



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 Service Awards
 - B. National Preparedness Month 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. Employee Wellness Clinic Implementation
 - B. Kings Mill Park Expansion Construction Contract
 - C. 120th Avenue Underpass Project – Engineering Design Contract
 - D. City Park Recreation Center Hot Tub Filtering Equipment Replacement
 - E. Second Reading of Councillor's Bill No. 9 re Modify W.M.C. Title VIII re the Industrial Pretreatment Program
 - F. Second Reading of Councillor's Bill No. 31 re 2012 2nd Quarter Budget Supplemental Appropriation
 - G. Second Reading of Councillor's Bill No. 32 re Bonnie Stewart Open Space Acquisition Grant Appropriation
 - H. Second Reading of Councillor's Bill No. 33 re McKay Overlook Open Space Acquisition Grant Appropriation
 - I. Second Reading of Councillor's Bill No. 34 re Westminster Hills Elementary Site Open Space Grant Appropriation
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Public Hearing on the 2013/2014 City Budget
 - B. Councillor's Bill No. 35 re Site Agreement Extension re Use of the Fire Station 6 Cell Tower at 999 W. 124th Ave.
 - C. Councillor's Bill No. 36 re Housekeeping Amendments to Titles V, VI, VIII and IX of the W.M.C.
 - D. Councillor's Bill No. 37 re Amend W.M.C. Section 10-1-13(B) re Parking in Public Rights-of-Way
 - E. Resolution No. 25 re Nomination to Designate the Metzger Farm to the National Register of Historic Places
 - F. Resolution No. 26 re Refunding of the 2009 Loan Issued for the South Sheridan Urban Renewal Area
11. Old Business and Passage of Ordinances on Second Reading
 - A. Second Reading of 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 – Discuss strategy and progress on the sale, acquisition, trade or exchange of property or property rights for the Heritage Golf Course, pursuant to W.M.C. section 1-11-3 (C)(2), (7) and (8) and CRS 24-6-402 (4)(a) and (e)

13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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



WESTMINSTER
Strategic Plan
2012-2017
Goals and Objectives

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 Use 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



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



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 27, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Members of Boy Scout Pack 216 presented the colors and led the Council, Staff and audience in the Pledge of Allegiance. Afterwards they introduced themselves and advised what badge they were working toward. Mayor McNally welcomed them.

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 Major, to approve the minutes of the regular meeting of August 13, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that Monday, September 3, was Labor Day. City offices would be closed and there would be no City Council meeting that evening.

At the conclusion of this meeting, the Westminster Economic Development Authority (WEDA) Board of Directors would meet, followed by a meeting of the Westminster Housing Authority (WHA) Board of Directors. After adjournment, the Council would conduct a post-meeting in the Board Room to receive a presentation regarding the Economic Development Program. Then the Council would convene in Executive Session to consult with the City Attorney about the Ag Ditch Midway Reservoir Water Court Case No. 05CW114.

Mr. McFall announced that agenda item 8F on the consent agenda should have been listed on the agenda under section 11, Old Business and Passage of Ordinances on Second Reading, in accordance with Council's Rules and Procedures because passage of the ordinance on first reading had not been by unanimous vote. He apologized for the error on the agenda and recommended that Councillor's Bill No. 28 be pulled from the consent agenda and considered individually. He also recommended that Council consider amending the effective date in Section 3 of the ordinance to January 1, 2014, following receipt of several concerns from the development community about the impact that an immediate effective date would have on projects under current construction or in development review. Copies of Councillor's Bill 28 with the recommended amendment had been distributed to Council.

In conclusion, Mr. McFall was pleased to note that the Mayor soon would be proclaiming September 3 through 6 as City of Westminster Employee Appreciation Week. Events were planned on Tuesday, Wednesday, and Thursday. One of the most fun activities would be Wednesday morning at the City Park Recreation Center when the Executive Team would cook breakfast for employees. On Tuesday, employees would be treated to something special at the department and/or division level; and on Friday, employees would enjoy a barbecue lunch at Westfield Village Park.

