



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
 - A. Employee Appreciation Week Proclamation
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. Financial Report for July 2012
 - B. 2012 Water Treatment Chemical Expenditures over \$50,000
 - C. 2012 Small Drainage Improvements Construction Contract
 - D. Tanglewood Creek Trail Engineering Design Contract
 - E. IGA re Utilization of Foothills Animal Shelter, Annual Assessments and the County-Wide Dog Licensing Program
 - F. Second Reading of Councillor's Bill No. 28 re Water Tap Fee Increase
 - G. Second Reading of Councillor's Bill No. 29 re Lease Agreement for the Kids Nite Out Program
 - H. Second Reading of Councillor's Bill No. 30 re Economic Development Agreement with Gmart Westminster, LLC
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Councillor's Bill No. 31 re 2012 2nd Quarter Budget Supplemental Appropriation
 - B. Councillor's Bill No. 32 re Bonnie Stewart Open Space Acquisition Grant Supplemental Appropriation
 - C. Councillor's Bill No. 33 re McKay Overlook Open Space Acquisition Grant Supplemental Appropriation
 - D. Councillor's Bill No. 34 re Westminster Hills Elementary School Site Open Space Grant Supplemental Appropriation
 - E. Resolution No. 23 re Annexation Compliance Hearing for the West 100th Avenue and Alkire Street Property
 - F. Resolution No. 24 re Refunding of the 2009 Loan Issued for the North Huron Urban Renewal Area
11. Old Business and Passage of Ordinances on Second Reading
 - A. Remove from the Table Councillor's Bill No. 26 re Update to Title XI of the W.M.C. re Accessory Buildings
 - B. 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
 - B. Executive Session – Ag Ditch Midway Reservoir Water Court Case No. 05CW114
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, AUGUST 13, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Atchison, to approve the minutes of the regular meeting of July 23, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that the Westminster Faire, held on Saturday, August 11, was possibly the most successful ever. The weather cooperated and the event produced the biggest crowd he could recalled. He thanked Parks, Recreation and Library staff and all of the volunteers who had helped throughout the day.

At the conclusion of this meeting, the Westminster Economic Development Authority (WEDA) Board of Directors would meet. That meeting would be followed by a meeting of the Westminster Housing Authority (WHA) Board of Directors. After the WHA meeting, the WEDA Board would conduct a study session concerning the North Huron Urban Renewal Authority. Then the City Council would conduct a post-meeting in the Board Room to discuss the MindMixerWeb-Based Platform for Community Engagement and an update to Title XI of the Westminster Municipal Code regarding accessory buildings.

CITY COUNCIL COMMENTS

Councillor Briggs echoed Mr. McFall's appreciation to Parks, Recreation and Libraries staff and volunteers for their help with the Westminster Faire. A Library employee had been particularly helpful to him in getting a tent from his car to the Faire booth location.

CITIZEN COMMUNICATIONS

Michael Raber, 1662 Sinton Road in Evergreen, provided copies of three maps (the Jefferson County Bicycle Plan, the 2008 Route Map for Bicycling the Greater Denver Area published by MAPSCO, and the Denver Bicycle Touring Club map by Google) to substantiate the major use of the 100th Avenue/Alkire Street route for commuter and recreational cyclists. Having addressed Council on July 23, he reiterated the need for four-foot shoulders to be added on both sides of 100th Avenue to improve safety for cyclists, pedestrians, and motorists and urged City Council to include funding for those improvements in the 2013/2014 City Budget. The popularity of this route had grown and would continue to grow in the years to come.

Tim McAndrew, 13585 West 84th Avenue and the co-founder of CyclistsHaveRights.org, concurred with Mr. Raber about the need for hard shoulders on 100th Avenue between Alkire and Simms. City transportation staff had added signage along this route to alert motorists to "Share the Road" and the engineering staff had prepared an estimate of the cost to construct four-foot hard shoulders on both sides of the roadway to improve safety. He urged Council to include funding in the City Budget now being developed.

Steven Forester, 6606 West 96th Avenue and a cyclist, agreed with the previous speakers. The City's roadways were narrow and bike lanes frequently ended without notice or any place for cyclists to go. Conflicts between motorists and cyclists were inevitable under existing conditions and a fear to those who used their bicycles for commuting and recreational purposes. He urged Councillors to fund improvements.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: award the bid for one Parks, Recreation and Libraries greenhouse work truck to Transwest Buick GMC Isuzu in the amount of \$55,187; based on the City Manager's recommendation, find that the public interest was best served by authorizing the City Manager to execute a contract with HDR Engineering, Inc. in the amount of \$420,410 with a 10% contingency of \$42,041 for a total project budget of \$462,451 for design and bidding services related to the Pressure Zone 4 System Improvements project; authorize the City Manager to execute a \$45,493 contract with the low bidder, Keeton Industries, 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; 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; final passage on second reading of Councillor's Bill No. 25 making revisions to sections of Title II, Title VIII and Title XI of the Westminster Municipal Code; and final passage on second reading of Councillor's Bill No. 27 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.

No items were removed from the consent agenda for individual consideration. It was moved by Councillor Kaiser and seconded by Councillor Lindsey to approve the consent agenda as presented. The motion carried with all Council members voting affirmatively.

APPOINTMENT OF DIRECTORS TO COUNTRY CLUB HIGHLANDS METROPOLITAN DISTRICT

Upon a motion by Councillor Briggs, seconded by Councillor Atchison, the Council voted unanimously to appoint John Healy, Amy Anders, and Todd Amberry to serve on the Board of Directors of the Country Club Highlands Metropolitan District pursuant to Section 32-1-905, C.R.S., of the Special District Act.

COUNCILLOR'S BILL NO. 28 INCREASING WATER & IRRIGATION TAP FEES

It was moved by Councillor Major and seconded by Mayor Pro Tem Winter to pass Councillor's Bill No. 28 on first reading authorizing an increase to the water tap and irrigation tap fees effective January 1, 2013. On roll call vote, the motion carried by a 6:1 margin with Councillor Atchison voting no for reasons stated.

COUNCILLOR'S BILL NO. 29 AUTHORIZING LEASE AGREEMENT FOR KIDS NITE OUT PROGRAM

It was moved by Mayor Pro Tem Winter and seconded by Councillor Lindsey to 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. The motion carried unanimously on roll call vote.

COUNCILLOR'S BILL NO. 30 AUTHORIZING EDA FOR HMART

Councillor Atchison moved, seconded by Councillor Lindsey, to 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 to the Agenda Memorandum. At roll call, the motion passed unanimously.

Becky Hogan of Galloway represented GMart Westminster, LLC and introduced company officials. Yeong Yong Lee thanked Council for welcoming HMart, an Asian grocery mart, to the community. Small bags of Korean fruits were presented to Council and staff.

ADJOURNMENT

There being no further business to come before the City Council, the Mayor adjourned the meeting at 7:23 p.m.

Mayor

ATTEST:

City Clerk



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Proclamation re Employee Appreciation Week

Prepared By: Lisa Chrisman, Employee Development & Benefits Manager

Recommended City Council Action

Mayor McNally proclaims September 3 through September 6, 2012, as City of Westminster Employee Appreciation Week in recognition of the contributions of City employees to the overall success of the City organization and the quality of life of Westminster citizens.

Summary Statement

- The Mayor and City Council are being requested to proclaim September 3 through September 6, 2012, as City Employee Appreciation Week.
- For many years, the City of Westminster and its citizens have benefited from the hard work and commitment of City employees.
- The purpose of the proposed proclamation is to recognize 956 full and part-time benefited employees, and the more than 566 seasonal and non-benefited employees who comprise the City of Westminster's workforce.
- On September 5, the 23rd annual employee appreciation breakfast will be prepared by the City Manager, Deputy City Manager, City Attorney, Presiding Municipal Court Judge, and City Department Heads.
- Members of the City's Employee Advisory Committee and the Employee Recognition Action Team, who represent employees from all City departments, have been invited to attend Monday evening's meeting to accept the proclamation on behalf of all City employees.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The ability of the City of Westminster organization to provide quality municipal services is in no small part due to the commitment, dedication, talent, expertise and knowledge of the City's employee workforce. Currently there are 956 full-time and part-time regular employees working in Information Technology, Police, Fire, Public Works and Utilities, Finance, General Services, Parks, Recreation and Libraries and Community Development Departments, and the City Attorney's and City Manager's Offices. Overall, there are roughly 1,522 active employees, including seasonal and non-benefited employees. Due to the efforts of these individuals, Westminster is in the forefront of providing high quality facilities and services to its residents. Very positive citizen feedback in biennial surveys and the many national and regional awards the City has received attest to the caliber of the City's workforce.

The attached Proclamation summarizes the contributions of City employees and recognizes their efforts by proclaiming September 3 through September 6, 2012, as City of Westminster Employee Appreciation Week.

One of the highlights of the week will be the Employee Appreciation Breakfast at the City Park Recreation Center. It will mark the 23rd year in a row that the City Manager, Deputy City Manager, City Attorney, Presiding Municipal Court Judge, and Department Heads have arrived at 5:00 a.m. to prepare a full breakfast with pancakes, hash browns, eggs, fruit, ham, link sausage and juice for employees at the start of their workday. Employees will stop by anytime between 6:00 a.m. and 8:30 a.m. to partake in the breakfast and camaraderie prior to the start of their normal workday, or in some cases after working through the night on a late shift.

In addition, the Employee Recognition Action Team has created an electronic thank you note that will be available to send to City employees during the week. This special thank you note helps employees remember to thank their coworkers for their teamwork and inspiration throughout the year. ERAT has planned other activities and events throughout Employee Appreciation Week.

Several of the members of the City's Employee Advisory Committee and the Employee Recognition Action Team will be present Monday evening to accept this proclamation from the City Council on behalf of all City employees.

Employee appreciation efforts are an integral part of the organization's ability to provide a quality work environment with effective employers prepared to deliver quality service to citizens, meeting all five of the City Council's Strategic Plan Goals.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Proclamation

WHEREAS, Westminster citizens have given the City very high service ratings in each of the past citizen surveys attesting to the high quality of services provided by Westminster employees; and

WHEREAS, Westminster employees are in large part responsible for the City's national and regional reputation for quality, progressive municipal government; and

WHEREAS, the 956 full-time and part-time benefited employees and over 566 seasonal and non-benefited employees have contributed significantly to the quality of life of Westminster citizens; and

WHEREAS, these employees who are employed in the City Attorney's Office, City Manager's Office, Community Development, Finance, Fire, General Services, Information Technology, Parks, Recreation, and Libraries, Police, and Public Works and Utilities Departments, comprise a workforce that is unquestionably one of the City's most valuable resources; and

WHEREAS, on September 5, 2012, the City Manager, Deputy City Manager, City Attorney, Presiding Judge, and all City Department Heads will be preparing an Employee Appreciation Breakfast in recognition of all City employees at City Park Recreation Center; and

WHEREAS, the week of September 3, 2012, will include several other activities designed to express appreciation to City Employees.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council do hereby proclaim September 3 through September 6, 2012, as

**CITY OF WESTMINSTER
EMPLOYEE APPRECIATION WEEK**

Signed this 27th of August, 2012.

Nancy McNally, Mayor



Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Financial Report for July 2012
Prepared By: Tammy Hitchens, Finance Director

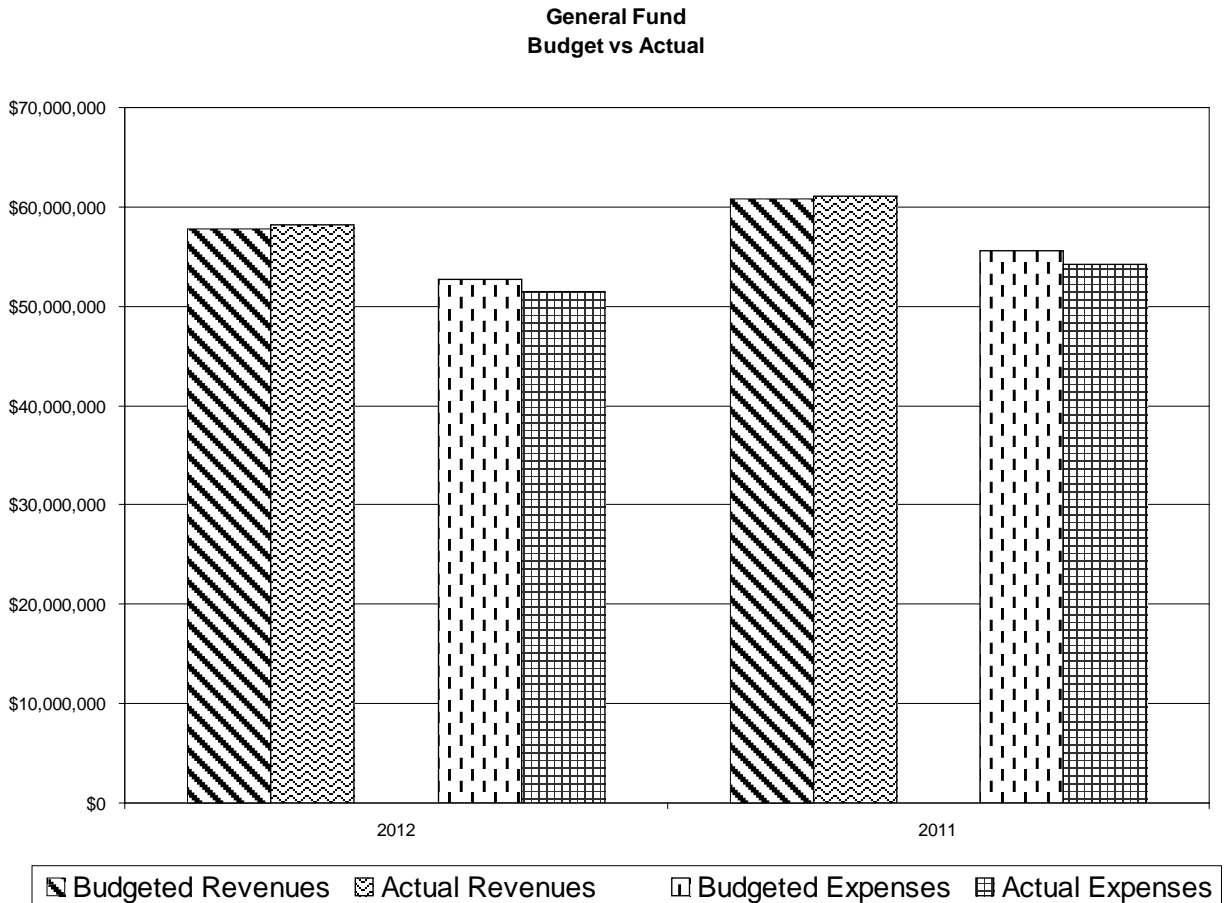
Recommended City Council Action

Accept the Financial Report for July as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, “budget” refers to the pro-rated budget. The budget numbers that are presented reflect the City’s amended adopted budget. Both revenues and expense are pro-rated based on 10-year historical averages.

The General Fund revenues and carryover exceed expenditures by \$6,670,261. The following graph represents Budget vs. Actual for 2011-2012.

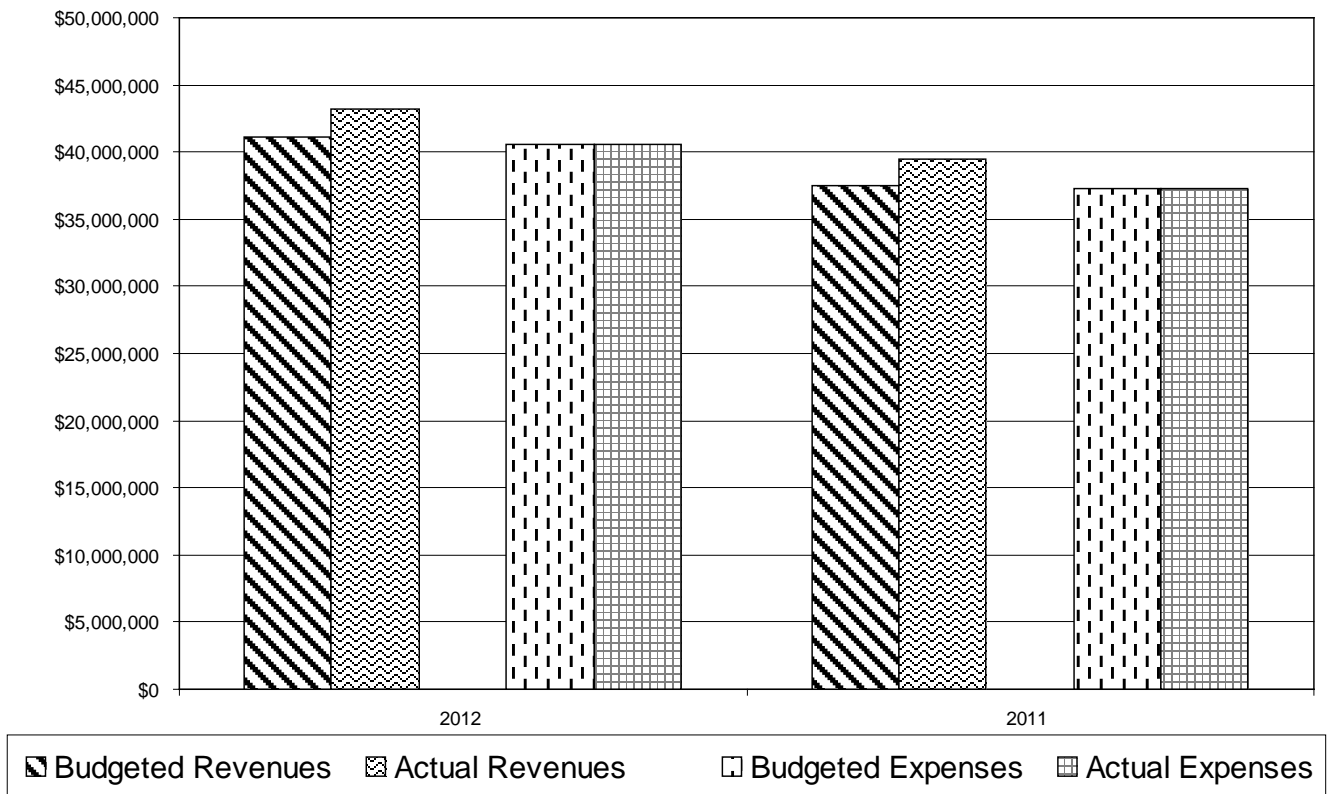


- 2012 includes \$1.9 million of carryover versus \$4.0 million for 2011.

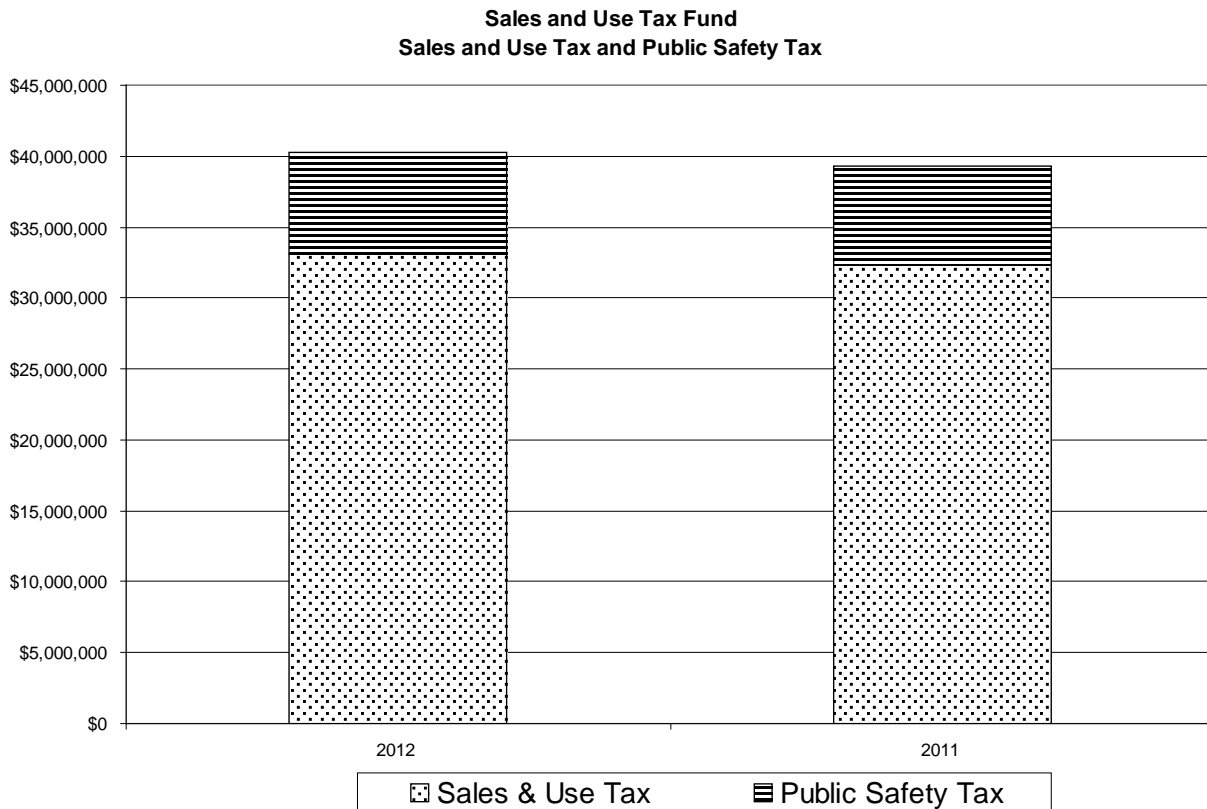
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$2,564,698. On a year-to-date cash basis, total sales and use tax is up 2.5% from 2011. Key components are listed below:

- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 2.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 58.6% of all collections, are up 0.8% for the month.
- Urban renewal areas make up 41.1% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 83.0% of this money is being retained for General Fund use.
- Auto Use tax is up 15.9% on a year-to-date basis.

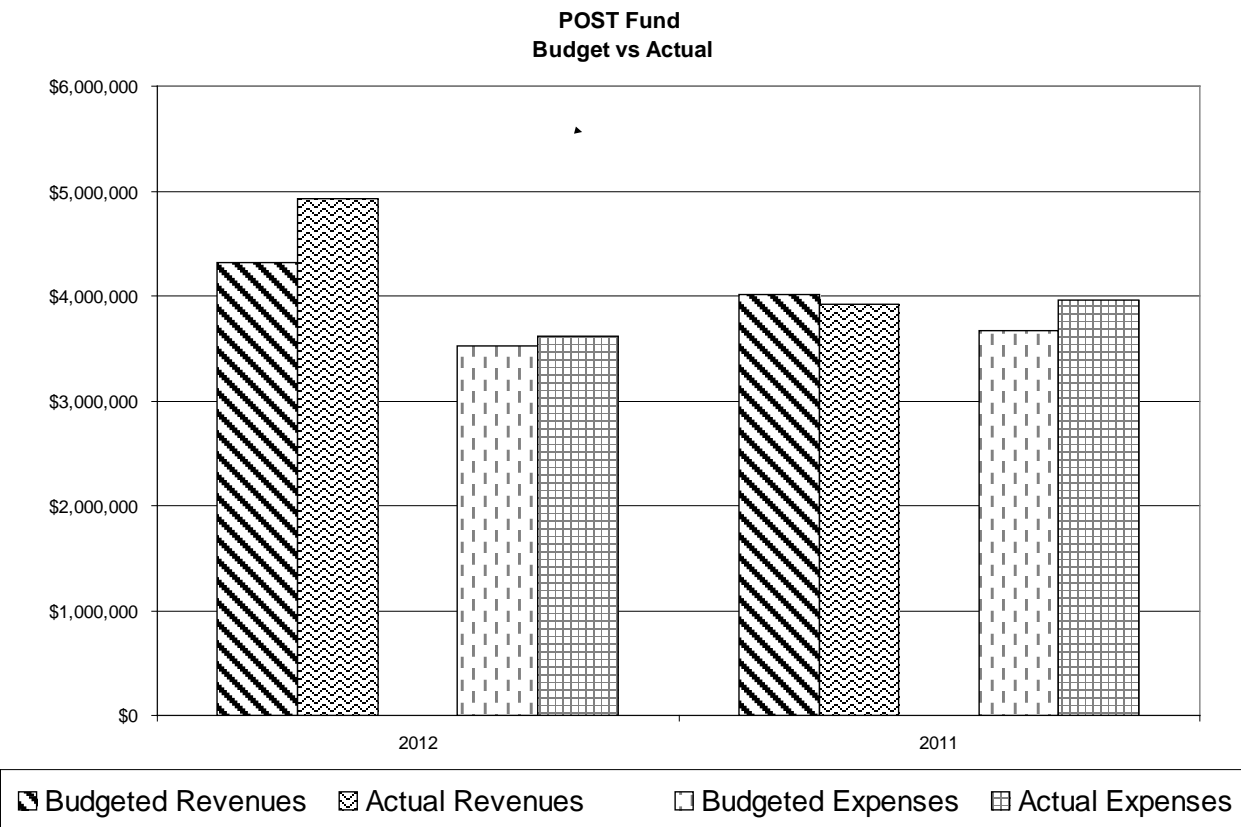
**Sales & Use Tax Fund
Budget vs Actual**



The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.

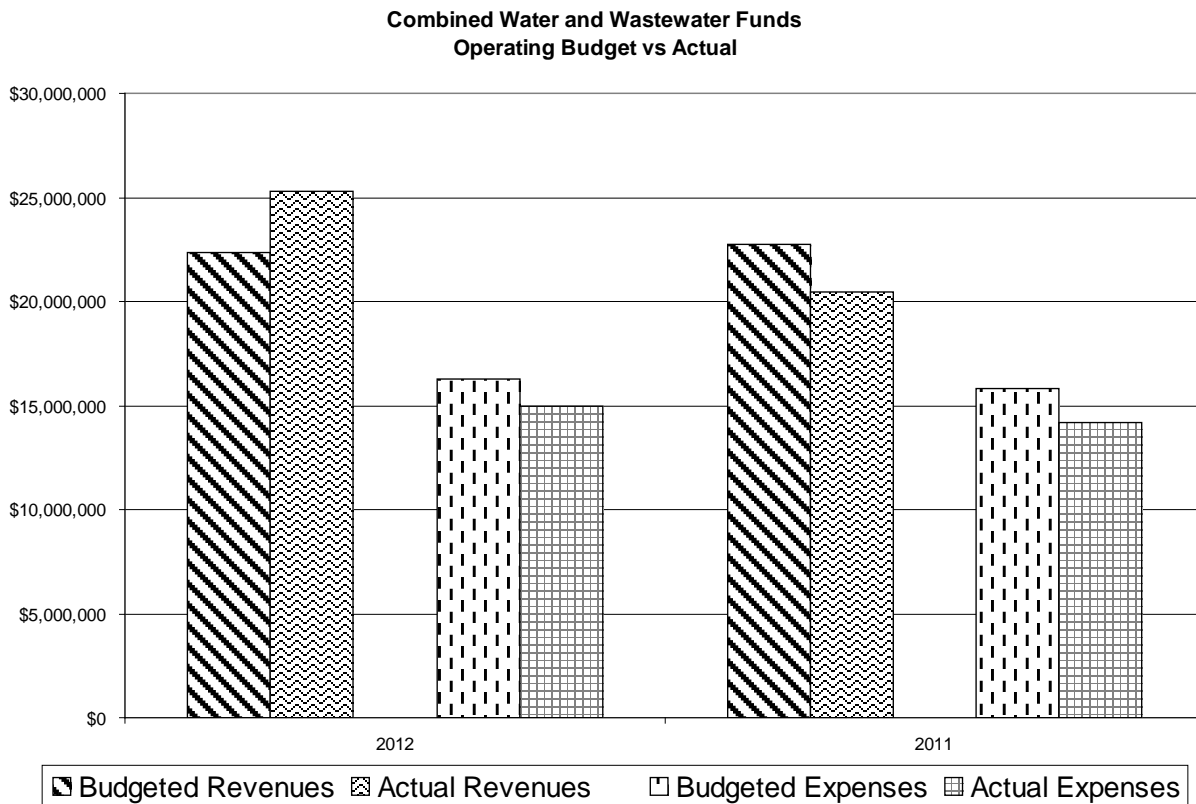


The Parks Open Space and Trails Fund revenues and carryover exceed expenditures by \$1,316,738.

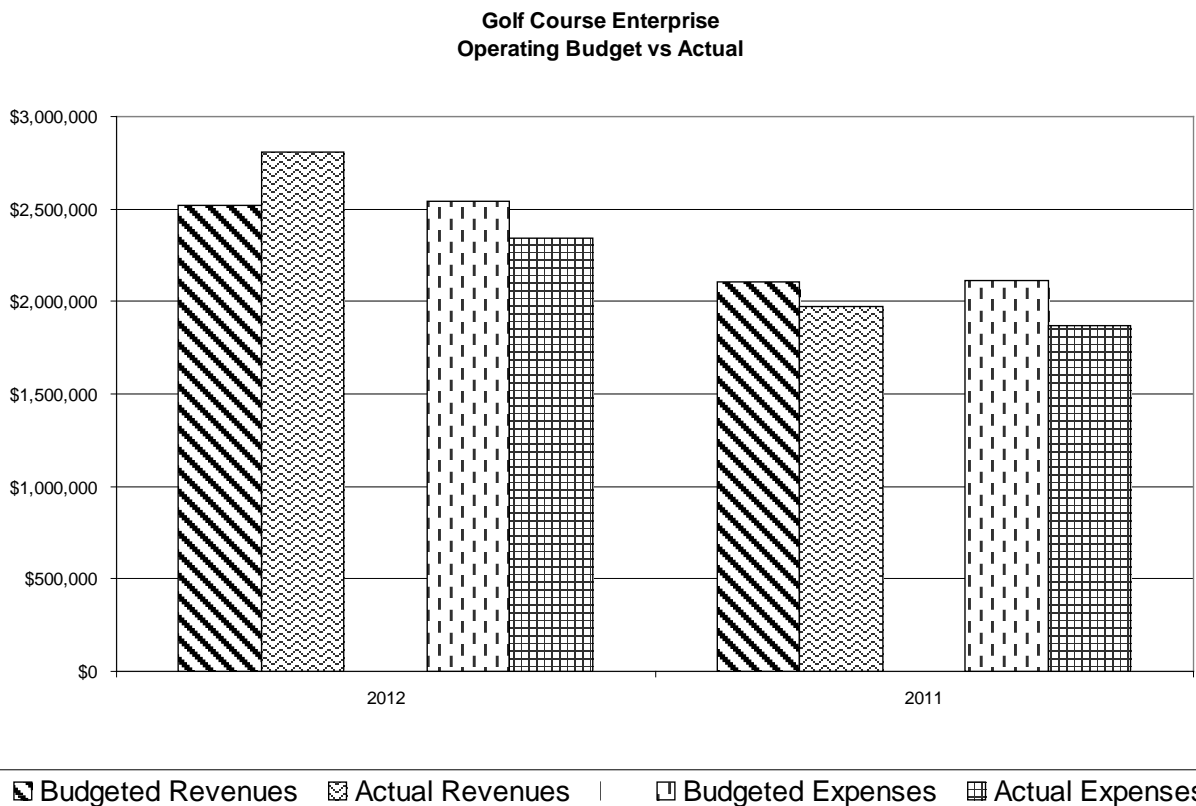


2012 revenues reflect the receipt of a significant grant which has not yet been appropriated as well as \$1.4 million of carryover.

The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$13,775,196. Operating revenues exceed operating expenses by \$10,345,338. \$14,916,417 is budgeted for capital projects and reserves.



The combined Golf Course Fund revenues and carryover exceed expenditures by \$465,123.



On a combined basis, golf course revenues are up by \$293,460 over prorated budget. This is attributable to increased play and primarily corporate memberships.

Policy Issue

A monthly review of the City’s financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

Alternative

Conduct a quarterly review. This is not recommended, as the City’s budget and financial position are large and complex, warranting a monthly review by the City Council.

Background Information

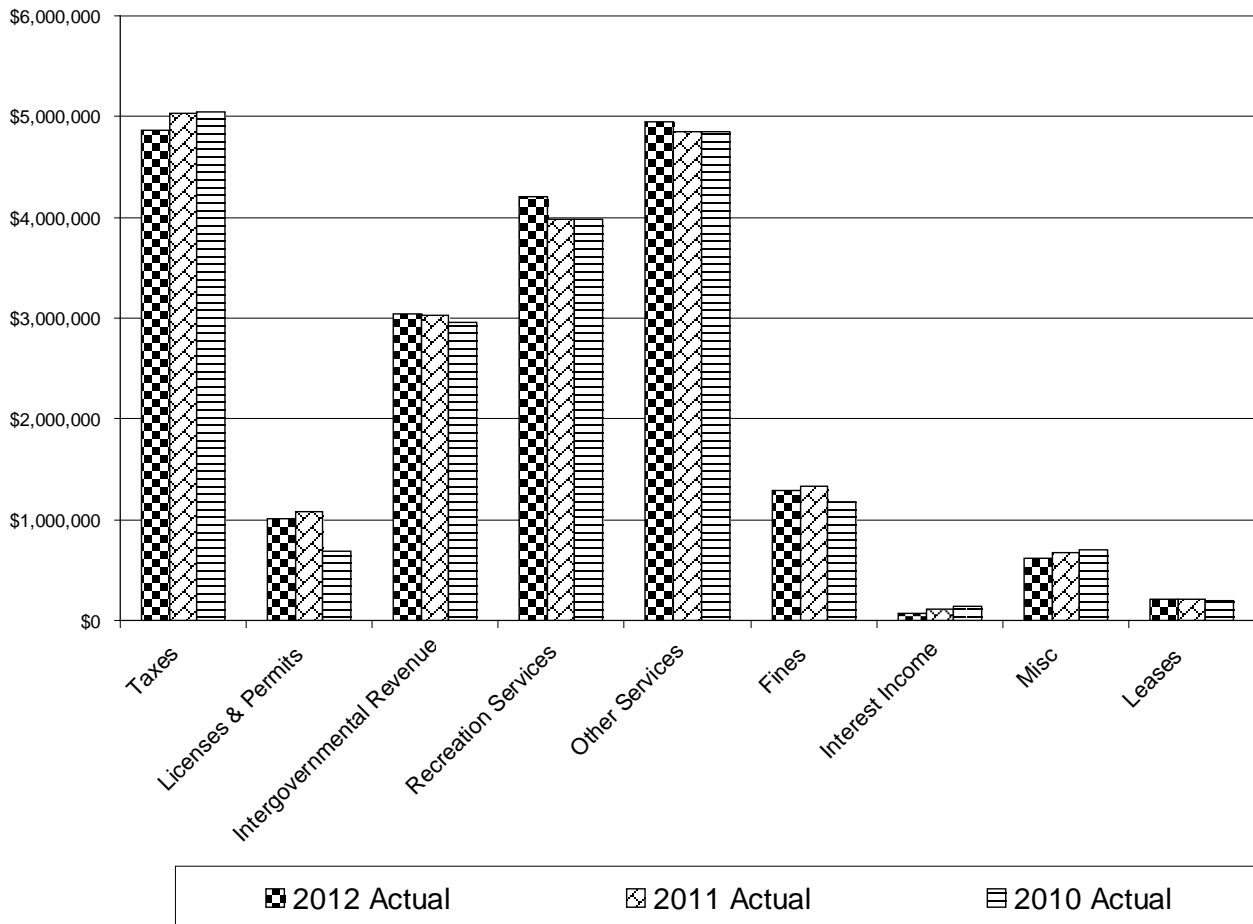
This section includes a discussion of highlights of each fund presented.

General Fund

This fund reflects the result of the City’s operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

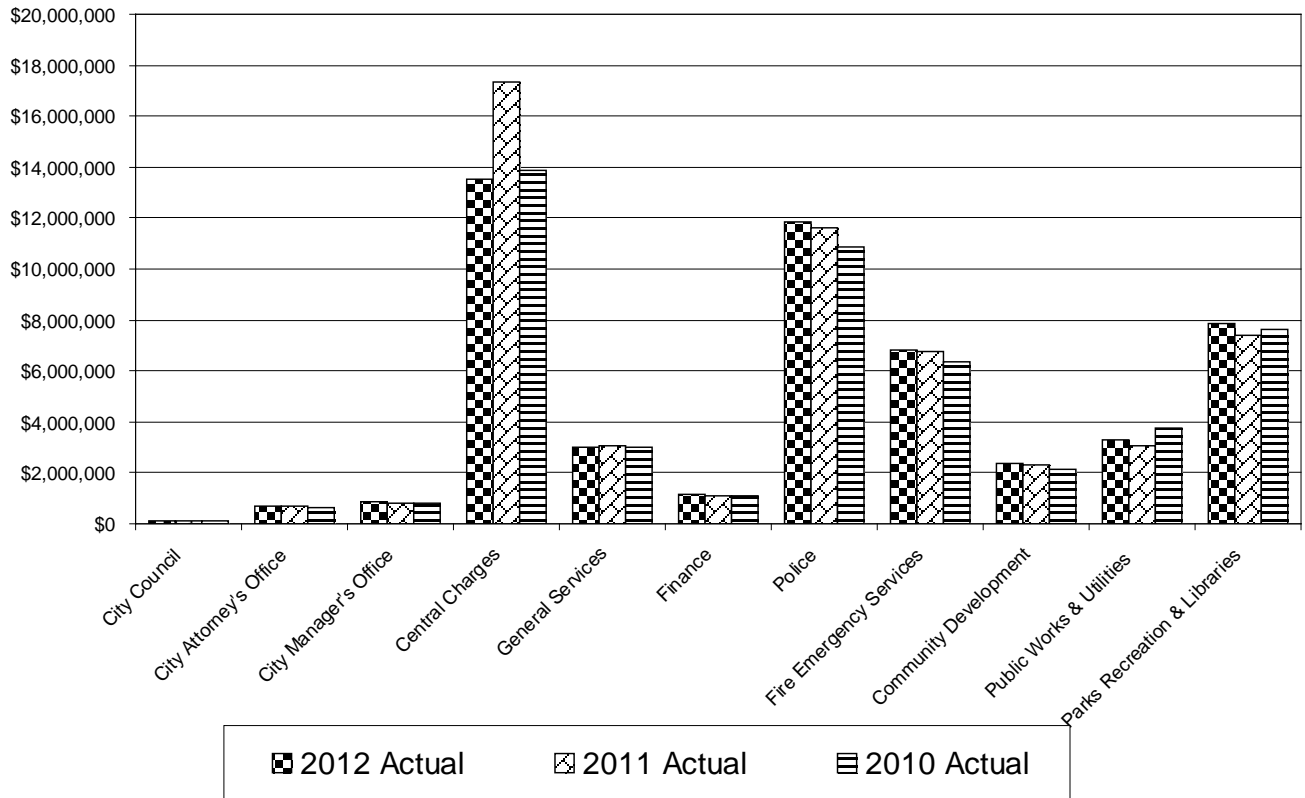
The following chart represents the trend in actual revenues from 2010-2012 year-to-date.

**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2010-2012**



The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2010-2012.

**Expenditures by Function, less Other Financing Uses
2010-2012**



- The large increase in Central Charges in 2011 was due to a transfer to WEDA of \$4 million for WURP as well as a larger transfer budgeted for the General Capital Improvement Fund in 2011 when compared to 2012.

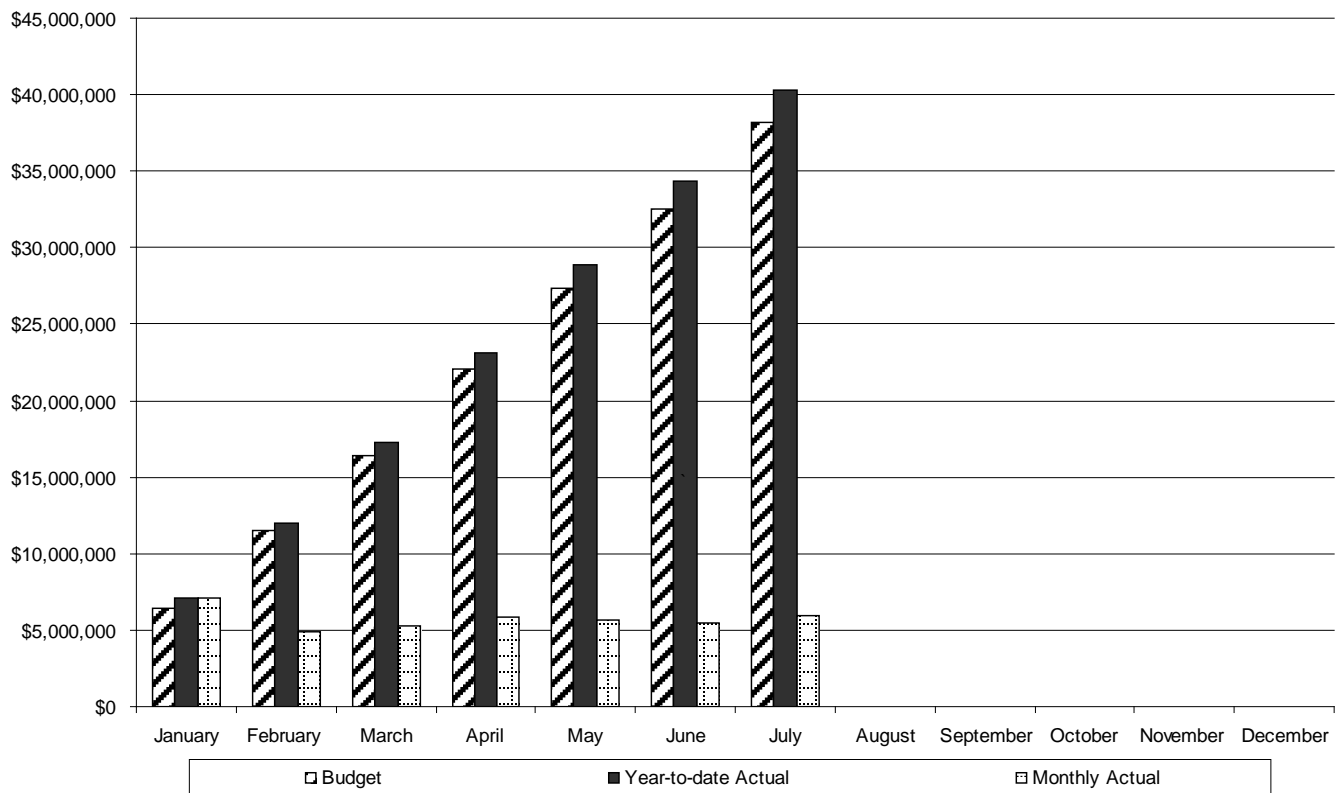
Sales and Use Tax Funds (Sales & Use Tax Fund and Parks, Open Space and Trails Sales & Use Tax Fund)

These funds are the repositories for the 3.85% City Sales & Use Tax. The Sales & Use Tax Fund provides monies for the General Fund, the General Capital Improvement Fund, and the Debt Service Fund. The Parks, Open Space, and Trails Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, pay bonds related to the Heritage Golf Course, buy open space land, and make park improvements on a pay-as-you-go basis. The Public Safety Tax (PST) is a 0.6% sales and use tax to be used to fund public safety-related expenses.

