appropriation for Hyland Village Subdivision Performance Bond Cash Settlement

Prepared By: Dave Downing, City Engineer

Recommended City Council Action

Pass Councillor's Bill No. 27 on second reading to accomplish the supplemental appropriation of the \$1,957,000 cash settlement from the bonding company for McStain Enterprises, Inc. pertaining to uncompleted public and private improvements at Hyland Village Subdivision.

Summary Statement

- In 2007, the City and McStain Enterprises, Inc. executed four separate Public and Private Improvements Agreements establishing the developer's obligation to the City to install certain infrastructure and enhancements necessary for the development of Hyland Village Subdivision, located on the west side of Sheridan Boulevard between approximately 94th Avenue and 98th Avenue. The construction of those improvements was guaranteed by various performance bonds issued by Bond Safeguard Insurance Company.
- In 2009, McStain filed for bankruptcy, and City Staff began negotiating with Bond Safeguard Insurance Company for the resolution of outstanding improvements. Those negotiations concluded earlier this summer with the bonding company's issuance of a \$1.957 million cash settlement to the City.
- City Council action is requested to pass the attached Councillor's Bill on second reading, which appropriates the \$1.957 million cash settlement into a newly created Capital Improvement Project that will allow Staff to begin to contract for the installation of certain uncompleted improvements at Hyland Village.
- This Councillor's Bill was passed on first reading on July 23, 2012.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **27**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

Briggs - Major

A BILL

FOR AN ORDINANCE INCREASING THE 2012 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES OF THIS FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation of the General Capital Improvement Fund initially appropriated by Ordinance No. 3550 is hereby increased by \$1,957,000. This appropriation is due to the receipt of funds from Bond Safeguard Insurance Company

Section 2. The \$1,957,000 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item No. 10 G dated July 23, 2012 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Capital Improvement Fund	<u>\$1,957,000</u>
Total	<u>\$1,957,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of July, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of August, 2012.

ATTEST:

Mayor

City Clerk



Agenda Item 9 A

Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Country Club Highlands Metropolitan District Appointment of Directors

Prepared By: Martin R. McCullough, City Attorney

Recommended City Council Action

Appoint the following individuals to serve on the Board of Directors of the Country Club Highlands Metropolitan District pursuant to section 32-1-905 of the Special District Act: John Healy, Amy Anders, and Todd Amberry.

Summary Statement

- Colorado's Special District Act provides that in the event a board of directors of a special district becomes vacant, to the extent there is an insufficient number of elected directors to appoint members to fill the board's vacancies, and the district is located wholly within the boundaries of a municipality, the governing body of the municipality may appoint the necessary directors.
- John Laing Homes was the original owner and developer of the property within the Country Club Highlands Metropolitan District. John Laing Homes filed for Chapter 11 bankruptcy in February of 2009, and all the board members of the District resigned their positions shortly thereafter. The District has not had a Board of Directors since 2009.
- The current owner of the undeveloped property within the District, Century Communities, has requested the City's assistance in reconstituting the District's board of directors so that the Board may recommence the performance of the District's statutory duties related to the adoption of a budget, operating and maintaining District owned improvements, and meeting the District's debt service obligations.
- The District issued \$2,055,000 of general obligation limited tax bonds in November of 2007. UMB bank, the trustee of these bonds, has been making the payments from the reserve fund, but the fund is being depleted.
- Staff believes that the revitalization of this District is in the City's best interest and the interest of the current property owners within the Country Club Highlands subdivision.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City Council appoint new directors for the Country Club Highlands Metropolitan District?

Alternative

The City could refuse to appoint new directors for the District. The Special District Act is silent as to what happens if this occurs. It would appear that the only remedy of the property owners would be to petition the district court for an order dissolving the existing District and creating a new district, which in turn would require an organizational election and a TABOR election to approve a new mill levy and new bonds. This alternative is not recommended as it would result in unnecessary legal expenses, and it would create a significant risk of a default on the District's outstanding bonds and a risk that the District's improvements would go unmaintained during the time it would take for the numerous legal issues that would follow to be resolved.

Background Information

The original property owner and developer of the property within the Country Club Highlands Metropolitan District was John Laing Homes. John Laing Homes filed for Chapter 11 bankruptcy in February of 2009. Subsequently the employees were let go and all the board members resigned from the District's Board of Directors. Century Communities acquired the remaining undeveloped property within the District. There are approximately 20 complete single-family residences in the development that have been sold.

The District has not had a Board of Directors since 2009. Without a Board, the District has not been able to perform the District's statutory duties, such as the adoption of a budget, operating and maintaining District owned improvements, and meeting the District's debt service obligations. In 2007, the District issued \$2,055,000 of General Obligation Limited Tax Bonds. The trustee of the bonds, UMB bank, has been making the bond payments from the reserve fund, but this fund is nearly depleted.

Pursuant to section 32-1-905(2) (a) of the Special District Act, if one or more vacancies remains on a Board of Directors of a special district more than 60 days, the governing body that approved the organization of the district may appoint directors to fill such vacancies.

Notice of these vacancies was published in the Westminster Window on June 21, 2012, and mailed on that same day to all homeowners within the boundaries of the District as listed with the Adams County Assessor. There were no responses received from the notice of vacancies.

The proposed replacement directors are all employees of Century Communities and have indicated a willingness to serve on the board. Having employees of the developer serve on metro district boards is a common practice. The Special District Act includes a special provision that allows a person to become qualified to serve as a director by taking title to taxable property or by entering into a contract to purchase taxable property for the purpose of qualifying such person when a vacancy exists on the board of the special district and, within 10 days of the publication of notice of such vacancy, no otherwise qualified eligible elector files a letter of interest in filling the position with the board. This is the manner by which the proposed directors have been qualified to be appointed to the District Board of Directors. However, it should be noted that pursuant to C.R.S. § 32-1-905, these appointments are temporary in nature and eligible to serve only until the next regular election, at which time the vacancy must be filled by election for any remaining unexpired portion of the term.

Staff believes that the revitalization of this District by creating a new board of directors in this manner is in the City's best interest and the interest of the current property owners within the Country Club Highlands subdivision.

SUBJECT: Country Club Highlands Metropolitan District Appointment of Directors

Page 3

The proposed action will further the following City Council Strategic Plan Goals: Financially Sustainable City Government Providing Exceptional Services, Vibrant Neighborhoods in One Livable Community, and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 10 A

Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Councillor's Bill No. 28 re Water Tap Fee Increase

Prepared By: Christine Anderson Gray, Management Analyst
Stu Feinglas, Water Resources Analyst

Recommended City Council Action

Pass Councillor's Bill No. 28 on first reading, authorizing an increase to the water tap fee effective January 1, 2013.

Summary Statement

- Water tap fees are charged to new utility customers to connect to the City's water system, and are based on the current value and size of the utility system.
- The water tap fee structure is composed of several components that together reflect the equitable portion of the water system impacted by new customers.
- Periodically the City increases the water tap fee charged to new utility tap customers to reflect the current value of the utility system's infrastructure and water resources.
- This increase will reflect the necessary cost recovery to meet the capital needs of the water system and to ensure that costs are equitably distributed between current and future users of the system.
- The recommended water tap fee for a single family equivalent service commitment would increase from \$16,325 to \$22,986.
- Sewer tap fees are not impacted by this increase. Sewer tap fees are increased separately on an annual basis and are based on the Metro Wastewater Reclamation District's annual sewer tap fee increases.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should Council authorize the increase of water tap fees effective January 1, 2013?

Alternatives

1. Council could direct Staff to leave water tap fees at the current rate. Staff does not recommend this alternative as water tap fees are priced to recover the costs necessary to maintain a sustainable water utility. By not recovering adequate funding, necessary repairs and improvements will need to be funded by existing water customers through larger water rate increases.
2. Council could direct Staff to phase in a water tap fee increase. Staff does not recommend this alternative as delaying an increase to water tap fees could delay the proactive funding of the repair, replacement and improvement needs of the utility system, and put pressure on for use of utility operating funds to address current capital needs.

Background Information

Tap fees are charges that new connections to the City's water and wastewater system pay in order to recover an equitable share of system capacity that has been developed to service growth. The City sets separate tap fees for connecting to the water system and the wastewater system. Past and current customers have invested to develop the water system sized to meet build-out demands. As new customers connect to the system, they pay for the portion of the developed system they will use. In this way, current customers benefit from lower system costs (water rates) and increased reliability, while new customers pay their fair share.

The water tap fee includes three components:

1. The Infrastructure or Treated Water Investment Fee is set to recover an equitable portion of the City's infrastructure required to meet the demand of the new customer. The infrastructure includes all components of the utility system required to divert, treat and distribute water to customers. Infrastructure tap fees are calculated based on fixture count and resulting meter size, which is the best determination of projected peak demand on the infrastructure system. The current cost of the infrastructure component for a typical single family water tap fee is \$8,987.
2. The Water Resources Fee is set to recover the value of the City's water supplies developed to meet the demand of the new customer. Water resources are calculated in terms of Service Commitments (SC). One SC is equal to 140,000 gallons of annual use, which is the projected use of one new single-family home. For those other than single-family homes, multiples of service commitments are purchased based on a projected volume of use. The current cost of the water resources component for a single family water tap fee is \$7,338.
3. The Connection Fee is the portion set to recover the cost of calibration and installing the water meter. The current cost of a single family water tap Connection fee is \$321.

The total current cost of a single family water tap fee is \$16,646.

Periodically the City increases the cost of the infrastructure portion of the water tap fee to ensure that new users are paying an equitable portion of the overall costs to maintain and improve the water system. A recent study determined that the infrastructure portion of the water tap fee should be increased from \$8,987 to \$10,086 to address the water system's replacement cost. This is based on the value of the improvements made to the system and the increase in the replacement costs for the rest of the system since the infrastructure fee was previously set.

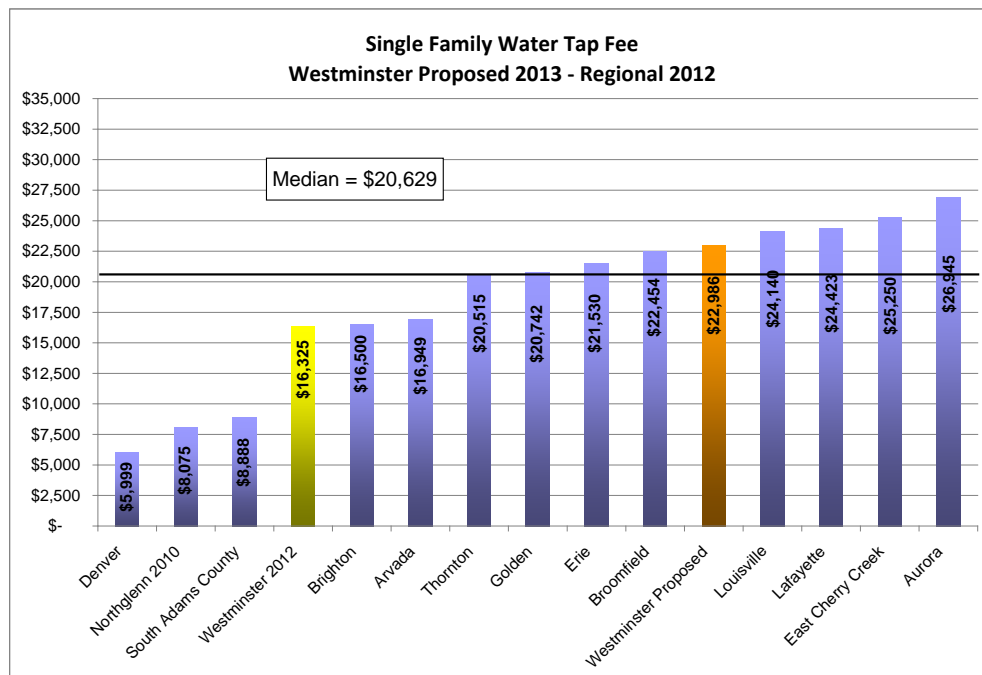
The water resources portion of the tap fee is based on the current market value of the water resources owned by the City. Recent water purchases are used as a basis for determining the current market value. Water purchases are valued in terms of the cost per acre foot (AF) of reliable annual water delivery. Currently, Westminster’s tap fee is based on a water value of \$17,000 per AF.