EMPLOYEE APPRECIATION WEEK PROCLAMATION

Mayor McNally proclaimed September 3 through 6 to be 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. She presented the proclamation to members of the Employee Advisory Committee and the Employee Recognition Action Team. She also gave them two large gift boxes to be opened at the Wednesday breakfast and the contents given to the employees attending to have fun with.

CITIZEN COMMUNICATIONS

Michael Raber, 1662 Sinton Road in Evergreen, Tom Buckner, 803 East 98th Avenue in Thornton, and Tim McAndrew, 13585 West 84th Avenue, addressed Council to reiterate previous requests at recent meetings for funding in the 2013 City Budget to construct four-foot hard shoulders on 100th Avenue between Alkire and Simms or to stripe two-foot safety lanes on each side for cyclists and pedestrians. Striping the road would narrow the driving lanes, causing drivers to reduce speed. Either approach would improve safety, which was the basis of their request.

Steve Ormiston of the Home Builders Association of Metro Denver; Nancy Rezac, General Manager of Forest City's Orchard Town Center; Mike Hill of McWhinney; Rob Johnson of Century Communities; Jamie Fitzpatrick of Corum Real Estate Group; Craig Campbell of Standard Pacific Homes; Mike Byrne of 2391 Ranch Reserve; and Joe Talarico of 4000 West 103rd Avenue, addressed Council about the impact the proposed 40% increase in water and irrigation tap fees set forth in Councillor's Bill No. 28 would have on new development in the City. While they were appreciative of the recommended delay of the effective date to January 1, 2014, they urged further study of the need for the full 40% increase, noting that the industry was just starting to regain strength following the 2008 economic downturn. They enjoyed doing business in the community and hoped to be able to continue to do so, but feared a 40% increase could drive them out of the market.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the July Financial Report; based on the report and recommendation of the City Manager, determine that the public interest would 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 not to exceed \$115,000 to Harcros Chemicals; authorize the City Manager to execute a \$235,975 contract with Diamond Contracting, Inc, the lowest responsible bidder, for the construction of the 2012 Small Drainage Improvements Projects, and authorize a \$35,396 construction contingency yielding a total project budget of \$271,371; find that the public interest would be best served by authorizing the City Manager to execute a \$60,113 contract with Muller Engineering Company, Inc. 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 for potential additional services in the amount of \$6,011, bringing the total for the project to \$66,124; authorize the City Manager to sign an Intergovernmental Agreement with Jefferson County and the Cities of Arvada, Lakewood, Wheat Ridge and Golden regarding the utilization of Foothills Animal Shelter and the County-Wide Dog Licensing Program; final passage on second reading of Councillor's Bill No. 28 authorizing an increase to the water tap fee effective January 1, 2013; final passage of 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; and final passage of 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 in the agenda packet.

It was moved by Councillor Major and seconded by Councillor Lindsey to remove agenda items 8B and 8F for individual consideration and to approve the consent agenda, as modified. The motion carried.

2012 WATER TREATMENT CHEMICAL EXPENDITURES OVER \$50,000 (AGENDA ITEM 8B)

Councillor Major moved, seconded by Mayor Pro Tem Winter, to determine, based on the report and recommendation of the City Manager, that the public interest would 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 not to exceed \$115,000 to Harcros Chemicals. The motion passed by a 6:1 margin with Councillor Kaiser abstaining due to a potential conflict of interest.

COUNCILLOR’S BILL NO. 28 INCREASING WATER & IRRIGATION TAP FEES (AGENDA ITEM 8F)

It was moved by Councillor Major and seconded by Mayor Pro Tem Winter to amend Section 3 of Councillor’s Bill No. 28 to state that this ordinance shall take effect on January 1, 2014. On roll call vote, the motion carried by a 6:1 margin with Councillor Atchison voting no.

Council members appreciated the comments offered about this ordinance earlier in the meeting and stated the reasons why they would vote for or against passage of the ordinance as amended.