This chart indicates how the City’s Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space, and Trails Sales & Use Tax.

**Sales & Use Tax - excluding Interest,
Transfers and Carryover
2012**

Budget = \$64,660,872

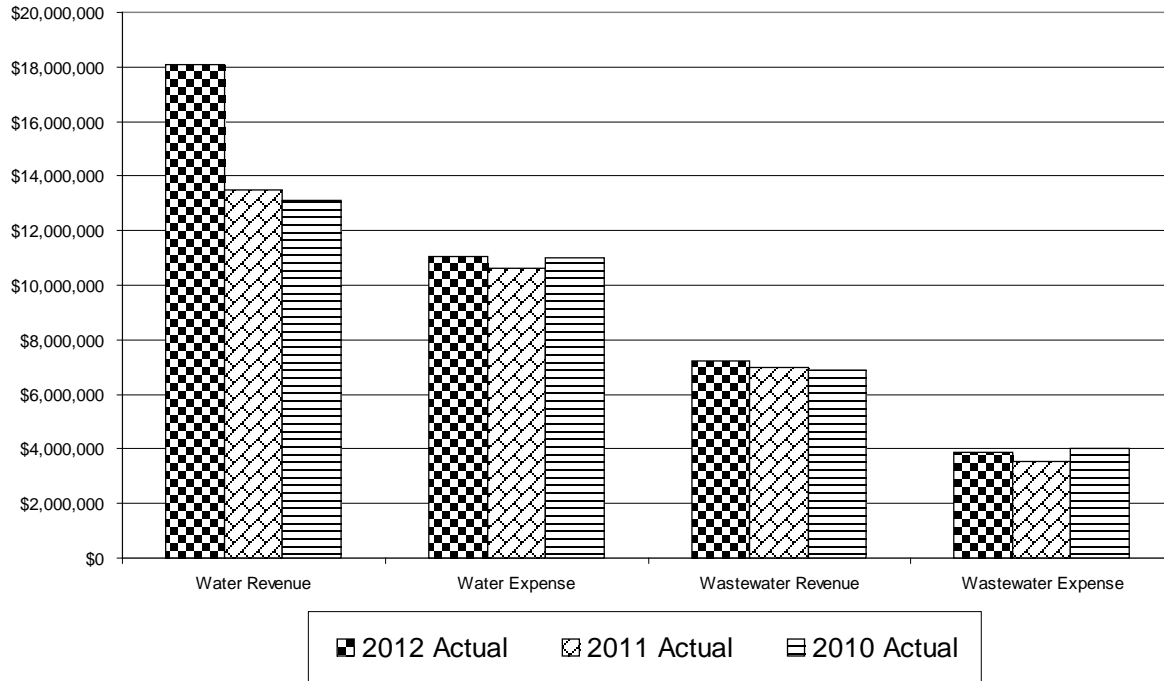


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects and reserves.

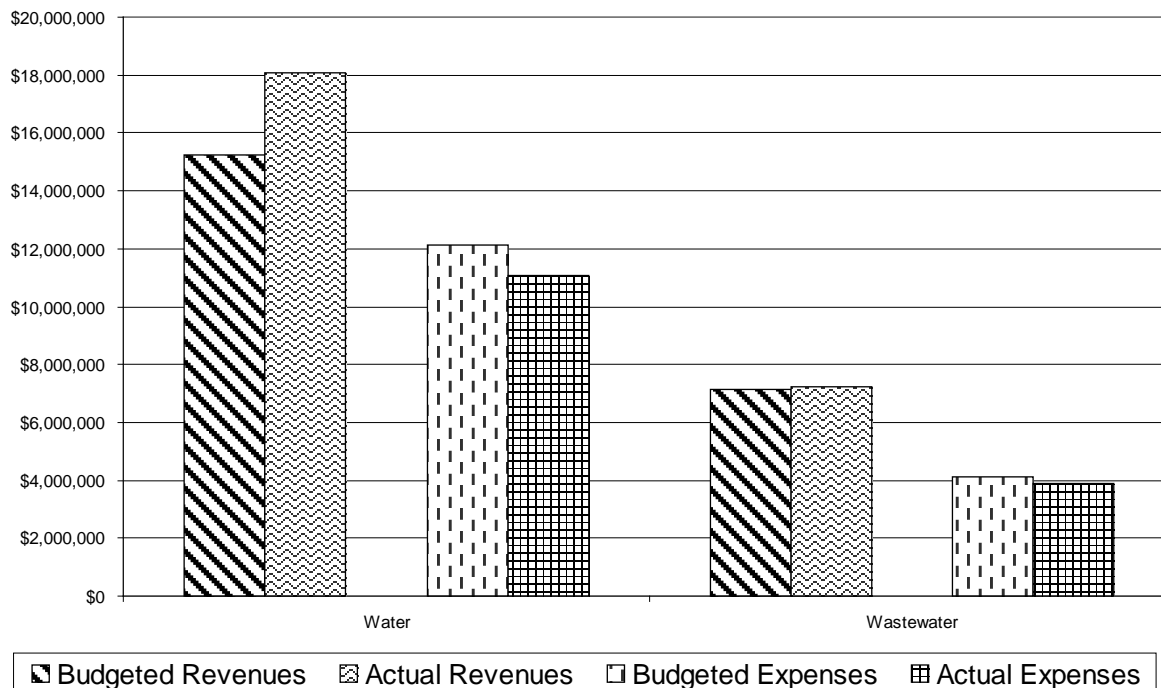
These graphs represent segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenue and Expenses 2010-2012**



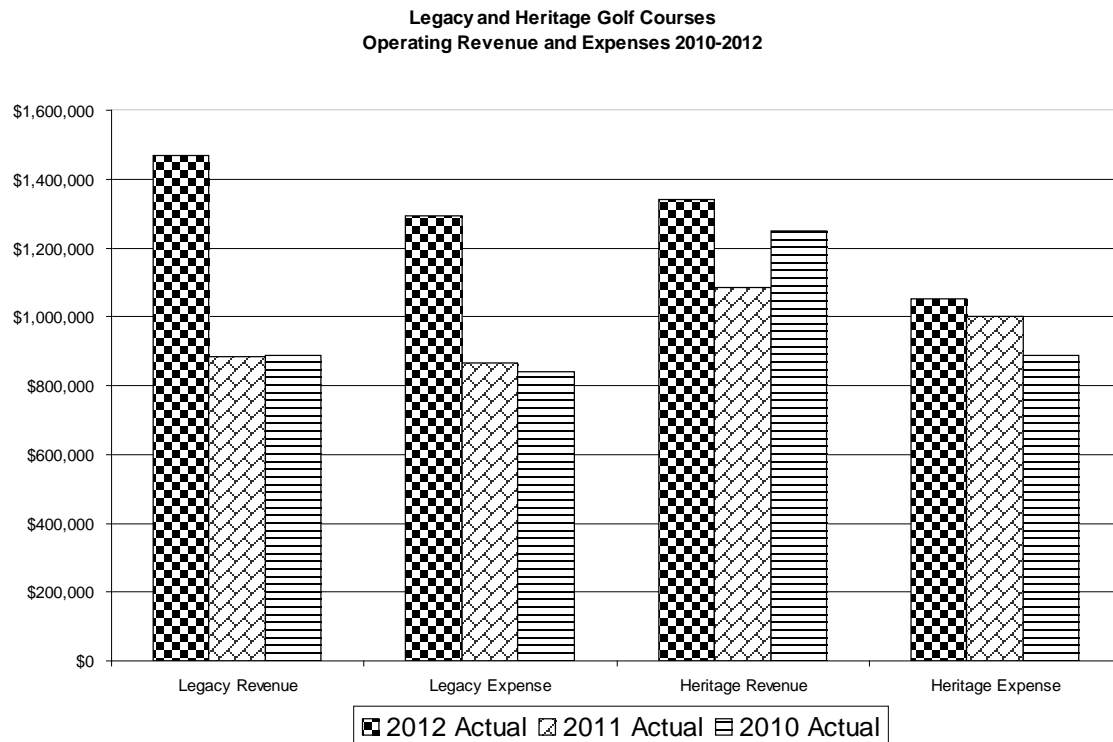
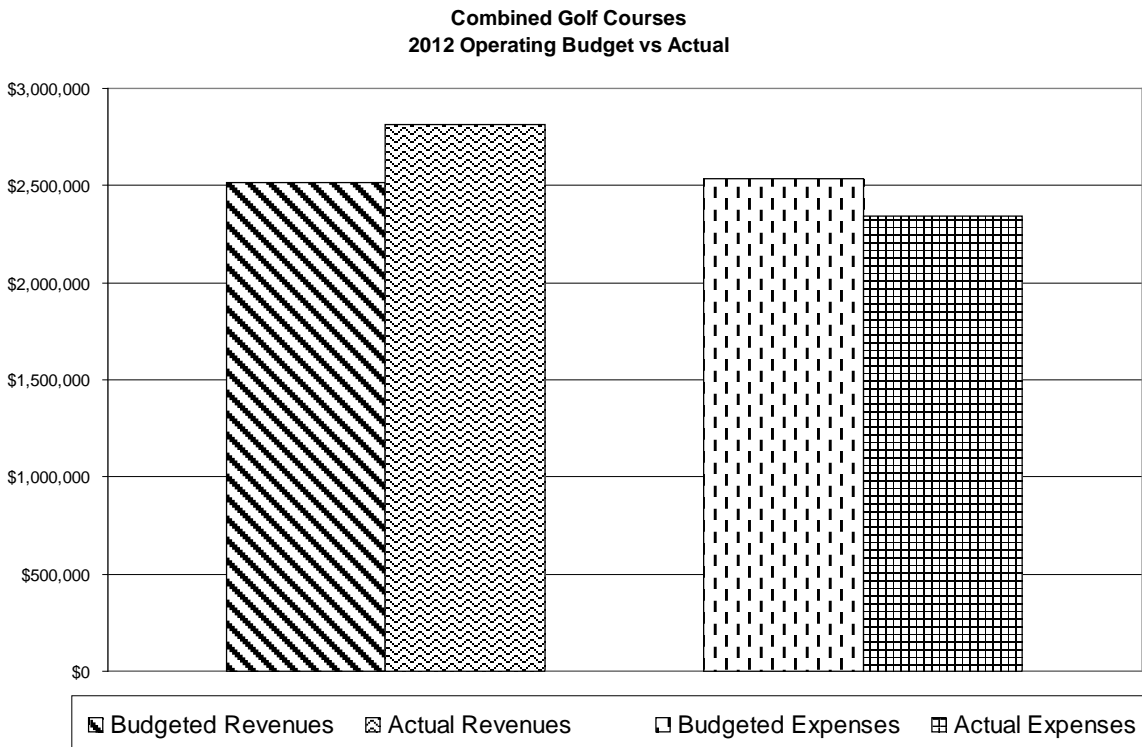
The water revenue variance is due to the effect of climatic variations on water consumption and 2012 changes to billing rates.

**Water and Wastewater Funds
2012 Operating Budget vs Actual**



Golf Course Enterprise (Legacy and Heritage Golf Courses)

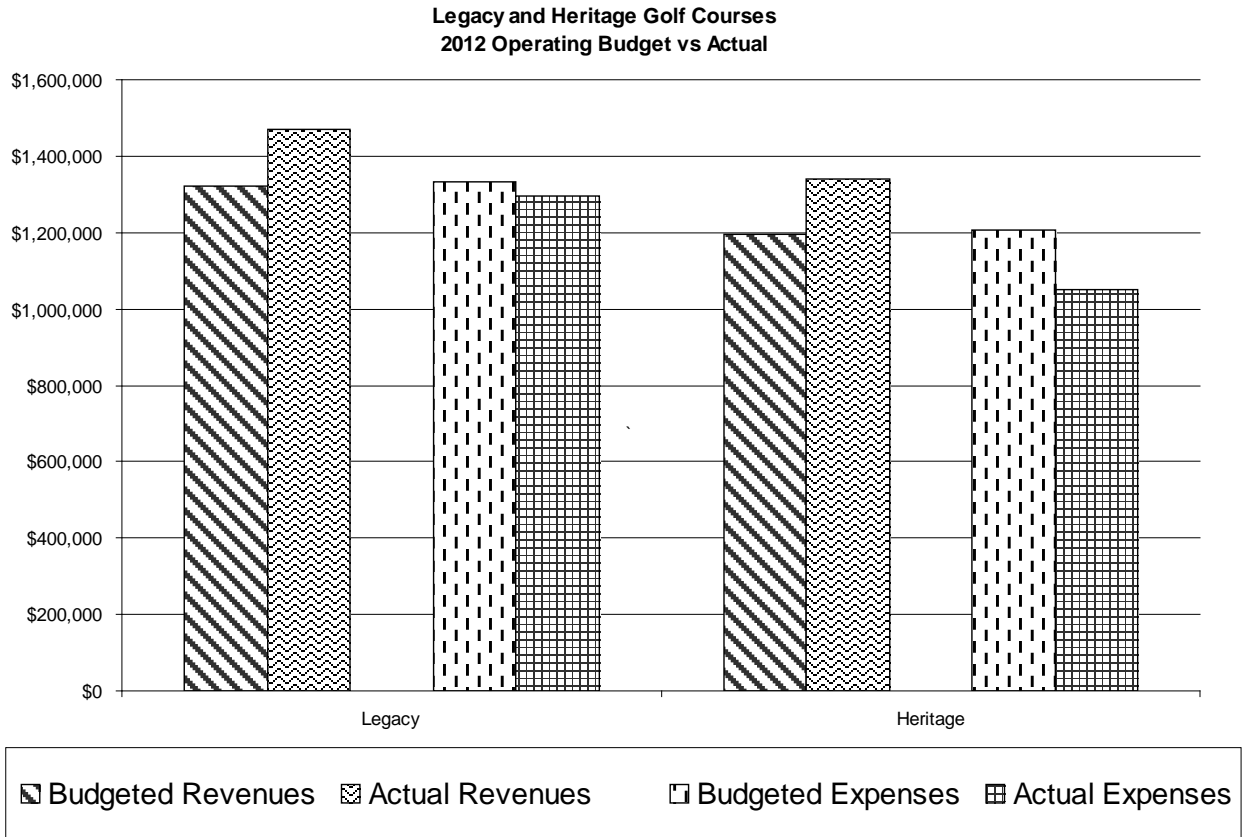
This enterprise reflects the operations of the City's two municipal golf courses.



Carryover of \$380,000 and charges for services, including driving range and green fees at both courses, account for the increased revenues. Transfers from other funds to the golf courses also increased, after being decreased in 2011. The transfer decreased in 2011 as a result of savings from refunding of the bonds.

A transfer of \$380,000 to the General Capital Improvement Fund for the Heritage Golf Course Back Nine Land Acquisition is reflected in 2012 Legacy Ridge expenses.

The following graphs represent the information for each of the golf courses.



This financial report supports City Council’s Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services by communicating timely information on the results of City operations and to assist with critical decision making.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- July Financial Statements
- July Shopping Center Reports

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description General Fund	Budget	Notes	Actual	(Under) Over Budget	% Budget
Revenues					
Taxes	5,575,590		4,863,994	(194,556)	96.2%
Licenses & Permits	1,415,000		1,015,952	242,534	131.4%
Intergovernmental Revenue	5,042,991		3,037,384	218,893	107.8%
Charges for Services					
Recreation Services	6,418,338		4,199,065	330,219	108.5%
Other Services	9,530,695		4,946,263	(79,596)	98.4%
Fines	2,110,000		1,291,139	54,118	104.4%
Interest Income	180,000		71,551	(13,573)	84.1%
Miscellaneous	1,733,733		620,618	(106,064)	85.4%
Leases	386,208		215,698	0	100.0%
Interfund Transfers	61,684,647		35,982,711	0	100.0%
Sub-total Revenues	<u>94,077,202</u>		<u>56,244,375</u>	451,975	100.8%
Carryover	1,926,631		1,926,631	0	100.0%
Total Revenues	<u>96,003,833</u>		<u>58,171,006</u>	451,975	100.8%
Expenditures					
City Council	240,119		126,988	(24,477)	83.8%
City Attorney's Office	1,197,764		668,158	(19,598)	97.2%
City Manager's Office	1,520,610		872,215	1,318	100.2%
Central Charges	26,900,601		13,500,921	(228,721)	98.3%
General Services	5,825,352		2,990,377	(299,361)	90.9%
Finance	1,994,706		1,148,537	(15,153)	98.7%
Police	20,381,168		11,869,423	(4,486)	100.0%
Fire Emergency Services	11,792,644		6,796,813	(12,965)	99.8%
Community Development	4,125,271		2,372,091	12,558	100.5%
Public Works & Utilities	7,767,031		3,275,214	(554,534)	85.5%
Parks, Recreation & Libraries	14,258,567		7,880,008	(8,738)	99.9%
Total Expenditures	<u>96,003,833</u>		<u>51,500,745</u>	(1,154,157)	97.8%
Revenues Over(Under)					
Expenditures	<u>0</u>		<u>6,670,261</u>	1,606,132	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues						
Sales Tax						
Sales Tax Returns	44,669,579	26,847,767		27,800,355	952,588	103.5%
Sales Tx Audit Revenues	719,000	419,177		294,938	(124,239)	70.4%
S-T Rev. STX	<u>45,388,579</u>	<u>27,266,944</u>		<u>28,095,293</u>	<u>828,349</u>	103.0%
Use Tax						
Use Tax Returns	7,193,750	3,872,839		4,695,244	822,405	121.2%
Use Tax Audit Revenues	785,000	457,655		365,645	(92,010)	79.9%
S-T Rev. UTX	<u>7,978,750</u>	<u>4,330,494</u>		<u>5,060,889</u>	<u>730,395</u>	116.9%
Total STX and UTX	<u><u>53,367,329</u></u>	<u><u>31,597,438</u></u>		<u><u>33,156,182</u></u>	<u><u>1,558,744</u></u>	104.9%
Public Safety Tax						
PST Tax Returns	10,985,043	6,417,030		7,004,846	587,816	109.2%
PST Audit Revenues	308,500	179,856		132,066	(47,790)	73.4%
Total Rev. PST	<u><u>11,293,543</u></u>	<u><u>6,596,886</u></u>		<u><u>7,136,912</u></u>	<u><u>540,026</u></u>	108.2%
Interest Income	95,000	55,417		45,862	(9,555)	82.8%
Interfund Transfers	257,000	149,917		149,917	0	100.0%
Carryover	2,693,412	2,693,412		2,693,412	0	100.0%
Total Revenues and Carryover	<u><u>67,706,284</u></u>	<u><u>41,093,070</u></u>		<u><u>43,182,285</u></u>	<u><u>2,089,215</u></u>	105.1%
Expenditures						
Central Charges	<u>67,706,284</u>	<u>40,617,587</u>		<u>40,617,587</u>	0	100.0%
Revenues Over(Under)						
Expenditures	<u><u>0</u></u>	<u><u>475,483</u></u>		<u><u>2,564,698</u></u>	<u><u>2,089,215</u></u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
POST Fund						
Revenues						
Sales & Use Tax	4,814,510	2,855,194		2,972,950	117,756	104.1%
Intergovernmental Revenue	81,229	0		408,564	408,564	
Interest Income	3,400	1,983		14,014	12,031	706.7%
Miscellaneous	85,030	49,601		121,780	72,179	245.5%
Interfund Transfers	19,000	11,083		11,083	0	100.0%
Sub-total Revenues	<u>5,003,169</u>	<u>2,917,861</u>		<u>3,528,391</u>	<u>610,530</u>	<u>120.9%</u>
Carryover	1,400,000	1,400,000		1,400,000	0	100.0%
Total Revenues	<u>6,403,169</u>	<u>4,317,861</u>		<u>4,928,391</u>	<u>610,530</u>	<u>114.1%</u>
Expenditures						
Central Charges	6,125,329	3,404,926		3,508,491	103,565	103.0%
Park Services	277,840	122,319		103,162	(19,157)	84.3%
	<u>6,403,169</u>	<u>3,527,245</u>		<u>3,611,653</u>	<u>84,408</u>	<u>102.4%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>790,616</u>		<u>1,316,738</u>	<u>526,122</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	43,750		58,860	15,110	134.5%
Intergovernmental Revenue	0	0		258,630	258,630	
Rates and Charges	43,153,638	22,062,895		24,731,874	2,668,979	112.1%
Miscellaneous	474,896	277,022		241,824	(35,198)	87.3%
Total Operating Revenues	<u>43,703,534</u>	<u>22,383,667</u>		<u>25,291,188</u>	<u>2,907,521</u>	113.0%
Operating Expenses						
Central Charges	5,893,555	3,437,907		3,501,981	64,074	101.9%
Finance	669,344	381,526		368,645	(12,881)	96.6%
Public Works & Utilities	20,919,246	10,815,406		9,548,070	(1,267,336)	88.3%
Parks, Recreation & Libraries	132,272	62,829		61,875	(954)	98.5%
Information Technology	2,784,438	1,556,501		1,465,279	(91,222)	94.1%
Total Operating Expenses	<u>30,398,855</u>	<u>16,254,169</u>		<u>14,945,850</u>	<u>(1,308,319)</u>	92.0%
Operating Income (Loss)	<u>13,304,679</u>	<u>6,129,498</u>		<u>10,345,338</u>	<u>4,215,840</u>	
Other Revenue and Expenses						
Tap Fees	3,700,000	2,292,700		3,289,793	997,093	143.5%
Interest Income	553,600	322,934		186,110	(136,824)	57.6%
Interfund Transfers	3,967,501	2,314,376		2,314,376	0	100.0%
Sale of Assets	0	0		98,788	98,788	
Carryover	4,591,155	4,591,155		4,591,155	0	100.0%
Debt Service	(7,219,424)	(3,069,270)		(3,069,270)	0	100.0%
Reserve Transfer	(3,981,094)	(3,981,094)		(3,981,094)	0	100.0%
Total Other Revenue (Expenses)	<u>1,611,738</u>	<u>2,470,801</u>		<u>3,429,858</u>	<u>959,057</u>	
Increase (Decrease) in Net Assets	<u>14,916,417</u>	<u>8,600,299</u>		<u>13,775,196</u>	<u>5,174,897</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	43,750		58,860	15,110	134.5%
Intergovernmental Revenue	0	0		258,630	258,630	
Rates and Charges	30,892,138	14,910,353		17,514,174	2,603,821	117.5%
Miscellaneous	464,896	271,189		235,424	(35,765)	86.8%
Total Operating Revenues	<u>31,432,034</u>	<u>15,225,292</u>		<u>18,067,088</u>	<u>2,841,796</u>	118.7%
Operating Expenses						
Central Charges	4,170,645	2,432,876		2,483,759	50,883	102.1%
Finance	669,344	381,526		368,645	(12,881)	96.6%
Public Works & Utilities	14,740,795	7,713,625		6,678,434	(1,035,191)	86.6%
PR&L Standley Lake	132,272	62,829		61,875	(954)	98.5%
Information Technology	2,784,438	1,556,501		1,465,279	(91,222)	94.1%
Total Operating Expenses	<u>22,497,494</u>	<u>12,147,357</u>		<u>11,057,992</u>	<u>(1,089,365)</u>	91.0%
Operating Income (Loss)	<u>8,934,540</u>	<u>3,077,935</u>		<u>7,009,096</u>	<u>3,931,161</u>	
Other Revenue and Expenses						
Tap Fees	3,000,000	1,854,400		2,484,231	629,831	134.0%
Interest Income	365,600	213,267		128,902	(84,365)	60.4%
Interfund Transfers	2,984,511	1,740,965		1,740,965	0	100.0%
Sale of Assets	0	0		98,788	98,788	
Carryover	3,746,765	3,746,765		3,746,765	0	100.0%
Debt Service	(5,715,075)	(2,483,506)		(2,483,506)	0	100.0%
Reserve Transfer	(3,211,924)	(3,211,924)		(3,211,924)	0	100.0%
Total Other Revenues (Expenses)	<u>1,169,877</u>	<u>1,859,967</u>		<u>2,504,221</u>	<u>644,254</u>	
Increase (Decrease) in Net Assets	<u>10,104,417</u>	<u>4,937,902</u>		<u>9,513,317</u>	<u>4,575,415</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	12,261,500	7,152,542		7,217,700	65,158	100.9%
Miscellaneous	10,000	5,833		6,400	567	109.7%
Total Operating Revenues	<u>12,271,500</u>	<u>7,158,375</u>		<u>7,224,100</u>	<u>65,725</u>	100.9%
Operating Expenses						
Central Charges	1,722,910	1,005,031		1,018,222	13,191	101.3%
Public Works & Utilities	6,178,451	3,101,781		2,869,636	(232,145)	92.5%
Total Operating Expenses	<u>7,901,361</u>	<u>4,106,812</u>		<u>3,887,858</u>	<u>(218,954)</u>	94.7%
Operating Income (Loss)	<u>4,370,139</u>	<u>3,051,563</u>		<u>3,336,242</u>	<u>284,679</u>	
Other Revenue and Expenses						
Tap Fees	700,000	438,300		805,562	367,262	183.8%
Interest Income	188,000	109,667		57,208	(52,459)	52.2%
Interfund Transfers	982,990	573,411		573,411	0	100.0%
Carryover	844,390	844,390		844,390	0	100.0%
Debt Service	(1,504,349)	(585,764)		(585,764)	0	100.0%
Reserve Transfer	(769,170)	(769,170)		(769,170)	0	100.0%
Total Other Revenues (Expenses)	<u>441,861</u>	<u>610,834</u>		<u>925,637</u>	<u>314,803</u>	
Increase (Decrease) in Net Assets	<u>4,812,000</u>	<u>3,662,397</u>		<u>4,261,879</u>	<u>599,482</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,050,000	1,195,833		1,160,492	(35,341)	97.0%
Interest Income	82,000	47,833		27,478	(20,355)	57.4%
Miscellaneous	0	0		28	28	
Carryover	418,574	418,574		418,574	0	100.0%
Total Revenues	<u>2,550,574</u>	<u>1,662,240</u>		<u>1,606,572</u>	<u>(55,668)</u>	96.7%
Expenses						
General Services	86,200	37,238		28,354	(8,884)	76.1%
Community Development	169,090	96,043		95,407	(636)	99.3%
PR&L Park Services	200,000	57,200		52,940	(4,260)	92.6%
Public Works & Utilities	359,710	158,632		79,184	(79,448)	49.9%
Total Expenses	<u>815,000</u>	<u>349,113</u>		<u>255,885</u>	<u>(93,228)</u>	73.3%
Increase (Decrease) in Net Assets	<u>1,735,574</u>	<u>1,313,127</u>		<u>1,350,687</u>	<u>37,560</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Course Funds - Combined						
Revenues						
Carryover	380,000	380,000		380,000	0	100.0%
Charges for Services	2,745,022	1,699,453		1,990,071	290,618	117.1%
Interest Income	0	0		2,842	2,842	
Interfund Transfers	751,143	438,166		438,166	0	100.0%
Total Revenues	<u>3,876,165</u>	<u>2,517,619</u>		<u>2,811,079</u>	<u>293,460</u>	<u>111.7%</u>
Expenses						
Central Charges	588,427	501,711		492,085	(9,626)	98.1%
Recreation Facilities	3,287,738	2,036,542		1,853,871	(182,671)	91.0%
Total Expenses	<u>3,876,165</u>	<u>2,538,253</u>		<u>2,345,956</u>	<u>(192,297)</u>	<u>92.4%</u>
 Increase (Decrease) in Net Assets	 <u>0</u>	 <u>(20,634)</u>		 <u>465,123</u>	 <u>485,757</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Revenues						
Carryover	380,000	380,000		380,000	0	100.0%
Charges for Services	1,456,167	892,630		1,037,300	144,670	116.2%
Interest Income	0	0		2,842	2,842	
Interfund Transfers	85,000	49,583		49,583	0	100.0%
Total Revenues	<u>1,921,167</u>	<u>1,322,213</u>		<u>1,469,725</u>	<u>147,512</u>	<u>111.2%</u>
Expenses						
Central Charges	489,383	443,770		437,009	(6,761)	98.5%
Recreation Facilities	1,431,784	887,706		857,493	(30,213)	96.6%
Total Expenses	<u>1,921,167</u>	<u>1,331,476</u>		<u>1,294,502</u>	<u>(36,974)</u>	<u>97.2%</u>
 Increase (Decrease) in Net Assets	 <u>0</u>	 <u>(9,263)</u>		 <u>175,223</u>	 <u>184,486</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues						
Charges for Services	1,288,855	806,823		952,771	145,948	118.1%
Interfund Transfers	666,143	388,583		388,583	0	100.0%
Total Revenues	<u>1,954,998</u>	<u>1,195,406</u>		<u>1,341,354</u>	<u>145,948</u>	112.2%
Expenses						
Central Charges	99,044	57,941		55,076	(2,865)	95.1%
Recreation Facilities	1,855,954	1,148,836		996,378	(152,458)	86.7%
Total Expenses	<u>1,954,998</u>	<u>1,206,777</u>		<u>1,051,454</u>	<u>(155,323)</u>	87.1%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(11,371)</u>		<u>289,900</u>	<u>301,271</u>	

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH OF JULY 2012

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	417,353	14,494	431,847	408,555	15,087	423,642	2	-4	2
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	347,469	968	348,437	332,729	8,162	340,891	4	-88	2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	267,255	1,606	268,861	252,492	1,750	254,242	6	-8	6
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	202,194	1,180	203,374	193,564	690	194,254	4	71	5
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	201,979	521	202,500	202,781	877	203,657	0	-41	-1
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	196,455	991	197,446	192,035	552	192,587	2	80	3
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	187,968	1,708	189,676	181,559	1,128	182,687	4	52	4
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	169,568	925	170,492	154,137	489	154,627	10	89	10
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	130,426	19,520	149,945	120,783	23,592	144,376	8	-17	4
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	127,259	1,219	128,478	120,520	367	120,886	6	232	6
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	114,144	1,508	115,652	105,050	1,255	106,305	9	20	9
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	88,454	760	89,213	99,432	77	99,509	-11	887	-10
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	87,007	306	87,313	95,566	223	95,790	-9	37	-9
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	76,678	124	76,802	79,471	410	79,881	-4	-70	-4
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	60,615	367	60,982	59,257	315	59,572	2	17	2

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF JULY 2012

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINTA	8,646	48,953	57,599	9,581	2,613	12,194	-10	1773	372
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	51,951	520	52,472	52,104	190	52,295	0	173	0
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	49,338	293	49,630	114,543	593	115,137	-57	-51	-57
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	44,718	2,801	47,519	38,256	982	39,238	17	185	21
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	43,746	172	43,918	45,263	188	45,450	-3	-8	-3
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	12,615	25,346	37,960	12,525	93,355	105,880	1	-73	-64
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	37,145	448	37,593	25,369	588	25,956	46	-24	45
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	34,279	505	34,784	34,479	531	35,010	-1	-5	-1
WILLOW RUN 128TH & ZUNI SAFEWAY	33,431	203	33,634	32,233	221	32,455	4	-8	4
PAVILION COURT 122ND & PECOS WESTERN ELECTRONICS	10,426	21,051	31,478	10,114	2,473	12,587	3	751	150
	3,001,121	146,486	3,147,607	2,972,400	156,709	3,129,108	1	-7	1

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
JULY 2012 YEAR-TO-DATE

Center Location Major Tenant	YTD 2012			YTD 2011			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	2,809,292	103,663	2,912,955	2,607,051	123,464	2,730,515	8	-16	7
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	2,455,343	17,781	2,473,124	2,370,487	17,444	2,387,931	4	2	4
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,685,980	13,206	1,699,186	1,621,756	27,202	1,648,958	4	-51	3
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	1,649,863	4,228	1,654,091	1,583,888	9,835	1,593,723	4	-57	4
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,375,105	3,795	1,378,900	1,342,999	3,913	1,346,912	2	-3	2
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,341,895	12,159	1,354,054	1,250,084	8,394	1,258,478	7	45	8
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,198,264	12,210	1,210,474	1,135,749	9,003	1,144,753	6	36	6
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,151,606	4,257	1,155,863	1,124,893	3,899	1,128,793	2	9	2
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	905,354	126,132	1,031,485	853,031	193,490	1,046,521	6	-35	-1
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	863,269	6,332	869,601	882,375	5,722	888,097	-2	11	-2
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	860,814	6,063	866,878	787,143	36,776	823,919	9	-84	5
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	618,480	13,390	631,870	909,387	19,794	929,181	-32	-32	-32
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	578,764	1,609	580,374	601,424	6,842	608,266	-4	-76	-5
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	552,703	5,700	558,403	581,879	2,444	584,322	-5	133	-4
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	466,296	5,103	471,398	460,058	2,129	462,187	1	140	2

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 JULY 2012 YEAR-TO-DATE

Center Location Major Tenant	YTD 2012			YTD 2011			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	432,006	1,558	433,564	446,355	1,506	447,861	-3	3	-3
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	374,283	6,414	380,697	363,857	2,285	366,142	3	181	4
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	306,098	6,558	312,656	321,781	1,320	323,101	-5	397	-3
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	299,924	14,747	314,670	279,623	5,998	285,620	7	146	10
WILLOW RUN 128TH & ZUNI SAFEWAY	234,391	2,511	236,902	223,962	2,091	226,053	5	20	5
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	211,245	4,168	215,413	187,774	3,471	191,245	13	20	13
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	202,004	1,792	203,797	184,742	2,868	187,610	9	-38	9
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	197,784	842	198,626	186,850	12,645	199,496	6	-93	0
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	175,163	7,850	183,013	167,170	4,916	172,086	5	60	6
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	173,839	3,999	177,837	175,735	1,349	177,084	-1	196	0
	21,119,766	386,066	21,505,832	20,650,055	508,800	21,158,854	2	-24	2



Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: 2012 Water Treatment Chemical Expenditures over \$50,000

Prepared By: Phil Jones, Utilities Operations Manager
Tom Settle, Water Treatment Superintendent

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will be best served by affirming the sole-source purchase of Carus-brand Sodium Permanganate for 2012 in an amount not to exceed \$88,000 and to further approve the purchase of various other water treatment chemical purchases on an as-needed basis for a total expenditure to Harcros Chemicals, not to exceed \$115,000.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement; to include transactions where the cumulative total purchases by individual City departments for similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- Carus Corporation is the sole supplier that meets the City specifications for permanganate products.
- Harcros Chemical is now the exclusive distributor for Carus brand Sodium and Potassium Permanganate products, meaning all orders for Carus products must now be directed through Harcros Chemical.
- Three chemicals will be purchased in various quantities totaling approximately \$115,000 in 2012 from Harcros Chemicals. They are Sodium Permanganate, Potassium Permanganate and Citric Acid.
- Normally only a single purchase of Sodium Permanganate under \$50,000 is made annually, but a second shipment is needed this year due to increased water demands, reduced water quality from Standley Lake due to the extended hot temperatures, and low chemical inventory.
- Adequate funds for the purchase of water treatment chemicals were included in the approved 2012 Utilities Operations Division Budget.

Expenditure Required: Not to exceed \$115,000

Source of Funds: Utility Fund – Utilities Operations Division Budget

Policy Issue

Should Council approve the sole-source purchase of Carus sodium permanganate and cumulative purchases of water treatment chemicals with Harcros Chemicals that total over \$50,000 in 2012?

Alternative

Do not approve the purchases as recommended. Carus permanganate products are the only source that meet the City’s specification for purity and feed characteristics. Council could direct staff to bid the permanganate products and utilize the low bid. This is not recommended based on the previous experience with the materials from other vendors.

Background Information

Due to recent changes in supplier order process, Harcros Chemical will now be the exclusive distributor for a total of three chemicals currently used by the water treatment facilities, which were formerly ordered directly from the manufacturers. This will require total annual expenditures in excess of \$50,000 with Harcros Chemical. Information regarding each chemical and its approximate annual usage and bid price for 2012 follows:

CHEMICAL	APPROXIMATE QUANTITY	PRICE	EXTENDED PRICE	VENDOR
Sodium Perm	50 Tons	\$1,760.00 Ton	\$88,000	Harcros Chemical
Potassium Perm	4000 Lbs	\$3.69 Lb	\$14,760	Harcros Chemical
Citric Acid	2000 Lbs	\$1.15 Lb	\$2,300	Harcros Chemical

As part of the 2012 Budget, Council approved the purchase of treatment chemicals for the City’s water and wastewater treatment facilities.

A chemical bid was put out on behalf of MAPO, a cooperative of state, municipal, county, special district, school district and other local government agencies. This is a competitive bid and offers greater volume and lower prices to the City than the City can obtain on its own. Westminster City Code 15-1-4-A1 specifically states that this is an acceptable form of purchasing for the City.

Forty-eight chemicals were put out on the MAPO bid. Eleven water chemical vendors responded to the bid notification. They were Dimmit Sulfur Products LTD, DPC Industries, Inc., General Chemical, Harcros Chemical, Industrial Chemical Corp., Peak Polymer Performance, Inc., Polydyne Inc., Prominent Systems Inc., PVS Technologies, Inc., SNR Enterprises, and Thatcher Company.

There were bids for Citric Acid and Potassium Permanganate in the original January 2009 MAPO bid. The vendors were contacted to ascertain the sources of the chemicals and confirm quality specifications. The potassium permanganate to be supplied under the MAPO bid contains unacceptable levels of inert material and has a “clumping” tendency that fouls the chemical feed equipment at the Northwest WTF. Historically, only Carus Chemical has met the quality specifications for this chemical due to manufacturing controls.

The Sodium Permanganate is a liquid product utilized at the Semper Water Treatment Facility. Typically only a single order is placed with Carus Chemical each year for approximately \$40,000. This year's higher water demands and lower lake levels, coupled with starting the year with a low chemical inventory level, has created the need for a second order, thus there is an anticipated total cost of up to \$88,000 and a request for affirming this expenditure. Permanganate, in liquid and dry forms, is used at the two water treatment facilities to oxidize iron and manganese in the raw water and allow it to be filtered out. The water treatment facilities are experiencing much higher iron and manganese levels this year due to the early onset of high temperatures and reduced runoff diversions into Standley Lake.

The annual estimated cost of the chemicals is within the amount previously approved by Council for this expense. In addition to the chemicals included within this agenda memorandum, a variety of other chemicals are utilized by the treatment facilities during the year that are purchased in smaller quantities and below the \$50,000 bid approval threshold. All of these chemical purchases contribute to the total annual chemical expenditures authorized in the Utilities Division operating budget.

This project meets Council's Strategic Plan goals of Safe and Secure Community, Financially Sustainable City Government Providing Exceptional Services, and Beautiful and Environmentally Sensitive City by keeping the City's water supply clean and safe and improving the service level of the treatment plants at the best possible price.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: 2012 Small Drainage Improvements Construction Contract

Prepared By: Andrew Hawthorn, Senior Civil Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with Diamond Contracting, Inc, the lowest responsible bidder, in the amount of \$235,975 for the construction of the 2012 Small Drainage Improvements Projects; and authorize a construction contingency in the amount of \$35,396, thus yielding a total project budget of \$271,371.

Summary Statement

- In 2001, the City Council established a Storm Water Utility for the City. The purpose of this Utility, in part, is to provide funding for the remedy of localized storm drainage problems.
- Two such localized drainage problems have been identified for mitigation in 2012 and have been bundled together into one contract to reduce costs. One project is located at the intersection of 94th Avenue and Lowell Boulevard, and the other is located near 4008 W. 99th Place in Skyland Village Subdivision.
- The “Request for Bids” for the construction of these projects was advertised in the Daily Journal and through the City’s web site for three weeks, and bids were opened on July 26th. Three bids were received. The lowest responsible bid was submitted by Diamond Contracting, Inc.
- City staff along with Martin/Martin Engineering, the design consultant for the project, reviewed the bids and recommend awarding this contract to Diamond Contracting in the amount of \$235,975. A \$35,396 construction contingency is also recommended.

Expenditure Required: \$271,371

Source of Funds: Storm Water Utility Fund

Policy Issue

Should the City enter into contracts with Diamond Contracting and ControlTech USA to perform the desired construction services for the 2012 Small Drainage Improvements Projects?

Alternatives

Council could choose to not authorize the execution of these construction contracts. This alternative is not recommended due to the fact that the two identified drainage problems cause hardships for Westminster residents. The City's Storm Water Utility was created for the purpose of resolving these types of localized storm drainage issues. Council could also elect to award the construction contract to one of the other bidders or order the project to be advertised and bid again. Staff believes that Diamond Contracting, the lowest bidder who successfully followed all of the bidding requirements, as well as ControlTech USA have the appropriate experience to perform the work and should be awarded the contracts.