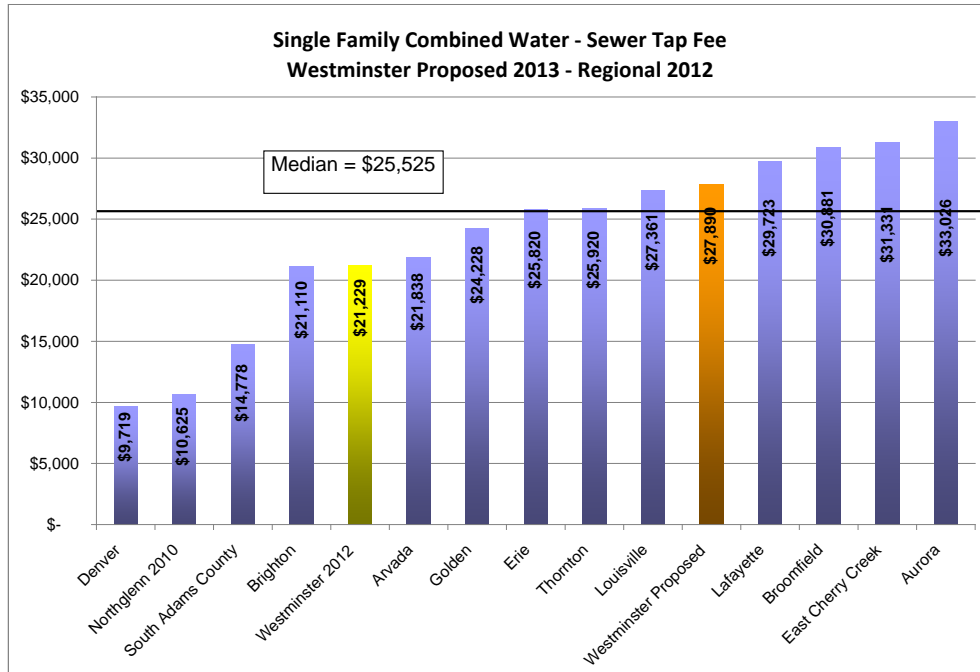
Since this value was established, the market for water rights in the Front Range of Colorado has become even more competitive. Staff is therefore recommending using a value of \$30,000 per AF for the increased tap fee calculation based on these purchases.

A chart is provided below that compares single family water tap fees at the existing rate to water tap fees fully implementing the infrastructure cost increase and at \$30,000 per AF for the market value of the water resources component:

Single Family Water Tap Fee Comparisons		
Water Tap Fees	2012 Current Tap Fee	Proposed Tap Fee
Infrastructure component:	\$8,987	\$10,086
Water Resources component:	\$7,338	\$12,900
Total Water Tap Fee: Not including connection fees	\$16,325	\$22,986

Westminster’s tap fee is currently below the median for surrounding communities. Below are two charts illustrating the comparisons between single family water tap fees and combined water and wastewater single family tap fees with other neighboring entities.





The revenue impacts to this proposed increase would allow for the funding of projects that support the operation and maintenance of the City’s water system, including the construction of such projects as the Standley Lake Bypass project. These projects will help to maintain the City’s high quality water system. To the extent new development does not pay its fair share for improvement, repair and replacement of the water system, these costs would need to be covered by existing customers through rates.

Staff is sensitive to the impacts that a water tap fee increase will have upon the building community and recommends that the tap fee increase be implemented effective January 1, 2013, to allow sufficient time to notify developers of the increase. Staff has notified the Home Builders Association of this proposed increase by letter and to date, has received no comments. Per City Code the water tap fee would continue to increase by the Denver Metro area’s Consumer Price Index on an annual basis beginning in 2014.

This recommendation supports the City Council strategic goal of Financially Sustainable City Government Providing Exceptional Services by ensuring that the City’s water system infrastructure is maintained as a high quality water system.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Water Tap Fee Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **28**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING SECTION 8-7-3 OF THE WESTMINSTER MUNICIPAL
CODE CONCERNING WATER TAP FEES AND CREDITS**

WHEREAS, the City of Westminster operates a water and wastewater enterprise utility; and

WHEREAS, the City Charter requires that the utility be self-supporting; and

WHEREAS, the City wishes to equitably distribute costs throughout user classes.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-7-3, subsection (A) W.M.C., is hereby AMENDED to read as follows:

8-7-3: WATER TAP FEES AND CREDITS:

(A) FEE CALCULATION:

1(1) An applicant for a water tap shall pay the fees set forth hereinafter, the total of which shall be known as the Water Tap Fee, or those portions that are applicable to the type of tap required by this Chapter. The Water Tap Fee or portions thereof are due and payable upon issuance of the water tap utility permit unless earlier paid as provided in Section 8-7-2(C). The Water Tap Fee may consist of the following individual fees.

(a)1— Water resources fee, being the share of the cost to provide adequate raw water supply to be utilized by the tap;

2(b) Treated water investment fee, being the share of the utility system related to treating and distributing water to be utilized by the tap;

(c) Meter connection fee, being the actual cost for installation of a meter with electronic remote readout device, when applicable; inspection of the tap, service line and meter pit installation; meter testing, when applicable; account and billing activation and other administrative procedures; and

4(d) ~~and w~~When applicable, a fire connection fee, being that charge associated with a tap providing fire protection.

(2)~~—~~ Water taps, water tap lines, and meters for the same service shall normally be the same size. If otherwise approved and/or required by the City, the tap and meter may be of different sizes in which case the fee for the meter size shall be paid. Water taps cannot be issued prior to building and/or tap entitlement approval. Any exceptions must be approved by the City Manager, i.e., conversion from well to the City water system, pursuant to Section 8-7-15.

3(3) The base water tap fees are as follows*:

Water Resources Fee	\$6,435.00 <u>\$10,086.00</u>
Treated Water Investment Fee	\$7,880.00 <u>\$12,900.00</u>
Meter Connection Fee	This connection is based on installed meter size and assessed on a per meter basis.
Fire Connection Fee	\$161.00

* On April 1st of each year, the Water Tap Fee and its individual components shall be automatically increased in accordance with the Consumer Price Index (CPI) for the previous calendar year as established for the Denver metropolitan area. The meter connection fee may also be adjusted separately at any time, when necessary, to reflect the full cost of said connection to the City.

Section 2. Section 8-7-3, subsection (D) W.M.C., is hereby AMENDED to read as follows:

(D) IRRIGATION WATER TAPS: The following regulations apply to taps for irrigation:

- (1) Separate irrigation taps and meters shall be required for:
- (a) all residential developments other than a development whose land area consists entirely of single-family detached lots; and
 - (b) all non-residential developments having any irrigated landscaped areas.

(2) Irrigation tap fees are required based on the area and type of landscaping. Landscape types are defined as either high water, moderate water or low-water as determined by the Community Development Department.

(3) An irrigation water tap shall be used only for irrigation purposes. Each irrigation water tap shall be assigned a service address and billing account in the name of the property owner or manager.

(4) The irrigation tap fee consists of the meter connection fee plus the following square footage fees based upon landscape type:

- (a) ~~\$1.61~~\$2.27 per square foot for high water landscaping requiring an annual application of more than ten (10) gallons of water per square foot;
- (b) ~~\$0.80~~\$1.13 per square foot for moderate water landscaping requiring an annual application of three (3) to ten (10) gallons of water per square foot;
- (c) ~~\$0.40~~\$0.56 per square foot for low water landscaping requiring an annual application of less than three (3) gallons per square foot.

Section 3: This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of August, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of August, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Councillor's Bill No. 29 re Lease Agreement for the Kids Nite Out Program with ABC Entertainment, LLC

Prepared By: Gina Barton, Recreation Supervisor
Peggy Boccard, Recreation Services Manager

Recommended City Council Action

Pass Councillor's Bill No. 29 on first reading authorizing the City Manager to sign a three year lease agreement with ABC Entertainment, LLC for the continuation of the Kids Nite Out Program.

Summary Statement

- The lease agreement for the Kids Nite Out Program currently being offered at the City Park Recreation Center has expired.
- The original lease was for three years, with one, three-year renewable option.
- The new lease agreement with ABC Entertainment, LLC would be for three years running through 2015. It includes one, three-year renewable option.
- This privately-run program offers a variety of activities in a safe, highly-supervised and controlled environment for youth from 7 to 14 years old.
- The program operates from the hours of 7:00 p.m. to 10:30 p.m. on Friday nights during the school year, September through May.
- Activities offered include a disc jockey with dancing, organized games, swimming, and concessions.
- This program generates up to \$18,000 per year of revenue for the City.
- Leasing of property owned by the City must be approved and ratified by ordinance under Section 13.4 of the City's Charter.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council wish to continue the Kids Nite Out Program?

Alternatives

1. Request that Staff investigate other options besides the Kids Nite Out program to address safe and secure alternative activities for children in the 7 to 14 age group. Staff does not recommend this alternative as Staff has explored additional options in the past and has found few, if any, recreation programs being offered by municipal agencies that are as successful as the Westminster Kids Nite Out Program.
2. Council could choose not to renew this lease and no program would be offered in its place. Staff does not recommend this option as this has been a positive program for the youth in the City and is revenue producing as well.

Background Information

Kids Nite Out is an established program that leases existing recreation facilities to offer a safe and fun opportunity for the youth in many local communities. Amanda Lau, owner and operator of ABC Entertainment, LLC, purchased and took over operations of this program, effective January 1, 2012. The previous owner, Dakota & Amanda Enterprises L.L.C., operated this program for over 18 years and successfully expanded the Kids Nite Out franchising to other agencies in the Denver-Metro area.

Rent is paid weekly based on the number of program participants. Kids Nite Out charges a \$10 admission fee, of which 20 percent of the admissions is paid to the City, along with an additional \$120 fee for use of the pool. The Kids Nite Out Program has use of the City Park Recreation Center's gymnasium, pool, locker rooms, community room, and classrooms. Supervision is required at all times while these areas are in use. The City requires the Lessee to hire at least one off-duty City of Westminster police officer to provide security for the program and facility.

Under the terms of the lease, the City may cancel the right of the Lessee (ABC Entertainment, LLC) to use the premises (City Park Recreation Center) upon written notice no later than one month in advance of the date to be cancelled.

The Kids Nite Out Program has been well received by participants, parents, and City employees. Staff recommends the continuation of this program.