Background Information

The drainage problems to be rectified by the 2012 Small Drainage Improvements Projects are described as follows:

Project A (94th Avenue and Lowell Boulevard)

The heavy storms in July of 2011 allowed a resident of 94th Avenue to video tape and bring to the attention of City staff the extent of the localized flooding that occurs in this area. The video showed storm water overtopping the curb in Lowell Boulevard, flowing through residents' back yards and diverging around and through a house located at 3645 94th Avenue. More recently, on July 6, 2012, the resident residing at 3605 94th Avenue notified staff that their basement was flooded as a result of the localized flooding that occurs in this area.

Staff hired a consultant, Martin/Martin Engineering, to analyze and evaluate the hydrology of the area and recommend solutions to alleviate this flooding. Staff found that increasing the capacity of the storm system infrastructure and installing a berm to block storm water flows from entering the yards is the best short term solution until the ultimate solution can be designed and installed. The ultimate solution is expected to cost over a million dollars and will be presented for consideration in a future budget year.

In addition, a solar power unit is proposed for installation at the City's existing weather station that is located within the median of 94th Avenue west of Lowell Boulevard. The electric service to the weather station, which signals several irrigation controllers located within this general area when watering is necessary, must be disturbed during the course of the drainage work. The new solar unit will allow for the permanent disconnection of this weather monitoring equipment from the hard-wired electric service provided by Xcel Energy. In order to maintain the warranty on the weather station, staff will hire ControlTech USA, Inc. as the sole source of this solar service. ControlTech installed the weather station at this location and provides the warranty service for it. Using another company to provide the solar equipment would compromise or void the warranty on the weather station. Facility & Infrastructure Stewardship Funds, which have been allocated within the City's General Fund for the purpose of defraying the capital cost of energy efficient systems, will be used to pay for \$1,500 of this \$6,975 expense. Approval of this separate element of the project does not require Council approval.

Project B (4008 99th Place)

Storm water runoff converges at the intersection of 98th Place and 99th Place in Skyland Village Subdivision, overtops the drainage pan and flows west down 99th Place to the lot located at 4008 99th Place. During heavy storms, residents reported over a foot of water ponding at this point. In winter, snowmelt runoff accumulates here causing excessive icing over the sidewalk. Residents also reported that a handicapped person of the immediate area has difficulty navigating the sidewalk during times of stormwater flow or accumulated ice. Staff engaged Martin/Martin Engineers to develop solutions and has determined that installing a storm inlet on the existing storm pipe will pick up the runoff before it reaches the area where it normally pools.

Bids for the construction of these projects were advertised in The Daily Journal and on the City's web site for three weeks. Those bids were opened on July 26th. Three contractors submitted bids, and the results are as follows:

<u>Contractor</u>	<u>Submitted Bid</u>
Levi Contractors, Inc	\$345,943
New Design Construction Co.	\$341,067
Diamond Contracting Corp.	\$286,780
Engineer's Estimate	\$226,095

Following the bid opening, Staff negotiated with Diamond to delete some bid items and reassess other items to reduce costs and bring the bid more in line with budgeted funds. Diamond's revised bid is \$235,975. Staff also checked the references of Diamond Contracting, and all references contacted had positive comments about the work of this company. City staff is confident that Diamond Contracting has the experience and resources necessary to complete this project.

City staff recommends that the lowest responsible bidder, Diamond Contracting, be awarded the contract for the construction of this project in the amount of \$235,975. The contingency amount of \$35,396 is approximately 15% of the cost of construction, which staff believes is necessary for the complexities involved in this project.

Construction is anticipated to begin in September 2012 and be completed October 2012. The construction of these 2012 Small Drainage Improvements Projects fulfills the City Council's goals of providing a Safe and Secure Community as well as Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 D

Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Tanglewood Creek Trail Engineering Design Contract

Prepared By: Richard A. Dahl, Parks Services Manager
Sarah Washburn, Landscape Architect II

Recommended City Council Action

Find that the public interest would be best served by authorizing the City Manager to execute a contract with Muller Engineering Company, Inc. in the amount of \$60,113 for the engineering design of a new segment of regional multi-use recreational trail and associated appurtenances within the Interstate-25 corridor, and authorize a 10% contingency fund for potential additional services in the amount of \$6,011, bringing the total for the project to \$66,124.

Summary Statement

- The Tanglewood Creek corridor is located west of Interstate 25 between 123rd and 128th Avenue. This corridor comprises a smaller portion of a larger area in which a multi-modal regional trail is proposed, starting at 121st Avenue and ending near 152nd Avenue within the City limits. This regional trail would connect major retail at The Orchard with residential, secondary school, park, and open space areas. Approximately 40% of this trail, currently known as the Interstate-25 Trail, is constructed. The total Tanglewood trail distance, when completed, will be 3.75 miles.
- This project would provide engineering design services for the longest missing link of regional trail within City-owned land. This missing link is a 0.7-mile (approximate) segment within a unique riparian area of Tanglewood Creek. This segment requires extensive technical analysis and reporting for the purposes of construction permitting.
- A Request for Proposal for the engineering design work was solicited from six reputable consultants, with three choosing to submit proposals. Staff believes that the public interest would best be served by accepting the bid for this work from Muller Engineering Company, Inc.

Expenditure Required: \$66,124

Source of Funds: Trail Development Account

Policy Issue

Should the City pursue development of a regional trail along the Interstate-25 corridor?

Alternative

City Council could choose to not authorize engineering design for this segment of the Tanglewood Trail. Staff does not recommend this option, as this trail is destined to become a major route to serve recreationalists and commuters and will connect major retail centers with residential areas, major school district centers, other existing regional trails, and open space systems. Over 40% of this multi-modal trail is already constructed, and this is an excellent opportunity to promote alternative modes of transportation as well as invest in opportunities to enhance the emotional and physical well-being of residents. There are just a few significant missing links in this trail still remaining before the entire 3.75 segment within the City is complete, with the majority of those gaps residing in parcels that will develop through private ownership in the future. This project will complete design for one of the 3 missing links, which is the longest segment of needed trail within City-owned land. The second-longest link will be designed and built as part of Public Works and Utilities' expansion of the Big Dry Creek reclaimed water storage system, and the final link within City-owned land will become a higher priority to connect to the adjacent land owner's trail once that property develops.

Background Information

Within the City limits, Tanglewood Creek flows generally from south to north immediately west of Interstate 25. The creek spans approximately 1.6 miles from 120th Avenue to 132nd Avenue, at which point it joins Big Dry Creek. Like many of the City's creek corridors, trails proposed within this corridor will become an integral segment within a major regional trail route, spanning the entire northeast edge of the City from 120th Avenue to 150th Avenue. This major regional route was identified in the 2001 Trails Master Plan. Informally known as the "I-25 Regional Trail," it will provide multi-modal access for recreationalists and commuters to schools and major regional retail centers such as The Orchard. The I-25 Regional Trail is currently in various stages of completion. Underpasses for the entire route are in place, and 1.62 miles of the 3.75-mile length are constructed to-date.

The segment within the scope of this project will provide engineering design and construction oversight for another 0.7 miles (approximate) of regional trail and several other secondary trail connections to existing sidewalks in the adjacent area within City-owned Open Space. In the immediate future, the trail improvements would serve students of Mountain Range High School and Silver Hills Middle School, patrons of Willowbrook Park, and the medium and high-density residential housing residents surrounding the project site. When privately-held properties to the north develop, public land dedication and subsequent trail construction will be a requirement of those developers.

This project site for this 0.7-mile trail segment is one of the most wild areas in the City, featuring diverse wildlife, an unusual combination of wetland and dry land species, an active creek, and complicated topography in some areas. As such, design for construction involves wetland delineation, Threatened and Endangered Species mapping, hydrologic study, and other technical criteria necessary for construction permitting. Outside agencies such as the U.S. Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife Service, Colorado Division of Parks and Wildlife, and the Urban Drainage and Flood Control District, among others, will be involved.

The complicated nature of this trail segment requires a diligent consultant team with extensive design experience in similar watershed projects. It also requires a consultant's ability to balance aesthetic design with design practicality to moderate future construction costs. A prudent consultant's due diligence and experience to address key components and constraints upfront will result in fewer costly changes during the design process.

The multi-jurisdictional value of the trail makes this project a good candidate for future grant funding. Once engineering design is underway, a better estimate of probable construction costs will begin to develop. Staff anticipates initiating a grant application to Adams County Open Space in the Spring 2013 cycle. At that point the selected consultant will have a refined estimate of probable cost and the timing for construction completion will match the grant criteria for project completion.

Proposals for the engineering design work – to include all technical reporting, construction documentation, cost estimates, bidding assistance, and construction administration - were solicited from six reputable consultants on June 28, 2012. Three consultant teams chose to submit proposals on July 23, 2012. Proposals were reviewed by four City Staff and scored according to the criteria outlined within the Request For Proposals. Those criteria included:

- Response to specific requirements in the RFP, clarity and presentation of proposed scope, tasks, phases, external agency coordination and requirements, challenges and/or constraints, and fee.
- Consultant’s background and expertise in completing projects of similar size, scope and complexity.
- Consultant’s references, reputation with the City and familiarity with City, State and Federal codes, policies, procedures and regulations
- Consultant’s project team background and availability
- Fee schedule and hourly rates.

The results are as follows:

Consultant	Average Score (100 max)	Frequency of #1 Ranking	Fee	Hours Assigned to Project*	Average Cost Per Hour
Muller Engineering Company, Inc.	88.3	3	\$55,382	434	\$127.61
Matrix Design Group, Inc.	75.5	1	\$49,424	306	\$161.51
J&T Consulting, Inc	72.3	0	\$46,190	408	\$113.21

** Sub-consultant Environmental Study and Survey hours omitted due to lack of uniform hourly estimates for these tasks among consultant proposals.*

Although Muller Engineering is not the lowest initial bid based on fee alone, Staff recommends contracting with Muller Engineering for this project:

- Staff believes the other consultants missed key components within the project scope which are necessary for successful project completion:
 - Muller Engineering’s proposal includes specific site observations indicating extensive on-site inspection and assessment of complicated features such as Tanglewood Creek, the surrounding topography, and actual on-site ecology. Muller’s observations correspond to accurate consultant hours (516) for successful completion of each element within the project scope.
 - A lack of detail and discussion of the existing site constraints within the other consultants’ proposals indicate a lack of familiarity with the level of work actually involved. These oversights decrease confidence in the other consultants’ proposals. Staff anticipates the omissions now would lead to costly Additional Services Requests for work that should have been included within the initial project scope, including additional hours for ADA grading implications and the technical criteria and reports required for water crossings.

- Matrix Design Group assigned the fewest total hours to the project, which Staff believes is a result of a lack of due diligence on their part and far too low. At their hourly rates of \$185/\$145/\$105, Matrix is up to 98% higher than Muller Engineering's hourly rates. They also assigned 128 fewer hours to the project. If Additional Services were required to address needs resulting from their initial oversights, their resultant contract total would quickly exceed that of Muller Engineering's total in just 35 additional hours of work.
- J&T Consulting assigned more hours to the project than Matrix, but their proposal lacked the specific detail necessary for Staff to have confidence in the adequacy of their hours and fee to address all specifics within the scope. Staff does not recommend initiating the project with J&T due to their lack of familiarity with the site, Staff's low ranking of their proposal, and their fee structure and anticipated additional hours to reach successful project completion.
- The purpose of the Design Development phase is to work out major technical details loosely, before plans are very refined and before substantial changes become costly.
 - Muller Engineering assigned the most effort to this Design Development Phase, while other consultants assigned more hours to the Final Construction Document Phase. Staff considers Muller's assignment of hours more practical than other consultants' assignments and less likely to result in substantial changes – and Additional Services requests - in the Final Construction Document Phase.

Muller Engineering's similar project experience and credentials show previous / concurrent engineering design work for the City directly south of the project area within Tanglewood Creek itself. That project, undertaken by the Community Development Department, involved many of the same elements needed for this project, including trails and low water crossings in addition to creek channel and pond improvements.

Due to their qualifications, experience, investment in upfront site observation, exceptionally thorough proposal, and reasonable fee structure based on the quality of work anticipated, Staff has the most confidence in Muller Engineering's ability to successfully complete the project within budget.

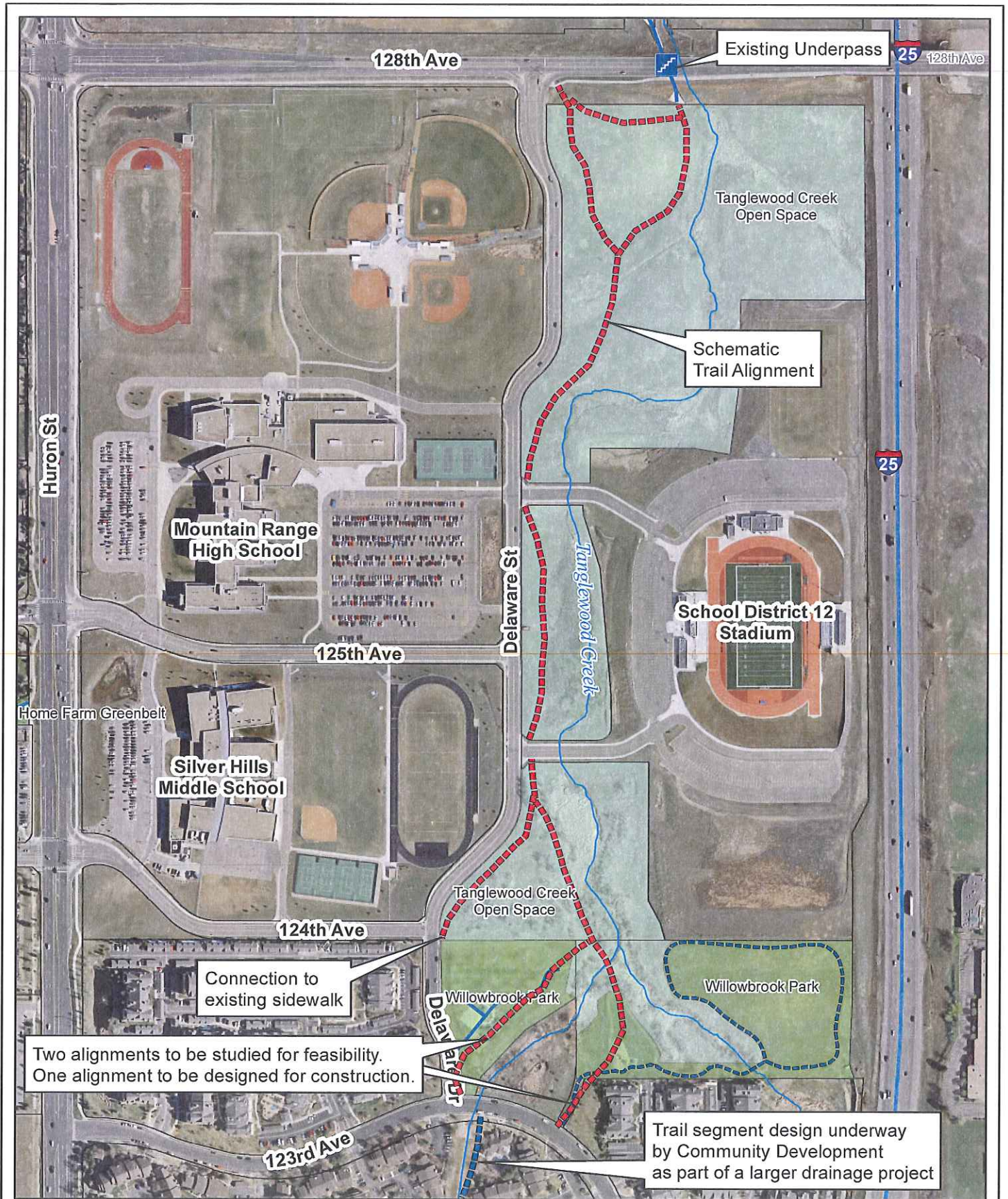
Through Muller Engineering's excellent due diligence, a previously unknown site constraint – unnoticed by the other consultants - has been brought to Staff's attention. This constraint is a significant "headcut," or erosion on the channel, within Tanglewood Creek near the potential location of the trail crossing. Muller's keen observation led them to provide a remediation for this natural erosion condition in the form of a grade control structure, to be added to their contract as an Additional Service. If this grade control structure is not designed or constructed, the erosion will continue to move upstream to create a more incised channel, the water table will drop, and the adjacent vegetation will stress or die as a result of water loss. Adding this item to the contract now will avoid future costs to re-engage and re-mobilize an engineer to provide the same inevitable technical work down the line, and it will reduce negative impacts to the vegetation in as timely a manner as possible. Staff feels it is in the best interest of the City to accept this Additional Service to include grade control structure design within the scope of this project at an additional cost of \$4,731, for a total contract amount of \$60,113.

This project meets City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall, City Manager

Attachment – Vicinity Map



Tanglewood Creek Trail Schematic Regional Trail Alignment





Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Intergovernmental Agreement re the Utilization of Foothills Animal Shelter, Annual Assessments and the County-Wide Dog Licensing Program

Prepared By: Lee Birk, Chief of Police
Mike Cressman, Deputy Chief of Police

Recommended City Council Action

Authorize the City Manager to sign an Intergovernmental Agreement with Jefferson County, the Cities of Arvada, Lakewood, Wheat Ridge and Golden, regarding the utilization of Foothills Animal Shelter and the County-Wide Dog Licensing Program.

Summary Statement

- Since 1997, the City of Westminster has partnered with Jefferson County and the cities of Arvada, Lakewood, Golden and Wheat Ridge as Directors and users of what is now named Foothills Animal Shelter (FAS).
- In the original IGA, the County and the involved cities, agreed to pay an annual assessment that would be paid to the FAS for operational expenses.
- The County and the partnering cities entered into a separate Intergovernmental Agreement (IGA) in 2007 creating a County-Wide Dog Licensing Program in which the revenue generated from the dog licensing would be used towards the construction costs of the new animal shelter facility.
- In 2011, the FAS Board of Directors reviewed the FAS operational budget and the construction debt repayment funding plan, which led to a meeting in March 2012 with the FAS Board of Directors, Jefferson County Administration, and City Management of the partnering cities. It was decided at that time to rewrite and combine the existing IGA's governing FAS and the County-Wide Dog Licensing Program.
- The attached IGA updates the operational agreements for the governing and usage of FAS. It also reflects a more stable and balanced funding plan for both operations and construction debt repayment to Jefferson County.
- Under this agreement, the City's budgeted and predictable annual assessments will be used to repay the construction debt, while revenue generated from the Dog Licensing Program will offset FAS operational costs.
- This IGA was reviewed with City Council at the July 23rd Study Session and Council directed Staff to schedule this item for official action.
- The City Attorney's Office has reviewed the proposed IGA and approved it as to form.

Expenditure Required: \$89,000 (Current assessment under the new IGA terms)

Source of Funds: General Fund - Police Department Operating Budget

Policy Issue

Should the City of Westminster enter into an Intergovernmental Agreement between Jefferson County and the Cities of Arvada, Lakewood, Golden, Wheat Ridge (Entities) for the utilization of Foothills Animal Shelter, the annual assessments for FAS construction debt repayment and the County-Wide Dog Licensing Program?

Alternative

Do not authorize the City Manager to sign the IGA. Staff is not recommending this action as regardless of facility utilization, the City is obligated by current agreements to assist in repayment of FAS construction debt and to pay higher annual assessments for FAS operations. Staff also believes despite the additional costs experienced recently, the City's participation with Foothills Animal Shelter remains a much more cost effective option versus the City operating its own animal shelter.

Background Information

In November 1996, City Council authorized the City Manager to enter into an IGA with Table Mountain Animal Center (the name was changed in 2010 to Foothills Animal Shelter) for the provision of all animal sheltering functions to be effective January 1, 1997. The IGA set out the method for calculating each participating agency's Entities' annual assessment for the FAS operating expenses. In addition, the IGA requires the FAS Executive Director to establish an annual operating budget. The budget is approved by the FAS Board of Directors, which includes representatives from each of the Entities. The annual assessment paid by each Entity to the operating budget is determined by a formula that takes into consideration the population and assessed property of each entity. No more than 50% of FAS's annual operating budget is funded through these assessments. Historically, the City's assessment has increased by approximately 5% each year. The amount assessed by FAS in 2012 was \$91,718. The remaining 50% of the annual operating budget is derived from fees and fundraising efforts by the Shelter and the Foothills Animal Shelter Foundation.

In late summer of 2010, the construction of the new shelter concluded and the FAS operations moved to the new facility in early August. The FAS Executive Director drafted the 2011 budget and was tasked with completing the budget with projections based on one month of occupancy. Westminster's share of the budget and scheduled assessment for 2011 was \$88,190. The new facility is three times the size of the old building and with the increase in size, came the realization that staffing and operational costs would also increase. The 2011 proposed budget included an additional 3.75 employees (a Facility Maintenance Technician, part-time Veterinarian, and a Surgical/Health Care Technician). Along with the increased staffing, there was a significant increase in utility costs and kennel/building cleaning supplies, Bi-directional antenna for first responder communications, an industrial floor cleaning machine and insurance. After the completion of the 2011 budget, it was determined that there would be a projected shortfall of \$372,684. In October 2011, FAS notified the IGA partners that a supplemental assessment was needed to cover the budget shortfall. The City of Westminster's share of the total supplemental assessment was \$63,250. On December 19, 2011, the Police Department brought this supplemental assessment before City Council and Council approved the expenditure. This resulted in an actual total assessment of \$151,440 for 2011.

As the 2012 budget was being prepared, it was evident that the cost of doing business at the new, larger facility was going to cost significantly more than the current business plan allowed. The FAS Executive Director submitted a 2012 budget reflecting a \$375,000 shortfall. The Board of Directors consulted with the Jefferson County Administrator and requested that this shortfall be covered with the Dog License Program surplus. The request was denied, which meant that the Entities were again faced with a supplemental assessment to cover the shortfall, and the realization that future Entities' annual budgets would have to be increased. In Westminster's case, that means that the annual assessment would have been approximately \$155,000 plus an additional 5% increase annually.

The Board of Directors analyzed the current business plan and operational assessment structure along with the Dog Licensing Program and the program's corresponding revenue. Currently, the Entities are assessed a fee based upon their population and assessed property value. According to the business plan developed several years ago, there is an approximate 5% annual escalator attached. The assessment was designated to help pay for the shelter's operational expenses. The annual escalator was an unstable budgetary consideration for the Entities. It was suggested that because the FAS construction debt was relatively constant over the term of the notes, that it made better sense to devote the Entity assessments to the repayment of the construction debt. This action might allow stabilization of the annual budget considerations for each of the Entities. It was proposed that in lieu of having the assessment calculation tied to population and property valuation, it would instead be tied to the estimated dog population in the Entity jurisdiction. In Westminster's case, this would stabilize our annual assessment at approximately \$89,000. Depending on an increase or decrease in dog population, a minor annual adjustment in the amount paid by Westminster may occur.

The IGA provides for the conversion of the revenue generated from the Countywide Dog Licensing Program from FAS construction debt repayment to FAS operational expenditures. FAS will also maintain a capital reserve account with a balance of \$500,000. The Dog Licensing Program generates approximately \$700,000 per year. This, coupled with an aggressive fundraising effort from the Foothills Animal Shelter Foundation, is projected by FAS Staff to provide the needed operational revenue for the shelter. Currently, the County-Wide Dog Licensing compliance rate is 20%. There is a potential 80% growth capability that FAS could realize and apply toward the shelter operations, thus reducing the reliance on fundraising efforts.

Staff believes that the funding changes being proposed in the IGA are sound and practical and offer a more predictable on-going funding responsibility for the City. However, it should be noted that Foothills Animal Shelter and the Foundation may be challenged to meet operational funding needs through shelter fees, dog license revenue and fundraising efforts. Their operational expenses have increased significantly with the new and expanded facility, and the current economic conditions pose challenges for all charitable and private fundraising. It is possible that, should they fail to raise sufficient revenue to meet operational expenses, they may approach the partnering entities in the future to address revenue shortfalls.

This IGA reflects the City's strategic goals of Financially Sustainable City Government Providing Exceptional Services and Safe and Secure Community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - IGA

INTERGOVERNMENTAL AGREEMENT
BETWEEN JEFFERSON COUNTY, THE CITY OF ARVADA, THE CITY OF LAKEWOOD, THE CITY OF WHEAT RIDGE, THE CITY OF GOLDEN, THE CITY OF WESTMINSTER AND THE CITY OF EDGEWATER
ANIMAL SHELTER/DOG LICENSING /FUNDING

THIS AGREEMENT, dated for reference purposes only this _____ day of _____, 2012, is made and entered into by and between the **COUNTY OF JEFFERSON, STATE OF COLORADO**, a body politic and corporate (the “County”); the **CITY OF ARVADA**, a municipal corporation (“Arvada”); the **CITY OF LAKEWOOD**, a municipal corporation (“Lakewood”); the **CITY OF WHEAT RIDGE**, a municipal corporation (“Wheat Ridge”); and the **CITY OF GOLDEN**, a municipal corporation (“Golden”); and the **CITY OF WESTMINSTER**, a municipal corporation (“Westminster”).

WITNESSETH

WHEREAS, C.R.S. Section 30-15-101(1) authorizes the board of county commissioners of each county to establish an animal holding facility and engage personnel to operate it, provide for the impoundment of animals, and to establish terms and conditions for the release or other disposition of impounded animals; and

WHEREAS, C.R.S. Section 30-15-101(2) authorizes counties and municipalities to enter into an intergovernmental agreement to provide for the control, licensing, impounding, or disposition of pet animals or to provide for the accomplishment of any other aspect of a county or municipal dog control or pet animal control licensing resolution or ordinance; and

WHEREAS, C.R.S. Section 31-15-401(m)(1) authorizes municipalities to regulate and control animals within the municipality including, but not limited to, licensing, impoundment, and disposition of impounded animals; and

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S. permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S. authorizes governments to contract with one another to provide any function, service, or facility lawfully authorized to each of the contracting units through the establishment of a separate legal entity; and

WHEREAS, pursuant to C.R.S. Section 30-11-107(1) the parties are authorized to enter into agreements for the joint use and occupation of public buildings; and

WHEREAS, some of the parties entered into an Intergovernmental Agreement forming the separate legal entity called the Jefferson Animal Shelter on March 15, 1975 and this Intergovernmental Agreement was amended several times to modify the terms and add parties to the agreement; and

WHEREAS, the Towns of Morrison and Mountain View are no longer participating in the operation or funding of the Jefferson Animal Shelter; and

WHEREAS, the parties entered into an Intergovernmental Agreement creating a County-Wide Dog Licensing Program (“Dog Licensing Program”) which provided that the revenue from the Dog Licensing Program would be used to construct a new animal shelter facility due to the deterioration of the prior facility; and

WHEREAS, the County funded the construction of a new animal shelter facility (“Facility”) by 1) issuing Certificates of Participation (“COPs”) which included the amount of 5.2 million dollars for construction of the Animal Shelter Facility; 2) contributing 3 million dollars; and 3) contributing an additional 1.5 million dollars pursuant to the terms of an Intergovernmental Agreement between some of the parties (the “Facility Funding IGA”) which provided that the participating cities would repay the County (unless the County is repaid by the Foothills Animal Foundation) at the end of a five year period ending on January 1, 2015; and

WHEREAS, the parties desire to amend the prior agreements for formation of the Shelter and the Dog Licensing Program to provide for the parties to no longer pay annual assessments for the operation of the Shelter, to instead use the revenue from the Dog Licensing Program for the operation of the Shelter and to provide for repayment of the COPs and the \$1.5 million dollar contribution; and

WHEREAS, the parties agree that each party and its residents should contribute toward the funding for the cost of capital construction of the Facility and the operation of a central animal shelter in equal proportion to the estimated number of dogs in their jurisdiction; and

WHEREAS, it continues to be in the best interest of all of the above-referenced parties to participate in the organization, administration, and common use of a central animal shelter and to amend the prior agreements for continued operation of the central animal shelter and the Dog Licensing Program and the Facility Funding IGA as set forth herein; and

WHEREAS, the City of Edgewater (“Edgewater”) may desire to become a party to this Agreement after adoption of a dog licensing ordinance in compliance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreement of the parties hereinafter contained, the receipt and sufficiency of which are hereby confessed, it is understood and agreed as follows:

PART 1. FOOTHILLS ANIMAL SHELTER FORMATION AND OPERATION

I. GENERAL PROVISIONS

A. ESTABLISHMENT OF FOOTHILLS ANIMAL SHELTER. The parties previously established a separate legal entity called the Jefferson Animal Shelter and then

renamed the entity the Table Mountain Animal Center. The parties hereby reaffirm the establishment of the separate legal entity which shall be known as the “Foothills Animal Shelter” (the “Shelter”) and which shall be responsible for the administration and operation of the Shelter and the Facility.

B. LEASE OF SHELTER. The Shelter entered into a lease with the County for the new Facility located at 580 McIntyre Street, Golden CO 80401 pursuant to a Lease Agreement effective on August 9, 2010 (the “Lease Agreement”). The Shelter, for the purpose of, organizing, administering, and operating the central animal facility on the land so leased, will improve, maintain, and operate the Facility as provided herein and as provided in the Lease Agreement.

II. POWERS OF THE SHELTER

A. GENERAL POWERS. The parties hereto agree the Shelter shall be empowered with the authority to improve, construct, maintain, repair, control, regulate, and operate the Facility within Jefferson County, Colorado, as a complete animal shelter for the use and benefit of the parties to this Agreement and their constituents.

B. POWER TO SHELTER ANIMALS AND PROVIDE EDUCATIONAL PROGRAMS. The principal purposes of the Shelter are (1) to retain in temporary custody and to provide for the subsequent adoption or disposition of animals taken into possession by the respective governing bodies or animals tendered to the Shelter by residents of the respective governing bodies, and (2) to provide educational, volunteer and related programs to individuals and the community to promote responsible pet ownership. As used herein, the term “animals” shall include, but is not necessarily limited to, dogs, cats, cattle, horses, and all other domestic or wild animals of any kind or description.

C. The Shelter shall have the power to contract with other governing bodies who are not parties to this Agreement to provide the same temporary custody, adoption or disposition services provided for the parties.

D. POWER TO ESTABLISH CLINICS FOR ANIMAL WELFARE PURPOSES. In addition to providing temporary custody for said animals, the Shelter shall have the authority to establish a clinic for the purpose of spaying and neutering animals, or any other animal welfare related purposes as deemed appropriate by the governing Board of Directors (the “Shelter Board”).

E. POWER TO MAKE CONTRACTS, HIRE, AND FIRE. The parties hereto further agree the Shelter shall have the authority to contract and purchase all necessary supplies, equipment, materials, and services, including professional services, and further to hire and discharge employees as deemed necessary to operate the Shelter.

F. POWER TO SET FEES. The fees to be charged for services shall be established by the Shelter Board. shall be uniform and reasonable, and shall supersede any fees previously

established by the respective governmental bodies. Fees for services provided to governing bodies who are not parties to this Agreement and their residents shall be set by the Shelter Board and shall be set to include the costs for operation and maintenance of the Shelter and capital costs of the Facility.

G. POWER TO LEASE PROPERTY. The parties hereto agree the Shelter is empowered to negotiate and enter into a lease of the Facility which is suitable for an animal facility and additional property if necessary.

III. BOARD OF DIRECTORS

A. POWERS. All powers, privileges and duties vested in the Shelter shall be exercised and performed by and through the Shelter Board. Only parties to this Agreement shall be entitled to appoint a Director to serve on the Shelter Board.

B. APPOINTMENTS. Each party shall designate and appoint one Director to serve on the Shelter board. Each Director shall be in regular attendance and participate in Shelter meetings and activities. Each Director shall serve in accordance with the terms and conditions set forth by the party that appointed the Director. Each party may also appoint an alternate board member. The current Directors for the existing animal shelter appointed by the parties shall continue to serve as Directors on the Foothills Animal Shelter Board after execution of this Agreement unless any Director is removed by the party who appointed the Director.

C. ELECTION OF OFFICERS. At the annual meeting of the Shelter Board, the Shelter Board shall elect from its membership a President, a Vice President (and President pro tem), a Secretary and a Treasurer, who will assume their office at the annual meeting. These officers shall serve until their successors have been elected. The officers shall be elected by an affirmative vote of at least a majority of the Shelter Board.

D. BYLAWS AND POLICIES AND PROCEDURES. The Shelter Board shall have the power to promulgate bylaws and policies and procedures which shall establish the organizational rules and policies and procedures for the management and operation of the Shelter.

IV. CAPITAL IMPROVEMENT FUND

The Shelter shall establish a capital improvement fund equal to a minimum of Five Hundred Thousand Dollars (\$500,000) ("Minimum Threshold") using the surplus revenues generated by either the operation of the Shelter or the Dog Licensing Program or by funds transferred from the Foothills Animal Foundation, a Colorado non-profit corporation (the "Foundation"). The uses to which said fund may be put include, but are not necessarily limited to, replacement of capital equipment, procurement of new capital equipment, and improvement or expansion of the Facility. If funds are used from the capital improvement fund, the capital improvement fund shall be returned to the Minimum Threshold as soon as funds become available but within no more than a two year period from the date the fund fell below the

Minimum Threshold. The Shelter Board may adjust the Minimum Threshold above \$500,000 on an annual basis if approved by a two-thirds vote of the Directors. Any adjustment of the Minimum Threshold below \$500,000 shall only occur by amendment to this Agreement.

V. CONTINGENCY/EMERGENCY FUND ESTABLISHED

The Shelter shall establish a contingency/emergency fund with a minimum of three months of operating expenses as calculated from the prior year ("Minimum Balance"). The money for said fund may be generated from transfers from impoundment, boarding and adoption fees, investment income, donations, grants or other incidental sources of revenue. Said contingency fund shall be used to defray the costs of unanticipated operating expense shortfall. If funds are used from the contingency emergency fund, the contingency/emergency fund shall be returned to the Minimum Balance as soon as funds become available but within no more than a two year period from the date the fund fell below the Minimum Balance.

VI. BUDGET

A. BUDGET PROCESS. Each year, the Shelter shall prepare a preliminary budget and submit said budget to the Shelter Board. The budget shall contain detailed estimates of the operating costs of the subsequent year. The preliminary budget shall be approved by the Shelter Board on or before September 30th of each year. The approved preliminary budget shall be submitted to each of the governing bodies of the parties hereto as soon thereafter as possible.

B. The final budget shall then be approved by the Shelter Board and certified by the secretary and treasurer of the Shelter Board. A final budget shall be submitted to each of the governing bodies of the parties no later than December 15th of each year that this Agreement is in effect.

VII. FUNDS AND OPERATIONS

A. DESIGNATION OF FUNDS. The Shelter and parties agree that the various monies paid to the Shelter from the Dog Licensing Program or any other source, and any monies generated by the Shelter, shall be placed into a designated fund, and any expenses incurred by reason of operation of the Shelter shall be paid from said fund.

B. CHOICE OF DEPOSITORY. All monies belonging to the Shelter or designated for use by the Shelter shall be deposited in the name and to the credit of the Shelter with such depositories as the Shelter shall from time to time designate.

C. DISBURSEMENT OF FUNDS. The Shelter Board will establish a written policy for the internal control and monitoring of the expenditure of funds by the Shelter and the type or method of payment used by the Shelter. The written policy established by the Shelter Board shall ensure that the Shelter Board is able to monitor all expenditures by the Shelter.

D. FISCAL RESPONSIBILITY. The Shelter shall not borrow money nor shall it approve any claims or incur any obligations for expenditures unless there is sufficient unencumbered cash in the appropriate fund, credited to the Shelter, with which to pay the same. The provisions and terms set forth in Part 3 of this Agreement shall not be considered debt of the Shelter.

VIII. BOOKS AND RECORDS

A. RECORD KEEPING. The Shelter shall maintain adequate and correct accounts of its funds, properties, and business transactions, which accounts shall be open to inspection at any reasonable time by the parties hereto, their attorneys, or their agents.

B. ANNUAL AUDIT. The Shelter shall cause to be conducted an annual audit within 90 days after the end of the fiscal year. The Shelter fiscal year shall be from January 1st to December 31st. Such audit shall be conducted by an independent certified public accountant, registered accountant, or partnership, or certified public accountants, or registered accountants licensed to practice in the State of Colorado. The Shelter shall tender a copy of said audit to the governing bodies of the respective parties hereto.

IX. REPORTS

A. ANNUAL REPORT. By June 1st of each year the Shelter shall prepare a comprehensive annual report of the Shelter's activities and finances during the preceding year and tender a copy of the annual report to the governing bodies of the respective parties hereto.

B. REPORTS REQUIRED BY LAW, REGULATION OR CONTRACT. The Shelter shall also prepare and present such reports as may be required by law, regulation, or contract to any authorized federal, state, and/or local officials to whom such report is required to be made in the course and operation of the Shelter.

C. REPORTS REQUESTED BY THE PARTIES. The Shelter shall also render to the parties hereto, at reasonable intervals, such reports and accountings as the parties hereto may from time to time request.

PART 2. COUNTY WIDE LICENSING PROGRAM/FUNDING FOR SHELTER

I. COUNTY-WIDE LICENSING PROGRAM

A. ORDINANCE ADOPTION. Each party shall adopt or has already adopted an ordinance which establishes a dog licensing program and penalties within its jurisdiction. The dog licensing ordinances adopted by the parties shall be consistent with the County ordinance concerning licensing of dogs and license fees; however, each party has discretion to adopt its own penalties.

B. ENFORCEMENT. Each party shall be responsible for enforcement of the penalties for its dog licensing ordinance within their own jurisdiction. Each party agrees to actively pursue enforcement of said ordinance.

C. LICENSING ADMINISTRATOR DEFINED. The Licensing Administrator is the entity delegated the authority by the parties to issue licenses and collect fees for said dog licenses on behalf of all parties.

D. DELEGATION OF AUTHORITY. The parties hereby have delegated authority to the County to be the Licensing Administrator to issue licenses and collect fees for said dog licenses on behalf of all parties. A new Licensing Administrator may be appointed by written approval of the Shelter Board. If the Licensing Administrator appointed is not a party, the Shelter Board shall enter into an agreement with the entity chosen to be the Licensing Administrator to bind the new Licensing Administrator to the terms of this Agreement and any other terms deemed necessary by the Shelter Board.

E. DOG LICENSES. The dog licenses shall all be identified as "County Dog Licenses."

II. FUNDS AND OPERATIONS

A. DESIGNATION OF FUNDS. The Licensing Administrator agrees that all monies paid to the Licensing Administrator for the licensing of dogs within the jurisdictions of all parties, shall be placed into a designated fund (the "Dog Licensing Fund") except the funds due to the Licensing Administrator as provided in Part 2, Article II, Section B and the funds withdrawn or retained by the County pursuant to Part 2, Article II, Section C.

B. LICENSING ADMINISTRATOR'S ADMINISTRATIVE COSTS. On August 1st of each year this Agreement is in effect, the Licensing Administrator shall provide each party with a statement of the Licensing Administrator's administrative costs directly attributable to the operation of the Dog Licensing Program from July 1st through June 30th of each year, and the projected administrative costs for the upcoming year. The Licensing Administrator shall retain the amount of the Licensing Administrator's administrative costs from the Dog Licensing Program revenue on a monthly basis. The Licensing Administrator shall be entitled to payment for the cost of, at a maximum, two full time employees including salary, benefits and overhead. The Licensing Administrator employee positions shall be Administrative Specialist I or II positions as currently defined by the County or equivalent positions. Any future staffing needs, beyond those currently listed above, require approval of the Shelter Board. The Licensing Administrator shall also be entitled to the cost of tags, mailers (for new tags and renewals), postage, printing, maintenance/updates of dog licensing software and miscellaneous office supplies, and any other costs directly attributable to the operation of the Dog Licensing Program.

C. DISBURSEMENT OF FUNDS FOR 2012. The parties have each paid an assessment to the Shelter for the 2012 Budget Year as a contribution to the operating costs and capital improvement costs of the Shelter. The County, as the current Licensing Administrator

shall withdraw funds from the Dog Licensing Fund to pay that portion of the debt service on the COPs for 2012 attributable to the portion of those proceeds used to fund the construction of the Facility. The County, as the current Licensing Administrator, shall retain funds in the Dog Licensing Fund to pay the County's estimated administrative costs and expenses for acting as the Licensing Administrator through December 31, 2012. The remainder of the funds in the Dog Licensing Fund shall be paid over to the Shelter to be used first to meet the requirements for funding the Capital Improvements Fund and Contingency/Emergency Fund and the remainder shall be allocated as determined by the Shelter Board.

D. DISBURSEMENT OF FUNDS AFTER 2012. Except for the funds retained by the Licensing Administrator each month for its administrative costs and expenses as provided in Part 2, Article II, Section B, the funds contained in the Dog Licensing Fund shall be paid to the Shelter by the Licensing Administrator on a monthly basis on the 10th of the following month as a contribution from the parties toward the operating costs of the Shelter or capital improvements or maintenance costs of the Shelter as approved by the Shelter Board.

III. BOOKS AND RECORDS

RECORD KEEPING. The Licensing Administrator shall maintain adequate and correct accounts of the funds, which accounts shall be open to inspection at any reasonable time by the parties hereto, their attorneys, or their agents.

IV. REPORTS

A. DEFINITIONS.

1. *Reporting Period* shall mean the period between July 1st to June 30th of each subsequent year.
2. *Jurisdiction* – The Jurisdiction of each party who is a city shall mean the area within its municipal boundaries. For Westminster and Arvada Jurisdiction shall include the area within their municipal boundaries that is within Adams County and Jefferson County. The Jurisdiction for the County shall be the unincorporated area of the County.
3. *Estimated Dog Population* for a party shall mean:
 - a. the estimated percentage of Colorado households harboring one or more dogs, obtained from the most current data published by the American Veterinary Medical Association (the "Source"); multiplied by
 - b. the number of households in a party's Jurisdiction, as reported in the most current publication by the State Demographer's Office; multiplied by
 - c. the average number of dogs per household for each household with a dog, obtained from the most current Source using the data for Colorado.

4. *Compliance Rate* shall mean the rate calculated by dividing
 - a. the number of licenses issued for dogs residing in a party's Jurisdiction during a one year Reporting Period by
 - b. the Estimated Dog Population in each party's Jurisdiction for the same Reporting Period.

B. ANNUAL REPORT. By August 1st of each year, the Licensing Administrator shall prepare and present to the Shelter Board an annual report of the number of dogs licensed during the prior year in each party's Jurisdiction, the estimated household population of each party's Jurisdiction as reported in the most current publication by the State Demographer's Office, the Compliance Rate for each party's Jurisdiction and the funds collected during the prior year. A sample of the report format is attached as Exhibit A.

C. REPORTS REQUESTED BY THE PARTIES. The Licensing Administrator shall also render to the parties hereto, at reasonable intervals, such reports and accountings as the parties hereto may from time to time request.

V. REVIEW OF REVENUES AND JURISDICTION COMPLIANCE

A. REVIEW OF REVENUES AND COMPLIANCE BY JURISDICTION. If during the reporting period ending June 30, 2012, there is less than twenty per cent (20%) compliance by the residents in a party's Jurisdiction, the respective party shall pay to the Licensing Administrator for placement in the Dog Licensing Fund an amount equal to the difference between the funds that the Dog Licensing Fund would have received if there was twenty per cent (20%) compliance at the spayed dog licensing rate and the amount of dog license fees actually collected from the residents of that party's Jurisdiction.

The twenty percent (20%) Compliance Rates set forth above shall be defined as the Minimum Compliance Rate for the reporting period ending June 30, 2012. When the annual report is distributed at the end of the next reporting period and every year thereafter, a new Minimum Compliance Rate shall be set for the following year if the Minimum Compliance Rate was exceeded by all the parties. If all the parties' Jurisdictions exceed the Minimum Compliance Rate according to the annual report, the new Minimum Compliance Rate for the following year shall be the Compliance Rate of the party with the lowest Compliance Rate. If any party's Jurisdiction fails to meet the Minimum Compliance Rate set for a reporting period, the party shall pay to the Licensing Administrator for placement in the Dog Licensing Fund an amount equal to the difference between the funds that the Dog Licensing Fund would have received if the Minimum Compliance Rate was met at the spayed dog licensing rate, and the amount of dog license fees actually collected from the residents of that party's Jurisdiction.

B. APPROPRIATION AND PAYMENT OF FUNDS. The parties agree to pay the amounts set forth in Part 2, Article V, Section A, to the Licensing Administrator for placement in the Dog Licensing Fund by January 31st of the year following which the Annual Report determined a party failed to meet the Minimum Compliance Rate, provided, however, that all payments by the parties to the Dog Licensing Fund pursuant to this Agreement are subject to

annual appropriation by the parties hereto in the manner required by statute. It is the intention of the parties that no multiple-year fiscal debt or other obligation be created by this Agreement.

PART 3. REPAYMENT OF DEBT SERVICE FOR CONSTRUCTION OF FACILITY

I. BASIS FOR DOG POPULATION

A. BASIS FOR DOG POPULATION. The basis for the dog population calculation shall be based upon the Colorado data from the most current Source. Whenever the dog population is needed for computations under this Agreement, the figure used shall be the most recent available at the time such figure is needed, unless otherwise specified herein.

B. DEFINITIONS. The definitions for Jurisdiction, Reporting Period and Estimated Dog Population are set forth in Part 2, Article IV.

II. CONTRIBUTIONS TO DEBT SERVICE FOR COST OF CONSTRUCTING FACILITY

A. CONTRIBUTIONS OF THE PARTIES FOR DEBT SERVICE ON COPS. \$5.2 million dollars of the proceeds from the COPS issued by the County were used to partially pay the cost for construction of the Facility. The parties agree that each municipal party shall annually pay an assessment to the County to repay that portion of the debt service on the COPS attributable to the portion of the proceeds used to fund the construction of the Facility (the "Facility Debt Service") until the COPS are defeased. The Facility Debt Service Schedule is attached hereto as Exhibit A but such schedule may be modified if the COPS are refinanced as provided herein. The schedule may also be modified to allow for prepayments or other events as deemed appropriate by all the parties. Each party's annual repayment will be determined as follows:

1. Calculation for the Annual Assessment
 - a. Determine the Estimated Dog Population for each party's Jurisdiction as of June 30th of each year.
 - c. b. Add the Estimated Dog Population for all the parties together to determine the Total Dog Population. Determine what percentage each party's Estimated Dog Population is compared to the Total Dog Population for all of the parties' Jurisdictions combined ("Dog Population Percentage").

Each municipal party shall pay the County a portion of the Facility Debt Service equal to that municipal party's Dog Population Percentage.

B. ANNUAL DEBT SERVICE STATEMENT AND INVOICE FOR COPS. By August 1st of each year, the County shall prepare and present to the Shelter Board and the governing bodies of the parties a statement and invoice of the Facility Debt Service due from January 1 to December 31 for the upcoming year, each party's Dog Population Percentage and the total dollar amount due from each party for its portion of the Facility Debt Service.

C. PAYMENT FOR FACILITY FUNDING IGA. Pursuant to the terms of the Facility Funding IGA, the County shall provide the parties with a report each year stating the amount received each year and the balance owing. Section I.D. of the Facility Funding IGA shall be amended to provide that the final payment on the remaining balance is due on January 1, 2015 and shall be divided equally between Arvada, Lakewood, Wheat Ridge, Golden and Westminster (collectively the "Cities"). The Cities shall make their final payments to the County no later than January 31, 2015. To the extent the Facility Funding IGA provides that the County is solely responsible for the Facility Debt Service on COPs, the Facility Funding IGA is amended in this Agreement to require participation of all the municipal parties and the County in the payment of the Facility Debt Service in the manner provided herein.

D. APPROPRIATION AND PAYMENT OF FUNDS. The parties agree to consider for appropriation the amounts computed as set forth above by the first day of January of the year during which said monies are to be paid to the County. The parties agree to pay the amounts for the Facility Debt Service to the County by January 31st of the year during which said monies are to be paid by the County for the debt service. All payments to the County pursuant to this Agreement are subject to annual appropriation by both the County and each municipal party hereto in the manner required by statute. It is the intention of the parties that no multiple-year fiscal debt or other obligation be created by this Agreement.

E. REPORTS REQUESTED BY THE PARTIES. The County shall also render to the other parties hereto, at reasonable intervals, such reports and accountings as the parties hereto may from time to time request.

F. REFINANCING. The County shall have the right to refinance the debt on the COPs if deemed beneficial to the County so long as the amount owed by the municipal parties for debt service does not increase due to the refinancing.

PART 4. GENERAL CONTRACT TERMS

I. DEFAULT IN PERFORMANCE

A. In the event any party fails to make the payments to the Licensing Administrator when due as provided by Part 2, Article V, or payments to the County as provided in Part 3 or to perform any of its covenants and undertakings under this Agreement, the County or any other party shall cause written notice to be given to the governing body of the defaulting party of the termination of the party's participation in the Agreement, unless such default is cured within thirty (30) days from the date of such notice. Upon failure to cure said default within said thirty (30) day period, membership in the Shelter of the defaulting party shall thereupon terminate, and said defaulting party shall thereafter have no voting rights as a member of the Shelter at any regular or special meeting thereto, nor be entitled to representation on the Shelter Board, and said defaulting party shall thereafter be denied service by the Shelter. Further, the Licensing Administrator shall no longer provide licensing services to said defaulting party. The defaulting party whose participation is terminated under this section of this Agreement shall forfeit all right, title, and interest in and to any funds in the Dog Licensing Fund or any right, title or interest in

and to any property of the Shelter to which said party may otherwise be entitled upon the dissolution of this Agreement. If a party is in default of this Agreement for any reason other than nonappropriation of funds for payment of an assessment to the County or payment to the Licensing Administrator for placement in the Dog Licensing Fund, termination of the defaulting party's participation in the Agreement shall not relieve the defaulting party of the obligation to make the payments to the County as provided in Part 3 or the Licensing Administrator for placement in the Dog Licensing Fund as provided in Part 2, Article V that were due prior to the defaulting party's termination. This Section is not intended to limit the right of any party under this Agreement to pursue any or all other remedies it may have for breach of this Agreement. A party who fails to make the payments required by Part 2 or 3 for any reason other than nonappropriation of funds shall be obligated to pay all costs of collection of said payment, including reasonable attorneys' fees. A municipal party who fails to make the payments for any reason other than nonappropriation of funds shall be obligated to pay interest at a default rate of 10% plus all costs of collection of said payment, including reasonable attorneys' fees.

B. PAYMENT DEFAULT/ COPs. In the event any municipal party fails to make the payments to the County when due other than for non appropriation as set forth in Part 3 Section D that municipal party shall be in default. In the event of a payment default or non appropriation by any of the municipal parties, the remaining municipal parties and County shall be responsible for the debt service amount owed by the defaulting or non appropriating municipal party or parties in the same ratio calculation set forth in Part 3 except the ratio shall be calculated without the defaulting party or parties inclusion in the ratio.

C. PAYMENT DEFAULT/ \$1.5 MILLION. In the event Arvada, Lakewood, Wheat Ridge, Golden or Westminster fails to make the payments to the County when due other than for non-appropriation as set forth in Part 3 Section C the municipal party who fails to make a timely payment shall be in default. In the event of a payment default or non appropriation by Arvada, Lakewood, Wheat Ridge, Golden or Westminster, the remaining municipal parties shall be responsible for the debt service amount owed by the defaulting or non appropriating municipal parties as provided in the Facility Funding IGA.

II. TERM, RENEWAL AND TERMINATION OF AGREEMENT

A. TERM AND RENEWAL OF AGREEMENT. This Agreement shall be in full force and effect for a term of 50 years from July 1, 2012 or until sooner terminated by two-thirds of the parties hereto, and the parties entering into this Agreement shall have the option to extend this Agreement by amending this Agreement pursuant to Part 4, Section III.

B. CONTINUATION OF SHELTER OPERATION/FEEES FOR NON-PARTIES. All property and animals shall remain in the Shelter under the terms of this new Agreement. Entities not parties to this Agreement who have animals at the Shelter that were placed at the Shelter by the entity or residents living within the boundaries of the entity on effective date of this Agreement shall pay a fee as set by the Shelter Board which may be per animal per day as long as said animal remains at the Shelter.

C. TERMINATION BY WRITTEN NOTICE. This Agreement, or any party's participation in this Agreement, may be terminated effective by written notice from the party or parties to the Shelter at least 180 days prior to January 1st of any given year. Any party terminating its participation pursuant to this provision shall not be entitled to any reimbursement for said parties' contributions to the County, the Shelter or the Licensing Administrator for capital costs, assessments or any operating costs previously paid by said party or any dog licensing fees previously paid by its residents. Such party shall be entitled to be readmitted to the membership of the Shelter if approved by the Shelter Board and if the terminated party has paid all dollar amounts the terminated party is in arrears under the terms of this Agreement.

D. TERMINATION WITHOUT REQUIRED NOTICE. In the event that any party hereto elects to terminate its participation in this Agreement prior to the end of any period of this Agreement and not in accordance with subsection C of this section, such party shall be considered in default of this Agreement and accordingly shall forfeit its entire contribution to the Shelter. Upon default, the defaulting party shall forfeit all privileges and property that such party obtained as a result of its membership in this Shelter. Should a defaulting party, at some later date, seek readmission to the membership of the Shelter, such party shall be required to meet the requirements and contributions of any new party seeking membership pursuant to the terms of this Agreement.

E. POWERS OF SHELTER UPON TERMINATION BY TWO-THIRDS. Upon termination by mutual agreement of two-thirds of the parties to this Agreement, the powers granted to the Shelter under this Agreement shall continue to the extent necessary to make an effective disposition of the property, equipment, and animals under this Agreement. If the Agreement is terminated the Shelter and the County shall cause the Lease Agreement with the County to be terminated.

F. STATUS OF LEASED PREMISES UPON TERMINATION BY TWO-THIRDS/ PAYMENT OF SHELTER LIABILITIES. Upon termination of this Agreement by mutual agreement of two-thirds of the parties hereto, the Lease Agreement shall terminate in accordance with its terms and improvements thereon located in Jefferson County, shall revert to Jefferson County for its use and ownership. Any cost for liabilities incurred by the Shelter during the termination of this Agreement and as an expense of termination shall be borne by each party to the Agreement in the same proportion as it is required to contribute to the assessments in Part 3 Section II, whether such assessments have terminated or not except, if the debt service on the COPs is not fully paid, the County shall not pay any part of the remaining Shelter liability and the proportion of each municipal party shall be adjusted to pay the full amount of the Shelter liability without the County participation.

G. TERMINATION FOR REASON OTHER THAN NONAPPROPRIATION. Termination of the Agreement for any reason other than nonappropriation of funds shall not relieve the terminating party of the obligation to make the payments to the Licensing Administrator as provided in Part 2 or pay the party's assessment to the County as provided in Part 3.

H. **DISBURSEMENT OF FUND UPON TERMINATION.** If this Agreement is terminated, the Licensing Administrator shall first pay the County any monies it holds from the dog licensing revenue, except its costs of administration prior to termination of the Agreement, to pay the County for the cost of any remaining debt service on the COPs issued to pay for the cost of constructing the Facility. The Shelter shall pay any funds it holds beyond its expenses incurred prior to the termination of this Agreement to the County to cover any remaining cost of the debt service on the COPs. This provision and the provisions of Part 2, Article II, Section B; Part 2, Article V; Part 3, Article II; Part 4, Article I, Section A, B and C and Article II., shall survive termination of this Agreement.

III. AMENDMENT

This Agreement may be amended at any time in writing by agreement of all the parties to this Agreement except that the Agreement may also be amended as set for the in Part 4, Section X.

IV. SEVERABILITY CLAUSE

If any provisions of this Agreement or the application thereof to any party or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of the Agreement are declared to be severable.

V. COUNTERPARTS

This Agreement may be signed in counterparts, and each counterpart shall be deemed an original, and all the counterparts taken as a whole shall constitute one and the same instrument. The Agreement shall not be effective until executed by all parties.

VI. NO THIRD PARTY BENEFICIARIES

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not named as parties, limit in any way governmental immunity and other limited liability statutes for the protection of the parties, nor limit the powers and responsibilities of any other entity not a party hereto. Nothing contained herein shall be deemed to create a partnership or joint venture between the parties with respect to the subject matter hereof.

VII. SUPERSEDES AND AMENDS PRIOR AGREEMENTS

This Agreement supersedes and replaces all prior agreements dealing with formation of the Shelter including but not limited to the Intergovernmental Agreement dated for reference purposes only January 1, 1998, and the Intergovernmental Agreement for the County Wide Licensing Program dated for reference purposes only June 20, 2007 and any amendments to

those agreements. The Facility Funding IGA shall remain in full force and effect except as amended herein. To the extent Facility Funding IGA says the County is solely responsible for the Facility Debt Service for the COPs the Facility Funding IGA is amended by Part 3 Article II(C).

VIII. NONDISCRIMINATORY POLICY

The Shelter shall make its services, facilities, and programs available to all persons regardless of race, color, age, creed, national origin, sex, or disability.

IX. NO GENERAL OBLIGATION INDEBTEDNESS

Because this Agreement will extend beyond the current fiscal year, the parties understand and intend that the obligation of the parties to pay any costs hereunder constitutes a current expense of the parties payable exclusively from the parties' funds and shall not in any way be construed to be a general obligation indebtedness of the parties within the meaning of any provision of Article XI of the Colorado Constitution, or any other constitutional or statutory indebtedness. None of the parties has pledged the full faith and credit of the state, or the parties to the payment of the charges hereunder, and this Agreement shall not directly or contingently obligate the parties to apply money from, or levy or pledge any form of taxation to, the payment of any costs.

X. JOINDER OF THE CITY OF EDGEWATER

All parties agree that the City of Edgewater ("Edgewater") may become a party to this agreement by adopting a dog license ordinance in compliance with the terms of this Agreement and Edgewater's properly executing this Agreement in counterpart. Upon Edgewater's execution of a counterpart of this Agreement the parties and Edgewater agree that this Agreement shall be deemed amended with Edgewater being deemed a party to this Agreement and Edgewater being subject to all the terms and provisions of this Agreement except Edgewater shall not be responsible for payment under the terms of the Facility Funding IGA without amendment to the Facility Funding IGA as provided therein. Calculation for the Compliance Rate for Edgewater shall be prorated for the first year from the date Edgewater executes the Agreement until the following June 30th.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

JEFFERSON COUNTY,
STATE OF COLORADO

Deputy Clerk and Recorder

By _____
Donald Rosier, Chairman
Board of County Commissioners
Date: _____

APPROVED AS TO FORM:

Gay Ummel
Assistant County Attorney

ATTEST:

CITY OF ARVADA,
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF LAKEWOOD
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF GOLDEN
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF WHEAT RIDGE
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF WESTMINSTER
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

J. M. Graham
Office of the City Attorney



Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Second Reading of 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 second 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.
- 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.
- Staff received a phone call from the Metro Homebuilders Association, a week after this ordinance passed on first reading, requesting that this item be tabled. The Metro Homebuilders were contacted more than a month ago for their input, but never got back in touch with the City until now. Staff is recommending that Council proceed with passage of this ordinance on second reading Monday night.
- This bill was approved on first reading by City Council on August 13, 2012.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **28**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Major - Winter

**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)~~(a) 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)~~(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).~~(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 27, 2012



SUBJECT: Second Reading of 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 Bocard, Recreation Services Manager

Recommended City Council Action

Pass Councillor's Bill No. 29 on second 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.
- This Councillor's Bill was passed on first reading on August 13, 2012.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance with Exhibit A Lease

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **29**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Winter - Lindsey

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 Bocard
	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

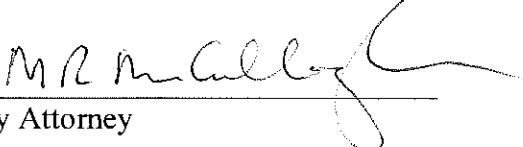
LESSEE: ABC Entertainment, L.L.C.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

ATTEST: _____
City Clerk

APPROVED AS TO LEGAL FORM:



City Attorney



Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Second Reading of 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 second 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

- This Councillor's Bill was passed on first reading on August 13, 2012.
- 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.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance with Exhibit A Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **30**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Atchison - Lindsey

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.

2. 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.

3. 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

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 Item 10 A

Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Councillor's Bill No. 31 re 2012 2nd Quarter Budget Supplemental Appropriation

Prepared By: Karen Barlow, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 31 on first reading, providing for a supplemental appropriation of funds to the 2012 budget of the General, Medical/Dental Self Insurance, Parks Open Space and Trails, and General Capital Improvement Funds.

Summary Statement

- At the end of each quarter, Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- General Fund amendments:
 - \$970 Reimbursements
 - \$3,141 Miscellaneous
 - \$24,076 Grants
- Medical/Dental Self Insurance Fund amendments:
 - \$300,000 Transfer
- Parks, Open Space and Trails Fund amendments:
 - \$47,794 Rent
 - \$66,436 Permit Fees
- General Capital Improvement Fund amendments:
 - \$16,090 Cash-in-Lieu
 - \$300,000 Transfer

Expenditure Required: \$758,507

Source of Funds: The funding sources for these budgetary adjustments include reimbursements, grants, miscellaneous, transfers, rents, permit fees, and cash-in-lieu.

Policy Issue

Does City Council support amending the appropriations for the 2012 budget of the General, Medical/Dental Self Insurance, Parks Open Space and Trails, and General Capital Improvement Funds as outlined?

Alternative

The alternative would be not to amend the 2012 budget appropriations for the General, Medical/Dental Self Insurance, Parks Open Space and Trails, and General Capital Improvement Funds and to utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them with their current budget or planned projects in anticipation of appropriation of these additional funds.

Background Information

The attached Councillor's Bill is a routine action addressing the need to adjust revenue and expenditure appropriations as a result of activities or events that were not anticipated during the normal budget process.

The Police Department received \$5,015 from the State of Colorado Department of Transportation for their participation in the 2012 High Visibility Impaired Driving Enforcement (HVIDE) campaign. The grant reimburses overtime incurred by enforcement officers while working the St. Patrick's Day and High School Prom enforcement campaigns. The funds are being appropriated to the department's overtime account.

The Police Department received \$11,419 from the North Metro Task Force High Intensity Drug Tracking Area (HIDTA) grant funding for overtime incurred by the department's Task Force members working on Federal HIDTA cases. The reimbursement from the Task Force was for overtime incurred from January through March 2012, and the reimbursement is being appropriated to the department's Overtime account.

The Police Department received \$970 from the North Metro Task Force for overtime incurred by Westminster Police Department Task Force Detectives while working cases involving U.S. Immigration and Customs (ICE) enforcement in January and February 2012. The funds are being appropriated to the department's overtime account.

The Police Department received \$5,399 from International Crimes Against Children (ICAC) for overtime, hardware, software, cell phone services, and internet services. The funds are being requested for appropriation to the department's Salaries Overtime account for \$743 and to the Lab Supplies Investigation Section account for \$4,656.

\$300,000 of the Fund Balance of the Medical/Dental Self Insurance Fund is being requested for appropriation to the Employee Wellness Clinic Capital Improvement Project for build out and relocation of the Information Technology disaster recovery area, recreation storage area, recreation offices and massage rooms.

The Community Development Department received \$47,794 in license fees from two companies. \$45,691 was received from Trimble Navigation as a license fee for use of the City Open Space for a storm sewer line, emergency spillway, and trail connection near 108th Avenue and Westmoor Drive. \$2,103 was received from Church Ranch Hotel Company as a license fee for a storm sewer line near 103rd Avenue and Church Ranch Boulevard. Staff agreed to enter into these agreements based on authority provided by the Policies for the Use of Open Space Properties, Parklands, and other City owned Properties adopted by Council on February 23, 2009. The funds are being requested for appropriation to the Open Space Fund Professional Services account.

The City receives School Land Dedication Fees for Adams County District 50. These fees have accumulated over many years. The Community Development Department received Council approval on January 23, 2012 to use \$66,436 of these funds towards the purchase of the Westminster Hills Elementary School property Open Space Acquisition. The funds are being appropriated to the Open Space Fund Land Purchases account.

The City received \$16,090 from White Lodging Services for cash in lieu of public art. The new Marriott Hotel, which is starting construction, and the future Hyatt Hotel chose not to install public art at their locations in Church Ranch. The City will be able to use these funds for public art installation elsewhere. These funds are being appropriated to the General Capital Improvement Fund New Art Participation project.

General Services received \$3,141 from the State of Colorado for the City’s drop-off recycling program. These funds are being appropriated to the department’s Solid Waste Collection Customer Service account.

The Parks, Recreation, and Libraries Department received \$2,243 from the Colorado Department of Health Care Policy and Financing for three additional computers to be used by library patrons. One of the main objectives is to ensure that those eligible for health, food, and cash assistance from the state have adequate access to apply for the benefits. These funds are being appropriated to the Library Office Equipment account.

In the Water Fund there will be a reallocation of budget between expenditure accounts, and this explanation is being provided for information purposes. On May 10, 2010 Council approved the issuance of Utility Enterprise Revenue Bonds in an amount not to exceed \$33,000,000 to fund a number of high priority utility fund capital improvement projects. Funding of \$27,910,538 was received on May 25, 2010. Since funding was received, Staff has worked to complete a number of capital projects with the bond funds. Many of these projects have been completed, and project savings in the amount of \$2,480,490 are available to be spent on other qualified capital projects. Two current capital projects (Brookhill/Vance Water Line Replacement and Wandering View Tank Major R&R) have been identified for utilizing these bond fund project savings. Staff is recommending that cash funds (equaling the amount of bond funds of \$2,480,490) which were originally allocated towards these projects be returned to the Capital Project Reserve for future use.

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$35,000	\$16,818	\$51,818
State Grants	1000.40620.0000	1,791	7,258	9,049
General	1000.43060.0000	361,193	3,141	364,334
Reimbursements	1000.43080.0000	55,171	<u>970</u>	56,141
Total Change to Revenues			<u>\$28,187</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Solid Waste Collect Cust Serv	10012390.67300.0702	\$42,144	\$3,141	\$45,285
Salaries OT-Investigation Section	10020300.60400.0344	170,500	13,132	183,632
Lab Supplies-Investigation Section	10020300.70800.0344	13,269	4,656	17,925
Salaries OT-Traffic	10020500.60400.0348	56,791	5,015	61,806
Office Equipment	10050620.75200.0000	18,000	<u>2,243</u>	20,243
Total Change to Expenses			<u>\$28,187</u>	

These appropriations will amend Medical/Dental Self Insurance Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	4900.40020.0000	\$0	<u>\$300,000</u>	\$300,000
Total Change to Revenues			<u>\$300,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	49010900.79800.0750	\$0	<u>\$300,000</u>	\$300,000
Total Change to Expenses			<u>\$300,000</u>	

These appropriations will amend Parks, Open Space and Trails Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
General	5400.43060.0000	\$73,750	\$66,436	\$140,186
Gen Misc Rentals	5400.43060.0540	11,280	<u>47,794</u>	59,074
Total Change to Revenues			<u>\$114,230</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Prof Serv	54010900.65100.0000	\$54,584	\$47,794	\$102,378
Land Purchases	54010900.76600.0000	1,086,533	<u>66,436</u>	1,152,969
Total Change to Expenses			<u>\$114,230</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Cash in lieu-Fut Cap Proj	7500.40210.0751	\$70,076	\$16,090	\$86,166
TRF Medical/Dental	7500.45000.0490	0	<u>300,000</u>	300,000
Total Change to Revenues			<u>\$316,090</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
New Art Participation	80575030426.80400.8888	\$20,720	\$16,090	\$36,810
Wellness Clinic	81275012993.80400.8888	0	<u>300,000</u>	300,000
Total Change to Expenses			<u>\$316,090</u>	

Total appropriations of the Water Fund do not change; however, a reallocation of budget between expenditure accounts in the fund is shown for information purposes:

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Capital Reserve	20010900.79800.0207	\$2,724,325	\$2,480,490	\$5,204,815
Brookhill/Vance St Water Main	81120035880.80400.8888	1,023,051	(1,092,490)	(69,439)
Wandering View Tanks R&R	81120035982.80400.8888	2,952,064	<u>(1,388,000)</u>	1,564,064
Total Change to Expenses			<u>\$0</u>	

These adjustments will bring the City's accounting records up-to-date to reflect the various detailed transactions.

The proposed action supports the City Council's strategic goals of Financially Sustainable City Government Providing Exceptional Services; Safe and Secure Community; Strong, Balanced Local Economy; Vibrant Neighborhoods in One Livable Community; and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **31**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2012 BUDGETS OF THE GENERAL, MEDICAL/DENTAL SELF INSURANCE, PARKS OPEN SPACE AND TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the General, Medical/Dental Self Insurance, Parks Open Space and Trails, and General Capital Improvement Funds initially appropriated by Ordinance No. 3550 is hereby increased in aggregate by \$758,507. This appropriation is due to the receipt of funds from reimbursements, grants, miscellaneous, transfers, rents, permit fees, and cash-in-lieu.

Section 2. The \$758,507 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item dated August 27, 2012 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$28,187
Medical/Dental Self Insurance Fund	300,000
Parks, Open Space and Trails Fund	114,230
General Capital Improvement Fund	<u>316,090</u>
Total	<u>\$758,507</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 27th day of August, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of September, 2012.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Councillor's Bill No. 32re Bonnie Stewart Open Space Acquisition Grant
Supplemental Appropriation

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 32 on first reading appropriating funds received from the Jefferson County Open Space Local Park and Recreation Grant Program in the amount of \$200,000 for the Bonnie Stewart open space acquisition grant.

Summary Statement

- Council previously authorized the Department of Community Development to pursue a grant in the amount of \$200,000 from Jefferson County Open Space (JCOS) for the acquisition of the Bonnie Stewart parcel located at 8390 West 108th Avenue (see attached map). Jefferson County awarded the grant to Westminster in the requested amount of \$200,000. The City is required to provide a cash match of up to \$636,000 towards the acquisition.
- The City is under a Purchase and Sale Agreement to purchase this property with a closing date of October 31, 2012.
- The City will be providing the cash match of \$636,000 from a combination of POST Bond Funds and Cash-in-Lieu of Public Land Dedication Funds.
- City Council action is needed to appropriate these grant funds.

Expenditure Required: \$200,000.

Source of Funds: Jefferson County Open Space Grant

Policy Issue

Should the Jefferson County grant be appropriated to the Parks, Open Space and Trails Fund land purchase account to help pay for the acquisition of the Bonnie Stewart property?

Alternative

The alternative would be to decline the Jefferson County Open Space grant money. Staff does not recommend this alternative as the grant was awarded to the City to assist with the acquisition of the Bonnie Stewart property.

Background Information

Council previously authorized the Department of Community Development to pursue a grant in the amount of \$200,000 with JCOS for the acquisition of the Bonnie Stewart parcel located at 8390 West 108th Avenue for open space. Jefferson County awarded a grant in the amount of \$200,000 to be used towards the acquisition. The City plans to purchase this property on October 31, 2012.

These appropriations will amend the Parks, Open Space and Trails Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Jefferson County Grant	5400.40640.0020	\$0	<u>\$200,000</u>	\$200,000
Total Change to Revenues			<u>\$200,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchase	54010900.76600.0000	\$1,086,533	<u>\$200,000</u>	\$1,286,533
Total Change to Expenses			<u>\$200,000</u>	

This acquisition fits with Council’s goal of Beautiful and Environmentally Sensitive City by providing open space and trails to residents.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Vicinity Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **32**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2012 BUDGET OF THE PARKS, OPEN SPACE AND TRAILS FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the Parks, Open Space and Trails Fund initially appropriated by Ordinance No. 3550 is hereby increased by \$200,000. This appropriation is due to the receipt of Jefferson County grant funds.

Section 2. The \$200,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item #10 B, dated August 27, 2012 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Parks, Open Space and Trails Fund	<u>\$200,000</u>
Total	<u>\$200,000</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 27th day of August, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of September, 2012.

ATTEST:

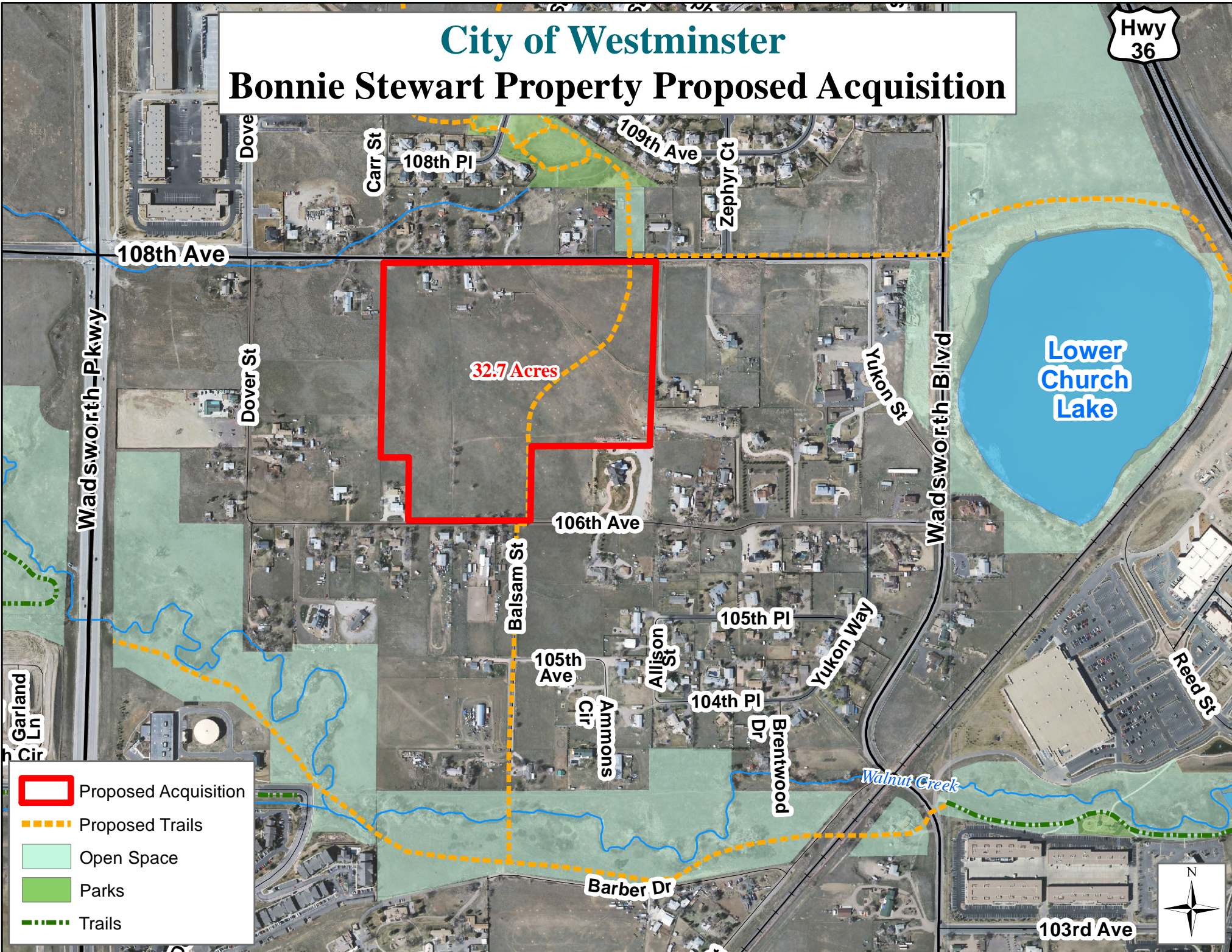
Mayor

City Clerk

City of Westminster

Bonnie Stewart Property Proposed Acquisition

Hwy 36



32.7 Acres

Lower Church Lake

- Proposed Acquisition
- Proposed Trails
- Open Space
- Parks
- Trails



103rd Ave



Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Councillor's Bill No. 33 re McKay Overlook Open Space Acquisition Grant Supplemental Appropriation

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 33 on first reading appropriating funds received from Adams County in the amount of \$448,700 for the McKay Overlook open space acquisition grant.

Summary Statement

- Council previously authorized the Department of Community Development to pursue a grant in the amount of \$448,700 from Adams County Open Space for the acquisition of the McKay Overlook parcel (see attached map). Adams County awarded the grant to Westminster in the requested amount of \$448,700. The City was required to provide a cash match of up to \$192,300.
- The City is under a Purchase and Sale Agreement to purchase this property with a closing date of August 30, 2012. Adams County plans to bring the grant funds to closing.
- The City will be providing the cash match of \$192,300 from the POST Bond Funds.
- City Council action is needed to appropriate these grant funds.

Expenditure Required: \$448,700.

Source of Funds: Adams County Open Space Grants

Policy Issue

Should the Adams County grant be appropriated to the Parks, Open Space and Trails Fund land purchase account to help pay for the acquisition of the McKay Overlook property?

Alternative

The alternative would be to decline the Adams County Open Space grant money. Staff does not recommend this alternative as the grant was awarded to the City to assist with the acquisition of the McKay Overlook property.

Background Information

Council previously authorized the Department of Community Development to pursue a grant in the amount of \$448,700 with Adams County Open Space for the acquisition of the McKay Overlook parcels located at 14330 Zuni Street and 2000 West 144th Avenue. Adams County awarded a grant in the amount of \$441,000 towards the closing along with \$7,700 towards due diligence costs. The City plans to purchase this property on August 30, 2012. Adams County plans to bring the \$441,000 to closing. Staff will request reimbursement of the \$7,700 for due diligence costs after the closing.

These appropriations will amend the Parks, Open Space and Trails Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Adams County Grant	5400.40640.0010	\$81,229	<u>\$448,700</u>	\$529,929
Total Change to Revenues			<u>\$448,700</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchase	54010900.76600.0000	\$1,086,533	<u>\$448,700</u>	\$1,535,233
Total Change to Expenses			<u>\$448,700</u>	

This acquisition fits with Council’s goal of Beautiful and Environmentally Sensitive City by providing open space and trails to residents.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Vicinity Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **33**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2012 BUDGET OF THE PARKS, OPEN SPACE AND TRAILS FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the Parks, Open Space and Trails Fund initially appropriated by Ordinance No. 3550 is hereby increased by \$448,700. This appropriation is due to the receipt of Adams County grant funds.

Section 2. The \$448,700 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item #10 C, dated August 27, 2012 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Parks, Open Space and Trails Fund	<u>\$448,700</u>
Total	<u>\$448,700</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 27th day of August, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of September, 2012.

ATTEST:

Mayor

City Clerk

City of Westminster McKay Overlook Open Space Acquisition








8.8 Total Acres

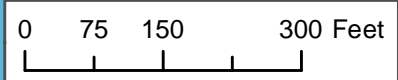
144th Ave

Tejon St

Zuni St

McKay Lake

-  Proposed Acquisition
-  Open Space
-  Existing Trails
-  Proposed Trails
-  Streams





Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Councillor's Bill No. 34 re Westminster Hills Elementary School Site Open Space Acquisition Grant Supplemental Appropriation

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 34 on first reading appropriating funds received from Adams County in the amount of \$408,564 for the Westminster Hills Elementary School site open space acquisition grant.

Summary Statement

- Council previously authorized the Department of Community Development to pursue a grant in the amount of \$408,564 from Adams County Open Space for the acquisition of the school parcel (see attached map). Adams County awarded the grant to Westminster in the requested amount of \$408,564. The City was required to provide a cash match of up to \$321,436.
- The City recently purchased the Westminster Hills Elementary School site located at 4105 West 80th Avenue for open space. Adams County brought the grant funds to closing.
- The City provided the cash match of \$321,436 from a combination of POST Bond Funds and Cash-in-Lieu of School Site Dedication Funds.
- City Council action is needed to appropriate these grant funds.

Expenditure Required: \$408,564

Source of Funds: Adams County Open Space Grants

Policy Issue

Should the Adams County grant be appropriated to the Parks, Open Space and Trails Fund land purchase account to help pay for the acquisition of the Westminster Hills Elementary School property?

Alternative

The alternative would be to decline the Adams County Open Space grant money. Staff does not recommend this alternative as the grant was awarded to the City to assist with the acquisition of the Westminster Hills Elementary School property.

Background Information

Council previously authorized the Department of Community Development to pursue a grant in the amount of \$408,564 with Adams County Open Space for the acquisition of the school parcel. Adams County awarded a grant in this amount to the City for this acquisition. The City purchased this property on July 31, 2012 and Adams County brought these grant funds to closing.

These appropriations will amend the Parks, Open Space and Trails Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Adams County Grant	5400.40640.0010	\$81,229	<u>\$408,564</u>	\$489,793
Total Change to Revenues			<u>\$408,564</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchase	54010900.76600.0000	\$1,086,533	<u>\$408,564</u>	\$1,495,097
Total Change to Expenses			<u>\$408,564</u>	

This acquisition fits with Council’s goal of Beautiful and Environmentally Sensitive City by providing open space and trails to residents in South Westminster.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Vicinity Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **34**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2012 BUDGET OF THE PARKS, OPEN SPACE AND TRAILS FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the Parks, Open Space and Trails Fund initially appropriated by Ordinance No. 3550 is hereby increased by \$408,564. This appropriation is due to the receipt of Adams County grant funds.

Section 2. The \$408,564 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item #10 D, dated August 27, 2012 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Parks, Open Space and Trails Fund	<u>\$408,564</u>
Total	<u>\$408,564</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 27th day of August, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of September, 2012.

ATTEST:

Mayor

City Clerk

Westminster Hills Elementary School Open Space Acquisition



Proposed
Regional US36
Trail Alignment

5.12 Acres

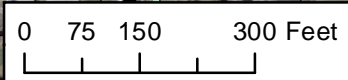
Proposed
Minor
Trail

Building
Demolished

Westminster
Hills Park

Retained
Parking Lot

- Acquired Property
- Open Space
- Parks
- Proposed Trails
- Existing Trails
- Streams





Agenda Item 10 E

Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Resolution No. 23 re Annexation Compliance Hearing for the West 100th Avenue and Alkire Street Property

Prepared By: Walter Patrick, Planner II

Recommended City Council Action

Adopt Resolution No. 23 accepting the annexation petition submitted by the City of Westminster for the West 100th Avenue and Alkire Street property and make the findings required by State Statute on the sufficiency of the petition. This resolution sets the date of October 8, 2012, for the annexation hearing.

Summary Statement

- The West 100th Avenue and Alkire Street property consists of 28.7788 acres and is generally located on the north side of West 100th Avenue at Alkire Street.
- The property was purchased by the City in 2011 for use as City Open Space.
- The property is owned by the City of Westminster and includes the public right-of-way along the adjacent section of West 100th Avenue.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City annex the West 100th Avenue and Alkire Street property?

Alternative

Make a finding that there is no community of interest with the West 100th Avenue and Alkire Street property and take no further action. If this course is taken, the property will remain unincorporated. This alternative is not recommended as this property is a significant addition to the Westminster Open Space program and annexing into the City will place the property under the City's jurisdiction.

Background Information

This property was acquired in 2011 for open space from the Sisters of the New Covenant. The former property owner retained an approximately 5 acre parcel that contains several buildings and another .14 acre parcel that contains a telecommunications tower that are not included as part of this annexation.

Upon receiving a petition for annexation, the City Council is required by State Statute to make a finding of whether or not said petition is in compliance with §31-12-107(1) C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

1. An allegation that the annexation is desirable and necessary;
2. An allegation that the requirements of §31-12-104 and §31-12-105 C.R.S. have been met (these sections are to be reviewed by the Council at the formal public hearing);
3. Signatures and mailing addresses of at least 50% of the landowners owning at least 50% of the land (in this case, the City of Westminster owns 100% the land to be annexed with the exception of the adjacent public right-of-way along W. 100th Avenue.)
4. The legal description of the land to be annexed;
5. The date of each signature; and
6. An attached map showing the boundaries of the area.

Planning Staff has reviewed the petition and has determined that it complies with the above requirements.

The proposed annexation meets Council's goal of "Beautiful and Environmentally Sensitive City."