This project meets City Council's Strategic Plan Goal of "Financially Sustainable City Government" by providing the City with additional revenues.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments – Ordinance with Exhibit A Lease Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **29**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE APPROVING AND RATIFYING A LEASE AGREEMENT WITH ABC ENTERTAINMENT, L.L.C. TO OPERATE THE "KIDS NITE OUT" PROGRAM WITHIN THE CITY PARK RECREATION CENTER

WHEREAS, the City owns the City Park Recreation Center, located at 10455 Sheridan Boulevard; and

WHEREAS, it is in the City's best interest to maximize the income generated from such operation by collecting rental income from space located in the City Park Recreation Center.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

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

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

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The lease agreement attached hereto as Exhibit A shall be executed by the lessee prior to consideration of this ordinance on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of August, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of August, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

LEASE AGREEMENT

This Lease is made and entered into by and between the **CITY OF WESTMINSTER, COLORADO**, a Colorado home-rule municipality, referenced hereinafter as “Lessor” and **ABC Entertainment, L.L.C.**, a Colorado corporation, referenced hereinafter as “Lessee.”

In consideration of the mutual covenants and agreements set forth in this Lease, and other good and valuable consideration, Lessor does hereby demise and Lease to Lessee, and Lessee does hereby Lease from Lessor, certain portions of the City Park Recreation Center located at 10455 Sheridan Boulevard, Westminster, Jefferson County, Colorado (“the Premises”), more particularly described in Exhibit “A” attached to this Lease. These Premises are referenced in this Lease as “the Premises” or “the Leased Premises.”

ARTICLE 1. TERM

1.01. Term of Lease. The term of this Lease shall be for each Friday during the one (3) year period commencing at six o’clock p.m. on September 1, 2012, and ending at 12 o’clock midnight on the Saturday following the last Friday of May 31, 2015 (the “Expiration Date”), unless sooner terminated as provided in this Lease.

1.02 Hours of Lease. During the term of this Lease, Lessee shall have exclusive use of certain portions of the Leased Premises between the times of six o’clock p.m. of each Friday until twelve o’clock midnight. Specific areas/usage hours are 6:00 p.m.-7:00 p.m.- set-up, 7:00 p.m.-12:00 midnight -program usage and cleaning of upper level, 7:30 p.m.-12:00 midnight – program usage and cleaning of lower level.

1.02. Extension.

- a. Lessor and Lessee may agree to extend this Lease beyond the Expiration Date provided in 1.01 above, for one (1) additional three-year period, on terms the Parties may negotiate. Such extension shall be for a period of three (3) years, with the additional term to begin on the Friday following the Expiration Date of the Lease term specified in 1.01 above. Any such extension shall be subject to the approval of Lessor’s City Council.
- b. Lessee shall notify Lessor of its desire to extend this Lease or to allow the Lease to expire without extension not later than thirty (30) days prior to the Expiration Date of the Lease term. Notice shall be in writing and sent to Lessor by registered mail or facsimile transmission to Lessor at the address provided in this Lease. If Lessee fails to provide notice to Lessor, the Lease shall automatically expire on the Expiration Date.

1.03. Lessor’s Right to Cancel. Lessor shall have the right, at its discretion, to cancel Lessee’s use of the Premises on a specific date without cause and without recourse against Lessor upon written notice to Lessee no later than one (1) month in advance of the date to be canceled.

ARTICLE 2. RENT

2.01. Rent. For the initial three (3) year term of this Lease, Lessee agrees to pay to Lessor the sum of 20% of gross admissions revenues received by Lessee from users of the Premises, on or before the first Friday of each month, as rent for succeeding month. The rent for any extended term pursuant to section 1.01 shall be adjusted by agreement of the Parties. Should Lessee choose to use the aquatics area, Lessee also agrees to pay Lessor \$120 for the use of the aquatics area and locker room from the times of 7:00 p.m. to 9:00 p.m.

ARTICLE 3. USE OF PREMISES

3.01. Permitted Use. Lessee shall operate the Leased Premises as a Youth Activity Center during the term of this agreement and shall use the Premises for no other purpose.

3.02. Youth Activity Center Defined. The term "Youth Activity Center" as used in this Lease (also known as "Kids' Nite Out") means that the Leased Premises shall be used for activities on Friday nights for persons from and including the ages 7 through 14, for, but not limited to, the following activities:

- i. **Game Activities:** consisting of, for example, games such as volleyball, basketball, racquetball, wallyball, dancing, ping pong, video games, and the like, including any activities which may be available but not listed stemming from the uniqueness of the Leased Premises;
- ii. **Audio and Video Activities:** including, but not limited to, performances of person(s) to coordinate and direct the playing of records, videos, laserdiscs and the like. Lessee shall be solely responsible for obtaining any necessary licenses and for paying any applicable royalties or penalties in connection with its use of any copyrighted audio or video works;
- iii. **Food, Drink, and Concession Activities:** including the sale of soft drinks, sandwiches, chips, candy bars, banners, T-shirts, and;
- iv. **All advertising and marketing promotions related to the Youth Activity Center.**

3.03. Manner of Operation. During the term of this Lease and any extensions, Lessee shall keep Leased premise reasonably stocked with concession merchandise, including soft drinks and food, and reasonably staffed to adequately serve the patrons. Lessee must operate the Youth Activity Center on the Leased Premises in a diligent and efficient manner. Lessee must keep the Leased Premises open for business from 7:00 p.m. to 10:30 p.m. on each Friday of the month during the term of this Lease, except Lessee is not required to operate its business on legal holidays, nor during any time when such operations must be suspended because of casualty loss to the Leased Premises or the building in which the Leased Premises are located, strike, insurrection, or other cause beyond the control of the Lessee. Lessee will require either a parent or responsible adult to sign in all youth attendees. Lessee will not allow a parent or responsible adult to enter the program without being accompanied by a Kids' Nite Out staff member.

3.04. Preparation and Clean-up. Preparation of the Leased Premises and clean-up of the Leased Premises shall be the sole responsibility of the Lessee during the term of the Lease. Lessee agrees that it shall have sufficient staff available on the Leased Premises to assure proper and efficient preparation and clean-up.

3.05. Nuisance and Illegal Activity. Lessee shall not use, or permit the use of, the Leased Premises in any manner that results in waste of the Leased Premises or constitutes a nuisance. Nor shall Lessee use, or permit the use of the Leased Premises for any illegal purpose. Lessee will comply, and will cause its officers, employees, agents, patrons, and other invitees to comply, with all applicable laws and ordinances and with all applicable rules and regulations of governmental agencies concerning the use of the Leased Premises.

3.06. Security. Lessee shall hire at least one (1) off-duty Westminster police officer to provide security. The officer shall be on the Premises during the hours Lessee is open for business.

3.07. Supervision. Lessee shall provide adequate supervision at all times. All supervisors shall be at least eighteen (18) years of age. Lessee shall staff supervisors at a ratio of not less than one (1) supervisor to every twenty (20) Youth Activity Program participants. A background investigation including a police record check must be performed on all employees assigned to work at City Park Recreation Center. A complete copy of the results of the background investigation must be provided to the City and approved by the City before the employee is assigned to work at City Park Recreation Center.

3.08. Conduct. Any guests who conduct themselves in an unbecoming manner or become a nuisance to Kids' Nite Out, or other guests, may be suspended or expelled from Kids' Nite Out. Thereupon, all privileges of such guest shall be automatically terminated without proration or refund. At that time, the suspended guest will wait for a parent(s) or a responsible adult to be notified to pick up their youth immediately. All participants and staff members are to conduct themselves in a manner deemed appropriate as agreed upon between Lessor and Lessee. Kids' Nite Out staff will closely monitor behavior and dress code.

3.09. Injury or Accident. Kids' Nite Out staff will immediately notify City Park Recreation Center staff and police officers if any injury or accident occurs during the operation of the program.

ARTICLE 4. MAINTENANCE AND SURRENDER

4.01 Maintenance by Lessor. Lessor shall, at its own expense and risk, maintain the Leased Premises including but not limited to maintenance of the roof, foundation, plumbing, heating and air conditioning systems, fire protection sprinkling systems, structural soundness of the exterior walls (including all windows, window glass, plate glass, and doors), parking lots, walkways surrounding the Leased Premises or the building in which the Leased Premises are located, stairways, and elevators, including repairs and all necessary replacements of these items.

4.02 Wear and Tear. Except as provided in 4.01, Lessee shall maintain the Leased Premises and keep them free from waste or nuisance throughout the Lease term and any extension. At the termination of the Lease, Lessee shall surrender and deliver the Leased Premises to Lessor in as good a state of repair and condition as they were in at the time Lessor delivered possession to Lessee, reasonable wear and tear and damage by fire, tornado, or other casualty excepted. Lessee and Lessor recognize that ordinary wear and tear may include stains from food, drinks, candy, and gum. Lessee will make a good faith effort to clean up such stains but shall not be required to undertake major capital expenditures for removal of such stains nor any structural repairs which may be caused by such stains.

4.03 Failure to Perform. In event either party fails to perform its obligation to repair or maintain as set forth in 4.01 and 4.02 above after notice from the other party of the need for such repair or maintenance and the passage of a reasonable amount of time for performance after such notice, the other party may terminate this Lease or, at its option, suspend business operations until such repairs or maintenance are completed.

ARTICLE 5. TAXES AND ASSESSMENTS

5.01 Personal Property Taxes. Lessee shall pay and fully discharge all taxes, special assessments, and governmental charges of every character imposed during the term of this Lease on the business activities or personal property placed by Lessee in, on, or about the Leased Premises. These taxes include but are not limited to Lessor's sales and use tax.

5.02 Real Property Taxes. Lessor shall pay and fully discharge all property taxes, special assessments, and governmental charges of every character imposed on the Leased Premises during the term of this Lease, including any special assessments imposed on or against the Leased Premises for the construction or improvement of public works.

ARTICLE 6. UTILITIES AND GARBAGE REMOVAL

6.01 Utility Charges. Lessor shall pay all utility charges for water, electricity, heat, gas, and telephone service used in and about the Leased Premises during the term of the Lease, all such charges to be paid by Lessor directly to the utility company or municipality furnishing the same before the same shall be delinquent.

6.02 Garbage Removal. Lessor shall pay for the removal of all garbage and rubbish from the Leased Premises during the term of the Lease.

ARTICLE 7. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

7.01 Consent of Lessor. Lessee shall not make any alterations, additions, or improvements to the Leased Premises without the prior written consent of Lessor.

ARTICLE 8. SIGNS

8.01 Signs. Lessee may erect signs on portions of the Leased Premises and portions of the building in which the Leased Premises are located, subject to the approval of the City Recreation Services Manager as to the number, size, and placement of the signs.

ARTICLE 9. INSURANCE AND INDEMNITY

9.01 Property Insurance. Lessor shall, at its own expense, during the term of this Lease, keep all buildings, structures, improvements, fixtures, and equipment, which are not part of the Leased Premises but are required for access or enjoyment of the Leased Premises, insured against loss or damage by fire or theft.

9.02 Liability Insurance. Lessee shall, at its own expense, obtain general commercial liability insurance. Such insurance shall provide liability coverage, at a minimum, in the amount of One Million Dollars (\$1,000,000). Lessor shall be named as an additional insured on the policy.

9.03 Lessee Hold Harmless Clause. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including reasonable attorney's fees for the defense of such claims and demands, arising from the conduct or management of Lessee's business on the Leased Premises or from its use of the Leased Premises, or from any breach on the part of Lessee of any conditions of the Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Leased Premises.