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date, recommended to be October 8, 2012, at which time the Council will review the merits of the proposed annexation.

Respectfully Submitted,

J. Brent McFall
City Manager

Attachments

- Attachment A - Annexation Map
- Annexation Compliance Resolution
- Exhibit A – Legal Description

ANNEXATION MAP W. 100TH AVE. & ALKIRE ST. TO THE CITY OF WESTMINSTER

A PART OF THE W 1/2 OF SECTION 17, T.2S., R.69W., OF THE 6TH P.M.
COUNTY OF JEFFERSON, STATE OF COLORADO
SHEET 1 OF 2

ANNEXATION DESCRIPTION:

A PARCEL OF LAND BEING A PART OF THE W 1/2 OF SECTION 17, T.2S., R.69W., OF THE 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF THE NW 1/4 OF SECTION 17, T.2S., R.69W., OF THE 6TH P.M.;
THENCE N00°17'51"E ALONG THE WEST LINE OF THE NW 1/4 OF SECTION 17, A DISTANCE OF 247.36 FEET;
THENCE S89°42'09"E A DISTANCE OF 466.70 FEET;
THENCE N00°17'51"E A DISTANCE OF 466.70 FEET;
THENCE N89°42'09"W A DISTANCE OF 466.70 FEET;
THENCE N00°17'51"E ALONG THE WEST LINE OF THE NW 1/4 OF SECTION 17, A DISTANCE OF 716.02 FEET;
THENCE S89°04'05"E A DISTANCE OF 933.46 FEET;
THENCE S00°17'51"W A DISTANCE OF 1330.09 FEET;
THENCE N89°04'05"W A DISTANCE OF 80.00 FEET;
THENCE S00°17'51"W A DISTANCE OF 82.00 FEET;
THENCE S89°04'05"E A DISTANCE OF 80.00 FEET;
THENCE S00°17'51"W A DISTANCE OF 78.00 FEET TO A POINT ON THE SOUTH R.O.W. LINE OF WEST 100TH AVENUE;
THENCE N89°04'05"W ALONG THE SOUTH R.O.W. LINE OF WEST 100TH AVENUE, A DISTANCE OF 933.45 FEET TO A POINT ON THE WEST LINE OF THE SW 1/4 OF SECTION 17, T.2S., R.69W., OF THE 6TH P.M.;
THENCE N00°17'24"E ALONG THE WEST LINE OF THE SW 1/4 OF SECTION 17 A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

SAID ANNEXATION PARCEL CONTAINS (1,166,483 SQUARE FEET) 26.7788 ACRES, MORE OR LESS, SUBJECT TO ALL EASEMENTS AND ENCUMBRANCES OF RECORD.

OWNER APPROVAL:

I, J. BRENT McFALL, AS CITY MANAGER OF THE CITY OF WESTMINSTER, PROPERTY OWNER, DO SO APPROVE THIS ANNEXATION MAP FOR REVIEW AND APPROVAL BY THE CITY OF WESTMINSTER

THIS _____ DAY OF _____, 20____.

J. BRENT McFALL
CITY MANAGER OF THE CITY OF WESTMINSTER

CITY ACCEPTANCE:

ACCEPTED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER

THIS _____ DAY OF _____, 20____.

MAYOR

ATTEST: CITY CLERK

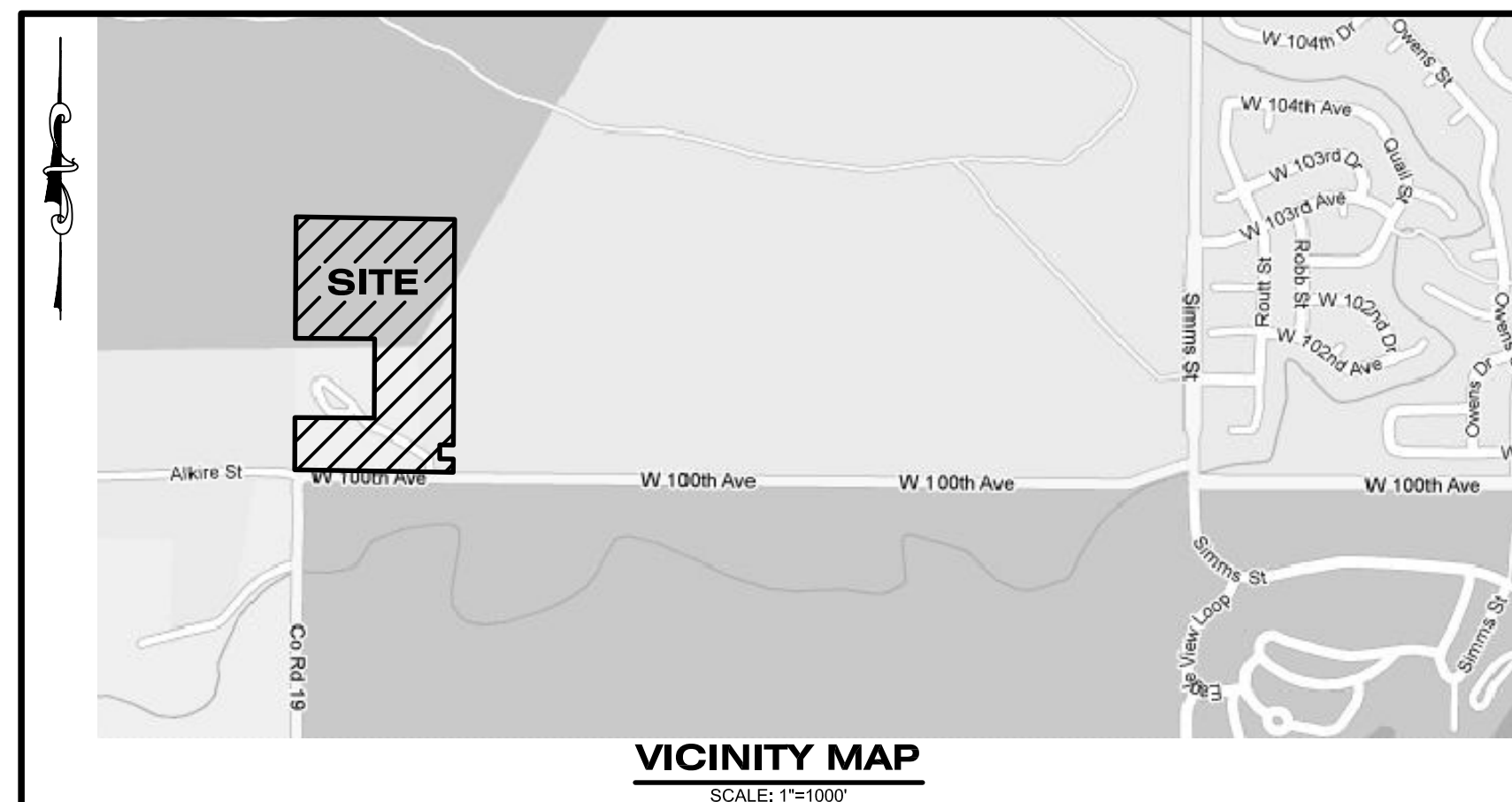
STATEMENT ON CONTIGUITY:

THE ABOVE-DESCRIBED LAND IS CONTIGUOUS TO THE CITY OF WESTMINSTER AND MEETS THE REQUIREMENTS OF C.R.S. §31-12-104(1)(A) THAT ONE-SIXTH (1/6TH) OR MORE OF THE PERIMETER OF THE AREA TO BE ANNEXED IS CONTIGUOUS WITH THE ANNEXING MUNICIPALITY.

TOTAL PERIMETER OF AREA CONSIDERED FOR ANNEXATION: 5940.49 FEET

ONE SIXTH OF TOTAL PERIMETER OF AREA: 990.08 FEET

PERIMETER OF THE AREA CONTIGUOUS WITH EXISTING WESTMINSTER CITY LIMITS: 4238.39 FEET



SURVEYOR'S CERTIFICATE:

I, CHARLES N. BECKSTROM, BEING A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT NOT LESS THAN ONE-SIXTH (1/6) OF THE PERIMETER OF THE AREA PROPOSED TO BE ANNEXED TO THE CITY OF WESTMINSTER, COLORADO, IS CONTIGUOUS WITH THE BOUNDARIES OF THE ANNEXING MUNICIPALITY, AND WAS MADE BY ME OR UNDER MY DIRECT SUPERVISION AND THAT THE ANNEXATION DESCRIPTION SHOWN HEREON WAS PREPARED FOR ANNEXATION PURPOSES ONLY.

CHARLES N. BECKSTROM
COLORADO P.L.S. NO. 33202
FOR AND ON THE BEHALF OF
ENGINEERING SERVICE COMPANY



NOTICE:

ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

ANY PERSON WHO KNOWINGLY REMOVES, ALTERS, OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT, LAND BOUNDARY MONUMENT, OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR, PURSUANT TO STATE STATUTE 18-4-508 OF THE COLORADO REVISED STATUTES.

NOTES:

- BEARINGS SHOWN HEREON ARE BASED ON THE WEST LINE OF THE NW 1/4 OF SECTION 17, T.2S., R.69W., OF THE 6TH P.M. ASSUMED TO BEAR N00°17'51"E, BOUNDED BY THE MONUMENTS SHOWN HEREON.
- THE ANNEXATION DESCRIPTION AND AREA SHOWN HEREON WERE PREPARED FOR ANNEXATION PURPOSES ONLY.
- THIS IS NOT A MONUMENTED LAND SURVEY.
- ALL MEASUREMENTS SHOWN HEREON ARE IN U.S. SURVEY FEET.

CLERK AND RECORDER'S CERTIFICATE:

RECEPTION NO. _____

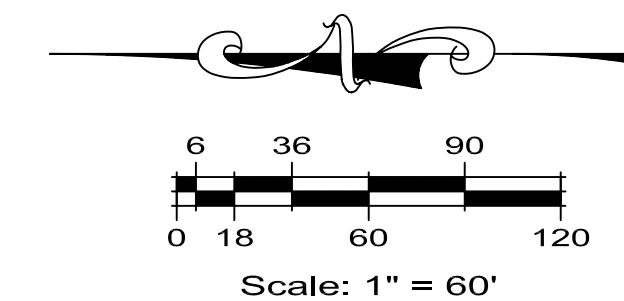
ACCEPTED FOR FILING IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF JEFFERSON COUNTY AT GOLDEN, COLORADO ON THIS _____ DAY OF _____, 20____ AT _____ O'CLOCK _____ M.

JEFFERSON COUNTY CLERK AND RECORDER

BY: DEPUTY CLERK

ANNEXATION MAP W. 100TH AVE. & ALKIRE ST. TO THE CITY OF WESTMINSTER

A PART OF THE W 1/2 OF SECTION 17, T.2S., R.69W., OF THE 6TH P.M.
COUNTY OF JEFFERSON, STATE OF COLORADO
SHEET 2 OF 2



LEGEND	
	EXISTING CITY LIMITS
ANNEXATION DATA:	
TOTAL PERIMETER:	5940.49'
CONTIGUOUS PERIMETER:	4238.39'
AREA OF ANNEXATION:	1,166,483 SQUARE FEET 26.7788 ACRES MORE OR LESS
PERCENT CONTIGUOUS:	71.3%

UNPLATTED
OWNER: CITY OF WESTMINSTER
4800 WEST 92ND AVENUE
WESTMINSTER, COLORADO 80030

UNPLATTED
OWNER: SISTERS OF THE NEW COVENANT INC
1640 GRAYS WAY
BROOMFIELD, COLORADO 80023
UNINCORPORATED, JEFFERSON COUNTY

AREA TO BE ANNEXED
26.7788 ACRES
OWNER: CITY OF WESTMINSTER
4800 WEST 92ND AVENUE
WESTMINSTER, COLORADO 80030

UNPLATTED
OWNER: SISTERS OF THE NEW COVENANT INC
1640 GRAYS WAY
BROOMFIELD, COLORADO 80023
UNINCORPORATED, JEFFERSON COUNTY

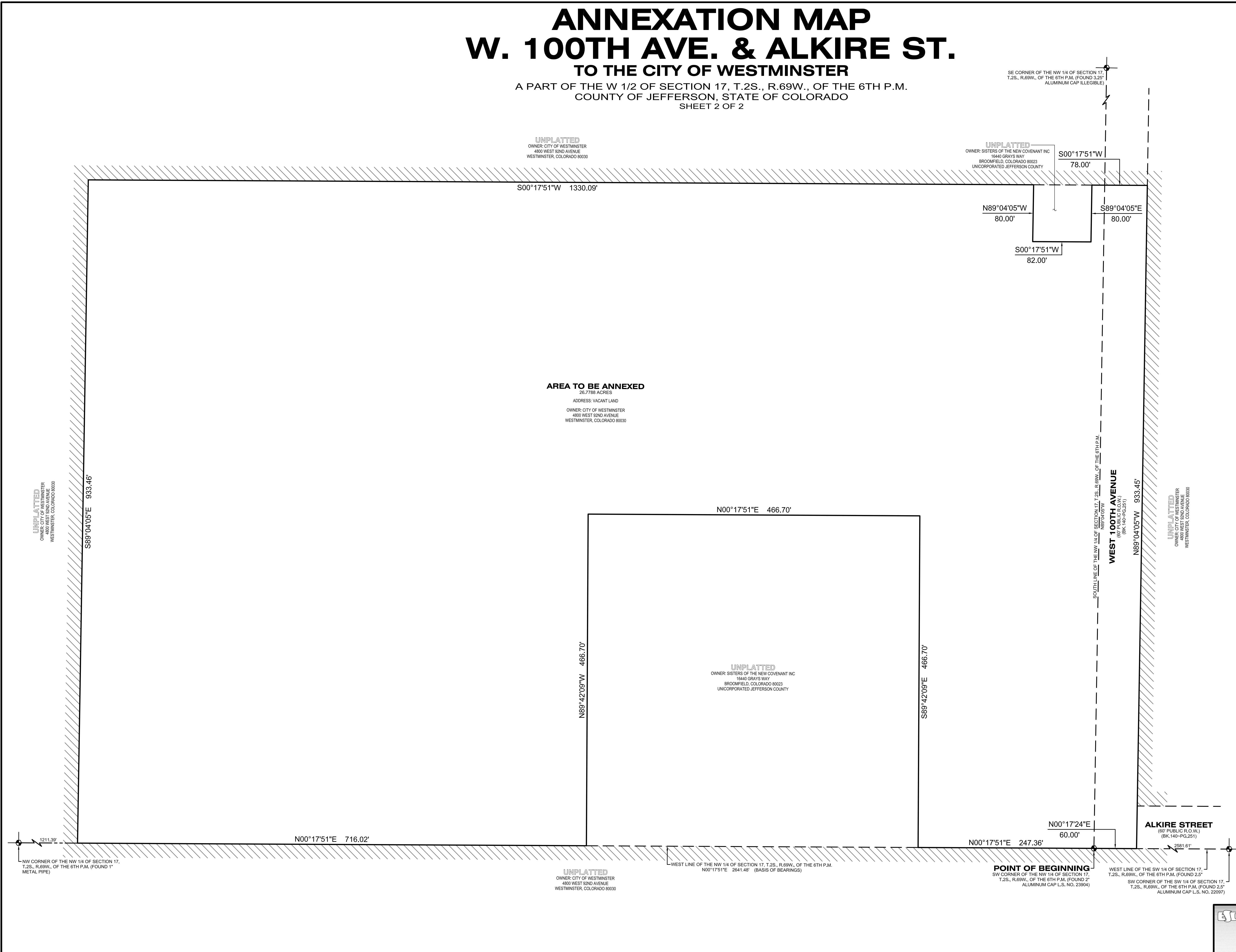
UNPLATTED
OWNER: CITY OF WESTMINSTER
4800 WEST 92ND AVENUE
WESTMINSTER, COLORADO 80030

POINT OF BEGINNING
SW CORNER OF THE NW 1/4 OF SECTION 17,
T.2S., R.69W., OF THE 6TH P.M. (FOUND 2"
ALUMINUM CAP L.S. NO. 23964)

WEST LINE OF THE SW 1/4 OF SECTION 17,
T.2S., R.69W., OF THE 6TH P.M. (FOUND 2.5"
ALUMINUM CAP L.S. NO. 22997)

ENGINEERING SERVICE COMPANY
ENGINEERS - SURVEYORS - PLANNERS
Creative Solutions Since 1954
1300 South Putnam Street, Suite 1200, Aurora, Colorado 80012
Office (303) 337-1393 Fax (303) 337-7481
www.ensurvey.com

Drawer No.: C-2584c	Date of Preparation: 01/23/2012	Date of Last Revision: 06/25/2012
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RESOLUTION

RESOLUTION NO. **23**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

**A RESOLUTION
FINDING OF SUBSTANTIAL COMPLIANCE OF A PETITION FOR ANNEXATION
FOR APPROXIMATELY 26.78 ACRES OF LAND IN SECTION 17, TOWNSHIP 2 SOUTH,
RANGE 69 WEST OF THE 6TH P.M., JEFFERSON COUNTY, COLORADO,
ALSO KNOWN AS THE WEST 100TH AVENUE & ALKIRE STREET PROPERTY**

WHEREAS, there has been filed with the City Clerk of the City of Westminster, a petition for the annexation of the land described on Exhibit A, attached hereto and incorporated herein by reference, to the City of Westminster; and

WHEREAS, the City Council has been presented evidence by the City's Staff that the petition and its accompanying maps are in substantial compliance with Subsection 31-12-107(1), C.R.S., as amended;

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

1. City Council finds the said petition to be in substantial compliance with the requirements of Subsection 31-12-107(1), C.R.S..
2. City Council hereby establishes August 27, 2012, 7:00 P.M. at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by Subsection 31-12-108(1), C.R.S..
3. The City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with Subsection 31-12-108(2), C.R.S..

PASSED AND ADOPTED this 27th day of August, 2012.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

ANNEXATION DESCRIPTION

A PARCEL OF LAND BEING A PART OF THE W ½ OF SECTION 17, T.2S, R69W, OF THE 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF THE NW ¼ OF SECTION 17, T.2S., R69W., OF THE 6TH P.M.; THENCE N00°17'51"E ALONG THE WEST LINE OF THE NW ¼ OF SECTION 17, A DISTANCE OF 247.36 FEET;
THENCE S89°42'09"E A DISTANCE OF 466.70 FEET;
THENCE N00°17'51"E A DISTANCE OF 466.70 FEET;
THENCE N89°42'09"W A DISTANCE OF 466.70 FEET;
THENCE N00°17'51"E ALONG THE WEST LINE OF THE NW ¼ OF SECTION 17, A DISTANCE OF 716.02 FEET;
THENCE S89°04'05"E A DISTANCE OF 933.46 FEET;
THENCE S00°17'51"W A DISTANCE OF 1330.09 FEET;
THENCE N89°04'05"W A DISTANCE OF 80.00 FEET;
THENCE S00°17'51"W A DISTANCE OF 82.00 FEET;
THENCE S89°04'05"E A DISTANCE OF 80.00 FEET;
THENCE S00°17'51"W A DISTANCE OF 78.00 FEET TO A POINT ON THE SOUTH R.O.W. LINE OF WEST 100TH AVENUE;
THENCE N89°04'05"W ALONG THE SOUTH R.O.W. LINE OF WEST 100TH AVENUE, A DISTANCE OF 933.45 FEET TO A POINT ON THE WEST LINE OF THE SW ¼ OF SECTION 17, T.2S., R.69W., OF THE 6TH P.M.,
THENCE N00°17'24"E ALONG THE WEST LINE OF THE SW ¼ OF SECTION 17 A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

SAID ANNEXATION PARCEL CONTAINS (1,166,483 SQUARE FEET) 26.7788 ACRES, MORE OR LESS, SUBJECT TO ALL EASEMENTS AND ENCUMBRANCES OF RECORD.



Agenda Item 10 F

Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Resolution No. 24 re Approval of Documents for Refunding of the 2009 Loan Issued for the North Huron Urban Renewal Area

Prepared By: Tammy Hitchens, Finance Director
Robert Smith, Treasury Manager
Robert Byerhof, Senior Financial Analyst
Rachel Price, Financial Analyst

Recommended City Council Action

Adopt Resolution No. 24 approving documents related to the WEDA 2012 Loan Refunding to refund the WEDA 2009 Loan, to which the City is a party, including the Replenishment Resolution, the City Cooperation Agreement with WEDA, and an Intergovernmental Agreement with WEDA.

Summary

- Replenishment Resolution: Adoption by the City Council of the Replenishment Resolution is required to complete the part of the loan structure known as the "moral obligation."
 - The basis of the resolution is such that if, at any time, the balance in the WEDA Bond Reserve Fund falls below the required minimum amount estimated to be \$4.484 million the City Manager will request that Council budget, appropriate, and transfer to the Trustee bank funds necessary to replenish the reserve to the minimum amount. Because the Replenishment Resolution is subject to annual appropriation, it does not constitute a multi-year fiscal obligation, and therefore does not subject the City to TABOR requirements.
 - This resolution will assist the Authority in obtaining credit enhancement for its bonds, thus serving to minimize interest costs and improve the marketability of the bonds. Because of the expected revenues WEDA will realize from tax increment, Staff does not anticipate the need for the City to actually transfer funds at any time. Performance to date in this URA confirms this assumption.
- Cooperation Agreement: City Council action is requested to approve a Cooperation Agreement between the City and the Authority, which provides for the repayment to the City of funds advanced to and on behalf of the Authority from tax increment, if such revenue is available after other debts are paid. This would permit recovery by the City of any amounts paid by the City to replenish the Reserve Fund held by the bank in connection with the Authority's bonds. It is a routine WEDA-City action when WEDA is issuing bonds.
- Intergovernmental Agreement: City Council action is requested to approve an Intergovernmental Agreement between the City and the Authority, which establishes an obligation for the repayment to the City of funds advanced to and on behalf of the Authority for certain capital expenditures with the URA.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issues

1. Does the City desire to provide its non-binding moral obligation pledge to replenish the reserve fund on the WEDA bonds in the event it is drawn down to meet debt service requirements?
2. Does the City desire to participate in the WEDA Cooperation Agreement?
3. Does the City desire to participate in an Intergovernmental Agreement with WEDA?

Alternatives

1. Decline or delay approval of the Replenishment Resolution. This is not recommended. Although non-binding, this would not be viewed favorably by the lender Bank and could result in the failure of the refinancing.
2. Decline or delay approval of the Cooperation Agreement. This is not recommended. The Cooperation Agreement spells out the terms of WEDA’s repayment in the event that the Replenishment Resolution is triggered.
3. Decline or delay approval of the Intergovernmental Agreement (IGA). This is not recommended. The IGA Agreement permits the City to be reimbursed from WEDA expenses incurred within the URA.

Background Information

On May 8, 2009, WEDA entered into a loan with Compass Mortgage for the North Huron URA. Prior to executing the loan, on April 13, 2009, Council approved a Replenishment Resolution and Cooperation Agreement associated with the 2009 Loan. As a means to enhance the credit of loans entered into by WEDA, approval of these actions is standard. Otherwise known as a “Moral Obligation,” the approval of such agreements is recognized by the rating agencies and lenders as a credit enhancement. In the event that WEDA has insufficient funds to cover debt service, the Bank would use funds in the Reserve Fund to make debt service payments. In general, the Replenishment Resolution of the Moral Obligation stipulates that the City Manager would be obligated to request that City Council budget, appropriate and transfer to the Bank the funds necessary to replenish the monies in the Reserve Fund to the minimum required under the Indenture. Council is not obligated to approve this funding. Staff does not anticipate such an event will occur as sufficient revenues are being generated in the North Huron URA to not only cover debt service but permit excess sales tax revenues to flow to the General Fund. In 2011, the URA generated slightly over \$4.7 million in sales tax revenues retained by the City.

The 2009 loan is recommended to be refunded due to: the principal balloon payment in 2016 of \$46.975 million; the ability to reduce the interest rate from the current swap-to-fixed rate of 4.51%; and the ability to increase \$2.635 million principal amount on the new loan, which will help fund the construction of Orchard Parkway. The refunding proposed for WEDA Board approval will secure long-term financing at a blended fixed rate of approximately 3.50% through its term ending in 2028 without extending the amortization period. In addition, the refunding continues the “floating sales tax” pledge, which benefits the City when excess sales tax dollars are generated after meeting certain debt covenants under the terms of the Indenture.

For the proposed WEDA 2012 Loan, the Replenishment Resolution of the City states that if the balance in the WEDA Reserve Fund falls below the Reserve Requirement, currently estimated to be \$4.484 million, the City Manager will request that Council budget, appropriate, and transfer to the Bank, the funds necessary to replenish the reserve account. The Cooperation Agreement states in part that WEDA agrees to repay the City for any such payment the City makes to replenish the Reserve Fund to the Reserve Requirement amount.

Because the City's credit rating is AA+/AA+, the word of the City has merit and can and should be used to reduce the costs and improve the credit worthiness of the Authority's (WEDA) borrowings. Having the City's moral obligation provides WEDA the ability to secure this type of fixed financing for the remaining term of the TIF period and will reduce WEDA overall borrowing costs.

Staff does not anticipate the need to ever trigger the City's moral obligation, as defined in the Reimbursement Resolution, to replenish the Reserve Fund at any time. The forecasts for the property tax and sales tax increment revenues for the commercial development within the North Huron URA exceed the anticipated annual debt service requirements.

A benefit of the refunding is the ability of the City to retain excess sales and use tax increment revenues similar to the terms of the existing Indenture. The ability for the City to retain potential excess sales tax increment revenues is particularly important during the current economic climate.

This recommended action supports the strategic objectives of a Financially Sustainable City Government Providing Exceptional Services, a Strong, Balanced Local Economy and Vibrant Neighborhoods in one livable community. It does so by controlling the financing costs for debt issued by WEDA and providing more certainty for the sales tax revenues generated in the Urban Renewal Area that the City will be able to retain.

Staff and the Underwriters will be available at the City Council meeting on August 27, 2012 to answer City Councillor questions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: 2012 Replenishment Resolution
2012 Cooperation Agreement
2012 Intergovernmental Agreement

RESOLUTION

RESOLUTION NO. 24

INTRODUCED BY COUNCILLORS

SERIES OF 2012

A RESOLUTION CONCERNING THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND ITS LOAN AGREEMENT WITH COMPASS MORTGAGE CORPORATION; AUTHORIZING AND DIRECTING ACTIONS BY THE CITY MANAGER WITH RESPECT TO THE PREPARATION OF REQUESTS TO THE CITY COUNCIL FOR APPROPRIATION OF FUNDS FOR THE REPLENISHMENT OF CERTAIN FUNDS PERTAINING THERETO; AUTHORIZING THE 2012 COOPERATION AGREEMENT (NORTH HURON URA); AND OTHER APPROVING AND RATIFYING ACTIONS TAKEN BY THE CITY IN CONNECTION THEREWITH.

WHEREAS, the City Council (the “City Council”) of the City of Westminster, Colorado (the “City”), by Resolution No. 40, adopted September 14, 1987, created the Westminster Economic Development Authority of the City (“Authority”); and

WHEREAS, pursuant to Resolution No. 5, adopted on January 26, 2004, the City approved the North Huron Urban Renewal Plan (the “Plan”) pursuant to the Colorado Urban Renewal Law; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) Series 2005 in the original aggregate principal amount of \$68,300,000 (the “Prior Bonds”), for the purpose of financing the acquisition, construction and equipping of the project described in the Plan (the “Urban Renewal Project”); and

WHEREAS, in order to refund the Prior Bonds, the Authority entered into a variable rate loan agreement (the “2009 Loan Agreement”) with Compass Mortgage Corporation (“Compass”); and

WHEREAS, in order to refund the 2009 Loan Agreement and to provide funds for additional improvements within the Urban Renewal Area, the Authority is entering into a fixed rate Loan Agreement (the “2012 Loan Agreement”) with Compass Mortgage Corporation (“Compass”) (the “Project”); and

WHEREAS, pursuant to a Cooperation Agreement (the “2012 Cooperation Agreement”) between the City and the Authority, the City will agree, subject to conditions

specified in the 2012 Cooperation Agreement, to loan funds to the Authority for the Project and deposit to certain funds in accordance with the 2012 Loan Agreement; and

WHEREAS, there will be created under the 2012 Loan Agreement a reserve fund (the "Reserve Fund") which will be funded initially in the amount of the Reserve Requirement (as defined in the 2012 Loan Agreement), and is required to be maintained at such amount to be used as a reserve against deficiencies in the payment of principal of or interest on the Loan and in certain other payments; and

WHEREAS, the 2012 Loan Agreement contemplates that if, at any time, the Reserve Fund is not funded at the Reserve Requirement, the Lender (as defined in the 2012 Loan Agreement) shall notify the City Manager of any deficiency and the City Manager shall request that the City Council advance sufficient funds pursuant to the 2012 Cooperation Agreement to restore the Reserve Fund to the Reserve Requirement immediately thereafter; and

WHEREAS, the City Council wishes to make a non-binding statement of its present intent with respect to the appropriation of funds for the replenishment of the Reserve Fund, and to authorize and direct the City Manager to take certain actions for the purpose of causing requests for such appropriations to be presented to the City Council for consideration; and

WHEREAS, the form of the 2012 Cooperation Agreement is on file with the City Clerk.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER, COLORADO:

Section 1. Appropriations to Replenish Reserve Fund. The City Manager shall, upon notice from the Lender that the Reserve Fund is not funded at the Reserve Requirement, prepare and submit to the City Council a request for an appropriation of a sufficient amount to replenish the Reserve Fund to the Reserve Requirement. It is the present intention and expectation of the City Council to appropriate such funds as requested, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Council may determine in its sole discretion, but shall never be required, to make the appropriations so requested. All sums appropriated by the City Council for such purpose shall be deposited by or on behalf of the Authority in the Reserve Fund. Nothing provided in this Section 1 shall create or constitute a debt, liability or multiple fiscal year financial obligation of the City.

Section 2. Repayment of Amounts Appropriated. In the event that the City Council appropriates funds as contemplated by Section 1 hereof, any amounts actually advanced shall be treated as an obligation under the 2012 Cooperation Agreement and shall be repaid by the Authority, with interest thereon, but shall be payable from and secured solely by the Pledged Revenue of the Authority, as provided in the 2012 Cooperation Agreement, on a basis expressly subordinate and junior to that of the Loan and any obligations secured under the 2012 Loan Agreement.

Section 3. Limitation to Loan and Other Obligations Originally Secured by 2012 Loan Agreement. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the Reserve Fund originally established in connection with the Loan and shall not apply to any other additional obligations.

Section 4. Approval and Authorization of the 2012 Cooperation Agreement. The form of the 2012 Cooperation Agreement is hereby approved. The City shall enter into and perform its obligations under the 2012 Cooperation Agreement, in the form of such document as is on file with the City Clerk, with only such changes therein as are not inconsistent herewith. The City Manager is hereby authorized and directed to execute the 2012 Cooperation Agreement on behalf of the City, and the City Clerk is hereby authorized to attest to the 2012 Cooperation Agreement.

Section 5. General Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 6. Ratification. All action not inconsistent with the provisions of this Resolution heretofore taken by the City Council and the officers of the City directed toward effecting the purposes set forth herein are, and the same is hereby ratified, approved and confirmed.

Section 7. Effectiveness. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED August 27, 2012.

CITY OF WESTMINSTER, COLORADO

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO)
) SS.
 CITY OF WESTMINSTER)

I, the City Clerk of the City of Westminster, Colorado, do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the City Council (the “Council”) at a regular meeting held on August 27, 2012.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of August 27, 2012, by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally				
Faith Winter				
Herb Atchison				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				

3. The members of the Council were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Mayor of the City, sealed with the City seal, attested by the City Clerk and recorded in the minutes of the Council.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Resolution.

6. Notice of the meeting of August 27, 2012, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed Augusts 27, 2012.

 City Clerk

(SEAL)

Exhibit A
(Form of Notice of Meeting)

2012 COOPERATION AGREEMENT (NORTH HURON URA)
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS COOPERATION AGREEMENT (this “Agreement”), dated as of August 27, 2012, is made and entered into between the CITY OF WESTMINSTER, COLORADO (the “City”) and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the “Authority”).

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes (“C.R.S.”) (the “Urban Renewal Law”); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority North Huron Urban Renewal Plan (the “Plan”) and the urban renewal project described therein (the “Urban Renewal Project”); and

WHEREAS, the Urban Renewal Project has been undertaken for the public purpose of enhancing employment opportunities, eliminating existing conditions of blight, and improving the tax base of the City; and

WHEREAS, pursuant to Section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Urban Renewal Project and carrying out the Plan; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) Series 2005 in the original aggregate principal amount of \$68,300,000 (the “Prior Bonds”), for the purpose of financing the acquisition, construction and equipping of the Urban Renewal Project; and

WHEREAS, in order to refund the Prior Bonds, the Authority entered into a variable rate Loan Agreement (the “2009 Loan Agreement”) with Compass Mortgage Corporation (“Compass”) to obtain a loan in the principal amount of not to exceed \$62,375,000 (the “2009 Loan”); and

WHEREAS, the Authority has determined that it is in the best interest of the Authority to (i) refund the 2009 Loan Agreement to fix the interest rate; ; (ii) incur additional obligations to fund certain improvements of the Authority; and (iii) in connection with the refunding, pay a termination payment in order to terminate the Exchange Agreement (collectively, the “Project”); and

WHEREAS, the City Council of the City (the “Council”) has adopted its Resolution 12-24 (the “Replenishment Resolution”) declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Reserve Requirement, for the purpose of providing additional security for the payment of principal and interest on the Loan.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. LOAN. (a) If the Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

(b) The Authority acknowledges that the City Manager, City Staff and the City Attorney have provided and will continue to provide substantial administrative and legal services to the Authority in connection with the Plan, the Urban Renewal Project, the Loan and the Project. The Authority shall pay to the City, the City’s costs for services rendered to the Authority in connection with the Plan, the Urban Renewal Project, the Loan and the Project. The City shall provide written evidence of such costs to the Authority from time to time. To the extent that this annual debt is incurred, this obligation is hereby designated a loan from the City to the Authority to be repaid as provided herein.

(c) Any other amounts advanced or loaned to the Authority by the City or payments made or debts incurred by the City on behalf of the Authority relating to the Plan, the Urban Renewal Project, the Loan or the Project may be designated a loan from the City to the Authority to be repaid as provided herein.

2. PAYMENT. (a) All amounts payable by the Authority to the City hereunder shall constitute “Subordinate Debt” for purposes of the Loan Agreement. The Authority shall cause such amounts to be paid from and to the extent of Pledged Revenue (as defined in the Loan Agreement) available for the payment of Subordinate Debt in accordance with Section 4.02 of the Loan Agreement.

(b) The Authority agrees to pay the City interest in the amount of 5% on the principal balance of any amounts designated as a loan hereunder.

3. FURTHER COOPERATION. (a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Plan, the Urban Renewal Project, the Loan or the Project, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenue for deposit with Compass in accordance with the Loan Agreement. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenue.

(c) The City agrees to pay to the Authority any Pledged Property Tax Revenues and any Pledged Sales Tax Revenues (each as defined in the Loan Agreement) when, as and if received by the City, but which are due and owing to the Authority pursuant to the Urban Renewal Plan.

4. SUBORDINATION. The Authority's obligations pursuant to this Agreement are subordinate to the Authority's obligations for the repayment of any current or future bonded indebtedness. For purposes of this Agreement, the term "bonded indebtedness," "bonds" and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the Authority, 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 revenues of the Authority, and including the Loan.

5. ALLOCATION OF SALES TAX REVENUE. The City currently imposes a municipal sales tax at a rate of 3.85%, pertaining to, including without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services. Pursuant to the terms of the Urban Renewal Plan, the City and the Authority may provide for the method by which sales tax increments shall be allocated and paid to the Authority. The City and the Authority hereby agree that the incremental revenues derived from the City sales tax at a rate as specified any loan agreement, bond indenture, bond resolution or other agreement pursuant to which WEDA borrows money for the project, shall be allocated to the Authority. Pursuant to Section 31-25-107, C.R.S., the balance of the City's sales tax revenues shall be retained by the City.

6. GENERAL PROVISIONS. (a) Dispute Resolution. If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation prior to filing litigation.

(b) Separate Entities. Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations or liabilities of the other.

(c) Third Parties. Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, other than the Lender.

(d) Modifications. No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties with the prior written consent of the Lender and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(e) Entire Agreement. This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

(f) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(g) Assignment. This Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other and of the Lender.

(h) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

(i) The Prior Cooperation Agreements. This Agreement supersedes and replaces any and all prior cooperation agreements. Any amounts owing to the City by the Authority pursuant to such prior cooperation agreements shall be payable under the terms and conditions described in this Agreement and shall be payable on a subordinate basis to the payment due and owing under the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

CITY OF WESTMINSTER, COLORADO

By: _____
Chairperson

By: _____
Mayor

ATTEST:

ATTEST:

Secretary

City Clerk

Executive Director

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

By: _____
Authority Attorney

By: _____
City Attorney

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND THE CITY
OF WESTMINSTER REGARDING PUBLIC IMPROVEMENTS IN THE
NORTH HURON URBAN RENEWAL AREA**

This Intergovernmental Cooperation Agreement (the "Agreement"), dated as of August 29, 2012, by and between the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY ("WEDA"), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the CITY OF WESTMINSTER (the City"), a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado (collectively the "Parties").

W I T N E S S E T H ;

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, WEDA is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes ("C.R.S.") (the "Urban Renewal Law"); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority North Huron Urban Renewal Plan (the "Plan") and the urban renewal project described therein (the "Urban Renewal Project"); and

WHEREAS, the Urban Renewal Project has been undertaken for the public purpose of enhancing employment opportunities, eliminating existing conditions of blight, and improving the tax base of the City; and

WHEREAS, pursuant to Section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with WEDA in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations or activities of WEDA, to enter into agreements with WEDA respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with WEDA in undertaking the Urban Renewal Project and carrying out the Plan; and

WHEREAS, pursuant to the Plan, WEDA is collecting tax increment revenues to accomplish the purposes of the Plan; and

WHEREAS, the City and WEDA have determined that it is in the best interest of the Authority and the City that the City construct various public improvements, including improvements to Orchard Parkway and 142nd Avenue, at an estimated cost of not to exceed \$7,000,000 (the “Project”); and

WHEREAS, in order to repay the City for the costs of the Project, WEDA has entered into a Loan Agreement (the “Loan Agreement”) with Compass Bank (“Compass”); in the amount of \$59,000,000, approximately \$6,500,000 of such amount shall be used to provide funding for a portion of the Project; and

WHEREAS, the remaining costs of the Project are expected to be advanced by the City to WEDA, and WEDA shall repay such advance through tax increment revenues as authorized by Section 31-25-107(9)(a)(II), Colorado Revised Statutes; and

WHEREAS, the Parties desire to enter into this intergovernmental cooperation agreement for the purpose of financing the Project and to provide for the repayment of amounts advanced by the City to WEDA.

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, the Parties hereby agree as follows:

1. Construction of the Project. The City agrees to construct the Project on behalf of WEDA subject to the following:

- (a) WEDA shall reimburse the City for all costs of the Project from approximately \$6,500,000 of proceeds of the Loan with Compass and the remaining amount of not to exceed \$500,000 shall be repaid by WEDA through tax increment revenue or other available revenue of WEDA;
- (b) Any amounts advanced by the City to WEDA for the Project shall not bear interest;
- (c) Any such advance shall be subordinate to the Loan Agreement and shall be repaid to the City at such times as revenues are available to WEDA.

2. Cooperation. The Parties covenant with each other that in any action or challenge of the Urban Renewal Plan or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

3. Effective Date; Term. This Agreement shall become effective as of the date set forth in the initial paragraph hereof. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the tax allocation provisions of the Urban Renewal Plan and the Act terminate.

4. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the

same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

5. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

6. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

7. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director

APPROVED AS TO LEGAL FORM:

Attorney for Authority

CITY OF WESTMINSTER

By: _____
Mayor

(SEAL)

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney



Agenda Item 11 A&B

Agenda Memorandum

City Council Meeting
August 27, 2012



SUBJECT: Councillor's Bill No. 26 re Update to Title XI of the Westminster Municipal Code Regarding Accessory Buildings

Prepared By: Walter Patrick, Planner II

Recommended City Council Action

1. Remove Councillor's Bill No. 26 from the table.
2. Pass Councillor's Bill No. 26 as amended on first reading making revisions to Title XI of the Westminster Municipal Code regarding accessory buildings.

Summary Statement

- Each year, staff proposes updates to the Westminster Municipal Code in order to remain current with development trends and "stay ahead of the curve" with regard to zoning regulations and requirements. One item on this year's list pertains to changes for Accessory Building regulations.
- The attached proposed ordinance includes amendments intended to reflect Council's discussion of the City's accessory building regulations at its August 13, 2012, Study Session. Subject to meeting all other code regulations pertaining to accessory buildings, the proposed amended ordinance would permit up to two accessory buildings per building lot in residential PUD districts, and up to two accessory buildings plus one detached garage in non-PUD residential districts.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City revise Title XI of the Westminster Municipal Code regarding Accessory Buildings?

Alternatives

1. Retain the existing code provisions relative to accessory buildings.
2. Propose other regulations pertaining to accessory buildings.

Background Information

One item on the list of 2012 Code Revisions included changes to the accessory building regulations. The ordinance regarding accessory buildings Code revisions was removed from the greater Code revision list and taken to the July 23, 2012, City Council meeting as a separate item. The accessory building ordinance was tabled at the City Council meeting. Staff was directed to propose alternative revisions to the accessory building regulations and return to a Council post session for further discussion.

At the August 13, 2012, Post Council meeting, several alternatives to the Accessory Building code revision were discussed. One alternative was chosen as preferred by the majority of Councillors and staff was directed to prepare an ordinance for adoption. A description of the proposed code change and a revised accessory building definition are listed below.

Recommended Accessory Building Regulation Changes

- Unless stated otherwise on an Official Development Plan, in residential PUD districts, two accessory buildings shall be permitted per building lot. In non-PUD residential zoning districts, one detached garage shall be permitted in addition to two accessory buildings.
- Keep all other regulations in place, including size requirements. Currently, unless otherwise stated on an Official Development Plan, accessory buildings are limited to 5% of the building lot area or 600 square feet, whichever is greater, up to a maximum of 2000 square feet.

Proposed Definition for an Accessory Building

ACCESSORY BUILDING shall mean any detached building, structure, or portion thereof that is not habitable, is located on the same principal lot as a habitable structure, and is clearly incidental to the principal structure, such as, but not limited to, a garage, storage shed, gazebo, pergola, dog run, or similar structure. An accessory building shall not mean an outdoor fireplace, fire-pit, cooking grill, trellis, arbor, or similar structure not intended for use as a shade or storage structure. An accessory building shall not mean play equipment or a small structure that is less than five feet in height, such as a fountain, playhouse, dollhouse, or doghouse.

Staff considers the updates to the land development code to be important for achieving the City Council's Strategic Plan goals of "Promoting Vibrant Neighborhoods in One Liveable City" by maintaining and improving neighborhood infrastructure and housing; and "Safe and Secure Community" by helping to maintain safe buildings and homes.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 26

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING TITLE XI, CHAPTERS 2 AND 4, OF THE
WESTMINSTER MUNICIPAL CODE TO AMEND THE DEFINITION AND
REGULATION OF ACCESSORY BUILDINGS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. In Section 11-2-1(A), W.M.C., the definition of "Accessory Building" is hereby AMENDED to read as follows:

ACCESSORY BUILDING shall mean any ~~non-habitable detached~~ building, structure, or portion thereof ~~that is not habitable, is~~ located on the same principal lot as a habitable structure, ~~and that~~ is clearly incidental to the principal structure, such as ~~but not limited to~~ a garage, ~~or a~~ storage shed, ~~gazebo, pergola, dog run, or similar structure. An accessory building shall not include a fence, play equipment, outdoor fireplace, fire-pit, cooking grill, trellis, arbor, or similar structure not intended for use as a shade or storage structure. An accessory building also shall not include a miniature structure that is less than five (5) feet in height such as a fountain, play house, doll house, or dog house.~~

Section 2. Section 11-4-6(N), W.M.C., is hereby AMENDED as follows:

(N) ACCESSORY BUILDINGS.

(1) Permitted Zone Districts: An accessory building is permitted in all residential zone districts or residential planned unit developments in accordance with the requirements of this Code unless restricted on an approved official development plan. Accessory buildings in nonresidential zone districts shall require an ODP waiver or ODP amendment meeting the requirements of this Code.

(2) Number permitted: ~~Unless stated otherwise on an official development plan, in residential PUD districts, one-two (1-2) accessory buildings will be permitted per building lot. In non PUD residential zoning districts, one detached garage that is used to meet the off street parking requirements of Section 11-7-4, WMC, shall be permitted in addition to one-two (1-2) accessory buildings, provided that said off street parking requirements are not currently being met by an existing attached garage.~~

(3) Architectural character: Accessory buildings must maintain the character of the surrounding neighborhood and architecturally resemble and be constructed of like or similar materials of that used on the exterior of the existing principal building on the property. Pre-fabricated or corrugated metal, plastic, vinyl, canvas or similar material buildings are prohibited.

(4) Size: For all residential zone districts and residential PUD districts, the total of any detached garage and accessory buildings shall be limited to 5% of the building lot area or 600 square feet, whichever is greater, unless a different size is provided for in the PUD district. In no case shall the ~~combined square footage of all~~ accessory buildings be ~~larger more~~ than 2000 square feet ~~per building lot~~. For all nonresidential PUD zone districts, size will be determined in the ODP or ODP amendment. Maximum height of an accessory building shall be limited to fifteen

(15) feet, except in O-1 zone districts where maximum height shall be limited to thirty-five (35) feet.

(5) Setbacks: This Subsection (N) provides the setbacks for accessory buildings, except that the setbacks for accessory buildings in PUD zone districts shall be as specified on an approved official development plan. If setbacks are not specified in the ODP, then the setbacks shall follow the requirements of this Subsection. The O-1 district is considered a nonresidential zone district for the purpose of this Subsection.

(a) Accessory buildings one hundred twenty (120) square feet or less: the front setback shall be the same as required for the principal building. The side and rear setbacks shall be a minimum of three (3) feet from the property line but may not encroach into any easements. The side or rear setback adjacent to a public road shall be fifteen (15) feet.

(b) Accessory buildings greater than one hundred twenty (120) square feet: the front setback shall be the same as required for the principal building. The side and rear setbacks shall be a minimum of five (5) feet from the property line but may not encroach into any easements. The side or rear setback adjacent to a public road shall be fifteen (15) feet.

(c) Accessory buildings in the O-1 zone district: the front setback shall be one hundred (100) feet. The side and rear setbacks shall be thirty (30) feet.

(d) Architectural features such as cornices, canopies, eaves, awnings or similar architectural roofline features may not encroach into the required side or rear setback for any accessory building.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of August, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of September, 2012.

Mayor

APPROVED AS TO LEGAL FORM:

ATTEST:

City Clerk

City Attorney's Office

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, August 27, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (August 13, 2012)
- 3. Purpose of Special WEDA Meeting is to consider**
 - A. Resolution No. 144 re Loan approval for up to \$60 million to refinance an existing loan for the North Huron Urban Renewal Project
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, AUGUST 13, 2012, AT 7:23 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 Atchison, to approve the minutes of the meeting of July 23, 2012, as written. The motion carried unanimously.

PHASE 2 PROJECT CHANGE ORDER FOR THE WESTMINSTER MALL DEMOLITION

It was moved by Board Member Lindsey and seconded by Board Member Atchison to authorize the Executive Director to execute a \$71,982.20 change order to American Demolition, Inc. for additional costs related to the demolition of the Sears and Sears Automotive buildings raising the total contract amount for the Westminster Mall Demolition – Phase 2 Project to \$507,478.44. The motion passed unanimously.

ADJOURNMENT

There was no further business for the Authority's consideration, and it was moved by Kaiser, seconded by Major, to adjourn. The motion passed and the meeting adjourned at 7:25 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
August 27, 2012



SUBJECT: Resolution No. 144 re WEDA Loan approval for up to \$60 million to refinance an existing loan for the North Huron Urban Renewal Project

Prepared By: Tammy Hitchens, Finance Director
Robert Smith, Treasury Manager
Robert Byerhof, Senior Financial Analyst
Rachel Price, Financial Analyst

Recommended Board Action

Adopt Resolution No. 144 authorizing the Executive Director or his designee to enter into a Loan Agreement for up to \$60 million with Compass Mortgage Corporation to refinance an existing Loan between the Westminster Economic Development Authority and the Bank for the North Huron Urban Renewal Project, as well as approving loan documents including but not limited to the Loan Resolution, Loan Agreement, Cooperation Agreement with the City, and an Intergovernmental Agreement with the City.

Summary Statement

- The recommended action secures long-term financing at a historically low interest rate by refinancing an existing loan with the same lender.
- By approving the attached resolution, Westminster Economic Development Authority (WEDA) approves the loan refunding and the following contract documents necessary to complete the transaction:
 - a) Loan Resolution dated August 27, 2012 authorizing WEDA to enter into the agreement related to the urban renewal project.
 - b) Loan Agreement dated August 29, 2012 between WEDA and the Lender Bank, Compass Mortgage.
 - c) Cooperation Agreement dated August 27, 2012 between WEDA and the City.
- An Intergovernmental Agreement (IGA) dated August 27, 2012 between WEDA and the City is recommended to reimburse the City for expenses associated with certain capital projects within the North Huron Urban Renewal Project (URA).
- This refinancing was discussed with the WEDA Board on May 7th and on August 13th. Staff was directed to bring this item to the Board for official action.

Expenditure Required: Not to exceed \$60 million

Source of Funds: Loan proceeds and increment revenues within the URA

Policy Issue

Should WEDA refund the 2009 North Huron URA Loan?

Alternatives

Decline or delay approval of the resolution concerning refunding of the 2009 WEDA loan. This alternative is not recommended. In 2016, there is a scheduled balloon payment of \$46.975 million and interest rates are currently at historic record lows, far below the current rate of 4.51%. Furthermore, additional loan proceeds above the current principal balance are needed to partially fund Orchard Parkway road improvements and essential storm water capital improvements in the URA. Of the solutions investigated, the proposed action provides a financially prudent long-term fixed rate solution neither increasing the annual debt service, nor extending the term of the original bonds issued in 2005. In addition, the refunding continues to provide for a floating sales tax pledge under the terms of the Loan Agreement, which permits excess sales tax revenues not needed for WEDA debt service to be available for the City's General Fund.

Background Information

In 2005, WEDA issued \$68.3 million of Variable Rate Revenue Bonds with an underlying Letter of Credit (LOC) agreement with DEPFA Bank. In September 2008 DEPFA Bank's credit ratings were downgraded, which resulted in investors tendering bonds back to the bank and subsequently resulted in these bonds being converted into Bank Bonds. The terms of the Bank Bonds eliminated the ability to release excess sales tax increment revenue due to an accelerated repayment of the principal, equal quarterly payments over a ten-year period per the agreement. On January 12, 2009 a Staff Report was presented to the WEDA Board and the Council regarding the Bank Bond issue.

The WEDA Board approved the recommendation to refund the 2005 Series WEDA Bonds in 2009 and obtained a new loan with Compass Mortgage Corporation (Bank) that has been beneficial to both WEDA and the City. The refunding resulted in WEDA benefitting from a financing solution eliminating the Bank Bonds. The loan agreement structured with the Bank was only six years in duration, included a scheduled balloon payment of \$46.975 million in 2016, and featured an interest rate exchange agreement (swap) which fixed the interest rate at 4.51% for the aforementioned duration. Furthermore, the loan agreement allowed the added benefit of creating a floating sales tax pledge that released excess sales tax increment revenues above the amount needed for debt and certain loan covenants. Prior to this, any excess sales tax revenues were kept within the URA and used solely for costs incurred with the URA.

Under the 2009 Loan Agreement, the swap terminates on the same day as the initial loan matures, June 1, 2016. As addressed in the August 13, 2012 Staff Report, the proposed 2012 refinancing includes the early termination fee associated with the swap agreement, which is estimated to range between \$3.70 million to \$4.20 million. It is common for the termination fee on such financial instruments to fluctuate due to interest payments made as well as the level of interest rates in the market, which impact the fee due if a swap is terminated prior to its maturity. As rates decline the swap termination fee WEDA must pay increases; however, lower interest rates mean that WEDA will pay less in interest on the new loan over the next sixteen years. Thus, despite this double edged sword, the refunding makes financial sense from both a nominal and present value analysis given today's low interest rate environment.

Staff completed a financial analysis of the projected cost to keep the existing loan in place until 2016 and then enter into a new loan versus securing long-term financing today and paying the upfront \$4.000 million swap termination from available funds in the Revenue Fund of the loan agreement. The interest rate assumption commencing in 2016 is based on a long-term rate averaging 5.5% versus entering into new loan this year with an interest rate of 3.50%. By entering into a new loan today versus waiting another 4 years, WEDA will save approximately \$5.2 million in interest costs over the life of the loan on a nominal basis and on a present value basis saves WEDA approximately \$2.1 million, inclusive of the \$4.0 million swap termination fee. Under the new loan, the interest rate will be fixed and so no new interest rate exchange agreement will be required.

The current loan has an existing principal balance of \$56.865 million with annual debt service payments equating to approximately \$4.879 million. The proposed new loan principal balance will increase to \$59.0 million but the estimated annual debt service will remain nearly the same at approximately \$4.878 million. The increase in principal will fund public road improvements within the URA with an Intergovernmental Agreement (IGA) between WEDA and the City.

An IGA establishes an obligation between the City and WEDA for public improvements and permit the City to be reimbursed for these expenses. Of the estimated \$7.0 million needed to construct the improvements, \$6.5 million will be funded from loan proceeds and previously collected property and sales tax increment held in revenue accounts at the Bank. The balance of the capital needed for the construction will be obtained from anticipated property and sales tax increment revenues in future years. Combined, these funding sources will construct Orchard Parkway from about 136th to 144th Avenues and construct 142nd Avenue between Huron Street and Orchard Parkway. This construction will connect critical planned retail and other office and commercial developments, including essential storm water capital improvements within the URA.

By entering into a new fixed rate loan, WEDA has an opportunity to secure a historically low fixed interest rate at about 3.50%, thus providing WEDA with known debt expenses until the final maturity in December 2028. Staff and the finance team believe that there is potentially greater interest rate risk to wait until 2016 to address the refinancing of this URA obligation versus securing a fixed rate solution at today's historic record low rates. While current short-term rates are at a historic low point, there is high probability that interest rates will only increase over time through final maturity in 2028. In addition, as experienced in 2008, there is a risk that the refinancing options available in the market will collapse due to systematic issues unrelated to WEDA's credit, resulting in higher costs to secure financing such as loans, letters of credit or bonds. If Banks are unable or unwilling to issue credit, the reality of a large balloon payment coming due in 2016 may prove financially difficult for WEDA.

After careful analysis of all of the relevant factors Staff recommends that the Board approve this Resolution by which WEDA will enter into a new loan to refund the existing loan, thereby obtaining a fixed interest rate estimated to be around 3.50% through maturity in 2028, the end of the 25-year URA period.

This recommended action supports the strategic objectives of a Financially Sustainable City Government Providing Exceptional Services, a Strong, Balanced Local Economy and Vibrant Neighborhoods in One Livable Community. It does so by controlling the financing costs for debt issued by WEDA and providing more certainty for the sales tax revenues generated in the Urban Renewal Area that the City will be able to retain.

Staff and Underwriters will be available at the WEDA meeting on August 27, 2012 to answer WEDA Commissioners' questions.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments: Loan Resolution
Loan Agreement
2012 Cooperation Agreement
2012 Intergovernmental Agreement

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **144**

INTRODUCED BY COMMISSIONERS

SERIES OF 2012

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AUTHORIZING, APPROVING AND DIRECTING THE EXECUTION AND DELIVERY OF A 2012 LOAN AGREEMENT FOR A 2012 LOAN IN THE ORIGINAL PRINCIPAL AMOUNT OF NOT TO EXCEED \$60,000,000, AND CERTAIN OTHER DOCUMENTS IN CONNECTION THEREWITH, FOR THE PURPOSE OF FINANACING AND REFINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF AN URBAN RENEWAL PROJECT.

WHEREAS, the Westminster Economic Development Authority (the “Authority”) is a public body corporate and politic, and has been duly created, organized, established and authorized by the City of Westminster, Colorado (the “City”) to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting Part 1 of Article 25 of Title 31, Colorado Revised Statutes, as amended (the “Act”); and

WHEREAS, an urban renewal plan, known as the “North Huron Urban Renewal Plan” (the “Urban Renewal Plan”), was duly and regularly approved by the City Council of the City for an urban renewal project under the Act; and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the City of the Urban Renewal Plan have been duly complied with; and

WHEREAS, pursuant to Section 31-25-105 of the Act, the Authority has the power to borrow money and to apply for and accept advances, loans, grants and contributions from any source for any of the purposes of the Act and to give such security as may be required; and

WHEREAS, pursuant to Section 31-25-109 of the Act, the Authority has the power and authority to issue “bonds” (defined by the Act to mean and include bonds (including refunding bonds), notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures or other obligations) to finance the activities or operations permitted and authorized to be undertaken by the Authority under the Act or for the payment, retirement, renewal or extension of any bonds previously issued by it under the Act; and

WHEREAS, the Authority is authorized to issue bonds without an election; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) Series 2005 in the original aggregate principal amount of \$68,300,000 (the “Prior Bonds”); and

WHEREAS, in order to refund the Prior Bonds, the Authority entered into a variable rate Loan Agreement (the “2009 Loan Agreement”) with Compass Mortgage Corporation (“Compass”) to obtain a loan in the principal amount of \$62,375,000 (the “2009 Loan”); and

WHEREAS, pursuant to Sections 11-59.3-101 through 11-59.3-105, inclusive, C.R.S. (the “Interest Rate Exchange Act”), and in connection with the 2009 Loan, the Authority previously entered into an agreement for an exchange of interest rates, cash flows or payments with respect to public securities; and

WHEREAS, in order to fix the interest rate on the 2009 Loan, the Authority executed and delivered an ISDA Master Agreement relating to the 2009 Loan, including a Schedule thereto and a Confirmation thereunder (together, the “Exchange Agreement”), with Compass Bank (the “Exchange Agreement Provider”), whereby the Authority agreed to pay the Exchange Agreement Provider a fixed rate of interest to be specified in the confirmation of the Exchange Agreement on a notional amount to be specified in the Confirmation, and the Exchange Agreement Provider agreed to pay the Authority a variable rate of interest equal to 65% of the Index plus the Base Margin (both as defined in the 2009 Loan Agreement); and

WHEREAS, the Authority has determined that it is in the best interest of the Authority to (i) refund the 2009 Loan Agreement to fix the interest rate; (ii) incur additional obligations to fund certain improvements of the Authority; and (iii) in connection with the refunding, pay a termination payment in order to terminate the Exchange Agreement (collectively, the “Project”); and

WHEREAS, the Authority intends to enter into a 2012 Loan Agreement with Compass Mortgage Corporation (“Compass”) to obtain a loan in the principal amount of not to exceed \$60,000,000 (the “2012 Loan”) in order to finance the costs of the Project; and

WHEREAS, the proceeds derived from the 2012 Loan, after payment of the costs of issuance properly allocable thereto, along with such other legally available moneys of the Authority as may be necessary, shall be used to pay and cancel the 2009 Loan on the date of funding of the 2012 Loan, to finance additional improvements of the Authority, and to pay other costs related to the Project, as more particularly hereinafter set forth; and

WHEREAS, the Authority specifically elects to apply the provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Act”) to the 2012 Loan; and

WHEREAS, the 2012 Loan shall be a limited obligation of the Authority payable solely from the Pledged Revenue (as defined in the 2012 Loan Agreement); and

WHEREAS, the Board desires to delegate to the Executive Director of the Authority the power to determine the terms of the 2012 Loan consistent with the provisions of this Resolution; and

WHEREAS, there are on file with the Secretary of the Board: (a) the proposed form of the 2012 Loan Agreement; (b) the proposed form of the promissory note, in the form attached to the 2012 Loan Agreement (the "Note"), to be executed by the Authority and delivered to Compass evidencing the Authority's obligations to pay the 2012 Loan; and (c) the proposed form of the 2012 Cooperation Agreement between the Authority and the City (the "Cooperation Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, COLORADO, THAT:

Section 1. All actions (not inconsistent with the provisions of this Resolution) heretofore taken by the Board and the officers of the Authority directed toward the Project and the entering into of the 2012 Loan Agreement, the Note and the 2012 Cooperation Agreement hereby are ratified, approved and confirmed.

Section 2. The forms, terms and provisions of the 2012 Loan Agreement, the Note and the 2012 Cooperation Agreement (collectively, the "Documents") hereby are authorized and approved, and the Authority shall enter into the Documents in the respective forms as are on file with the Secretary of the Board, but with such changes therein as shall be consistent with this Resolution and as the Chair or Vice Chairperson of the Board or the Executive Director of the Authority shall approve, the execution thereof being deemed conclusive approval of any such changes. The Chair and/or the Vice Chairperson of the Board is hereby authorized and directed to execute and deliver the Documents, for and on behalf of the Authority. The Secretary of the Board is hereby authorized and directed to affix the seal of the Authority to, and to attest those Documents requiring the attestation of the Secretary.

Section 3. The officers of the Authority shall take all action which they deem necessary or reasonably required in conformity with the Act to enter into the Documents and refund the 2012 Loan, including the paying of incidental expenses, which are hereby authorized to be paid, and for carrying out, giving effect to and consummating the transactions contemplated by this Resolution and the Documents, including, without limitation, the execution and delivery of any necessary or appropriate closing documents to be delivered in connection with the execution and delivery of the Documents and the refunding of the 2012 Loan.

Section 4. Pursuant to Section 11-57-205, C.R.S., the Board hereby delegates to the Executive Director of the Authority the authority to make the following determinations with respect to the 2012 Loan, including the execution of any certificates necessary or desirable to evidence such determinations, which determinations shall be subject to the restrictions and parameters set forth below:

- (a) the rate or rates of interest on the 2012 Loan;
- (b) the conditions on which and the prices at which the 2012 Loan may be redeemed before maturity;
- (c) the existence and amount of any reserve funds;

- (d) the principal amount of the 2012 Loan;
- (e) the amount of principal maturing in any particular year; and
- (f) the dates on which principal and interest shall be paid;

The foregoing authority shall be subject to the following restrictions and parameters:

- (1) the 2012 Loan shall mature not later than December 1, 2028;
- (2) the principal amount of the 2012 Loan shall not exceed \$60,000,000;
- (3) the 2012 Loan shall bear interest at a rate not to exceed 4.5%; and
- (4) the maximum annual repayment cost of the 2012 Loan shall not exceed \$6,000,000;

Provided, however, that with respect to Sections (3) and (4) above, the maximum interest rate and the maximum annual repayment cost imposed as a result of an event of default shall conform to the provisions of the 2012 Loan Agreement.

Section 5. The 2012 Loan and the Note are special obligations of the Authority payable solely as provided in the 2012 Loan Agreement. The principal of, premium, if any, and interest on the 2012 Loan and the Note shall not constitute an indebtedness of the City or the State of Colorado or any political subdivision thereof, and neither the City, the State of Colorado nor any political subdivision thereof shall be liable thereon, nor in any event shall the principal of, premium, if any, and interest on the 2012 Loan and the Note be payable out of funds or properties other than the Pledged Revenue, as such term is defined in the 2012 Loan Agreement. Neither the Commissioners of the Authority nor any persons executing the 2012 Loan Agreement or the Note shall be liable personally on the 2012 Loan Agreement or the Note.

Section 6. After the 2012 Loan Agreement and the Note are entered into, this Resolution shall be and remain irrevocable, and may not be amended except in accordance with the 2012 Loan Agreement, until the 2012 Loan and the Note shall have been fully paid, canceled and discharged in accordance therewith.

Section 7. The 2009 Loan shall be paid and cancelled on the date of funding of the 2012 Loan, at a price equal to the par amount thereof plus accrued interest.

Section 8. The Exchange Agreement shall be terminated on the date of the funding of the 2012 Loan pursuant to the price set forth for “termination payments” under the Exchange Agreement.

Section 9. If, for any reason, the funds on hand from the 2012 Loan shall be insufficient to make the payment of the principal of and accrued interest on the 2009 Loan, as the same shall be due and payable as provided in Section 7 above, or the Exchange Agreement termination payment as set forth in Section 8 above, the Authority shall forthwith deposit

additional legally available funds as may be required fully to meet the amount due and payable on the 2009 Loan and Exchange Agreement.

Section 10. The officers of the Authority are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution, including but not limited to the execution of such certificates and affidavits as may be reasonably required by Compass.

Section 11. The Chair, the Vice Chairperson and the Executive Director are each hereby appointed as an Authorized Person, as defined in the 2012 Loan Agreement. Different or additional Authorized Persons may be appointed by resolution adopted by the Board and a certificate filed with Compass.

Section 12. All costs and expenses incurred in connection with the 2012 Loan and the transactions contemplated by this Resolution shall be paid either from the proceeds of the 2012 Loan or from legally available moneys of the Authority, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 13. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 14. All bylaws, orders and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order or resolution or part thereof.

Section 15. This Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED, ADOPTED AND APPROVED this August 27, 2012.

(SEAL)

Chairperson of the Board of Commissioners

ATTEST:

Secretary

APPROVED AS TO LEGAL FORM:

Attorney for the Authority

STATE OF COLORADO)
) SS.
 WESTMINSTER ECONOMIC)
 DEVELOPMENT AUTHORITY)

I, Linda Yeager, the Secretary of the Westminster Economic Development Authority (the "Authority"), do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Board of Commissioners of the Authority (the "Board") at a regular meeting held on August 27, 2012.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of August 27, 2012, by an affirmative vote of a majority of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Faith Winter				
Herb Atchison				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				

3. The members of the Board were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Chair or Vice Chairperson of the Board, sealed with the Authority seal, attested by the Secretary of the Board and recorded in the minutes of the Board.

5. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

6. Notice of the meeting of August 27, 2012, in the form attached hereto as Exhibit A, was posted in at the Westminster City Hall, 4800 W. 92nd Street, in the City of Westminster, not less than twenty-four hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of said Authority affixed August 27, 2012.

(SEAL)

 Secretary

EXHIBIT A

(Form of Notice of Meeting)

LOAN AGREEMENT

by and between

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
as Borrower

and

COMPASS MORTGAGE CORPORATION
as Lender

Dated as of August 29, 2012

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS..... 2

ARTICLE II

LOAN TERMS, FEES, APPLICATION OF PROCEEDS

Section 2.01. Agreement to Make Loan 10
Section 2.02. Loan Origination Fee 10
Section 2.03. Application of Loan Proceeds and Other Available Funds 10
Section 2.04. Interest Rate and Calculation; Interest Payments; Principal Payments 11
Section 2.05. Optional Prepayment and Order of Principal Payment..... 11
Section 2.06. Written Statements..... 13
Section 2.07. Expenses and Attorneys' Fees 13
Section 2.08. Provisions Regarding Annual Debt Service Coverage Certificate 13

ARTICLE III

CONDITIONS TO CLOSING

Section 3.01. Conditions to Loan Closing 13

ARTICLE IV

FUNDS AND ACCOUNTS

Section 4.01. Creation of Funds and Accounts..... 16
Section 4.02. Flow of Funds 16
Section 4.03. Loan Payment Fund 17
Section 4.04. Reserve Fund 18
Section 4.05. Supplemental Reserve Fund 19
Section 4.06. Transaction Costs Fund..... 20
Section 4.07. Lender To Direct Funds and Accounts: Accounting 21

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Section 5.01. Accuracy of Information..... 21
Section 5.02. Organization; Litigation..... 21
Section 5.03. Performance of Covenants, Authority 21
Section 5.04. Use of Proceeds..... 22
Section 5.05. Tax Covenants 22
Section 5.06. Other Liabilities 22
Section 5.07. Financial Statements 22
Section 5.08. Reporting Requirements 22
Section 5.09. Inspection of Books and Records 23
Section 5.10. Instruments of Further Assurance 24
Section 5.11. Additional Debt..... 24
Section 5.12. Continued Existence 24
Section 5.13. Restructuring..... 24

Section 5.14.	Operation and Management	24
Section 5.15.	Annual Audit and Budget	24
Section 5.16.	No Exclusion of Property.....	24
Section 5.17.	Amendments to Financing Documents Require Prior Lender Consent.....	24

**ARTICLE VI
DEPOSITS; INVESTMENTS**

Section 6.01.	Deposits Held Under This Agreement	24
Section 6.02.	Investment of Reserve Fund and Supplemental Reserve Fund	25
Section 6.03.	Compliance with Tax Covenants	25

**ARTICLE VII
EVENTS OF DEFAULT AND REMEDIES**

Section 7.01.	Events of Default	25
Section 7.02.	Remedies on Occurrence of Event of Default	27
Section 7.03.	Notice to Lender of Default	27
Section 7.04.	Termination of Disbursements; Additional Lender Rights.....	28
Section 7.05.	Delay or Omission No Waiver.....	28
Section 7.06.	No Waiver of One Default to Affect Another; All Remedies Cumulative.....	28
Section 7.07.	Other Remedies.....	28

**ARTICLE VIII
MISCELLANEOUS**

Section 8.01.	Loan Agreement and Relationship to Other Documents	28
Section 8.02.	Successors; Assignment.....	28
Section 8.03.	Indemnification	29
Section 8.04.	Notice of Claims against Lender; Limitation of Certain Damages.....	29
Section 8.05.	Notices	29
Section 8.06.	Payments	30
Section 8.07.	Applicable Law and Jurisdiction; Interpretation; Severability	30
Section 8.08.	Copies; Entire Agreement; Modification.....	30
Section 8.09.	Waiver of Jury Trial.....	31
Section 8.10.	Attachments	31
Section 8.11.	No Recourse Against Officers and Agents	31
Section 8.12.	Conclusive Recital	31
Section 8.13.	Limitation of Actions	31
Section 8.14.	Pledge of Revenues.....	32
Section 8.15.	Payment on Non-Business Days	32
Section 8.16.	Termination.....	32

EXHIBIT A	FORM OF NOTE	
EXHIBIT B	PRINCIPAL REPAYMENT SCHEDULE	
EXHIBIT C	URBAN RENEWAL AREA	
EXHIBIT D	FORM OF ANNUAL DEBT SERVICE COVERAGE CERTIFICATE	
EXHIBIT E	FORM OF SUPPLEMENTAL RESERVE FUND REQUISITION	

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into as of August 29, 2012 by and between **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (the “Borrower”), a public body corporate and politic duly existing under the laws of the State of Colorado, and **COMPASS MORTGAGE CORPORATION**, an Alabama corporation, in its capacity as lender (the “Lender”).

RECITALS

WHEREAS, the Borrower is a public body corporate and politic and has been duly created, organized, established and authorized by the City of Westminster, Colorado (the “City”) to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting part 1 of article 25 of title 31, Colorado Revised Statutes (the “Act”) (all capitalized terms used and not otherwise defined herein shall have the respective meanings assigned in Article I hereof); and

WHEREAS, pursuant to the Act, the Borrower has the power and authority to borrow money and to apply for and accept loans to accomplish the purposes set forth in the Act, and to give such security as may be required; and

WHEREAS, an urban renewal plan, known as the “North Huron Urban Renewal Plan” originally approved January 2004 as amended by a First Amendment thereto dated April 13, 2009 (collectively, the “Urban Renewal Plan”) has been duly and regularly approved by the City Council of the City for an urban renewal project (the “Urban Renewal Project”) under the Act; and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the City of the Urban Renewal Plan have been duly complied with; and

WHEREAS, the Borrower has previously issued, for the purpose of paying a portion of the costs of the Urban Renewal Project, its Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) Series 2005 in the original aggregate principal amount of \$68,300,000 (the “2005 Bonds”), pursuant to an Indenture of Trust dated as of May 1, 2005, between the Borrower and U.S. Bank National Association, Denver Colorado, as Trustee, as amended by the First Amendment to Indenture of Trust dated as of September 1, 2006; and

WHEREAS, for the purpose of refunding the 2005 Bonds, the Lender has previously advanced a loan to the Borrower in the original principal amount of \$62,375,000 (the “2009 Loan”), as further evidenced by a promissory note of the Borrower in like principal amount dated as of May 8, 2009, in accordance with a Loan Agreement between the Borrower and the Lender dated as of May 8, 2009 (as subsequently amended by an Amendment No. 1 to Loan Agreement dated March 26, 2012, the “2009 Loan Agreement”), which 2009 Loan is presently outstanding in the aggregate principal amount of \$56,865,000; and

WHEREAS, the Borrower has made a request to the Lender to make certain modifications to the 2009 Loan and to advance additional amounts to the Borrower for the purpose of funding additional costs of the Urban Renewal Project and, in order to accomplish the same, to advance to or on behalf of the Borrower a loan in the original principal amount of \$59,000,000 (the "Loan"), to refund the 2009 Loan and fund such additional costs of the Urban Renewal Project; and

WHEREAS, the Lender is willing to enter into this Agreement and to make the Loan to the Borrower pursuant to the terms and conditions contained herein; and

WHEREAS, the Borrower's authority to execute and deliver the Note (as defined in Article I hereof) and this Agreement and perform its obligations thereunder and hereunder is authorized pursuant to the Authorizing Resolution (as more particularly defined in Article I hereof); the Act; the provisions of Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Public Securities Act"); and all other laws thereunto enabling; and

WHEREAS, the Loan shall constitute a special revenue obligation of the Borrower payable from and secured by the Pledged Revenue, subject to the limitations set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties hereto agree as follows.

ARTICLE I

DEFINITIONS

"Actual Taxable Sales" means, with respect to any Fiscal Year, the total amount of transactions occurring in the Urban Renewal Project Area during such Fiscal Year which were subject to the Sales Tax, including, without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services, expressed in dollars, as reported by the City. For purposes of clarification, "Actual Taxable Sales" for a particular Fiscal Year includes sales occurring through December of any Fiscal Year, which are reported and with respect to which sales tax is collected, on or before January 31 of the following Fiscal Year.

"Annual Debt Service Coverage Certificate" means a certificate, in the form attached as Exhibit D hereto, executed by the Authorized Person and approved by the Lender (which approval may be withheld only under the circumstances set forth in Section 2.08 hereof), demonstrating that, with respect to the Proposed Pledged Sales Tax Rate set forth therein for any particular Sales Tax Rate Period, the Projected Available Debt Service Revenues for the then current Fiscal Year divided by the sum of the Estimated Debt Requirements for the then current Fiscal Year (meaning the year in which such certificate is submitted) equals at least 1.15. Any Annual Debt Service Coverage Certificate shall be submitted and approved in accordance with Section 2.08 hereof.

"Authorized Person" means the Chairperson or Executive Director of the Borrower or any designee thereof, and also means any other individual authorized by the Board to act as an Authorized Person hereunder, provided that the Borrower has provided specimen signatures for such Authorized Person(s) to the Lender.

“*Authorizing Resolution*” means, collectively, the resolution adopted by the Board on August 27, 2012, authorizing the Borrower to incur the indebtedness of the Loan and execute and deliver the Note, this Agreement, and the other Financing Documents to which the Borrower is a party.

“*Available Supplemental Reserve Moneys*” means, as of any date of calculation, any amounts on deposit in the Supplemental Reserve Fund (and for purposes of any calculation required in connection with an Annual Debt Service Coverage Certificate, the Loan Payment Fund) in excess of an amount equal to 50% of the Maximum Annual Debt Service Requirements.

“*BBVA*” means Banco Bilbao Vizcaya Argentaria S.A.

“*BBVA/Compass Entity*” means BBVA, Compass Bank, Compass Mortgage Corporation, and any subsidiary or affiliate of BBVA, Compass Bank and/or Compass Mortgage Corporation.

“*Board*” means the Board of Commissioners of the Borrower.

“*Bond Counsel*” means (a) as of the Closing Date, Sherman & Howard L.L.C., Denver, Colorado, and (b) as of any other date, Sherman & Howard L.L.C., Denver, Colorado, or such other attorneys selected by the Borrower with nationally recognized expertise in the issuance of tax-exempt debt.

“*Borrower*” means Westminster Economic Development Authority, a public body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado.

“*Business Day*” means a day on which the Lender, or banks or trust companies in New York, New York, are not authorized or required to remain closed and on which the New York Stock Exchange is not closed.

“*City*” means the City of Westminster, Colorado.

“*City Cooperation Agreement*” means the Cooperation Agreement dated as of August 27, 2012, by and between the City and the Borrower.

“*Closing*” means the concurrent execution and delivery of the Note, the Loan Agreement, and the other Financing Documents by the respective parties thereto and the issuance and disbursement of the Loan and application of the proceeds thereof in accordance with Section 2.03 hereof.

“*Closing Date*” means the date on which the Closing occurs, estimated to be on or about August 29, 2012.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“*Compass Bank*” means Compass Bank, an Alabama state chartered banking association.

“*County*” means Adams County, Colorado.

“*County Assessor*” means the assessor of Adams County, Colorado.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Debt*” means, without duplication, all of the following obligations of the Borrower which are secured by any portion of the Pledged Revenue: (a) borrowed money of any kind; (b) obligations evidenced by bonds, debentures, notes or similar instruments, including the Note; (c) obligations upon which interest charges are customarily paid; (d) obligations under conditional sale or other title retention agreements relating to property or assets purchased by the Borrower; (e) obligations issued or assumed as the deferred purchase price of property or services; (f) obligations subject to annual appropriation of amounts sufficient to pay such obligations; (g) obligations in connection with indebtedness of others secured by (or which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien or other encumbrance on property owned or acquired by the Borrower, whether or not the obligations secured thereby have been assumed (only to the extent of the fair market value of such asset if such indebtedness has not been assumed by the Borrower); (h) obligations arising from guarantees made by the Borrower; (i) obligations evidenced by capital leases; (j) obligations as an account party in respect of letters of credit and bankers’ acceptances or similar obligations issued in respect of the Borrower; (k) obligations evidenced by any interest rate exchange agreement; provided however, that notwithstanding the foregoing, for purposes of any restrictions on the issuance of Debt herein, Debt hereunder shall not include the City Cooperation Agreement, any amounts representing the overpayment of incremental property taxes as the result of refunds made to taxpayers and with respect to which the Borrower has undertaken an obligation to repay the County Treasurer as contemplated by Section 31-25-107(9)(a)(III), Colorado Revised Statutes, and management, consultant, operation, repair, service, goods, construction and maintenance contracts entered into in the ordinary course of business.

“*Debt Requirements*” means, with respect to any Payment Date, an amount equal to the sum of the following with respect to any such date: (a) the principal due on the Loan; and (b) the interest due on the Loan.

“*Default*” means an event, act or occurrence which, with the giving of notice or the lapse of time (or both), would become an Event of Default.

“*Default Interest Rate*” means a rate per annum equal to the Fixed Interest Rate plus 6.50%.

“*Estimated Debt Requirements*” means, with respect to any calendar year, an amount equal to the sum of the following with respect to such period:

- (a) the principal coming due on the Loan; and
- (b) the interest coming due on the Loan in such calendar year computed based on the Fixed Interest Rate, provided, however, that if on the date of calculation the Loan then bears

interest at the Default Interest Rate, the interest coming due on the Loan in such calendar year shall be calculated based on the Default Interest Rate.

“*Event of Default*” has the meaning set forth in Section 7.01 hereof.

“*Excluded Mill Levies*” means, collectively, (i) any mill levy imposed by the 144th Avenue Metropolitan District, the 136th Avenue General Improvement District and/or Orchard Park Place General Improvement District, (ii) any mill levy imposed by any special district formed after July 1, 2006, pursuant to Title 32, Article 1, Colorado Revised Statutes, which mill levy is in addition to, and not a replacement for, property taxes levied by taxing entities in existence as of July 1, 2006, and (iii) any mill levy imposed by any other improvement district formed pursuant to Part 6 of Title 31, Article 25, Colorado Revised Statutes (excluding the 144th Avenue General Improvement District), which mill levy is in addition to, and not a replacement for, property taxes levied by taxing entities in existence as of the date of the Original Loan Agreement (other than a replacement for property taxes levied by entities described in clause (i) or (ii) hereof).

“*Final Assessed Valuation*” means the final certified assessed valuation of all taxable property within the Urban Renewal Project Area, as calculated and recorded by the County Assessor on or about December 10 of each year, or on such other date as may be established by law for the annual final certification of assessed valuation.

“*Financing Documents*” means this Agreement, the Note, the Authorizing Resolution, the Urban Renewal Plan, the Replenishment Resolution and the City Cooperation Agreement, all in form and substance satisfactory to the Lender.

“*Fiscal Year*” means the 12 months commencing on the first day of January of any calendar year and ending on the last day of December of the same calendar year, or any other twelve month period which the Borrower or other appropriate authority hereafter may establish as the Borrower’s fiscal year.

“*Fitch*” means Fitch Ratings, Inc., its successors and assigns.

“*Fixed Interest Rate*” shall mean ____% per annum.

“*Interest Payment Date*” means June 1 and December 1 of each year, commencing December 1, 2012 and continuing through and including the Maturity Date.

“*Lender*” means Compass Mortgage Corporation, an Alabama corporation, in its capacity as lender of the Loan.

“*Loan*” means the loan made by the Lender to the Borrower in the original principal amount of \$59,000,000 as evidenced by the Note and made in accordance with the terms and provisions of this Agreement.

“*Loan Amount*” means Fifty Nine Million Five Hundred Thousand and 00/100 U.S. Dollars (\$59,000,000).

“*Loan Payment Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.03 hereof.

“*Maturity Date*” means December 1, 2028.

“*Maximum Annual Debt Service Requirements*” means, as of any date of calculation, the maximum Estimated Debt Requirements estimated for a current or future calendar year period during the term of the Loan.

“*Net Pledged Revenue*” means the moneys described in clauses (a), (b), (c) and (e) of the definition of Pledged Revenue set forth in this Article I.

“*Note*” means the Promissory Note evidencing the Loan issued in the original principal amount of \$59,000,000 from the Borrower, as maker, to the Lender, as payee, and dated as of August 29, 2012.

“*Parity Debt*” means any Debt of the Borrower having a lien upon all or any portion of the Pledged Revenue on parity with the lien thereon of the Loan.

“*Payment Date*” means a Principal Payment Date and/or any Interest Payment Date, as the context requires.

“*Permitted Investments*” means (a) certificates of deposit in Compass Bank or the Lender which have (i) a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (ii) a yield which is not less than the yield on reasonably comparable direct obligations of the United States, and (iii) a yield which is not less than the highest yield that is published or posted by the issuer of the certificate to be currently available from such issuer on reasonably comparable certificates of deposit offered to the public to comparable governmental entities and subject to the Public Deposit Protection Act; (b) any money market account offered by Compass Bank or the Lender which bears interest at the published money market rate of Compass Bank or the Lender, as applicable, and has a yield which is at least 100 basis points less than the yield on the Loan (as set forth in the Tax Certificate); and (c) any investment or deposit offered by Compass Bank or the Lender which (i) is a permitted investment for governmental entities under then-applicable Colorado law, and (ii) in the opinion of nationally recognized bond counsel delivered to the Borrower and the Lender will not cause the Borrower to violate the covenant in Section 5.05 hereof. If, after making a good faith effort to do so, the Borrower determines that it is not possible to invest in the investments described in (a), (b) or (c) above, Permitted Investments means any investment or deposit directed by the Borrower which (i) is a permitted investment for governmental entities under then-applicable Colorado law, and (ii) in the opinion of nationally recognized bond counsel delivered to the Borrower and the Lender will not cause the Borrower to violate the covenant in Section 5.05 hereof.