ARTICLE 10. DEFAULT

10.01. Default by Lessee. If Lessee shall allow the rent to be in arrears more than fourteen (14) days after written notice of such delinquency, or shall remain in default under any of the other conditions of this Lease for a period of twenty (20) days after written notice from Lessor, Lessor may, without notice to Lessee, immediately terminate this Lease, re-enter and take possession of the Leased Premises and remove all persons and property without being deemed guilty of any manner of trespass, and re-let the Premises, or any part of the Premises, for all or any part of the remainder of the Lease term to a party satisfactory to Lessor, and at such monthly rental as Lessor may with reasonable diligence be able to secure. Should Lessor be unable to re-let after reasonable efforts to do so or, should such monthly rental be less than the rental Lessee was obligated to pay under this Lease, Lessee shall pay to Lessor the expense of re-letting plus the amount of any deficiency in the rent.

10.02 Default by Lessor. If Lessor defaults in its performance of any term, covenant, or condition required to be performed by it under this agreement, Lessee may terminate this Lease on giving ten (10) days' notice to Lessor of such intention. The Lease will be terminated on the date designated in Lessee's notice, unless Lessor has cured the default prior to the expiration of the ten (10) day period.

10.03 Waiver of Breach. A waiver by either Lessor or Lessee of a breach of this Lease by the other party does not constitute a continuing waiver or waiver of any subsequent breach of the Lease.

ARTICLE 11. INSPECTION BY LESSOR

11.01 Access by Lessor. Lessee shall permit Lessor and Lessor’s agents, representatives, and employees to enter into and on the Leased Premises at all reasonable times for the purpose of inspection, maintenance, making repairs or alterations to the Premises, or any other purpose necessary to protect Lessor’s interest in the Premises or to perform Lessor’s duties under this Lease so long as such access does not interfere with the quiet use and enjoyment by Lessee of the Leased Premises.

ARTICLE 12. ASSIGNMENT AND SUBLEASE

12.01 Assignment and Subletting by Lessee. Lessee may not sublet, assign, or otherwise transfer this Lease or any right or interest in this Lease, or in the Leased Premises or the improvements on the Leased Premises, without the prior written consent of Lessor. Any such sublet, assignment, or transfer shall not relieve Lessee of any of its obligations under this Lease.

ARTICLE 13. MISCELLANEOUS

13.01 Notice and Addresses. All notice required under this Lease must be given by certified mail or registered mail, addressed to the proper party, at the following address:

Lessor:	Name:	City of Westminster
	Attn:	Peggy Boccard
	Address:	4800 West 92 nd Avenue
	City:	Westminster, CO 80031
	Telephone No.:	(303) 658-2211
	FAX No.:	(303) 706-3926
Lessee:	Name:	ABC Entertainment, L.L.C.
	Attn:	Amanda Lou
	Address:	2019 Monte Vista Circle
	City:	Loveland, CO 80538
	Telephone No.:	(970) 308-0439

Either party may change the address for notice, in whole or in part, by giving the other party written notice of the new address.

13.02 Parties Bound. This agreement shall be binding upon, and inure to the benefit of, the parties to this Lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this agreement.

13.03 Colorado Law to Apply. This agreement shall be construed under, and in accordance with, the laws of the state of Colorado.

13.04 Legal Construction. In case any one or more of the provisions contained in this agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the agreement, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the agreement.

13.05 Prior Agreements Superseded. This agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of same.

13.06 Attorney's Fees and Costs. If, as a result of a breach of this agreement by a party hereto, the other party employs an attorney or attorneys to enforce its rights under this Lease, then the prevailing party shall be paid by the other party the reasonable attorney fees and costs incurred to enforce the Lease.

13.07 Force Majeure. Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this Lease so long as performance is delayed by Force Majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor is unable, wholly or in part, to prevent or overcome.

13.08 Rights and Remedies Cumulative. The rights and remedies provided by this Lease are cumulative, and use of any one right or remedy by a party shall not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights provided by law, statute, ordinance, or otherwise.

13.09 Time of Essence. Time is of the essence of this agreement.

The undersigned Lessor and Lessee agree that this agreement shall be effective as of the first day of September, 2012, regardless of when executed.

LESSOR: CITY OF WESTMINSTER

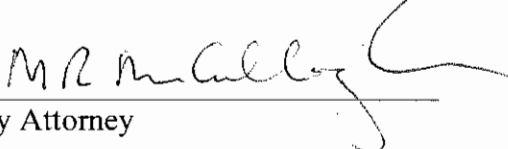
LESSEE: ABC Entertainment, L.L.C.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

ATTEST: _____
City Clerk

APPROVED AS TO LEGAL FORM:



City Attorney



Agenda Memorandum

City Council Meeting
August 13, 2012



SUBJECT: Councillor's Bill No. 30 re Economic Development Agreement with Gmart Westminster, LLC dba HMart

Prepared By: Susan F. Grafton, Economic Development Director

Recommended City Council Action

Pass Councillor's Bill No. 30 on first reading authorizing the City Manager to execute and implement an Economic Development Agreement with GMart Westminster, LLC (HMart) in substantially the same form as the Agreement attached as Exhibit A.

Summary Statement

- City Council action is requested to authorize the execution of the attached Economic Development Agreement (EDA) with HMart to assist with the cost of tenant improvements required to ready existing vacant space previously occupied by Albertsons in the Northview Shopping Center for a new HMart grocery. Northview is located at the southeast corner of 92nd Avenue and Sheridan Boulevard.
- The \$450,000 EDA will be entirely funded with the rebates of the sales tax resulting from the new store.
- This Economic Development Agreement will assist in filling large retail vacancies in the City, one of City Council's strategic plan objectives.
- The EDA rebate shall terminate after 36 months or when the \$450,000 rebate amount has been reached, which ever occurs first.
- If HMart ceases business operations in the City within five years of when new operations commence, any payments made to HMart under this agreement shall be reimbursed to the City unless a replacement tenant is found that is suitable to the City.

Expenditure Required: No more than \$450,000

Source of Funds: The EDA with HMart will be funded through revenue received from sales tax revenues directly generated from the operation of the HMart.

Policy Issue

Does Council desire to provide assistance to HMart to aid in filling the vacant space at Northview Shopping Center with a HMart?

Alternatives

Do Nothing: One alternative to offering the business assistance package is to offer nothing to this company. HMart is already committed to the site, so they are not likely to go elsewhere. However the assistance allows them to make improvements to the exterior of the store as well as interior enhancements.

Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended assistance package is the minimum amount that Staff believes will make this deal move forward.

Provide More: A third alternative would be to provide a greater amount of assistance than recommended. It is Staff’s opinion that additional assistance is not needed.

Background Information

HMart is short for “Han Ah Reum,” which in Korean means, “One Arm Full of Groceries.” The owners of HMart started Hah Ah Reum markets in Queens, New York, in 1982 with a focus on Asian consumers. As they decided on expansion, the name was shortened to HMart.

The company currently has stores in 13 states across the United States. The first Colorado store is located in Aurora at South Parker Road and Yale Boulevard. The Westminster store is anticipated to be opened by first quarter 2013. They will be locating in the former Albertson’s store at the southeast corner of 92nd Avenue and Sheridan Boulevard.

HMart will provide the City with a unique retailer that is a blend of Asian and other fresh produce. They intend to build a marketplace like concept that provides ready to serve and bakery goods. They will begin the revitalization of an aging, predominantly vacant retail center. By the third year of operations, HMart is anticipated to generate in excess of \$30 million in annual sales, which equates to approximately \$900,000 in sales tax at 3%.

Revitalization and the filling of vacancies in existing shopping centers is an important goal which HMart helps to fulfill. Because of the level of tenant improvements and associated costs necessary to improve the former Albertson’s space, HMart has asked for assistance from the City. Therefore, to aid with the filling of vacant space by attracting HMart, Staff is recommending the following business assistance package.

	<u>Approximate Value</u>
<u>Sales Tax Rebate</u>	<u>\$450,000</u>
50% of the General Sales Tax (excludes the City’s .25% Open Space Tax and .6% Public Safety Tax) for the first 36 months (3 years) of operation (estimated at 50% x \$900,000 taxes = \$450,000)	
Total Proposed Assistance Package	\$450,000

SUBJECT: Councillor's Bill re EDA with Gmart Westminster, LLC

Page 3

This assistance package is based upon the City's desire to fill existing vacant retail space in the City. The HMart will not only meet this goal but it will also provide a very unique new retailer in an area of the City that will draw retail sales from outside the City, as well as from Westminster residents. Additionally, the rebates proposed for this assistance will only be paid from dollars generated by the new HMart.

The proposed economic development assistance package supports City Council's Strategic Plan Goal for a Strong, Balanced Local Economy.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments – Ordinance with Exhibit A Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **30**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT
WITH GMART WESTMINSTER, LLC FOR THE ATTRACTION OF A "HMART" TO THE
NORTHVIEW SHOPPING CENTER IN WESTMINSTER, COLORADO**

WHEREAS, the successful attraction and retention of high quality retail development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to generate additional sales tax revenue and remain competitive with other local governments in offering assistance for occupancy of existing retail space in the City; and

WHEREAS, GMart Westminster, LLC dba HMart plans to improve and fill a portion of the vacant space in the Northview Shopping Center located at the southeast corner of Sheridan Boulevard and 92nd Avenue with an HMart; and

WHEREAS, a proposed Economic Development Agreement between the City and HMart 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 GMart Westminster, LLC dba HMart 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. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of August, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of August, 2012.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

ECONOMIC DEVELOPMENT AGREEMENT WITH GMART WESTMINSTER, LLC FOR A "HMART GROCERY"

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, between the CITY OF WESTMINSTER (the "City"), and GMart Westminster, LLC; a Colorado, LLC (HMart).

WHEREAS, the City wishes to provide certain assistance to GMart Westminster, LLC to encourage the location of a HMart in the Northview Shopping Center at the southeast corner of 92nd Avenue and Sheridan Boulevard; and

WHEREAS, City Council finds the execution of this Agreement will serve to 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 HMart agree as follows:

1. Sales Tax Rebate. The City shall pay HMart an amount equal to 50% of the sales tax collected from HMart for the first three years (36 months) of operation of the new HMart store up to a maximum of \$450,000 (the "Rebate"). The Rebate shall not continue past three years (36 months) from the date of HMart's initial certificate of occupancy and shall be administered as follows:

- (a) Payment. The Rebate will be paid to HMart in quarterly payments, made within 20 days after the end of each quarter. The Rebate will be submitted electronically to HMart's designated financial institution.
- (b) End of Sales Tax Rebate. The Rebate shall commence on issuance of the Certificate of Occupancy for HMart and end on the third (3rd) anniversary thereof or upon reaching an amount equal to \$450,000, whichever occurs first.

5. Entire Agreement. This Agreement shall constitute the entire agreement between the City and HMart concerning the HMart grocery store 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.

6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if HMart has not commenced business operations in its new space in the Northview Shopping Center on or before December, 2013; if HMart defaults under the provisions of paragraph 7 below, or, if HMart fails to comply with any City Code or regulation

7. Business Termination. In the event that HMart ceases business operations in the City within five years after the new operations commence, HMart shall reimburse the City for any amounts rebated to or otherwise provided to HMart pursuant to this Agreement.

8. 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.

9. 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.

10. 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 Adams County, Colorado.

11. Any notices related to this Economic Development Agreement shall be delivered as follows:

If to City:	If to HMart:
City Manager City of Westminster 4800 West 92 nd Avenue Westminster, Colorado 80031	Yeong Yong Lee 2751 S. Parker Road Aurora, CO 80014 Huee K Kwon, Manager/Sole Member HK Investment LLC 171 E. 84 th Street, #14J New York, NY 10028

Any such notice shall be deemed effective upon depositing the same with the U. S. Post Office for delivery by certified mail, return receipt requested.