“*Pledged Property Tax Revenues*” means, for each Fiscal Year, that portion of the ad valorem property taxes produced by the levies at the rates fixed each year by or for the governing bodies of the various taxing jurisdictions within or overlapping the Urban Renewal Project Area (but excluding ad valorem property taxes produced by Excluded Mill Levies) upon that portion of the valuation for assessment of all taxable property within the Urban Renewal Project Area

which is in excess of the Property Tax Base Amount; provided, however, that such amount shall be reduced by any lawful collection fee charged by the County.

“*Pledged Revenue*” means:

- (a) Pledged Property Tax Revenues;
- (b) Pledged Sales Tax Revenues;
- (c) all amounts appropriated to the Borrower by the City in accordance with the Replenishment Resolution;
- (d) all amounts held in the funds and accounts established and maintained hereunder together with investment earnings thereon, including, without limitation, the Loan Payment Fund, the Reserve Fund and the Supplemental Reserve Fund; and
- (e) all other legally available moneys which the Borrower determines, in its sole discretion, to deposit in the Loan Payment Fund.

“*Pledged Sales Tax Rate*” means, for any particular Sales Tax Rate Period, the Proposed Pledged Sales Tax Rate set forth in an Annual Debt Service Coverage Certificate with respect to such Sales Tax Rate Period, provided, however, that:

- (a) for any Sales Tax Rate Period with respect to which an Annual Debt Service Coverage Certificate has not been provided by the Borrower and approved (or deemed approved as provided in the definition of “Annual Debt Service Coverage Certificate” herein) by the Lender on or before the February 15 immediately prior to the commencement of such Sales Tax Rate Period, the Pledged Sales Tax Rate shall mean 2.00%;
- (b) for any Sales Tax Rate Period in which an Event of Default has occurred or is then continuing as of the immediately preceding February 15, or in which amounts are owing by the Borrower to the City under the City Cooperation Agreement as of the immediately preceding February 15, the Pledged Sales Tax Rate shall mean 2.00%; and
- (c) for the Sales Tax Rate Period commencing the Closing Date and continuing through and including February 28, 2013, the Pledged Sales Tax Rate shall mean 0.00%.

“*Pledged Sales Tax Revenues*” means, for each Fiscal Year, all of the proceeds of the portion of the Sales Tax representing the Pledged Sales Tax Rate for such Fiscal Year collected within the Urban Renewal Project Area after deduction of the following amounts:

- (a) the proportional share of the reasonable and necessary costs and expenses of collecting and enforcing the Sales Tax attributable to the Urban Renewal Project Area; and
- (b) an amount equal to the Sales Tax Base Amount.

“*Principal Payment Date*” means December 1 of each year, commencing December 1, 2013 and continuing through and including the Maturity Date.

“Project Fund” means a fund of that name to be established by the Borrower and held by or on behalf of the Borrower. The Project Fund shall not be pledged to or constitute security for the payment of the Loan.

“Projected Available Debt Service Revenues” means, with respect to any Fiscal Year, the sum of (a) the Proposed Pledged Sales Tax Rate multiplied by the Actual Taxable Sales with respect to the immediately preceding Fiscal Year, less the then current Sales Tax Base Amount, plus (b) the Projected Pledged Property Tax Revenues for such Fiscal Year, plus (c) Available Supplemental Reserve Moneys as of the December 31 immediately preceding such Fiscal Year (or such lesser amount as may be specified by the Borrower in such certificate), less (D) the amount, if any, necessary for amounts on deposit in the Reserve Fund as of the December 31 immediately preceding such Fiscal Year to equal the Reserve Requirement, less (E) the amount, if any, necessary for amounts on deposit in the Supplemental Reserve Fund as of the December 31 immediately preceding such Fiscal Year to equal 50% of Maximum Annual Debt Service Requirements.

“Projected Pledged Property Tax Revenues” means, for any particular Fiscal Year, the amount of Pledged Property Tax Revenues projected to be generated in such Fiscal Year (net of the then current Property Tax Base Amount) based upon the most recent Final Assessed Valuation of the Urban Renewal Project Area, the most recent certified Property Tax Base Amount, and the most recent ad valorem property tax mill levies certified by all taxing jurisdictions within the Urban Renewal Project Area (but excluding ad valorem property taxes produced by Excluded Mill Levies).

“Property Tax Base Amount” means the amount certified by the Assessor as the valuation for assessment of all taxable property within the Urban Renewal Project Area last certified by the Assessor prior to the adoption of the Urban Renewal Plan or any modification thereof; and provided, however, that in the event of a general reassessment of taxable property in the Urban Renewal Project Area, the valuation for assessment of taxable property within the Urban Renewal Project Area shall be proportionately adjusted in accordance with such general reassessment in the manner required by the Act. The Property Tax Base Amount for calendar year 2012 was \$2,588,860.

“Proposed Pledged Sales Tax Rate” means the sales tax rate set forth in an Annual Debt Service Coverage Certificate, which shall not exceed 2.00%.

“Public Deposit Protection Act” means Article 10.5 of Title 11, Colorado Revised Statutes, as amended from time to time.

“Refunded Loan Obligation” means the loan made by the Lender to the Borrower in the original principal amount of \$62,375,000, as evidenced by the promissory note of the Borrower in like principal amount dated as of May 8, 2009, and made in accordance with the terms and provisions of the Loan Agreement dated as of May 8, 2009, between the Lender and the Borrower.

“*Replenishment Resolution*” means the resolution adopted by the City Council on August 27, 2012, expressing the City Council’s present intent to lend additional moneys to the Borrower to maintain the Reserve Fund at the Reserve Requirement.

“*Reserve Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.04 hereof.

“*Reserve Requirement*” means an amount equal to \$4,484,000.

“*Revenue Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth herein.

“*Sales Tax*” or “*Sales Taxes*” means the municipal sales tax at a rate of 2.00%, established by the City as the same shall from time to time be in effect, pertaining to, including, without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services, or any successor tax in the event that such taxes are replaced or superseded, but excluding any additional sales tax which may be approved by the electors of the City subsequent to the execution and delivery of this Loan Agreement.

“*Sales Tax Base Amount*” means \$0 or such other amount as may be lawfully determined by the City to be the total collections of Sales Taxes within the Urban Renewal Project Area for the twelve-month period immediately preceding the original adoption of the Urban Renewal Plan or any modification thereof.

“*Sales Tax Rate Period*” means the 12 months commencing on March 1 of any calendar year and ending on February 28 (or February 29, as applicable) of the immediately succeeding calendar year; provided that the initial Sales Tax Rate Period shall commence the Closing Date and continue through and include February 28, 2013.

“*S&P*” means Standard & Poor’s Ratings Services, A Division of McGraw Hill, Inc., its successors and assigns.

“*Subordinate Debt*” means Debt which is secured by a lien on all or any portion of the Pledged Revenue subordinate to the lien thereon of the Loan. Such term includes the payment obligations of the Borrower under the City Cooperation Agreement and any amounts representing the overpayment of incremental property taxes as the result of refunds made to taxpayers and with respect to which the Borrower has undertaken an obligation to repay the County Treasurer as contemplated by Section 31-25-107(9)(a)(III), Colorado Revised Statutes.

“*Supplemental Public Securities Act*” means Title 11, Article 57, C.R.S.

“*Supplemental Reserve Fund*” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.05 hereof.

“2009 Loan Agreement” means the Loan Agreement dated as of May 8, 2009, as amended by an Amendment No. 1 to Loan Agreement dated March 26, 2012, between the Lender and the Borrower.

“2009 Interest Rate Exchange Agreement” means the International Swap Dealers Association, Inc. Master Agreement dated as of May 8, 2009, between the Borrower and BBVA, as supplemented by the Schedule to the Master Agreement dated of even date therewith between the Borrower and BBVA and the accompanying confirmation of pricing and other pertinent terms.

“Tax Certificate” means the tax compliance certificate to be signed by the Borrower, in a form acceptable to Bond Counsel, relating to the requirements of Sections 103 and 141-150 of the Code.

“Transaction Costs Fund” means the fund by that name established by the provisions of Section 4.01 hereof to be administered by the Lender in the manner and for the purposes set forth in Section 4.06 hereof.

“Urban Renewal Project Area” means the areas described in Exhibit C hereto.

ARTICLE II

LOAN TERMS, FEES, APPLICATION OF PROCEEDS

Section 2.01. Agreement to Make Loan. The Lender hereby agrees to make a loan to the Borrower in the original aggregate principal amount of \$59,000,000 (as previously defined, the “Loan Amount”) subject to the terms and conditions of this Agreement. The Loan shall be evidenced by the Note, the form of which is set forth in Exhibit A attached hereto.

Section 2.02. Loan Origination Fee. No Origination Fee will be collected with respect to the Loan.

Section 2.03. Application of Loan Proceeds and Other Available Funds. On the Closing Date, the Lender will disburse or apply, as applicable, the proceeds of the Loan (the “Loan Proceeds”), as follows:

- (a) \$6,500,000.00 from Loan Proceeds shall be deposited into the Project Fund for application by the Borrower solely to costs of the Urban Renewal Project; and
- (b) \$52,500,000.00 from Loan Proceeds shall be applied to the payment on the date hereof of the Refunded Loan Obligation, including accrued interest thereon to the date hereof.

In addition, on the Closing Date, amounts held by the Lender under the 2009 Loan Agreement (including the Reserve Fund, Supplemental Reserve Fund and Revenue Fund, as such terms are used in the 2009 Loan Agreement) shall be applied on the date hereof as follows: (i) \$_____ shall be applied to payment of the Refunded Loan Obligation, including accrued interest thereon (to the extent not funded from Loan Proceeds), (ii) \$_____ shall be

paid to BBVA for amounts due and owing by the Borrower under the 2009 Interest Rate Exchange Agreement; (iii) \$4,484,000.00 shall be deposited to the Reserve Fund; (iv) \$_____ shall be deposited to the Supplemental Reserve Fund Account; and (v) \$75,000.00 shall be deposited to the Transaction Costs Fund.

Section 2.04. Interest Rate and Calculation; Interest Payments; Principal Payments

(a) ***Interest Rate and Calculation.*** Unless the Default Interest Rate applies, the unpaid principal balance of the Loan will bear interest at the Fixed Interest Rate. Upon the occurrence of an Event of Default, interest shall immediately begin to accrue and compound semi-annually on all principal amounts owing on the Loan at the Default Interest Rate for so long as such Event of Default continues and remains uncured. Payment Dates and Computations; Compounding. All interest due and payable hereunder shall be calculated on the basis of a 360-day year and twelve 30-day months. Interest not paid when due shall compound on each Interest Payment Date at the rate of interest then borne by the Loan. The Lender's internal records of applicable interest rates shall be determinative in the absence of manifest error.

(b) ***Interest Payments.*** Interest payments on the Loan shall be due semi-annually on June 1 and December 1 each year, commencing December 1, 2012.

(c) ***Principal Payments.*** Repayment of Loan principal shall be due and payable on the 1st day of December each year, commencing December 1, 2013. The outstanding principal balance of the Loan shall be due and payable in full on the Maturity Date. The Loan amortization schedule setting the Principal Payment Dates and corresponding principal amounts due is set forth in Exhibit B attached hereto.

Section 2.05. Optional Prepayment and Order of Principal Payment.

(a) ***Optional Prepayment Prior to Ten Year Anniversary.*** The Loan may be prepaid, in whole or in part, on any date prior to August 29, 2022, upon payment of the principal amount of the Loan so prepaid plus accrued interest thereon to the date of prepayment, together with a prepayment penalty equal to: (i) three percent (3%) of the principal amount so prepaid, plus (ii) an amount equal to (a) the Annual Yield Differential multiplied by the Percent Being Prepaid, multiplied by (b) the Average Remaining Outstanding Principal Amount, multiplied by (c) the number resulting from the number of days from the Prepayment Date through the Maturity Date divided by 360. Notwithstanding the foregoing, the component of the prepayment penalty described in the foregoing clause (i) shall not be owing (provided that the component of the prepayment penalty described in the foregoing clause (ii) shall be paid) under the following circumstances: (1) if such prepayment is a result of refinancing all of the Loan then outstanding with the Lender; or (2) if such prepayment is made solely from revenues available therefor in the Supplemental Reserve Fund in accordance with Section 4.05(c) hereof, provided that any such prepayments are in \$100,000 increments and are made not more than once each calendar year. Principal prepayments on the Loan shall be applied by the Lender in inverse order of maturity, commencing with the principal payment due and owing on the Maturity Date.

For purposes of this Section 2.05(a), the following capitalized terms shall have the meanings assigned below:

“Annual Yield Differential” is defined as the difference (but not less than zero) between the nominal U.S. Treasury constant maturity yield, as reported in the Federal Reserve Bank H.15 Report (the “H.15 Report”), as of the Closing Date, for a maturity that is the same as the term of the Loan as of the Closing Date (rounded to the nearest whole number of months) or, if no such maturity is reported, an interpolated yield based on the reported maturity that is next shorter than, and the maturity reported that is next longer than, the term of the Loan as of the Closing Date, and (ii) the nominal U.S. Treasury constant maturity yield, as reported in the H.15 Report, daily updates, for the Prepayment Date for a maturity that is the same as the remaining term of the Loan at the Prepayment Date (rounded to the nearest whole number of months) or, if no such maturity is reported, an interpolated yield based on the reported maturity that is next shorter than, and the maturity reported that is next longer than, the remaining term of the Loan at the Prepayment Date. If the H.15 Report is not available for any day, then the H.15 Report for the immediately preceding day on which yields were last reported will be used. As of the Closing Date, the U.S. Treasury constant maturity yield is _____%.

“Average Remaining Outstanding Principal Amount” is defined as the simple average of (i) the outstanding principal balance of the Loan as of the Prepayment Date (prior to any prepayment being applied) and (ii) the scheduled principal amount of the Loan due on the Maturity Date (taking into account any prior prepayments, but not the prepayment then being made).

“Percent Being Prepaid” is defined as the amount determined by dividing the principal amount of the Loan being prepaid by the balance of the Loan as of the Prepayment Date (prior to any prepayment being applied).

“Prepayment Date” means the date on which the Lender is in actual receipt of the amount representing the prepayment of the Loan.

(b) ***Optional Prepayment After Ten Year Anniversary.*** The Loan may be prepaid, in whole or in part, on any date on and after August 29, 2022, upon payment of the principal amount of the Loan so prepaid plus accrued interest thereon to the date of prepayment, without penalty. Principal prepayments on the Loan shall be applied by the Lender in inverse order of maturity, commencing with the principal payment due and owing on the Maturity Date.

Section 2.06. Written Statements. The Lender agrees to send written statements itemizing all transactions in the funds and accounts made by the Lender to the Borrower at the

address set forth in Section 8.05 hereof or at such other address as the Borrower shall specify to the Lender in writing.

Section 2.07. Expenses and Attorneys' Fees. In the event that a claim by the Lender is brought against the Borrower relating to this Agreement or any of the other Financing Documents and the Lender prevails in such claim, the Borrower will reimburse the Lender for all reasonable attorneys' and all other consultants' fees and all other costs, fees and out-of-pocket disbursements incurred by the Lender in connection with the preparation, execution, delivery, administration, defense and enforcement of this Agreement or any of the other Financing Documents, including reasonable attorneys' and all other consultants' fees and all other costs and fees (a) incurred before or after commencement of litigation or at trial, on appeal or in any other proceeding; (b) incurred in any bankruptcy proceeding and (c) related to any waivers or amendments with respect thereto (examples of costs and fees include but are not limited to fees and costs for confirming the priority of the Lender's claim on the Pledged Revenue or the funds and accounts established hereunder). The Borrower will also reimburse the Lender for all costs of collection of the Pledged Revenue, including all reasonable attorneys' and all other consultants' fees, before and after judgment.

Section 2.08. Provisions Regarding Annual Debt Service Coverage Certificate. Any Annual Debt Service Coverage Certificate shall be submitted by the Borrower to the Lender no later than the February 1 immediately prior to the commencement of the Sales Tax Rate Period for which the Proposed Pledged Sales Tax Rate set forth in such certificate is proposed to be effective. Subject to compliance by the Borrower with the foregoing sentence, if, on the February 15 following submission of an Annual Debt Service Coverage Certificate, the Lender has not approved or provided to the Borrower a written objection thereto in compliance with the following sentence, the Lender will be deemed to have approved such certificate. The Lender shall be entitled to object to an Annual Debt Service Coverage Certificate only on the basis that the Lender reasonably believes that: (a) a mathematical calculation therein is incorrect or not in compliance with the provisions of this Agreement, or (b) one or more values used in the calculation are incorrect.

ARTICLE III

CONDITIONS TO CLOSING

Section 3.01. Conditions to Loan Closing. The funding by the Lender of the Loan pursuant to Section 2.03 is conditioned upon the satisfaction of each of the following:

(a) ***The Financing Documents.*** The Financing Documents shall have been duly executed and delivered by each of the respective parties thereto and shall not have been modified, amended or rescinded, shall be in full force and effect on and as of the Closing Date and executed original or certified copies of each thereof have been delivered to the Lender; provided, however, that with respect to the Note, the Lender shall be in receipt of the executed original.

(b) ***Borrower Proceedings.*** The Lender shall have received a certified copy of all resolutions and proceedings taken by the Borrower authorizing the execution,

delivery and performance of this Agreement, the Note, and the other Financing Documents to which the Borrower is a party, and the transactions contemplated hereunder and thereunder, together with such other certifications as to the specimen signatures of the officers of the Borrower authorized to sign this Agreement, the Note, and the other Financing Documents to be delivered by the Borrower hereunder and as to other matters of fact as shall reasonably be requested by the Lender.

(c) ***Governmental Approvals.*** The Lender shall have received certified copies of all governmental approvals, if any, necessary for the Borrower to execute, deliver and perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party.

(d) ***Representations and Warranties True; No Default.*** The Lender shall be satisfied that on the Closing Date each representation and warranty on the part of the Borrower contained in this Agreement and any other Financing Document to which the Borrower is a party are true and correct in all material respects and no Default or Event of Default has occurred and is continuing, and the Lender shall be entitled to receive certificates, signed by authorized officers of the Borrower, to such effect.

(e) ***Borrower's Certificate.*** The Lender shall have received a certificate signed by an authorized officer of the Borrower, dated the Closing Date, to the same effect as provided in the foregoing Subsections 3.01(a), (b), (c) and (d). Such certificate shall cover such other matters incidental to the transactions contemplated by this Agreement or any other Financing Document as the Lender may reasonably request.

(f) ***Bond Counsel's Legal Opinions.*** The Lender shall have received an opinion of Bond Counsel, dated the Closing Date and addressed to the Borrower, with a reliance letter addressed to the Lender, with respect to such matters as the Lender may require, including opinions to the effect that the obligations of the Borrower under this Agreement constitute a special revenue obligation of the Borrower, that such obligation is binding and enforceable against the Borrower in accordance with the terms of this Agreement; opinions addressing the tax exemption of the interest on the Loan for state and federal purposes; and otherwise in form and substance satisfactory to the Lender and its counsel.

(g) ***Opinion of Counsel to the Borrower.*** The Lender shall have received an opinion of counsel to the Borrower dated the Closing Date and addressed to the Lender, with respect to such matters as the Lender may require, in form and substance satisfactory to the Lender and its counsel, including opinions as to the validity of the Borrower's organization and existence; to the effect that all other governmental approvals, if any, necessary for the Borrower to execute, deliver and perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party have been duly obtained; that the Authorizing Resolution has been duly and properly adopted; and that this Agreement and the other Financing Documents to which the Borrower is a party have been duly authorized and delivered by the Borrower.

(h) ***Opinion of Counsel to City.*** The Lender shall have received an opinion from counsel to the City, dated the Closing Date and addressed to the Lender, with respect to such matters as the Lender may require, including, without limitation, opinions to the effect that the Urban Renewal Plan was duly and properly adopted by the City Council of the City, has not been rescinded, revoked, or amended since such adoption (except as modified by the First Amendment thereto dated April 13, 2009) and remains in full force and effect, and otherwise in form and substance satisfactory to the Lender and its counsel.

(i) ***Other Certificates and Opinions.*** The Lender shall have received certificates of authorized representatives of all parties to the Financing Documents with respect to such matters as the Lender may require, or opinions of counsel as the Lender may require, all in form and substance satisfactory to the Lender and its counsel.

(j) ***No Change in Law.*** No law, regulation, ruling or other action of the United States, the State of Colorado or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Borrower from fulfilling its obligations under this Agreement.

(k) ***Fees and Expenses.*** All Lender's counsel fees and any other fees and expenses due and payable in connection with the issuance of the Loan, the execution and delivery of this Agreement and the other Financing Documents, and any other amounts due and payable hereunder shall have been paid by the Borrower or funded from amounts to be deposited into the Transaction Costs Fund in accordance with Section 2.03 hereof.

(l) ***Borrower Financial Information.*** The Borrower shall have provided the Lender with all pertinent financial information regarding the Borrower, including, without limitation, copies of all documents describing and evidencing any and all Debt of the Borrower.

(m) ***Borrower Due Diligence.*** The Lender and its counsel shall have been provided with the opportunity to review all agreements, documents, and other material information relating to the Borrower, the Pledged Revenue, the Refunded Bonds, and the Borrower's ability to perform its obligations under this Agreement and the other Financing Documents to which the Borrower is a party.

(n) ***Approval of Financing Documents.*** The Lender and its counsel shall have had sufficient time to review the Financing Documents and the substantially final versions of such documents shall be in form and content satisfactory to the Lender and its counsel.

(o) ***Other Requirements.*** The Lender shall be in receipt of such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Lender.

(p) ***Other Matters.*** All other legal matters pertaining to the execution and delivery of this Agreement, the Note, and the other Financing Documents, and the issuance of the Loan shall be reasonably satisfactory to the Lender and its counsel.

(q) **Debt Outstanding.** The Lender shall be in receipt of the evidence satisfactory to the Lender, including, without limitation, certifications from the Borrower to the effect that, except for the indebtedness evidenced by the Note and this Agreement, as of the Closing Date the Borrower has no Debt outstanding, other than the contingent liability set forth in the City Cooperation Agreement.

ARTICLE IV

FUNDS AND ACCOUNTS

Section 4.01. Creation of Funds and Accounts. The following funds are hereby created and established, each of which shall be administered by the Lender in accordance with the provisions hereof:

- (a) the Revenue Fund;
- (b) the Loan Payment Fund;
- (c) the Reserve Fund;
- (d) the Supplemental Reserve Fund; and
- (e) the Transaction Costs Fund.

The Borrower shall also establish a Project Fund, which shall be held and administered by the Borrower. The Borrower shall cause all Loan Proceeds deposited therein to be applied to costs of the Urban Renewal Project. It is acknowledged that the Borrower intends to establish a depository account at the Lender or an affiliate thereof as the Project Fund and that the Borrower may elect, but is not required, to submit requisitions to the Lender (or such affiliate) for the purpose of directing the disbursement of funds therefrom.

Section 4.02. Flow of Funds. On the Closing Date, the Lender shall cause to be transferred any funds then held under the 2009 Loan Agreement in accordance with Section 2.03 hereof. Thereafter, the Borrower shall transfer all amounts comprising Net Pledged Revenue to the Lender as soon as may be practicable after the receipt thereof. The Lender shall deposit all such Net Pledged Revenue into the Revenue Fund and apply the same as received in the order of priority set forth below.

- FIRST: To the credit of the Loan Payment Fund, the amounts required by Section 4.03(b) hereof for the then current Fiscal Year;
- SECOND: To the credit of the Reserve Fund, the amount required to replenish the Reserve Fund to the Reserve Requirement, if any;
- THIRD: To the Lender, for application to any amounts due and owing hereunder other than principal and interest payments on the Loan; and

FOURTH: To the credit of any fund or account established for the payment of the principal of and interest on any Subordinate Debt, the amounts required for the then current Fiscal Year by the resolution or other enactment authorizing issuance of the Subordinate Debt; and

FIFTH: To the Supplemental Reserve Fund, any Net Pledged Revenue remaining and all Net Pledged Revenue received for the remainder of the Fiscal Year after the payments and accumulations set forth in clauses FIRST through FOURTH above with respect to such Fiscal Year.

Section 4.03. Loan Payment Fund.

(a) **General.** The Loan Payment Fund shall be administered by the Lender in accordance with the terms of this Agreement.

(b) **Credits to Funds.** There shall be credited to the Loan Payment Fund in each Fiscal Year an amount of Net Pledged Revenue which, when combined with other legally available moneys in the Loan Payment Fund, equals the Estimated Debt Requirements for such Fiscal Year. For purposes of clarification, the foregoing shall not be interpreted to require that there be maintained in the Loan Payment Fund at all times an amount equal to the Estimated Debt Requirements but, rather, that there is to be transferred to the Loan Payment Fund in each Fiscal Year (and prior to transfers for any other purpose provided in Section 4.02 hereof) moneys which in the aggregate, when combined with other legally available moneys in the Loan Payment Fund from time to time, equals the Estimated Debt Requirements for such Fiscal Year. At any given time, amounts on deposit in the Loan Payment Fund are not intended to be in excess of the portion of the Estimated Debt Requirements remaining to be paid for the then current Fiscal Year.

(c) **Notice of Deficiency.** If, on the day which is ten (10) Business Days prior to any Payment Date, the amount then on deposit in the Loan Payment Fund is insufficient to pay the Debt Requirements coming due on such Payment Date based on invoices provided from the Lender, the Lender shall notify the Borrower in writing of such shortfall indicating the amount of such deficiency. If, on or before such Payment Date, the Borrower provides funds to the Lender to make up any or all of such deficiency, then the Lender shall accept and deposit such funds into the Loan Payment Fund for the payment of the Debt Requirements then due.

(d) **Application of Moneys in Loan Payment Fund.** Moneys in the Loan Payment Fund (including amounts transferred thereto pursuant to provisions hereof) shall be used by the Lender solely to pay the Debt Requirements in the following order of priority.

(i) First, to the payment of interest due in connection with the Loan pursuant to the relevant invoice provided by the Lender; and

(ii) Second, to the payment of regularly scheduled principal on the Loan when due.

(e) **Investment Earnings.** All interest income from moneys credited to the Loan Payment Fund shall remain therein.

Section 4.04. Reserve Fund.

(a) **General.** The Reserve Fund shall be administered by the Lender in accordance with the terms of this Agreement. Moneys in the Reserve Fund shall be used by the Lender, if necessary, only for the purposes set forth in this Section 4.04 and the Reserve Fund is hereby pledged for such purposes.

(b) **Transfers to Loan Payment Fund.** If, on any Payment Date, the amount then on deposit in the Loan Payment Fund is an amount which is less than the Debt Requirements owing on such Payment Date, after taking into account amounts (if any) transferred from the Supplemental Reserve Fund to the Loan Payment Fund in accordance with Section 4.05 hereof, the Lender shall transfer from the Reserve Fund to the Loan Payment Fund an amount which, when combined with moneys then on deposit in the Loan Payment Fund, will be sufficient to pay such Debt Requirements when due on the applicable Payment Date. In the event that moneys in the Reserve Fund, together with moneys then on deposit in the Loan Payment Fund (including amounts transferred from the Supplemental Reserve Fund), are insufficient for such purpose, the Lender is to nonetheless transfer all moneys in the Reserve Fund to the Loan Payment Fund for the purpose of making partial payments in the order of priority provided in Section 4.03(d) hereof.

(c) **Replenishment of Reserve.** The Reserve Fund shall be replenished from Pledged Revenue available therefor in accordance with Section 4.02 hereof, and, after application of the foregoing, from amounts, if any, paid by the City in accordance with the Replenishment Resolution. In no event shall replenishment of the Reserve Fund to the Reserve Requirement be made later than August 31 of the Fiscal Year immediately succeeding the year in which a draw is made on the Reserve Fund.

(d) **Earnings.** All interest income on moneys on deposit in the Reserve Fund in excess of the Reserve Requirement shall be transferred by the Lender to the Loan Payment Fund.

(e) **Maturity Date.** All amounts on deposit in the Reserve Fund on the Maturity Date shall be applied by the Lender to the payment of the Loan.

(f) **Application to Prepayment of Loan.** In the event that the Borrower elects to pre-pay the Loan in full prior to the Maturity Date and utilize amounts on deposit in the Reserve Fund for such purpose, and provided that amounts on deposit in the Reserve Fund, together with amounts on deposit in the Loan Payment Fund and, if irrevocably pledged for such purpose, the Supplemental Reserve Fund, and other amounts, if any, deposited by the Borrower are sufficient to pay all principal and accrued interest on the Loan, and any prepayment penalty due in accordance with Section 2.05 hereof, all

amounts on deposit in the Reserve Fund shall be applied by the Lender to the payment of the Loan.

(h) ***Lender Notice Regarding Deficiency in Reserve Fund.*** If, at any time, the Reserve Fund is not funded to the Reserve Requirement, the Lender shall notify the City Manager of any deficiency and, pursuant to the Replenishment Resolution, the City Council has agreed to consider but is not obligated to, replenish the Reserve Fund immediately thereafter. Prior to any request to the City to replenish the Reserve Fund, Pledged Revenues shall be deposited in the Reserve Fund in accordance with Section 4.02 hereof. The Lender and the Borrower acknowledge that any City replenishment of the Reserve Fund shall constitute a loan by the City to the Borrower payable as Subordinate Debt in accordance with the City Cooperation Agreement and Section 4.02 hereof.

Section 4.05. Supplemental Reserve Fund.

(a) ***General.*** The Supplemental Reserve Fund shall be administered by the Lender in accordance with the terms of this Agreement. Moneys in the Supplemental Reserve Fund shall be used by the Lender, if necessary, only for the purposes set forth in this Section 4.05 and the Supplemental Reserve Fund is hereby pledged for such purposes.

(b) ***Transfers to Loan Payment Fund.*** If, on any Payment Date, the amount then on deposit in the Loan Payment Fund is an amount which is less than the Debt Requirements owing on such Payment Date, the Lender shall transfer from the Supplemental Reserve Fund to the Loan Payment Fund an amount which, when combined with moneys then on deposit in the Loan Payment Fund, will be sufficient to pay such Debt Requirements when due on the applicable Payment Date. In the event that moneys in the Supplemental Reserve Fund, together with moneys then on deposit in the Loan Payment Fund, are insufficient for such purpose, the Lender is to nonetheless transfer all moneys in the Supplemental Reserve Fund to the Loan Payment Fund for the purpose of making partial payments in the order of priority provided in Section 4.03(d) hereof. Moneys shall be transferred from the Supplemental Reserve Fund for such purpose prior to the transfer of any moneys from the Reserve Fund for such purpose.

(c) ***Loan Prepayment From Available Supplemental Reserve Moneys.*** Subject to the following sentences of this subparagraph (c), the Lender shall apply amounts on deposit in the Supplemental Reserve Fund constituting Available Supplemental Reserve Moneys in accordance with written direction of the Borrower, to the prepayment of the Loan in accordance with Section 2.05 hereof; provided, however, that any moneys on deposit in the Supplemental Reserve Fund and specified by the Borrower in an Annual Debt Service Coverage Certificate for purposes of supporting a Proposed Pledged Sales Tax Rate for any particular Fiscal Year shall not constitute Available Supplemental Reserve Moneys in such Fiscal Year for purposes of this Section 4.05(c). In the event that there has occurred and is then continuing an Event of Default hereunder, amounts on deposit in the Supplemental Reserve Fund shall not be disbursed

to the Borrower and shall be applied solely in accordance with subparagraph (b) hereof so long as the Event of Default continues.

(d) **Earnings.** All interest income on moneys on deposit in the Supplemental Reserve Fund shall be credited to the Supplemental Reserve Fund and be applied or disbursed in accordance with this Section 4.05, in the same manner, and subject to the same limitations, as all other moneys on deposit in the Supplemental Reserve Fund.

(e) **Application to Full Prepayment of Loan.** In the event that the Borrower elects to pre-pay the Loan in full prior to the Maturity Date and utilize amounts on deposit in the Supplemental Reserve Fund for such purpose, and provided that amounts on deposit in the Supplemental Reserve Fund, together with amounts on deposit in the Loan Payment Fund and, if irrevocably pledged for such purpose, the Reserve Fund, and other amounts, if any, deposited by the Borrower are sufficient and available to pay all principal and accrued interest on the Loan, and any prepayment penalty due in accordance with Section 2.05 hereof, all amounts on deposit in the Supplemental Reserve Fund shall be applied by the Lender to the payment of the Loan, as directed by the Borrower.

(f) **Application to Rebate Payments.** The Lender shall transfer to the Borrower from the Supplemental Reserve Fund the amount, if any, necessary to pay the Rebate Requirements to the United States of America when the same become due and payable, as more particularly defined and provided in the Tax Certificate.

(g) **Application to Urban Renewal Project Costs.** The Lender shall transfer amounts from the Supplemental Reserve Fund to or at the direction of the Borrower, for the payment of costs of the Urban Renewal Project, in accordance with a Requisition, in the form attached as Exhibit E hereto (or as otherwise agreed to by the Lender and the Borrower), executed by an Authorized Person; provided however that the Lender shall not be obligated to make such transfers more frequently than monthly. Notwithstanding the foregoing, in the event that there has occurred and is then continuing an Event of Default hereunder, amounts on deposit in the Supplemental Reserve Fund shall not be disbursed to the Borrower and shall be applied solely in accordance with subparagraph (b) hereof so long as the Event of Default continues.

(h) **Maturity Date.** Any amounts on deposit in the Supplemental Reserve Fund on the Maturity Date not required to pay Debt Requirements on such date shall be disbursed by the Lender to the Borrower for application to any lawful purpose.

Section 4.06. Transaction Costs Fund. The Transaction Costs Fund shall be maintained by the Lender in accordance with the terms of this Section 4.06. All moneys on deposit in the Transaction Costs Fund shall be applied by the Lender, as directed by the Borrower, to the payment of the costs incurred in connection with the transactions contemplated by the Financing Documents in accordance with invoices provided to the Lender and as detailed in a closing memorandum approved by the Borrower. Any amounts remaining in the Transaction Costs Fund sixty (60) days after the Closing Date shall be transferred by the Lender

to the Loan Payment Fund. At such time as no amounts remain in the Transaction Costs Fund, such fund shall terminate.

Section 4.07. Lender To Direct Funds and Accounts: Accounting. Subject to Article VII hereof, the Borrower hereby grants to the Lender the right and the authority to direct all activity with respect to all funds and accounts created pursuant to this Agreement, including those funds and accounts created pursuant to this Article IV (excluding the Project Fund), provided that any such Lender direction shall be in accordance with the terms of this Agreement. Subject to Article VII hereof, the Borrower shall not have any right, power, or authority to direct any activity within any funds created pursuant to this Agreement, including those funds and accounts created pursuant to this Article IV (excluding the Project Fund), except that the Borrower may make any deposits into such funds as may be required by this Agreement. Lender shall keep and maintain accounting records in such manner that the Pledged Revenue received and amounts deposited to each fund and account held hereunder may at all times be readily and accurately determined.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

While any part of the Loan is available for disbursement or any obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the Borrower continuously warrants, covenants and agrees as follows:

Section 5.01. Accuracy of Information. All information, certificates or statements given to the Lender by the Borrower pursuant to this Agreement and the other Financing Documents will be true and complete when given.

Section 5.02. Organization; Litigation. The Borrower is validly existing and in good standing under the laws of its state of organization, has all requisite power and authority and possesses all licenses, permits and approvals necessary to conduct its business. There is no litigation or administrative proceeding threatened or pending against the Borrower which could, if adversely determined, have a material adverse effect on the Borrower's financial condition.

Section 5.03. Performance of Covenants, Authority. The Borrower covenants that it will faithfully perform and observe at all times any and all covenants, undertakings, stipulations, and provisions contained in the Authorizing Resolution, this Agreement, the Note, and all proceedings pertaining thereto. The Borrower covenants that it is duly authorized under the constitution and laws of the State of Colorado, including, particularly and without limitation, the Act, to execute and deliver the Note, this Agreement, and the other Financing Documents to which it is a party, and that all action on its part for the execution and delivery of the Note, this Agreement, and the other Financing Documents to which it is a party have been duly and effectively taken and will be duly taken as provided therein and herein, and that the Loan, the Note, this Agreement, and the other Financing Documents to which the Borrower is a party are and will be valid and enforceable obligations of the Borrower according to the terms thereof and hereof.

Section 5.04. Use of Proceeds. Disbursements by the Lender to the Borrower hereunder will be used exclusively by the Borrower for the purposes represented to the Lender and in accordance with the provisions of Section 2.03 hereof.

Section 5.05. Tax Covenants. The Borrower covenants for the benefit of the Lender that it will not take any action or omit to take any action with respect to the Loan, the proceeds thereof, or any other funds of the Borrower or any facilities financed or refinanced with the proceeds of the Loan if such action or omission (a) would cause the interest on the Loan to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, (b) would cause interest on the Loan to lose its exclusion from alternative minimum taxable income defined in Section 55(b)(2) of the Tax Code, except that interest on the Loan is required to be included in calculating the “adjusted current earnings” adjustment applicable to corporations for purposes of computing the alternative minimum taxable income of corporations or (c) would cause interest on the Loan to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenants shall remain in full force and effect notwithstanding the payment in full or defeasance of the Loan until the date on which all obligations of the Borrower in fulfilling the above covenants under the Tax Code and Colorado law have been met.

Section 5.06. Other Liabilities. The Borrower will pay and discharge, when due, all of its liabilities, except when the payment thereof is being contested in good faith by appropriate procedures which will avoid financial liability and with adequate reserves provided therefor.

Section 5.07. Financial Statements. The financial statements and other information previously provided to the Lender by the Borrower or provided to the Lender by the Borrower in the future are or will be complete and accurate and prepared in accordance with generally accepted accounting principles generally applicable to urban renewal authorities. There has been no material adverse change in the Borrower’s financial condition since such information was provided by the Borrower to the Lender. The Borrower will (a) maintain accounting records in accordance with generally recognized and accepted principles of accounting generally applicable to urban renewal authorities consistently applied throughout the accounting periods involved; (b) provide the Lender with such information concerning the business affairs and financial condition (including insurance coverage) of the Borrower as the Lender may request; and (c) without request, provide the Lender with the information set forth in Section 5.08 below. The Borrower shall notify the Lender promptly of all interim litigation or administrative proceedings, threatened or pending, against the Borrower which would, if adversely determined, in Borrower’s reasonable opinion, have a material adverse effect on the Borrower’s financial condition arising after the date hereof.

Section 5.08. Reporting Requirements. The Borrower will provide the following to the Lender at the times and in the manner provided below:

- (i) as soon as available, but not later than 210 days following each Fiscal Year, a copy of the City’s comprehensive annual financial report (CAFR) which shall include audited financial statements of the City and of the Borrower as a component of the City;

(ii) as soon as available, but in no event later than December 31 of each year, the annual budget of the Borrower for the immediately succeeding Fiscal Year; and

(iii) promptly upon receipt thereof, a certification of values issued by the County Assessor containing the preliminary certified “assessed value” and certified preliminary assessed valuation of the Urban Renewal Project Area and of the 144th Avenue General Improvement District for that year;

(iv) promptly upon receipt thereof, a certification of values issued by the County Assessor containing the final certified “assessed value” and Final Assessed Valuation of the Urban Renewal Project Area and of the 144th Avenue General Improvement District for that year;

(v) within 45 days of the end of each calendar quarter, commencing with the quarter ending September 30, 2012, a summary of the Pledged Revenues received by the Borrower during the previous calendar quarter and during the consecutive twelve month period, separating the amount of Pledged Property Tax Revenue and Pledged Sales Tax Revenues received;

(vi) as soon as available, a copy of any report to the Borrower of any auditor of the Borrower, following approval thereof by the Borrower;

(vii) on or prior to the issuance of any Debt, a schedule reflecting the Borrower’s Debt then outstanding and the Debt then proposed to be issued, which shall specify, for each obligation constituting Debt, the principal amount then outstanding, the interest rate, and the nature of such Debt (i.e., whether such Debt is Parity Debt or Subordinate Debt), accompanied by a certificate of an Authorized Person as to the accuracy and completeness of such information;

(viii) promptly at the time or times at which such event occurs, written notice of any events likely to have a material adverse effect on the Borrower or the Loan; and

(ix) promptly upon request of the Lender, the Borrower shall furnish to the Lender such other reports or information regarding the Pledged Revenue or the assets, financial condition, business or operations of the Borrower as the Lender may reasonably request, to the extent legally permissible for the Borrower to provide.

Section 5.09. Inspection of Books and Records. The Lender shall have the right to examine any of the books and records of the Borrower at any reasonable time and as often as the Lender may reasonably desire. Without limiting the generality of the foregoing, the Lender agrees that it shall use commercially reasonable efforts to maintain as confidential any non-public or proprietary information obtained by the Lender in exercising its rights under this Section 5.09.

Section 5.10. Instruments of Further Assurance. The Borrower covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such agreements supplemental hereto and such further acts, instruments, and transfers as the Lender may reasonably require for the better assuring, transferring, and pledging unto the Lender the Pledged Revenue; provided, however, that the Borrower shall not be obligated to incur in excess of nominal expenses in complying with this covenant.

Section 5.11. Additional Debt. The Borrower shall not issue or incur any additional Debt without the prior written consent of the Lender.

Section 5.12. Continued Existence. The Borrower will maintain its existence and shall not merge or otherwise alter its corporate structure in any manner or to any extent as might reduce the security provided for the payment of the Loan.

Section 5.13. Restructuring. In the event the Pledged Revenue is insufficient or is anticipated to be insufficient to pay the principal of, prepayment penalty, if any, and interest on the Loan when due, the Borrower shall use its best efforts to refinance, refund, or otherwise restructure the Loan so as to avoid such a default.

Section 5.14. Operation and Management. The Borrower will continue to operate in accordance with all applicable laws, rules, regulations, and intergovernmental agreements, and keep and maintain separate accounts of the receipts and expenses thereof in such manner that the Pledged Revenue may at all times be readily and accurately determined.