12. Each party represents and warrants to the other that the execution of this Agreement has been duly authorized and shall be binding and enforceable against that party according to the terms hereof.

GMART WESTMINSTER, LLC,
DBA HMART
A COLORADO LLC

CITY OF WESTMINSTER

Yeong Yong Lee
Managing Director

J. Brent McFall
City Manager

ATTEST:

ATTEST:

Linda Yeager
City Clerk

Approved by Ordinance No.

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, August 13, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (July 23, 2012)
- 3. Purpose of Special WEDA Meeting is to consider**
 - A. Phase 2 Project Change Order for the Westminster Mall Demolition
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JULY 23, 2012, AT 7:43 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter, and Board Members Atchison, Briggs, Kaiser, Lindsey, and Major. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Major, to approve the minutes of the meeting of April 23, 2012, as written. The motion carried unanimously.

RESOLUTION NO. 142 APPROVING MANDALAY URA TAX INCREMENT REVENUE BONDS

It was moved by Board Member Kaiser and seconded by Board Member Lindsey to adopt Resolution No. 142 approving the issuance of up to \$30.500 million in Westminster Economic Development Authority Tax Increment Revenue Refunding Bonds, (Mandalay Gardens Urban Renewal Project), Series 2012 as well as approving bond documents including but not limited to the Bond Indenture of Trust, Bond Purchase Agreement, Reimbursement Agreement; Cooperation Agreement with the City; and Final Official Statement. At roll call, the motion carried unanimously

RESOLUTION NO. 143 – TITLE TO FORMER WESTMINSTER MALL PROPERTY

Board Member Major moved, seconded by Board Member Kaiser, to adopt Resolution No. 143 authorizing the Executive Director and Authority Counsel to initiate and file title clearing condemnation action for the Westminster Center Urban Reinvestment Project; to enter such stipulations and court orders as necessary to accomplish the purposes of the condemnation; and to incur reasonable costs associated with acquiring the subject property.

Mr. McCullough noted that City Council had been provided corrected legal descriptions prior to the meeting. On roll call vote, the motion carried with all members voting affirmatively.

ADJOURNMENT

There was no further business for the Authority's consideration, and it was moved by Winter, seconded by Kaiser, to adjourn. The motion passed and the meeting adjourned at 7:45 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
August 13, 2012



SUBJECT: Westminster Mall Demolition – Phase 2 Project Change Order

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended Board Action

Authorize the Executive Director to execute a change order to American Demolition, Inc. for additional costs related to the demolition of the Sears and Sears Automotive buildings in the amount of \$71,982.20, thus raising the total contract amount for the Westminster Mall Demolition – Phase 2 Project to \$507,478.44.

Summary Statement

- Over the past few years, the Westminster Economic Development Authority (WEDA) has acquired approximately 90% of the Westminster Mall property, and Staff believes that it is in the City's best interest to continue to remove the majority of the structures on the site in preparation for the eventual redevelopment of the property. The subject change order is for additional costs related to the removal of the Sears and the Sears Automotive buildings. The Dillard's building, the Wards building and all of the remaining mall with the exception of the Sears, Sears Automotive, J.C. Penney, Olive Garden, Brunswick Bowl, U.S. Bank and the dentist's office buildings were demolished as part of American Demolitions' original contract for Phase 2.
- On April 23, 2012, the WEDA Board approved a change order with American Demolition in the amount of \$83,000 for the demolition of the Sears and Sears Automotive buildings. At the time that American Demolition provided this price quote, the company did not have access to the interior of the buildings due to the reluctance of Sears' management to allow the contractor inside to perform an inspection. Furthermore, Sears did not immediately make "as-built" drawings of the structures available to the contractor. As a result, City staff agreed that American Demolition should calculate their cost for the change order based on an assumption that the Sears building was constructed in the same manner that the Mervyns, Macys, Montgomery Wards and Dillard's buildings.
- American Demolition was recently allowed to fully inspect the building and review the "as-built" drawings, and it was discovered that the Sears building is entirely constructed of cast-in-place concrete on twin tee girders with concrete columns. The Mervyns, Macys, Montgomery Wards and Dillard's buildings were all steel frame construction that offset the demolition cost due to the salvage value of the steel. The Sears building has no salvage value, and the demolition is entirely a "haul and dispose" operation. The requested change order would compensate the contractor for this changed condition and additional cost of the disposal of the concrete material to an inert landfill.

Expenditure Required: \$71,982.20

Source of Funds: WEDA
- Westminster Center Urban Reinvestment Project Capital Improvement Project

Policy Issue

Should the WEDA Board approve this change order to the original contract with American Demolition for the Phase 2 Demolition Project?

Alternative

The WEDA Board could require this change order to be competitively bid. City Staff recommends approval of the change order because Staff is very confident that no other contractor could submit a bid lower than the price that American Demolition has proposed. This opinion is based on the original Phase 2 contract bids in which the second low bid was \$493,613, which is only \$13,865 lower than the proposed revised total contract amount of \$507,478.44 from American Demolition. Naturally, the second low bid did not include any of the additional work that American Demolition has performed or will perform on the Phase 2 demolition contract.

Background Information

Over the past few years, the Authority has purchased many properties at the Mall making WEDA the owner of over 90% of the site. Staff is recommending demolition of portions of the Mall in a timely manner because of security costs, utility costs and the desire to demonstrate activity in the redevelopment of the property. The first phase of this effort was the demolition of the Mervyns, Macys, Steak and Ale and the theater buildings. The second phase of demolition included the Dillard's, Montgomery Wards and the main mall corridor buildings - essentially all structures within the main mall structure with the exception of the Sears and J.C. Penney stores. Accommodations for fire protection, electrical, gas, water service, sanitary sewer service and parking lot lighting will be made to maintain all of these services to J.C. Penney so that the store can continue to operate once the Mall demolition is completed.

The original contract with American Demolition for the Phase 2 Demolition Project was executed on September 29, 2011, in the amount of \$339,250. Since that time, five change orders have been issued. The first change order was in the amount of \$750 and included the construction of a temporary road between the JC Penney store and the Sears store during the 2011 holiday season. The second change order was in the amount of \$14,544.63 and included additional asbestos abatement at the Dillard's building that was unforeseen because the asbestos was covered by drywall material. The third change order resulted in a deduction in the amount of \$13,842.47 that included additional asbestos remediation at several loading docks but also included a significant deduction for the cost of repairs to a damaged, unforeseen electric line that was partially the responsibility of American Demolition. The fourth change order was the demolition of the Sears and Sears Automotive buildings that the WEDA Board previously approved in the amount of \$83,000. The fifth change order was for the painting of the north face of the J.C. Penney building. The sixth change order, which is the subject of this Agenda Memorandum, is the additional cost to demolish and dispose of the building material for the Sears building to an inert landfill site, which is an environmental regulation. If this change order is approved by WEDA, the new contract amount with American Demolition will be \$507,478.44.

WEDA action on this item meets elements of two goals in the City's Strategic Plan: Strong Balanced Local Economy, and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
City Manager

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, August 13, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (May 14, 2012)
- 3. Purpose of Special WHA Meeting is to consider**
 - A. Resolution No. 47 re Revised By-Laws
 - B. Resolution No. 48 regarding the issuance and sale of Private Activity Bonds relative the sale of the Westminster Commons Senior Apartments
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, MAY 14, 2012 AT 7:54 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter and Board Members Atchison, Briggs, Kaiser and Lindsey. Board Member Major was absent and excused. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

MINUTES OF PRECEDING MEETING

Board Member Briggs moved, seconded by Lindsey, to accept the minutes of the meeting of December 19, 2011 as written and distributed. The motion carried unanimously.

DEVELOPMENT AGREEMENT WITH RENAISSANCE I, LLLP RE LOWELL PLAZA PROJECT

Board Member Lindsey moved, seconded by Board Member Kaiser, to authorize the Executive Director to enter into a development agreement with Renaissance I, LLLP, in substantially the same form as presented. The motion passed unanimously.

RESOLUTION NO. 46 RE ASSIGNMENT OF A PRIVATE ACTIVITY FROM THE CITY

Board Member Atchison moved, seconded by Board Member Kaiser, to adopt Resolution No. 46 accepting the assignment from the City of Westminster of \$5,056,803 of private activity bond allocation for 2012 for the qualified purposes set forth in the assignment and authorizing the Chair to execute the necessary documents. On roll call vote the motion passed unanimously.

ADJOURNMENT

There being no further business to conduct, it was moved by Atchison, seconded by Kaiser, to adjourn. The motion carried and the meeting adjourned at 7:56 p.m.

Chairperson

ATTEST:

Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
August 13, 2012



SUBJECT: Resolution No. 47 re Revised By-Laws

Prepared By: Hilary Graham, Assistant City Attorney

Recommended Board Action

Adopt Resolution No. 47 adopting revised by-laws to ensure compliance with applicable state laws and to reflect the current and proper allocation of responsibilities between the Westminster Housing Authority and staff.

Summary Statement

- Current by-laws date back to 1979 and no longer strictly comply with applicable statutory requirements.
- The current by-laws also do not reflect the current and long-standing practice of having the City Manager serve as Executive Director of Westminster Housing Authority (the “Authority”) with the City Clerk performing administrative record-keeping functions.
- An Authority resolution from 2002 created some ambiguity as to the Authority’s administrative structure.
- Revising the by-laws as proposed will create compliance with state statutes and will eliminate the ambiguity that exists between the current by-laws and the 2002 resolution.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the Authority by-laws be amended to accurately reflect statutory requirements and current City practices?

Alternative

The Authority could decide to take no action at this time, but that alternative is not recommended as it would allow the current state of non-compliance and ambiguity to continue.

Background Information

The Westminster Housing Authority first adopted by-laws in 1979, and they have not been revised since. A recent review showed some inconsistencies between the adopted by-laws, applicable state law, a 2002 Authority resolution, and the Authority's current practices.

More specifically, the adopted by-laws properly designated the Authority's Secretary as its Executive Director, but the 2002 resolution separated the duties of those two positions between the City Manager and the City Clerk. In practice, the Authority's record-keeping needs to be carried out by the City Clerk. By creating a new Authority office of Administrative Secretary, these revised by-laws will recognize the City Clerk's responsibilities while still complying with the state law requirement that the Authority Secretary be its Executive Director. These revised by-laws also memorialize the City's practice of having the City Manager serve as Executive Director and Secretary of the Authority.

The other change being recommended pertains to selection of the Chairperson and Vice Chairperson. The original by-laws called for the election of a Chair and a Vice Chair from among the Authority members. The 2002 resolution appointed the City Mayor and Mayor Pro Tempore, respectively, to serve in both positions. Yet, the applicable statute requires the City's Mayor to serve as Chair and the Vice Chair to be elected by the Authority. The revised by-laws accurately reflect this requirement. As a result, the original Sections 6 and 7 within Article II of the by-laws, which addressed election, appointment and vacancies, can be eliminated with the relevant portions of those provisions being incorporated into Article II, Section 3, regarding the Vice Chair.

Last, the original by-laws were adopted prior to the current iteration of the state's Open Meetings Law, C.R.S. § 24-6-401, *et seq.*, which appeared in the early 1990s. Thus, other proposed revisions to Article III of the by-laws address current Open Meetings Law requirements.

Adopting the revised by-laws as proposed ensures compliance with applicable state law, reflects the current and proper allocation of responsibilities between the Authority and Staff, and will further the Authority's important work. All of this supports the Strategic Plan goal of vibrant neighborhoods and commercial areas by helping to improve and maintain neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- WHA Resolution No. 2, Series 1979
- WHA Resolution No. 1, Series 2002
- Proposed WHA Resolution Revising By-Laws

RESOLUTION

RESOLUTION NO. 2

INTRODUCED BY MEMBERS

SERIES OF 1979

Kenneth E. Harris &
Chester McPherson

RESOLUTION ADOPTING BYLAWS OF THE WESTMINSTER HOUSING AUTHORITY,
WESTMINSTER, COLORADO

Be it resolved by the Housing Authority of the City of Westminster, Colorado:

That the following By-Laws shall be and they are hereby approved and adopted as and for the By-Laws of the Westminster Housing Authority, Westminster, Colorado:

BYLAWS OF THE WESTMINSTER HOUSING AUTHORITY, WESTMINSTER, COLORADO

ARTICLE I - THE AUTHORITY:

Section 1. Name of Authority: The name of the Authority shall be "Westminster Housing Authority".

Section 2. Seal of Authority: The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority.

Section 3. Office of Authority: The office of the Authority shall be at such place in the City of Westminster, State of Colorado, as the Authority may from time to time designate by resolution.

ARTICLE II - OFFICERS:

Section 1. Officers: The officers of the Authority shall be a Chairperson, a Vice Chairperson and a Secretary who shall be Executive Director.

Section 2. Chairperson: The Chairperson shall preside at all meetings of the Authority. Except as otherwise authorized by resolution of the Authority, the Chairperson shall sign all contracts, deeds and other instruments made by the Authority. At each meeting, the Chairperson shall submit such recommendations and information as he/she may consider proper concerning the business, affairs and policies of the Authority.

Section 3. Vice Chairperson: The Vice Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson; and in case of the resignation or death of the Chairperson, the Vice Chairperson shall perform such duties as are imposed on the Chairperson until such time as the Authority shall select a new Chairperson.

Section 4. Secretary: The Secretary shall be the Executive Director of the Authority and, as such, shall have general supervision over the administration of its business and affairs, subject to the direction of the Authority. He/She shall be charged with the management of the housing projects of the Authority, shall act as secretary of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his/her office. He/she shall keep in safe custody the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority.

He/She shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select. The Secretary shall sign all orders and checks for the payment of money and shall pay out and disburse such moneys under the direction of the Authority. Except as otherwise authorized by resolution of the Authority, all such orders and checks shall be countersigned by the Chairperson. He/she shall keep regular books or accounts showing receipts and expenditures and shall render to the Authority, at each regular meeting (or more often when requested), an account of his transactions and also of the financial condition of the Authority. He/she shall give such bond for the faithful performance of his/her duties as the Authority may designate.

The compensation of the Secretary shall be determined by the Authority, provided that a temporary appointee selected from among the Commissioners of the Authority shall serve without compensation (other than the payment of necessary expenses).

Section 5. Additional Duties: The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority or the By-Laws or rules and regulations of the Authority.

Section 6. Election or Appointment: The Chairperson and Vice Chairperson shall be elected at the annual meeting of the Authority from among the Commissioners of the Authority, and shall hold office for one year or until their successors are elected and qualified.

The Secretary shall be appointed by the Authority. Any person appointed to fill the office of Secretary or any vacancy therein, shall have such term as the Authority fixes, but no Commissioner of the Authority shall be eligible to this office except as a temporary appointee.

Section 7. Vacancies: Should the office of Chairperson or Vice Chairperson become vacant, the Authority shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office. When the office of Secretary becomes vacant, the Authority shall appoint a successor, as aforesaid.

Section 8. Additional Personnel: The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by "The Housing Authorities Law" of Colorado and all other laws of the State of Colorado applicable thereto. The selection and compensation of such personnel (including the Secretary) shall be determined by the Authority subject to the laws of the State of Colorado.

ARTICLE III: MEETINGS:

Section 1. Annual Meeting: The annual meeting of the Authority shall be held each year on the Second Monday in January, at 8:00 P.M., at the regular meeting place of the Authority. In the event such date shall fall on a Sunday or a legal holiday, the annual meeting shall be held on the next succeeding secular day.

Section 2. Regular Meetings: Regular meetings may be held without notice at such times and places as may from time to time be determined by resolution of the Authority.

Section 3. Special Meetings: The Chairperson of the Authority may, when he/she deems it expedient, and shall, upon the written request of two members of the Authority, call a special meeting of the Authority for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each member of the Authority or may be mailed to the business or home address of each member of the Authority at least two days prior to the date of such special meeting. At such special meeting no business shall be considered other than as designated in the call but if all of the members of the Authority are present at a special meeting, and and all business may be transacted at such special meeting.

Section 4. Quorum: The powers of the Authority shall be vested in the Commissioners thereof in office from time to time. Four Commissioners shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time and reconvene upon such notice as would be required for a special meeting of the Authority until a quorum is obtained. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Commissioners present.

Section 5. Order of Business: At the regular meetings of the Authority the following shall be the order of business:

1. Roll Call
2. Approval of minutes of previous meeting
3. Consideration of New Business
4. Old Business
5. Miscellaneous Business
6. Adjournment

All resolutions shall be in writing and shall be copied in the official minute book or journal of the proceedings of the Authority.

Section 6. Manner of Voting: The voting on all questions coming before the Authority shall be by roll call, and the ayes and nays shall be entered upon the minutes of such meeting, except on the election of officers, which may be by ballot.


ARTICLE IV - AMENDMENTS:

Section 1. Amendments to By-Laws: The by-laws of the Authority shall be amended only with the approval of at least three of the members of the Authority at a regular or a special meeting, but no such amendment shall be adopted unless at least seven days written notice thereof has been previously given to all of the members of the Authority.

Passed and adopted this 8th day of January, 1979.

ATTEST:

Chairperson


Vice Chairperson



**WESTMINSTER HOUSING AUTHORITY
RESOLUTION**

RESOLUTION NO. **1**
SERIES OF 2002

INTRODUCED BY COMMISSIONERS

Dittman - Atchison

WHEREAS, the Board of Commissioners wishes to refinance the loan encumbering the Westminster Commons apartment complex,

WHEREAS, a proposal has been received from Vectra Bank, which proposal is described in the loan commitment dated June 17, 2002, and which was approved by the Board in its meeting on July 8, 2002,

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") has approved the refinancing of Westminster Commons contingent upon entering into an appropriate Use Agreement (the "HUD Use Agreement") that restricts the use of the Westminster Commons apartment complex to rental housing for lower or moderate income families,

WHEREAS, the City provides services to the Westminster Housing Authority ("WHA") in order to accomplish WHA goals and activities; and

WHEREAS, HUD and Vectra Bank have requested documentation of various officials' authority to act on behalf of the WHA,

NOW, THEREFORE, the Board of Commissioners of the Westminster Housing Authority resolves that:

1. The responsibilities of chairperson of the Board of Commissioners shall be carried out by the mayor of the City of Westminster, and the responsibilities of vice-chairperson shall be carried out by the mayor pro tempore.
2. The Westminster City Manager shall perform the responsibilities of the Executive Director of the WHA pursuant to C.R.S. section 29-4-202(5).
3. The Westminster City Clerk shall serve as Secretary to the Board of Commissioners.
4. The Executive Director is authorized to designate the Executive Director's secretary, assistant secretaries, and other officials, staff and agents as the Executive Director deems appropriate to accomplish the goals and activities authorized by the Board of Commissioners.
5. The scope of the Executive Director's authority to enter into contracts and make purchases on behalf of the WHA shall be consistent with the limits set forth in Title XV of the Westminster Municipal Code, as it may be amended from time to time, and the Executive Director is further authorized, but not required, to delegate such contract and purchasing authority to staff of the WHA who may be appointed by the Executive Director from time to time.
6. The Executive Director is hereby directed and authorized to execute the HUD Use Agreement in a form approved by the Westminster City Attorney.
7. The Executive Director is hereby directed and authorized to execute the Vectra Bank loan documents in a form consistent with the loan commitment approved by the Board on July 8, 2002, and in a form approved by the Westminster City Attorney.

8. The Board hereby approves and incorporates by reference the attached Governmental Certificate requested by Vectra Bank.


PASSED AND ADOPTED this 26th day of August 2002.



A handwritten signature in blue ink, appearing to be "S. J. Kelly", is written over a horizontal line.

Chair

ATTEST:



A handwritten signature in black ink, "Michele Kelley", is written over a horizontal line.

Secretary

**WESTMINSTER HOUSING AUTHORITY
RESOLUTION**

RESOLUTION NO. **47**

INTRODUCED BY COMMISSIONERS

SERIES OF 2012

**A RESOLUTION ADOPTING REVISED BY-LAWS TO ENSURE COMPLIANCE WITH
APPLICABLE STATE LAWS AND TO REFLECT THE CURRENT AND PROPER
ALLOCATION OF RESPONSIBILITIES BETWEEN THE WESTMINSTER HOUSING
AUTHORITY AND STAFF**

WHEREAS, the Board of Commissioners of the Westminster Housing Authority (the "Authority") wishes to revise its by-laws, which were adopted in 1979 and have not been revised since; and

WHEREAS, Resolution No. 1, Series 2002, adopted by the Authority on August 26, 2002, memorialized certain duties but also introduced some inconsistencies between that resolution and the by-laws; and

WHEREAS, the Board of Commissioners wishes to amend the by-laws to clarify the duties of the various Authority officials, to reflect current practices, and to ensure consistency with applicable Colorado statutes, including Section 29-4-201, C.R.S. *et seq.*, and Section 24-6-401, C.R.S. *et seq.*

NOW, THEREFORE, the Board of Commissioners of the Westminster Housing Authority resolves that:

1. The by-laws originally adopted and approved as Westminster Housing Authority Resolution No. 2, Series 1979, on January 8, 1979, shall be amended as shown below:

ARTICLE I - THE AUTHORITY:

Section 1. Name of Authority: The name of the Authority shall be "Westminster Housing Authority."

Section 2. Seal of Authority: The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority.

Section 3. Office of Authority: The office of the Authority shall be at such place in the City of Westminster, State of Colorado, as the Authority may from time to time designate by resolution.

ARTICLE II - OFFICERS:

Section 1. Officers: The officers of the Authority shall be a Chairperson, a Vice Chairperson, and a Secretary who shall be Executive Director, and an Administrative Secretary.

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Section 2. Chairperson: The office of Chairperson shall be filled by the Westminster Mayor. The Chairperson shall preside at all meetings of the Authority. Except as otherwise authorized by resolution of the Authority, the Chairperson shall sign all contracts, deeds and other instruments made by the Authority. At each meeting, the Chairperson shall submit such recommendations and information as he/she the Chairperson may consider proper concerning the business, affairs and policies of the Authority.

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Section 3. Vice Chairperson: The Vice Chairperson shall be elected at the annual meeting of the Authority from among the Commissioners of the Authority, and shall hold office for one year or until a successor is elected and qualified. The Vice Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson; and in case of the resignation or death of the Chairperson,

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the Vice Chairperson shall perform such duties as are imposed on the Chairperson until such time as ~~the Authority shall select~~ a new Chairperson takes office. ~~Should the office of Vice Chairperson become vacant, the Authority shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office.~~

Section 4. Secretary: The office of Secretary shall be filled by the Westminster City Manager.