Section 5.15. Annual Audit and Budget. At least once a year in the time and manner provided by law, the Borrower will cause audits to be performed of the records relating to the Borrower's revenues and expenditures. In addition, at least once a year in the time and manner provided by law, the Borrower will cause budgets to be prepared and adopted. The audits and budgets of the Borrower may be presented as a component of the City. Copies of the budgets and the audits will be filed and recorded in the places, time, and manner provided by law.

Section 5.16. No Exclusion of Property. The Borrower shall take no action that could have the effect of excluding property from the Urban Renewal Project Area unless consented to by the Lender.

Section 5.17. Amendments to Financing Documents Require Prior Lender Consent. The Borrower shall not amend or consent to any amendment to any Financing Document, or waive any provision thereof, without the prior written consent of the Lender.

ARTICLE VI

DEPOSITS; INVESTMENTS

Section 6.01. Deposits Held Under This Agreement. Subject to Section 6.02 hereof, all moneys held in any of the funds or accounts to be held and administered by the Lender under this Agreement shall be held in depository accounts in the possession of Compass Bank or the Lender and satisfying the requirements of the Public Deposit Protection Act and shall not be

invested, but shall earn interest at the rate provided by Compass Bank or the Lender, as applicable, with respect to depository accounts.

Section 6.02. Investment of Reserve Fund and Supplemental Reserve Fund. Notwithstanding any provision contained herein, the Lender shall invest moneys on deposit in the Reserve Fund and the Supplemental Reserve Fund as directed in writing by the Borrower in Permitted Investments and may rely upon such direction as a determination that the investment described in such direction is a Permitted Investment.

Section 6.03. Compliance with Tax Covenants. Any and all interest income on moneys held and administered by the Lender under this Agreement shall be subject to full and complete compliance at all times with the covenants and provisions of Section 5.05 hereof.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. The occurrence of any one or more of the following events or the existence of any one or more of the following conditions shall constitute an Event of Default under this Agreement (whatever the reason for such event or condition and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, rule, regulation, or order of any court or any administrative or governmental body), and there shall be no default or Event of Default hereunder except as provided in this Section 7.01.

(a) The Borrower fails to pay the interest on the Loan when due pursuant to this Agreement;

(b) The Borrower fails to pay the principal or prepayment penalty on the Loan when due pursuant to this Agreement;

(c) The Borrower fails to deposit the Net Pledged Revenue as required herein or fails to transfer the Net Pledged Revenue to the Lender as required herein;

(d) The Borrower defaults in the performance or observance of any other of the covenants, agreements, or conditions on the part of the Borrower in this Agreement or the Note, and fails to remedy the same to the satisfaction of the Lender within 45 days after the occurrence thereof;

(e) The Borrower fails to replenish the Reserve Fund to the Reserve Requirement by the time required in Section 4.04(c) hereof;

(f) Any financial information, statement, certificate, representation or warranty given to the Lender by the Borrower in connection with entering into this Agreement or the other Financing Documents and/or any borrowing thereunder, or required to be furnished under the terms thereof, shall prove untrue or misleading in any material respect (as determined by the Lender in the exercise of its judgment) as of the time when given and shall not be duly corrected and communicated to the Lender within the first to occur of 30 days following (i) the Borrower becoming aware of such incorrect

information or (ii) the Lender's delivery of written notice to the Borrower of such incorrect information;

(g) Any final judgment, not subject to further appeals, shall be obtained against the Borrower in excess of the sum of \$10,000 and shall remain unsatisfied, unpaid, unvacated, unbonded or unstayed for a period of 30 days following the date of entry thereof;

(h) (i) the Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of its property, or the Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower any case, proceeding or other action of a nature referred to in clause (i) and the same shall remain undismissed for a period of 60 days from the date of commencement; or (iii) there shall be commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof; or (iv) the Borrower shall take action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(i) a change occurs in the financial or operating conditions of the Borrower, that, in the Lender's reasonable judgment, will have a materially adverse impact on the ability of the Borrower to generate revenues sufficient to satisfy the Borrower's obligations under this Agreement, or its other obligations, and the Borrower fails to cure such condition within 45 days after receipt by the Borrower of written notice thereof from the Lender;

(j) any funds or investments on deposit in, or otherwise to the credit of, any of the Loan Payment Fund, Supplemental Reserve Fund, Reserve Fund, or Transaction Costs Fund become subject to any writ, judgment, warrant or attachment, execution or similar process not attributable to actions of the Lender;

(k) Fitch or S&P shall have downgraded either of their ratings on the sales tax revenue obligations of the City to Baa1 or BBB+, respectively, or below;

(l) the City fails to appropriate moneys to pay when due any obligation subject to annual appropriation; or

(m) any determination, decision, or decree is made by the Commissioner or the District Director of the Internal Revenue Service, or by any court of competent jurisdiction, that the interest payable on the Loan is includable in the gross income for federal income tax purposes of the Lender by virtue of the occurrence of any event, including any change in the Constitution or laws of the United States of America or the State of Colorado, which results in interest payable on the Loan becoming includable in the gross income of the Lender pursuant to Section 103(b) of the Internal Revenue Code, and the rules and regulations promulgated thereunder if and so long as such determination, decision or decree is not being appealed or otherwise contested in good faith by the Borrower.

Section 7.02. Remedies on Occurrence of Event of Default.

(a) ***Lender's Rights and Remedies.*** Upon the occurrence and continuance of an Event of Default, the Lender shall have the following rights and remedies which may be pursued:

(i) ***Receivership.*** Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Lender hereunder, the Lender shall be entitled as a matter of right to the appointment of a receiver or receivers of the Pledged Revenue, and of the revenues, income, product, and profits thereof pending such proceedings, subject however, to constitutional limitations inherent in the sovereignty of the Borrower; but notwithstanding the appointment of any receiver or other custodian, the Lender shall be entitled to the possession and control of any cash, securities, or other instruments constituting Pledged Revenue at the time held by, or payable or deliverable under the provisions of this Loan Agreement to, the Lender.

(ii) ***Suit for Judgment.*** The Lender may proceed to protect and enforce its rights under this Loan Agreement and any provision of law by such suit, action, or special proceedings as the Lender shall deem appropriate.

(iii) ***Mandamus or Other Suit.*** The Lender may proceed by mandamus or any other suit, action, or proceeding at law or in equity, to enforce its rights hereunder.

(b) ***Judgment.*** No recovery of any judgment by the Lender shall in any manner or to any extent affect the lien of this Loan Agreement on the Pledged Revenue or any rights, powers, or remedies of the Lender hereunder, but such lien, rights, powers, and remedies of the Lender shall continue unimpaired as before.

(c) ***No Acceleration.*** Notwithstanding anything herein to the contrary, acceleration of the Loan shall not be an available remedy for an Event of Default.

Section 7.03. Notice to Lender of Default. Notwithstanding any cure period described above, the Borrower will immediately notify the Lender in writing when it obtains knowledge of the occurrence of any Default or Event of Default.

Section 7.04. Termination of Disbursements; Additional Lender Rights. Upon the occurrence of an Event of Default, the Lender may at any time (a) cease making any disbursements from the Supplemental Reserve Fund for the payment of costs of the Urban Renewal Project; and/or (b) take such other steps to protect or preserve the Lender's interest in the Pledged Revenue.

Section 7.05. Delay or Omission No Waiver. No delay or omission of the Lender to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient.

Section 7.06. No Waiver of One Default to Affect Another; All Remedies Cumulative. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon. All rights and remedies of the Lender provided herein shall be cumulative and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

Section 7.07. Other Remedies. Nothing in this Article VII is intended to restrict the Lender's rights under any of the Financing Documents or at law, and the Lender may exercise all such rights and remedies as and when they are available.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Loan Agreement and Relationship to Other Documents. The warranties, covenants and other obligations of the Borrower (and the rights and remedies of the Lender) that are outlined in this Agreement and the other Financing Documents are intended to supplement each other. In the event of any inconsistencies in any of the terms in the Financing Documents, all terms will be cumulative so as to give the Lender the most favorable rights set forth in the conflicting documents, except that if there is a direct conflict between any preprinted terms and specifically negotiated terms (whether included in an addendum or otherwise), the specifically negotiated terms will control.

Section 8.02. Successors; Assignment. Except where specifically stated as a right or obligation of the Lender only if the Lender is a BBVA/Compass Entity, the rights, options, powers and remedies granted in this Agreement and the other Financing Documents will extend to the Lender and to its successors and permitted Lender assignees, will be binding upon the Borrower and its successors and will be applicable hereto and to all renewals and/or extensions hereof. This Loan Agreement shall be assignable by the Lender to any entity without the consent of the Borrower, provided that the assignee (unless a BBVA/Compass Entity) shall provide an opinion of legal counsel to the effect that the assignee is legally authorized to perform the obligations of the Lender hereunder.

Section 8.03. Indemnification. Except for harm arising from the Lender's willful misconduct, gross negligence or bad faith, and without waiving governmental immunity, the Borrower, to the extent allowed by law, hereby indemnifies and agrees, to defend and hold the Lender harmless from any and all losses, costs, damages, claims and expenses of any kind suffered by or asserted against the Lender relating to claims by third parties as a result of, or arising out of, the negligence or other misconduct of the Borrower, or any claim made against the Borrower, in connection with the financing provided under the Financing Documents. To the extent permitted by law, this indemnification and hold harmless provision will survive the termination of the Financing Documents and the satisfaction of the Obligations due the Lender.

Section 8.04. Notice of Claims against Lender; Limitation of Certain Damages. In order to allow the Lender to mitigate any damages to the Borrower from the Lender's alleged breach of its duties under the Financing Documents or any other duty, if any, to the Borrower, the Borrower agree to give the Lender written notice no later than twenty (20) days after the Borrower knows of any claim or defense it has against the Lender, whether in tort or contract, relating to any action or inaction by the Lender under the Financing Documents, or the transactions related thereto, or of any defense to payment of the Obligations for any reason. The requirement of providing timely notice to the Lender represents the parties' agreed-to standard of performance regarding the duty of the Lender to mitigate damages related to claims against the Lender. Notwithstanding any claim that the Borrower may have against the Lender, and regardless of any notice the Borrower may have given the Lender, the Lender will not be liable to the Borrower for consequential and/or special damages arising therefrom, except those damages arising from the Lender's willful misconduct, gross negligence or bad faith. Failure by the Borrower to give notice to the Lender shall not waive any claims of the Borrower but such failure shall relieve the Lender of any duty to mitigate damages prior to receiving notice.

Section 8.05. Notices. Notice of any record shall be deemed delivered when the record has been (a) deposited in the United States Mail, postage pre-paid; (b) received by overnight delivery service; (c) received by telex; (d) received by telecopy; (e) received through the internet; or (f) when personally delivered at the following addresses:

If to the Borrower: Westminster Economic Development Authority
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Executive Director
Telephone: 303.658.2010

with copies to:

Westminster Economic Development Authority
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Marty McCullough, City Attorney
Telephone: 303.658.2234

Sherman & Howard

633 17th Street, Suite 3000
Denver, Colorado 80202
Attention: Dee Wisor
Telephone: (303) 299-8228

To Lender: Compass Mortgage Corporation
999 – 18th Street, Suite 2800
Denver, CO 80202
Attention: Matt Chorske
Telephone: (303) 217-2235

with a copy to: Kutak Rock LLP
1801 California Street, Suite 3100
Denver, CO 80202
Attn: Saranne Maxwell
Telephone: (303) 297-2400

Section 8.06. Payments. Payments due on the Loan shall be made in lawful money of the United States. All payments may be applied by the Lender to principal, interest and other amounts due under the Note and this Agreement in any order which the Lender elects, subject to the provisions of this Agreement.

Section 8.07. Applicable Law and Jurisdiction; Interpretation; Severability. This Agreement will be governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by Federal law. Invalidity of any provisions of this Agreement will not affect any other provision. **THE BORROWER AND THE LENDER HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED IN DENVER, COLORADO, AND WAIVE ANY OBJECTIONS BASED ON *FORUM NON CONVENIENS*, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS AGREEMENT, THE NOTE, OR THE PLEDGED REVENUE OR ANY TRANSACTIONS ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING.** Nothing in this Agreement will affect the Lender's rights to serve process in any manner permitted by law. This Agreement, the other Financing Documents and any amendments hereto (regardless of when executed) will be deemed effective and accepted only at the Lender's offices, and only upon the Lender's receipt of the executed originals thereof. Invalidity of any provision of this Agreement shall not affect the validity of any other provision.

Section 8.08. Copies; Entire Agreement; Modification. The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Financing Documents.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING, EXPRESSING CONSIDERATION AND SIGNED BY THE PARTIES ARE ENFORCEABLE. NO OTHER TERMS OR PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. THE TERMS OF THIS

AGREEMENT MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT. THIS NOTICE SHALL ALSO BE EFFECTIVE WITH RESPECT TO ALL OTHER CREDIT AGREEMENTS NOW IN EFFECT BETWEEN THE BORROWER AND THE LENDER. A MODIFICATION OF ANY OTHER CREDIT AGREEMENT NOW IN EFFECT BETWEEN THE BORROWER AND THE LENDER, WHICH OCCURS AFTER RECEIPT BY THE BORROWER OF THIS NOTICE, MAY BE MADE ONLY BY ANOTHER WRITTEN INSTRUMENT. ORAL OR IMPLIED MODIFICATIONS TO ANY SUCH CREDIT AGREEMENT ARE NOT ENFORCEABLE AND SHOULD NOT BE RELIED UPON.

Section 8.09. Waiver of Jury Trial. THE BORROWER AND THE LENDER HEREBY JOINTLY AND SEVERALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO ANY OF THE FINANCING DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. EACH OF THE BORROWER AND THE LENDER REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

Section 8.10. Attachments. All documents attached hereto, including any appendices, schedules, riders, and exhibits to this Agreement, are hereby expressly incorporated by reference.

Section 8.11. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Public Securities Act, if a member of the Board of the Borrower, or any officer or agent of the Borrower, acts in good faith in the performance of his duties as a member, officer, or agent of the Board or the Borrower and in no other capacity, no civil recourse shall be available against such member, officer or agent for payment of the principal of and interest on the Loan. Such recourse shall not be available either directly or indirectly through the Board of the Borrower, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the delivery of the Note evidencing the Loan and as a part of the consideration for such transfers, the Lender, and any person purchasing or accepting the transfer of the obligations representing the Loan specifically waives any such recourse.

Section 8.12. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, this Loan Agreement and the Note are entered into pursuant to certain provisions of the Supplemental Public Securities Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Note and the Loan Agreement after delivery for value.

Section 8.13. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Public Securities Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Note or the Loan Agreement shall be commenced more than 30 days after the authorization of the Note and the Loan Agreement.

Section 8.14. Pledge of Revenues; Limited Obligation. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Loan provided herein and therein shall be governed by Section 11-57-208 of the Supplemental Public Securities Act, this Agreement, the Note, and the Authorizing Resolution. The amounts pledged to the payment of the Note and the Loan Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have a first priority. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Borrower irrespective of whether such persons have notice of such liens.

The obligations of the Authority pursuant to this Agreement and the Note are special obligations payable solely from and secured only by a pledge of the Pledged Revenues and amounts held in the funds created pursuant to Section 4.01 hereof.

Section 8.15. Payment on Non-Business Days. Except as provided herein, whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the amount due.

Section 8.16. Termination. This Agreement shall terminate at such time as no amounts are due and owing to the Lender hereunder or under any of the other Financing Documents.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed this Loan Agreement as of the date set forth above.

LENDER

COMPASS MORTGAGE CORPORATION, an
Alabama corporation

By _____
Matthew J. Chorske, Vice President

BORROWER

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By _____
Chairperson, Board of Commissioners

[SEAL]

Attest:

By _____
Secretary, Board of Commissioners

[Signature Page to Loan Agreement]

EXHIBIT A
FORM OF NOTE

PROMISSORY NOTE

US \$ _____

August __, 2012

FOR VALUE RECEIVED, WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado (hereinafter referred to as "Maker"), promises to pay to the order of COMPASS MORTGAGE CORPORATION, an Alabama corporation, its successors and assigns (hereinafter referred to as "Payee"), at the office of Payee or its agent, designee, or assignee, or such place as Payee or its agent, designee, or assignee may from time to time designate in writing, the principal sum of _____ AND 00/100 DOLLARS (US \$ _____) pursuant to the terms of the Loan Agreement dated of even date herewith (the "Loan Agreement") by and between Maker and Payee, in lawful money of the United States of America. Unless and until otherwise designated in writing by Payee to Maker, all payments hereunder shall be made to Payee in accordance with the Loan Agreement.

Amounts received by Payee under this Promissory Note (this "Note") shall be applied in the manner provided by the Loan Agreement. This Note shall bear interest, be payable, mature and be enforceable pursuant to the terms and provisions of the Loan Agreement. All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed in the Loan Agreement.

This Note is governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by Federal law. Invalidity of any provisions of this Note will not affect any other provision.

Pursuant to Section 11-57-210 of the Colorado Revised Statutes, as amended, this Note is entered into pursuant to certain provisions of the Supplemental Public Securities Act, being Title 11, Article 57, of the Colorado Revised Statutes, as amended. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Note after delivery for value.

The obligations of the Authority pursuant to this Note are special obligations payable solely from and secured only by a pledge of the Pledged Revenues and amounts held in the funds created pursuant to Section 4.01 of the Loan Agreement.

THE PROVISIONS OF THIS NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY MAKER AND PAYEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MAKER AND PAYEE WITH RESPECT TO THE SUBJECT MATTER HEREOF.

IN WITNESS WHEREOF, an authorized representative of Westminster Economic Development Authority, as Maker, has executed this Promissory Note as of the day and year first above written.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By _____
Chairperson, Board of Commissioners

[SEAL]

Attest:

By _____
Secretary, Board of Commissioners

[Signature Page to Promissory Note]

EXHIBIT B

PRINCIPAL REPAYMENT SCHEDULE

[BELOW IS APPROXIMATE. TO BE FINALIZED UPON SETTING OF RATE]

Year	Principal Payment Due
12/1/2013	\$2,813,000
12/1/2014	2,912,000
12/1/2015	3,014,000
12/1/2016	3,119,000
12/1/2017	3,228,000
12/1/2018	3,341,000
12/1/2019	3,458,000
12/1/2020	3,579,000
12/1/2021	3,705,000
12/1/2022	3,834,000
12/1/2023	3,969,000
12/1/2024	4,107,000
12/1/2025	4,251,000
12/1/2026	4,400,000
12/1/2027	4,554,000
12/1/2028	4,716,000
Total	\$59,000,000

EXHIBIT C
URBAN RENEWAL AREA

EXHIBIT D

FORM OF ANNUAL DEBT SERVICE COVERAGE CERTIFICATE

The undersigned, on behalf of the Westminster Economic Development Authority (the "Authority"), as required by Section 4.05(g) of the Loan Agreement dated as of August 29, 2012 (the "Agreement," to which reference is made for the definition of capitalized terms not otherwise defined herein), by and between the Authority and Compass Mortgage Corporation (the "Lender"), hereby states and certifies as follows:

(a) The undersigned is a duly authorized representative of the Authority, and as such, is familiar with the facts herein and is authorized to certify the same.

(b) This certificate is delivered with respect to the Sales Tax Rate Period to commence March 1, 20__ and end February __, 20__. As a result the Estimated Debt Requirements set forth in the attached Schedule A are for the Fiscal Year ending December 31, 20__, amounts on deposit in the Revenue Fund, Reserve Fund, Supplemental Reserve Fund and Loan Payment Fund are as of December 31, 20__, and Actual Taxable Sales are for the Fiscal Year ended December 31, 20__.

(c) The Proposed Pledged Sales Tax Rate is ____, which amount is not less than the Minimum Pledged Sales Tax Rate indicated on Schedule A hereto.

(d) No Event of Default under the Loan Agreement has occurred and is now continuing.

(e) No amounts are now owed to the City under the City Cooperation Agreement.

Dated: _____

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By _____
Name _____
Title _____

The foregoing Annual Debt Service Coverage Certificate is hereby acknowledged and approved by Compass Mortgage Corporation on the date set forth below.

Dated _____

COMPASS MORTGAGE CORPORATION

By _____

Name _____

Title _____

SCHEDULE A TO ANNUAL DEBT SERVICE COVERAGE CERTIFICATE

ESTIMATED DEBT REQUIREMENTS	Amount	line
Principal		
Interest		
Total		(A)
Coverage Ratio	1.15	
Target Revenues (line A multiplied by 1.15)		(B)
PROJECTED AVAILABLE DEBT SERVICE REVENUES		
Projected Pledged Property Tax Revenues		
Urban Renewal Project Area Total Assessed Value		
Urban Renewal Project Area Base Assessed Value		
Urban Renewal Project Area Incremental Assessed Value		
Certified Tax Levies--Entities Covering Entire Urban Renewal Project Area (But Not "Excluded Mill Levies")		
Projected Property Taxes--Entities Covering Entire Urban Renewal Project Area (Tax Levies Applied to Urban Renewal Project Area Incremental Assessed Value)		(C)
144 th Avenue GID Total Assessed Value		
144 th Avenue GID Base Assessed Value		
144 th Avenue GID Incremental Assessed Value		
Certified Tax Levy--144 th Avenue GID		
Projected Property Taxes--144 th Avenue GID (Tax Levy Applied to 144 th Avenue Incremental Assessed Value)		(D)
Estimated County Collection Costs		(E)
Total (C plus D minus E)		(F)
Available Supplemental Reserve Moneys		
Amount in Revenue Fund		
Amount in Supplemental Reserve Fund and Loan Payment Fund		
Total		(G)
50% of Maximum Annual Debt Service Requirements		(H)
Available Supplemental Reserve Moneys (G less H)		(I)
Reserve Fund Replenishment		
Reserve Requirement		(J)
Amount in Reserve Fund		(K)
Replenishment Due (J minus K; if K is greater than J, enter \$0)		(L)
Supplemental Reserve Fund Replenishment		
50% of Maximum Annual Debt Service Requirements		(M)
Amount in Supplemental Reserve Fund, Loan Payment Fund and Revenue Fund (enter amount from line G)		(N)
Replenishment Due (M minus N; if N is greater than M, enter \$0)		(O)
Projected Available Debt Service Revenues (excluding sales tax) (F plus I, minus L, minus O)		(P)
Sales Tax Base Amount	\$0	(Q)
Sales Tax Revenues Required (B minus P plus Q)		(R)
Actual Taxable Sales		(S)
Resulting Sales Tax Percentage (R divided by S, multiplied by 100)		(T)
Minimum Pledged Sales Tax Rate (T rounded up to nearest 0.10%)		

EXHIBIT E
FORM OF REQUISITION FROM SUPPLEMENTAL RESERVE FUND

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
NORTH HURON URBAN RENEWAL PROJECT
SUPPLEMENTAL RESERVE FUND ACCOUNT: _____

To: Shane Miner
999 18th Street, #2800
Denver, CO 80202
Email: Shane.miner@compassbank.com

This requisition is made in accordance with Section 4.05(g) of the Loan Agreement, dated August 29, 2012, between the Westminster Economic Development Authority and Compass Mortgage Corporation. Terms defined in the Agreement and not otherwise defined herein shall have the same meaning when used herein.

The Westminster Economic Development Authority hereby states as follows:

1. This is Requisition No._____.
2. The amount requisitioned hereunder is \$_____.
3. The amount requisitioned hereby shall be transferred from the Supplemental Reserve Fund to the Project Fund and shall thereafter be transferred from the Project Fund to (indicate the person, firm or corporation to whom the amount requisitioned is due):
4. The manner of payment to the payee is to be mailed to:
5. The amount hereby requisitioned constitutes a cost of the Urban Renewal Project and is a proper charge against the aforementioned Supplemental Reserve Fund, and has not been the basis for any previous withdrawal.
6. No Event of Default has occurred and is continuing under the Loan Agreement.
7. The undersigned is an Authorized Representative of the Borrower authorized to submit this Requisition.

Dated: _____

By: _____

2012 COOPERATION AGREEMENT (NORTH HURON URA)
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS COOPERATION AGREEMENT (this “Agreement”), dated as of August 27, 2012, is made and entered into between the CITY OF WESTMINSTER, COLORADO (the “City”) and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the “Authority”).

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes (“C.R.S.”) (the “Urban Renewal Law”); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority North Huron Urban Renewal Plan (the “Plan”) and the urban renewal project described therein (the “Urban Renewal Project”); and

WHEREAS, the Urban Renewal Project has been undertaken for the public purpose of enhancing employment opportunities, eliminating existing conditions of blight, and improving the tax base of the City; and

WHEREAS, pursuant to Section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Urban Renewal Project and carrying out the Plan; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) Series 2005 in the original aggregate principal amount of \$68,300,000 (the “Prior Bonds”), for the purpose of financing the acquisition, construction and equipping of the Urban Renewal Project; and

WHEREAS, in order to refund the Prior Bonds, the Authority entered into a variable rate Loan Agreement (the “2009 Loan Agreement”) with Compass Mortgage Corporation (“Compass”) to obtain a loan in the principal amount of not to exceed \$62,375,000 (the “2009 Loan”); and

WHEREAS, the Authority has determined that it is in the best interest of the Authority to (i) refund the 2009 Loan Agreement to fix the interest rate; ; (ii) incur additional obligations to fund certain improvements of the Authority; and (iii) in connection with the refunding, pay a termination payment in order to terminate the Exchange Agreement (collectively, the “Project”); and

WHEREAS, the City Council of the City (the “Council”) has adopted its Resolution 12-24 (the “Replenishment Resolution”) declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Reserve Requirement, for the purpose of providing additional security for the payment of principal and interest on the Loan.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. LOAN. (a) If the Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

(b) The Authority acknowledges that the City Manager, City Staff and the City Attorney have provided and will continue to provide substantial administrative and legal services to the Authority in connection with the Plan, the Urban Renewal Project, the Loan and the Project. The Authority shall pay to the City, the City’s costs for services rendered to the Authority in connection with the Plan, the Urban Renewal Project, the Loan and the Project. The City shall provide written evidence of such costs to the Authority from time to time. To the extent that this annual debt is incurred, this obligation is hereby designated a loan from the City to the Authority to be repaid as provided herein.

(c) Any other amounts advanced or loaned to the Authority by the City or payments made or debts incurred by the City on behalf of the Authority relating to the Plan, the Urban Renewal Project, the Loan or the Project may be designated a loan from the City to the Authority to be repaid as provided herein.

2. PAYMENT. (a) All amounts payable by the Authority to the City hereunder shall constitute “Subordinate Debt” for purposes of the Loan Agreement. The Authority shall cause such amounts to be paid from and to the extent of Pledged Revenue (as defined in the Loan Agreement) available for the payment of Subordinate Debt in accordance with Section 4.02 of the Loan Agreement.

(b) The Authority agrees to pay the City interest in the amount of 5% on the principal balance of any amounts designated as a loan hereunder.

3. FURTHER COOPERATION. (a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Plan, the Urban Renewal Project, the Loan or the Project, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenue for deposit with Compass in accordance with the Loan Agreement. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenue.

(c) The City agrees to pay to the Authority any Pledged Property Tax Revenues and any Pledged Sales Tax Revenues (each as defined in the Loan Agreement) when, as and if received by the City, but which are due and owing to the Authority pursuant to the Urban Renewal Plan.

4. SUBORDINATION. The Authority's obligations pursuant to this Agreement are subordinate to the Authority's obligations for the repayment of any current or future bonded indebtedness. For purposes of this Agreement, the term "bonded indebtedness," "bonds" and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the Authority, 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 revenues of the Authority, and including the Loan.

5. ALLOCATION OF SALES TAX REVENUE. The City currently imposes a municipal sales tax at a rate of 3.85%, pertaining to, including without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services. Pursuant to the terms of the Urban Renewal Plan, the City and the Authority may provide for the method by which sales tax increments shall be allocated and paid to the Authority. The City and the Authority hereby agree that the incremental revenues derived from the City sales tax at a rate as specified any loan agreement, bond indenture, bond resolution or other agreement pursuant to which WEDA borrows money for the project, shall be allocated to the Authority. Pursuant to Section 31-25-107, C.R.S., the balance of the City's sales tax revenues shall be retained by the City.

6. GENERAL PROVISIONS. (a) Dispute Resolution. If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation prior to filing litigation.

(b) Separate Entities. Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations or liabilities of the other.

(c) Third Parties. Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, other than the Lender.

(d) Modifications. No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties with the prior written consent of the Lender and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(e) Entire Agreement. This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

(f) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(g) Assignment. This Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other and of the Lender.

(h) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

(i) The Prior Cooperation Agreements. This Agreement supersedes and replaces any and all prior cooperation agreements. Any amounts owing to the City by the Authority pursuant to such prior cooperation agreements shall be payable under the terms and conditions described in this Agreement and shall be payable on a subordinate basis to the payment due and owing under the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

CITY OF WESTMINSTER, COLORADO

By: _____
Chairperson

By: _____
Mayor

ATTEST:

ATTEST:

Secretary

City Clerk

Executive Director

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

By: _____
Authority Attorney

By: _____
City Attorney

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND THE CITY
OF WESTMINSTER REGARDING PUBLIC IMPROVEMENTS IN THE
NORTH HURON URBAN RENEWAL AREA**

This Intergovernmental Cooperation Agreement (the “Agreement”), dated as of August 27, 2012, by and between the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (“WEDA”), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and the CITY OF WESTMINSTER (the City”), a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado (collectively the “Parties”).

WITNESSETH;

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, WEDA is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes (“C.R.S.”) (the “Urban Renewal Law”); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority North Huron Urban Renewal Plan (the “Plan”) and the urban renewal project described therein (the “Urban Renewal Project”); and

WHEREAS, the Urban Renewal Project has been undertaken for the public purpose of enhancing employment opportunities, eliminating existing conditions of blight, and improving the tax base of the City; and

WHEREAS, pursuant to Section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with WEDA in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations or activities of WEDA, to enter into agreements with WEDA respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with WEDA in undertaking the Urban Renewal Project and carrying out the Plan; and

WHEREAS, pursuant to the Plan, WEDA is collecting tax increment revenues to accomplish the purposes of the Plan; and

WHEREAS, the City and WEDA have determined that it is in the best interest of the Authority and the City that the City construct various public improvements, including improvements to Orchard Parkway and 142nd Avenue, at an estimated cost of not to exceed \$7,000,000 (the “Project”); and

WHEREAS, in order to repay the City for the costs of the Project, WEDA has entered into a Loan Agreement (the “Loan Agreement”) with Compass Bank (“Compass”); in the amount of \$59,000,000, approximately \$6,500,000 of such amount shall be used to provide funding for a portion of the Project; and

WHEREAS, the remaining costs of the Project are expected to be advanced by the City to WEDA, and WEDA shall repay such advance through tax increment revenues as authorized by Section 31-25-107(9)(a)(II), Colorado Revised Statutes; and

WHEREAS, the Parties desire to enter into this intergovernmental cooperation agreement for the purpose of financing the Project and to provide for the repayment of amounts advanced by the City to WEDA.

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, the Parties hereby agree as follows:

1. Construction of the Project. The City agrees to construct the Project on behalf of WEDA subject to the following:

- (a) WEDA shall reimburse the City for all costs of the Project from approximately \$6,500,000 of proceeds of the Loan with Compass and the remaining amount of not to exceed \$500,000 shall be repaid by WEDA through tax increment revenue or other available revenue of WEDA;
- (b) Any amounts advanced by the City to WEDA for the Project shall not bear interest;
- (c) Any such advance shall be subordinate to the Loan Agreement and shall be repaid to the City at such times as revenues are available to WEDA.

2. Cooperation. The Parties covenant with each other that in any action or challenge of the Urban Renewal Plan or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

3. Effective Date; Term. This Agreement shall become effective as of the date set forth in the initial paragraph hereof. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the tax allocation provisions of the Urban Renewal Plan and the Act terminate.

4. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the

same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

5. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

6. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

7. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director

APPROVED AS TO LEGAL FORM:

Attorney for Authority

CITY OF WESTMINSTER

By: _____
Mayor

(SEAL)

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, August 27, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (August 13, 2012)
- 3. Purpose of Special WHA Meeting is to consider**
 - A. Inducement Resolution No. 49 re Declaration of Intent to Issue Multifamily Housing Revenue Activity Bonds for the Venue at the Plaza Project
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, AUGUST 13, 2012 AT 7:25 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter and Board Members Atchison, Briggs, Kaiser, Major and Lindsey. 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 Kaiser, to accept the minutes of the meeting of May 14, 2011 as written and distributed. The motion carried unanimously.

RESOLUTION NO. 47 REVISING THE AUTHORITY'S BY-LAWS

Board Member Atchison moved, seconded by Board Member Kaiser, to adopt Resolution No. 47 enacting 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. On roll call vote, the motion passed unanimously.

RESOLUTION NO. 48 TO ISSUE & SELL PAB FOR SALE OF WESTMINSTER COMMONS

Vice Chairperson Winter moved, seconded by Board Member Kaiser, to 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. On roll call vote the motion passed unanimously.

ADJOURNMENT

There being no further business to conduct, it was moved by Major, seconded by Kaiser, to adjourn. The motion carried and the meeting adjourned at 7:27 p.m.

Chairperson

ATTEST:

Administrative Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
August 27, 2012



SUBJECT: Inducement Resolution No. 49 re Declaration of Intent to Issue Multifamily Housing Revenue Activity Bonds for the Venue at the Plaza project

Prepared By: Signy Mikita, Community Development Program Planner

Recommended Board Action

Adopt Inducement Resolution No. 49 declaring the Westminster Housing Authority's intent to issue multifamily housing revenue activity bonds for the Venue at the Plaza project.

Summary Statement

- The Westminster Housing Authority approved a development agreement with Renaissance I LLLP on May 14, 2012 authorizing an assignment of Private Activity Bonds (PAB) funding capacity to the project.
- The project will require the issuance of up to \$6.0 million in PAB capacity to construct a mixed-use development that would include 48 low-income residential units and about 6,400 square feet of commercial space, located on the southwest corner of W. 73rd Avenue and Lowell Boulevard.
- The Westminster Housing Authority (WHA) accepted the assignment of the City of Westminster's 2012 PAB allocation in the amount of \$5,056,803 on May 14, 2012 for the Venue at the Plaza project. The WHA also has a remaining balance of about \$2.0 million from previous year allocations available that can be used to supplement the 2012 allocation to provide the requested \$6.0 million in PAB funding.
- The Colorado Department of Local Affairs (DOLA) requires that the Authority approve an inducement resolution declaring the Authority's intent to issue multifamily housing revenue activity bonds.
- The attached Resolution has been reviewed and approved by the Authority Attorney's Office and is ready for the Board of Commissioners' formal action.

Expenditure Required: Up to \$6,000,000

Source of Funds: PAB Allocation

Policy Issue

Should the Authority declare its intent to issue multifamily housing revenue bonds for the Venue at the Plaza project?

Alternative

Take no action, and refuse to declare this intent. This option is not recommended, as the State Department of Local Affairs instructs issuers to declare such intent when private activity bond capacity is accepted.

Background Information

A developer, Renaissance I, LLLP, is proposing to construct a mixed-use development that would include 48 low-income residential units and 6,400 square feet of commercial space, located in the southwest corner of W. 73rd Avenue and Lowell Boulevard.

The project is being developed as an affordable housing project that intends on using 4% Low Income Housing Tax Credits and an accompanying issuance of Private Activity Bonds. The project will require the issuance of up to \$6.0 million in PABs to help fully fund the project. Staff has evaluated the funding proposal and concurs with assessment that the PAB is essential to making the project financially viable. PABs are not obligations of the City or WHA.

On May 14, 2012, the Westminster City Council approved the assignment of the City's 2012 PAB allocation to the WHA in the amount of \$5,056,803. The WHA also has a remaining balance of about \$2.0 million from previous year allocations available that can be used to supplement the 2012 allocation to provide the requested \$6.0 million in PAB funding.

The State Department of Local Affairs has instructed WHA, the issuer, to declare its intent to issue multifamily housing revenue activity bonds by September 15, 2012.

Approval of the resolution 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;
- Develop business-oriented mixed use development;
- Retain and expand current businesses; and,
- Develop a reputation as a great place for small and/or local businesses.

Goal: Vibrant Neighborhoods and Commercial Areas

- Maintain and improve neighborhood infrastructure and housing;
- Develop Westminster as a cultural art community;
- Have a range of quality homes for all stages of life (type, price) throughout the City.

The project will remove declining buildings of which several are vacant. It will provide high quality, affordable residences in a variety of sizes, including live-work residences. There will be additional retail space to provide neighborhood services and create jobs, as well as community space, including a community theater. New residents will bring their spending power to the area, while new businesses will increase the diversity of shops and services in the area.

The project 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 will provide one more visual feature that will lead to further interest in investment and redevelopment activity in South Westminster.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment – Resolution

RESOLUTION

RESOLUTION NO. 49

INTRODUCED BY COMMISSIONERS

SERIES OF 2012

**A RESOLUTION
DECLARING THE INTENT OF THE WESTMINSTER HOUSING AUTHORITY
TO ISSUE MULTIFAMILY HOUSING REVENUE ACTIVITY BONDS FOR
THE VENUE AT THE PLAZA PROJECT**

WHEREAS, the Westminster Housing Authority (the “Authority”) is authorized and empowered pursuant to Part 2, Article 4, Title 29, Colorado Revised Statutes (the “Act”), as from time to time supplemented and amended, to issue revenue bonds for the purpose of providing dwelling accommodations for persons of low income; and

WHEREAS, the Authority expects to select a private entity (the “Borrower”) interested in constructing a mixed-use development that would include 48 low-income residential units and 6,400 square feet of commercial space, located in the southwest corner of W. 73rd Avenue and Lowell Blvd., Westminster (the “Project”), subject to the financing by the Authority of the Project by the issuance of its multifamily housing revenue bonds pursuant to the provisions of the Act and the Supplemental Public Securities Act, constituting Part 2, Article 57, Title 11 of Colorado Revised Statutes, as amended (the “Supplemental Act”); and

WHEREAS, the Project is within the boundaries of the Authority; and

WHEREAS, the Project will qualify as a “project” within the meaning of the Act; and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) has concluded that the Project is consistent with the goals and objectives of the Authority; and

WHEREAS, the Board desires to indicate its intent to proceed with the financing of the Project through the issuance of such multifamily housing revenue bonds.

NOW, THEREFORE, BE IT RESOLVED BY BOARD OF COMMISSIONERS OF WESTMINSTER HOUSING AUTHORITY:

1. In order to induce the Borrower to undertake the Project, the Authority shall, subject to the provisions hereof, take all necessary and advisable steps to effect the issuance of multifamily housing revenue bonds (the “Bonds”) in one or more series pursuant to the Act and Supplemental Act in the maximum aggregate principal amount not to exceed \$6,000,000, or such other amounts as shall be determined and agreed upon by the Borrower and the Authority to finance the Project. The Bonds shall never constitute the debt or indebtedness of the Authority, nor any multiple-fiscal year direct or indirect debt or other financial obligation of the Authority whatsoever, within the meaning of any provision or limitation of the Constitution or statutes of the State of Colorado, and shall not constitute nor give rise to a pecuniary liability or financial obligation of the Authority, nor shall the Bonds ever be deemed to be an obligation of any officer, agent or employee of the Authority in such person’s individual capacity, and no such person shall be subject to personal liability by reason of the issuance of the Bonds. The Bonds shall be special, limited obligations of the Authority and payable solely from and secured by a pledge of revenues derived from and payable by the Borrower pursuant to financing agreements with the Authority. No Board member, officer, official, employee or agent of the Authority shall be subject to any personal liability in connection with the Bonds or the provisions of this Resolution.

2. The Board hereby finds, determines, recites and declares the Authority's intent that this Resolution constitute an official indication of the present intention of the Authority to issue the Bonds as herein provided, subject to: (a) the delivery of an approving opinion of Bond Counsel to the Authority, (b) the Borrower obtaining sufficient debt and equity financing acceptable to the Authority, (c) the execution and delivery of indemnity agreements and payment or reimbursement of costs and expenses, all to the satisfaction of the Authority, and (d) the adoption of a final bond resolution by the Board. The Authority's discretion to accept or not to accept items relating to the Project or additional financing therefor or relating to credit, security, sale or marketing aspects of the Bonds is intended for the protection of the Authority's interest, and any such acceptance shall not be construed to impose upon the Authority any duties to, nor to confer any rights against the Authority upon, any bondholders, investors or other third parties.
3. Prior to any execution of any financing agreements, mortgages, indentures of trust, bond purchase agreements or any other necessary documents and agreements in connection with such Bonds, such documents and/or agreements shall be submitted for approval to the Authority, and, if satisfactory to the Authority, their execution shall be authorized by resolution of the Board pursuant to law.
4. All commitments of the Authority contained herein are subject to the condition that within 12 months of the date hereof, or such shorter period of time available under applicable law, unless otherwise extended by agreement between the Authority and the Borrower, the Bonds to be issued pursuant hereto shall be issued and sold. In the event that the Bonds to be issued pursuant hereto are not issued within 12 months, or such shorter period of time available under applicable law, the Authority shall be under no obligation to perform any of the terms and conditions contained herein.
5. All resolutions or parts thereof concerning the subject matter hereof in conflict with this Resolution are hereby repealed to the extent of such conflict. This repealer shall not be construed to revive any resolution or part thereof, heretofore repealed.
6. The agreements of the Authority set forth above are expressly conditioned upon the ability and willingness of the Authority to issue the Bonds as tax-exempt obligations under the Internal Revenue Code of 1986, as amended. Nothing contained in this Resolution shall be construed as requiring the Authority to issue the Bonds and the decision to issue the Bonds shall be in the complete discretion of the Authority.
7. If any section, paragraph, clause or provision of this Resolution, with the exception of any section, paragraph, clause or provision limiting the Authority's financial obligation, shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.
8. This Resolution shall take effect immediately upon its introduction and passage.

PASSED, ADOPTED AND APPROVED this August 27, 2012.

ATTEST:

Administrative Secretary

Chairperson

APPROVED AS TO LEGAL FORM

Attorney for the Authority