The Secretary shall be the Executive Director of the Authority and, as such, shall have general supervision over the administration of its business and affairs, subject to the direction of the Authority. ~~He /She~~The Secretary shall be charged with the management of the housing projects of the Authority. ~~The Secretary shall have the authority to enter into contracts and make purchases on behalf of the Authority, which authority shall be consistent with the limits set forth in Title XV of the Westminster Municipal Code, as it may be amended from time to time.~~

~~shall act as secretary of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his /her office. He /she shall keep in safe custody the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority.~~

~~He /She~~The Secretary shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select. The Secretary shall sign all orders and checks for the payment of money and shall pay out and disburse such moneys under the direction of the Authority. Except as otherwise authorized by resolution of the Authority, all such orders and checks shall be counter- signed by the Chairperson. ~~He /she~~The Secretary shall keep regular books or accounts showing receipts and expenditures and shall render to the Authority, at each regular meeting (or more often when requested), an account of his transactions and also of the financial condition of the Authority. ~~He /she~~The Secretary shall give such bond for the faithful performance of his /her duties as the Authority may designate. ~~The Secretary is authorized to delegate responsibilities to Authority personnel and agents as appropriate to accomplish the goals and activities authorized by the Board of Commissioners.~~ The compensation of the Secretary shall be determined by the Authority, ~~provided that a temporary appointee selected from among the Commissioners of the Authority shall serve without compensation (other than the payment of necessary expenses).~~

Section 5. Administrative Secretary: The office of Administrative Secretary shall be filled by the Westminster City Clerk. The Administrative Secretary shall act as secretary of the meetings of the Authority and record all votes; shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose; shall be custodian of all papers, documents and records pertaining to the Authority; shall certify by signature all resolutions passed by the Authority; shall keep in safe custody the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority; and shall perform such other duties as may be incident to his/her office or as may be prescribed by law, by the Board of Commissioners or by the Executive Director.

Section 56. Additional Duties: The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority or the ~~By-Laws~~by-laws or rules and regulations of the Authority.

~~Section 6. Election or Appointment: The Chairperson and Vice Chairperson shall be elected at the annual meeting of the Authority from among the Commissioners of the Authority, and shall hold office for one year or until their successors are elected and qualified.~~

~~The Secretary shall be appointed by the Authority. Any person appointed to fill the office of Secretary or any vacancy therein, shall have such term as the Authority fixes, but no Commissioner of the Authority shall be eligible to this office except as a temporary appointee.~~

~~Section 7. Vacancies: Should the office of Chairperson or Vice Chair person become vacant, the Authority shall elect a successor from its membership at the next regular meeting, and such election shall~~

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~~be for the unexpired term of said office. When the office of Secretary becomes vacant, the Authority shall appoint a successor, as aforesaid.~~

~~Section 87. Additional Personnel: The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by "The Housing Authorities Law" of Colorado and all other laws of the State of Colorado applicable thereto. The selection and compensation of such personnel (including the Secretary) shall be determined by the Authority subject to the laws of the State of Colorado.~~

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ARTICLE III: MEETINGS:

~~Section 1. Meetings of the Authority shall be conducted in accordance with the provisions of the Colorado Open Meetings Law, as may be amended from time to time.~~

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~~Section 2. Annual Meeting: The annual meeting of the Authority shall be held each year on the ~~Second~~ second Monday in January, at 8:00 P.M., at the regular meeting place of the Authority. In the event such date shall fall on a ~~Sunday or a~~ legal holiday, the annual meeting shall be held on the ~~next fourth Monday in January~~ succeeding secular day.~~

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~~Section 23. Regular Meetings: Regular meetings may be held with~~out~~ at least twenty-four hours' notice ~~posted in a designated public place~~ at such times and places as may from time to time be determined by resolution of the Authority.~~

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~~Section 34. Special Meetings: The Chairperson of the Authority may, when ~~the Chairperson~~ ~~he~~ ~~she~~ deems it expedient, and shall, upon the written request of two members of the Authority, call a special meeting of the Authority for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each member of the Authority or may be mailed to the business or home address of each member of the Authority at least two days prior to the date of such special meeting. ~~At such special meeting no business shall be considered other than as designated in the call but if all of the members of the Authority are present at a special meeting, and all business may be transacted at such special meeting.~~~~

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~~Section 45. Quorum: The powers of the Authority shall be vested in the ~~Board of~~ Commissioners ~~thereof~~ in office from time to time. Four Commissioners shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time and reconvene upon such notice as would be required for a special meeting of the Authority until a quorum is obtained. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Commissioners present.~~

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~~Section 56. Order of Business: At the regular meetings of the Authority the following shall be the order of business:~~

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1. Roll Call
2. Approval of minutes of previous meeting
3. Consideration of New Business
4. Old Business
5. Miscellaneous Business
6. Adjournment

All resolutions shall be in writing and shall be copied in the official minute book or journal of the proceedings of the Authority.

~~Section 67. Manner of Voting: The voting on all questions coming before the Authority shall be by roll call, and the ayes and nays shall be entered upon the minutes of such meeting, except on the election of officers, which may be by ballot.~~

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ARTICLE IV - AMENDMENTS:

Section 1. Amendments to By-Laws: The by-laws of the Authority shall be amended only with the approval of at least three of the members of the Authority at a regular or a special meeting, but no such amendment shall be adopted unless at least seven days written notice thereof has been previously given to all of the members of the Authority.

2. Except as inconsistent herewith, Resolution 1, Series 2002, of the Authority shall remain in full force and effect.

PASSED AND ADOPTED this 13th day of August 2012.

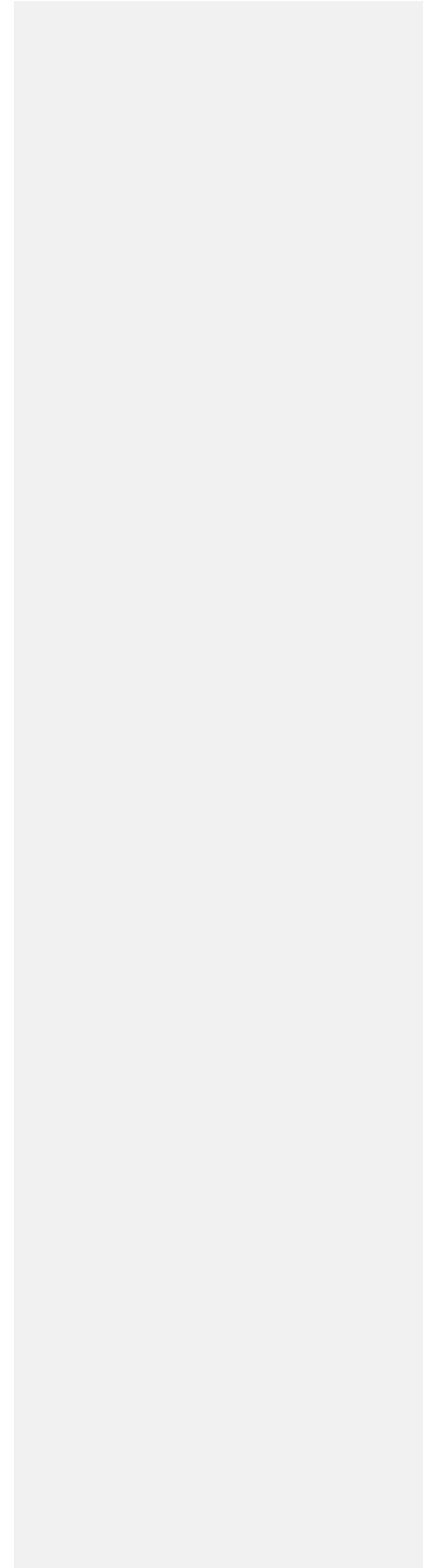
Chairperson

ATTEST:

Administrative Secretary

APPROVED AS TO LEGAL FORM:

City Attorney



WHA Agenda Item 3 B

Agenda Memorandum

Westminster Housing Authority Meeting
August 13, 2012



SUBJECT: Resolution 48 re Issuance and Sale of Private Activity Bonds Relative to the Sale of the Westminster Commons Senior Apartments

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Adopt Resolution No. 48 pursuant to the issuance and sale of the Westminster Housing Authority's multi-family housing revenue bonds and authorizing the Executive Director to execute the necessary documents relative to closing on the sale of the Westminster Commons project.

Summary Statement

- Over the last several years, the City of Westminster has assigned a total of \$18,069,533 in private activity bond (PAB) capacity to the Westminster Housing Authority (WHA) for the purpose of facilitating a sale of the Westminster Commons senior apartments and the development of affordable housing. None of these proceeds has been expended to date.
- The Westminster Housing Authority entered into a purchase and sale agreement to sell the Westminster Commons property to Volunteers of America (VOA) for a sale price of \$7.0 million. In addition, VOA is required to invest about \$6.2 million in a thorough rehabilitation of the Westminster Commons' apartment units and buildings. VOA expects to spend \$2.8 million in other development related costs for a total project cost of about \$16 million.
- Per the purchase and sale agreement between the WHA and VOA, the WHA is required to allocate sufficient PAB to provide financing for the project from a private lender.
- VOA is requesting the WHA issue up to \$11.0 million in PAB that will be assigned to JP Morgan Chase Bank, N.A., which is providing the private financing for the acquisition and rehabilitation.
- The \$5.0 million balance of the project cost will be covered through a provision of Low Income Housing Tax Credits (LIHTC), a HOME fund grant, and several smaller grant sources.
- Per the Purchase and Sale agreement, the WHA will also carry-back a loan of about \$2.2 million from the sale proceeds that will be repaid from the project's cash flow proceeds.
- The City retained the expert services Stan Raine of Sherman & Howard, L.L.C. as outside counsel to prepare and review all documents pertaining to the issuance of the Private Activity Bonds. All legal documents have received his approval.

Expenditure Required: up to \$11,000,000

Source of Funds: Private Activity Bonds

Policy Issue

Should the Authority issue the Private Activity Bonds to assist VOA in purchasing the Westminster Commons senior apartments?

Alternative

Take no action and refuse to issue the bonds. This option is not recommended as the private funding to be provided by JP Morgan Chase Bank, N.A. is premised on the issuance of no less than \$11.0 million in PAB. Without the bank financing, VOA will not be able to close on the purchase of the property.

Background Information

The Authority owns Westminster Commons, a 130-unit senior housing complex. The Commons is thirty years old and is in need of substantial reinvestment. In early 2011, the City issued a request-for-proposals from qualified affordable housing providers relative to the sale of the apartment complex. From this process, the Westminster Housing Authority (WHA) selected Volunteers of America (VOA) to proceed with negotiations on a purchase and sale agreement. On July 25, 2011, City Council authorized the execution of a purchase and sale agreement with VOA relative to the sale of Westminster Commons. The agreement calls for VOA to acquire the property for a purchase price of \$7.0 million and invest an estimated \$6.2 million in rehabilitation. VOA also estimated it would incur another \$2.8 million in other development related costs, for an estimated total project cost of about \$16 million.

The primary funding source for the purchase is the issuance of Private Activity Bonds (PAB) by the Westminster Housing Authority. Over the last several years, the City of Westminster has assigned \$18,069,533 in bonding authority to the WHA with which to issue bonds relative to the sale of the Westminster Commons senior apartments. VOA is requesting a bond issuance of up to \$11.0 million from the WHA to provide a portion of the acquisition financing. VOA has secured JP Morgan Chase Bank, N.A. as a private lender that will provide the financing to cover the bond issuance. By issuing the bonds, the WHA will incur a debt; however, such debt will be assigned immediately to JP Morgan Chase Bank, N.A. at closing. Under agreement, the bank will assume the bond debt from the WHA, and such debt will be repaid solely from the project's rent and cash flow proceeds. VOA will be responsible for repayment of the loan. The WHA has no responsibility to repay the debt under agreement. The issuance of the bonds is necessary for the sale to proceed.

Mr. Stan Raine of Sherman & Howard LLC, an expert affordable housing attorney, was retained to represent the WHA interests in the Westminster Commons sale transaction. Mr. Raine was involved in the preparation and review of all relevant legal documents pertaining to the sales transaction and bond issuance. All legal documents have received his approval. Agreements pertaining to the financing, loan, regulation and assignments can be made available viewing upon request. Mr. Raine will also be in attendance to answer any questions of the Board.

The balance of the funding will come from several other sources, including 4% Low Income Housing Tax Credits (LIHTC), an allocation of \$500,000 in U.S. Department of Housing and Urban Development (HUD) HOME funds from the City of Westminster, and a carry-back loan from the WHA in the amount of about \$2.2 million. The WHA, per the purchase and Sale Agreement, agreed to provide VOA with a carry-back loan from the proceeds of the sale. The loan would be for a 40 year period and would be gradually repaid from 10% of the net cash flow proceeds generated from project rents. The WHA loan would be secured by a promissory note and subordinated deed of trust.

VOA is working towards a sale closing by the end of August, 2012, pending the receipt of HOME funds from Adams County. Although the HOME funds to be applied to the project are dedicated to the City, Adams County has the responsibility, under agreement with HUD, to administer the funds. Therefore, Adams County is responsible for processing the payment of such funds.

The sale of the Westminster Commons meets the City of Westminster's goal of Safe and Secure Community with the objective of maintaining safe buildings and homes. The proposed sale and improvements will extend the life and enhance the livability of the Westminster Commons as affordable senior housing for many years into the future.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment - Resolution

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **48**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2012

RESOLUTION

AUTHORIZING THE ISSUANCE AND SALE OF THE WESTMINSTER HOUSING AUTHORITY'S MULTIFAMILY HOUSING REVENUE BONDS (WESTMINSTER COMMONS PROJECT) SERIES 2012 TO JPMORGAN CHASE BANK, N.A.; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT, LOAN AGREEMENT, REGULATORY AGREEMENT, ASSIGNMENT OF LOAN DOCUMENTS AND OTHER NECESSARY AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; AND RELATED MATTERS

WHEREAS, the Westminster Housing Authority, a public body corporate and politic of the State of Colorado (the "Authority") is authorized and empowered by the provisions of Part 2, Article 4, Title 29 of Colorado Revised Statutes (the "Act"), and the Supplemental Public Securities Act, Part 2, Article 57, Title 11, Colorado Revised Statutes (the "Supplemental Act"), as from time to time supplemented and amended, to provide multifamily residential housing that substantially benefits persons of low income and to issue its obligations in connection with the financing thereof; and

WHEREAS, Section 29-4-209(1)(o) of the Act provides as follows:

An authority shall constitute a body both corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part 2, including the following powers in addition to others granted in this section: ... (o) To borrow money upon its bonds, notes, debentures, or other evidences of indebtedness, and to secure the same by pledges of its revenues and, subject to the limitations imposed by this part 2, by mortgages upon property held or to be held by it, or in any other manner; and

WHEREAS, Section 29-4-209(1)(d.3) of the Act provides as follows:

An authority shall constitute a body both corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part 2, including the following powers in addition to others granted in this section: ... (d.3) To grant or lend moneys or otherwise provide financing to any person, firm, corporation, the city, or a government for any project or any part thereof; and,

WHEREAS, the Authority is the owner of a 130-unit multifamily rental housing apartment project providing independent living for seniors, known as Westminster Commons Apartments (the "Project"), and has entered into a Purchase Agreement and Escrow Instructions dated July 25, 2011 (the "Purchase Agreement") between the Authority, as Seller, and Volunteers of America National Services, as Buyer, which Purchase Agreement has been or will be assigned by the Buyer to the below-defined Borrower; and

WHEREAS, the Authority has determined that in furtherance of public purposes as set forth in the Act, it desires to authorize the issuance of not to exceed \$11,000,000 principal amount of its Multifamily Housing Revenue Bonds (Westminster Commons Project) Series 2012 (the "Bonds"), upon the terms and conditions stated herein, and to use the proceeds thereof to provide a mortgage loan to Westminster Commons VOA LP, a Colorado limited partnership (the "Borrower"), to finance a portion of the purchase price of the Project, to finance the rehabilitation and equipping by the Borrower of the Project, and to pay for certain costs of issuance associated with the issuance of the Bonds; and

WHEREAS, the remainder of the purchase price of the Project pursuant to the Purchase Agreement that is not paid from a portion of the proceeds of the Bonds shall be evidenced by a Promissory Note from the Borrower in favor of the Authority as provided in Section 5.2 of the Purchase Agreement, secured by a Deed of Trust and Security Agreement by Borrower on behalf of the Authority; and

WHEREAS, there have been submitted to this meeting the proposed forms of the following documents (collectively, together with related documents, the "Financing Documents"):

- (a) the Financing Agreement (the "Financing Agreement") among the Authority, the Borrower and JPMorgan Chase Bank, N.A. ("JPMorgan Chase"), as the purchaser of the Bonds,
- (b) the Loan Agreement among the Authority, the Borrower and JPMorgan Chase,
- (c) the Regulatory Agreement and Declaration of Restrictive Covenants between the Authority and the Borrower, and
- (d) the Assignment of Loan Documents from the Authority to and for the benefit of JPMorgan Chase; and

WHEREAS, the Bonds and the obligation to pay interest thereon shall be special, limited obligations of the Authority, payable solely out of the revenues and income derived from the Financing Agreement and as otherwise provided in the Financing Documents; the Bonds and the obligation to pay interest thereon shall not be deemed to constitute a debt or indebtedness of the City of Westminster, Colorado (the "City"), or the State of Colorado (the "State") or any political subdivision thereof (including the Authority), and neither the City, the State nor any political subdivision thereof shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Authority pledged under the Financing Documents; and the Bonds shall not constitute an indebtedness or a multiple fiscal-year financial obligation within the meaning of any constitutional or statutory debt limitation or restriction.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE WESTMINSTER HOUSING AUTHORITY, AS FOLLOWS:

Section 1. Pursuant to the Act, the financing of all or a portion of the costs of the Project through the execution of the Financing Documents in accordance with the terms of such documents is hereby authorized and approved. All action (not inconsistent with the provisions of this

Resolution) heretofore taken by the Commissioners or officers of the Authority in connection with the Project and the financing of the costs thereof by the execution of the Financing Documents hereby is ratified, approved and affirmed. The Authority hereby finds and determines that the execution of the Financing Documents to finance the cost of the Project is in furtherance of the public purposes set forth in the Act.

Section 2. The terms and provisions of the Financing Documents hereby are in all respects approved, and the Executive Director is hereby authorized, empowered and directed to execute and deliver the Financing Documents in the name and on behalf of the Authority, in such respective forms as shall be approved by the officials of the Authority executing the same, their execution thereof to constitute conclusive evidence of their approval thereof; and from and after the execution and delivery of the Financing Documents, the officials, agents and employees of the Authority are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such instruments as executed.

Section 3. The Commissioners hereby elect to apply Sections 11-57-205, 11-57-207, 11-57-208, 11-57-209, 11-57-210 and 11-57-212 of the Supplemental Act to the Bonds. Pursuant to Section 11-57-205 of the Supplemental Act, each Bond shall recite that it is issued under the authority of this resolution and the Supplemental Act and that it is the intention of the Authority that such recital shall be conclusive evidence of the validity and the regularity of the issuance of each of the Bonds after its delivery for value. Pursuant to such election to apply Section 11-57-205 of the Supplemental Act to the Bonds, the Commissioners hereby delegate to the Executive Director of the Authority the power to make the following determinations with respect to the Bonds without any requirement that the Commissioners approve such determinations:

(a) The rate or rates of interest to be borne by the Bonds, which shall not exceed (i) during the construction period, a variable rate equal to 71% of 30-day LIBOR plus 3.00% or, at the election of the Borrower, JPMorgan Chase's Prime Rate (with a floor equal to 30-day LIBOR on any day) plus 3.00%, and (ii) thereafter, a fixed rate equal to 5.25% per annum, except as may otherwise be provided in the Financing Documents.

(b) The aggregate principal amount of the Bonds, which shall not exceed \$11,000,000.

(c) The final maturity date of the Bonds, which shall be no later than April 1, 2034.

Section 4. The Bonds shall be sold and delivered to JPMorgan Chase at a private sale at a purchase price equal to 100% of the principal amount thereof.

Section 5. For the purposes of Section 142(d)(1) of the Internal Revenue Code of 1986, as amended, the Authority hereby elects that the Project shall be subject to the requirements of subparagraph (B) of Section 142(d)(1).

Section 6. The proper officials, agents and employees of the Authority are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Financing Documents and to further the purposes and intent of this Resolution, including the preamble hereto. The Chair, Vice

Chair and the Executive Director are hereby further authorized and directed for and on behalf of the Authority, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by this Resolution or to evidence said authority, and to exercise and otherwise take all necessary action to the full realization of the rights, accomplishments and purposes of the Authority under the Bonds and the Financing Documents and to discharge all of the obligations of the Authority thereunder.

Section 7. All acts and doings of the officials of the Authority which are in conformity with the purposes and intent of this Resolution and in furtherance of the sale and financing of the Project, the issuance of the Bonds and the execution and delivery of the Purchase Agreement, including the acceptance of the delivery of the Promissory Note and Deed of Trust described in the sixth preamble to this resolution, hereby are in all respects, approved and confirmed.

Section 8. All covenants, stipulations, promises, agreements and obligations of the Authority contained in this resolution shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any director, member, officer or employee of the Authority or the City in his or her individual capacity, and no recourse shall be had for the payment of the principal or redemption price of or interest on any of the Bonds or for any claim based thereon or on this resolution, either jointly or severally, against any director, member, officer or employee of the Authority or the City or any person executing Bonds.

Section 9. This Resolution shall constitute an irrevocable contract between the Authority and the owner or owners of the Bonds; and this Resolution shall be and shall remain irrevocable until such the Bonds shall be fully paid, canceled and discharged.

Section 10. The provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision shall, for any reason, be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 11. All resolutions, orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby superseded.

Section 12. This Resolution shall be in full force and effect from and after its passage and approval, in accordance with law.

PASSED, ADOPTED AND APPROVED this August 13, 2012.

[SEAL]

Chair

Attest:

Administrative Secretary

STATE OF COLORADO)
)
COUNTY OF ADAMS) SS.
)
CITY OF WESTMINSTER)

I, the undersigned Linda Yeager, the duly appointed Administrative Secretary of the Westminster Housing Authority (the "Authority"), do hereby certify that the foregoing pages 1 through 5, inclusive, are a true, correct and complete copy of the record of proceedings of the Commissioners of the Authority, insofar as such proceedings relate to the resolution contained therein, had and taken at a lawful, public meeting of the Commissioners held at the Authority's offices, 4800 W. 92nd Avenue, in Westminster, Colorado, on August 13, 2012, commencing at the hour of __:__ __.m., as recorded in the regular official book of the proceedings of the Authority kept in my office; that said proceedings were duly had and taken as therein shown; that the meeting therein shown was duly held and was open to the public at all times; and that the persons therein were present at said meeting in person or by telephone as therein shown.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Westminster Housing Authority this August 13, 2012.

Administrative Secretary

(SEAL)