It was moved by Councillor Major and seconded by Mayor Pro Tem Winter to pass on second reading Councillor’s Bill No. 28 authorizing an increase to the water tap fee effective January 1, 2014. On roll call vote, the motion passed by a 6:1 margin with Councillor Atchison voting no.

COUNCILLOR’S BILL NO. 31 – 2012 BUDGET 2ND QUARTER SUPPLEMENTAL APPROPRIATION

It was moved by Councillor Major, seconded by Councillor Kaiser, to 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. The motion carried unanimously on roll call vote.

COUNCILLOR’S BILL NO. 32 – OPEN SPACE GRANT SUPPLEMENTAL APPROPRIATION

Councillor Briggs moved to pass Councillor’s Bill No. 32 on first reading appropriating \$200,000 received from the Jefferson County Open Space Local Park and Recreation Grant Program for the Bonnie Stewart open space acquisition. Councillor Kaiser seconded the motion, and it passed unanimously on roll call vote.

COUNCILLOR’S BILL NO. 33 – OPEN SPACE GRANT SUPPLEMENTAL APPROPRIATION

Upon a motion by Mayor Pro Tem Winter, seconded by Councillor Kaiser, the Council voted unanimously on roll call vote to pass Councillor’s Bill No. 33 on first reading appropriating \$448,700 received from Adams County for the McKay Overlook open space acquisition.

COUNCILLOR’S BILL NO. 34 – OPEN SPACE GRANT SUPPLEMENTAL APPROPRIATION

It was moved by Councillor Major, seconded by Councillor Kaiser, to pass Councillor’s Bill No. 34 on first reading appropriating \$408,564 received from Adams County for the Westminster Hills Elementary School site open space acquisition. The motion carried unanimously on roll call vote.

RESOLUTION NO. 23 - W 100TH AVE/ALKIRE ST PROPERTY ANNEXATION COMPLIANCE HEARING

Councillor Lindsey moved, seconded by Councillor Kaiser, to adopt Resolution No. 23 accepting the annexation petition submitted by the City of Westminster for the West 100th Avenue and Alkire Street property, making the findings required by State Statute on the sufficiency of the petition, and setting October 8, 2012, as the date for the annexation hearing. The motion passed unanimously on roll call vote.

RESOLUTION NO. 24 – REFUNDING 2009 LOAN ISSUED FOR NORTH HURON URA

It was moved by Councillor Briggs and seconded by Councillor Major to adopt Resolution No. 24 approving documents related to the Westminster Economic Development Authority (WEDA) 2012 Loan Refunding to refund the WEDA 2009 Loan, to which the City was a party, including the Replenishment Resolution, the City Cooperation Agreement with WEDA, and an Intergovernmental Agreement with WEDA. At roll call, the motion passed unanimously.

COUNCILLOR’S BILL NO. 26 REMOVED FROM THE TABLE

It was moved by Councillor Major and seconded by Councillor Kaiser to remove Councillor’s Bill No. 26 from the table. The motion passed unanimously.

COUNCILLOR’S BILL NO. 26 REVISING TITLE XI W.M.C. REGARDING ACCESSORY BUILDINGS

Mayor Pro Tem Winter moved to pass Councillor’s Bill No. 26 as amended on first reading making revisions to Title XI of the Westminster Municipal Code regarding accessory buildings. The motion was seconded by Councillor Kaiser and passed by a 4:3 margin with Mayor McNally and Councillors Briggs and Major voting no for reasons stated.

ADJOURNMENT

There being no further business to come before the City Council, the Mayor adjourned the meeting at 8:03 p.m.

Mayor

ATTEST:

City Clerk



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, General Service Director
Dee Martin, Workforce Planning & Compensation Manager

Recommended City Council Action

Mayor Pro Tem Faith Winter will present service pins and certificates of appreciation to employees celebrating 20 years of service with the City, Mayor McNally will present 25 year awards and Councillor Major will present 35 year awards.

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In the fifth grouping of 2012, employees with 20, 25, and 35 years of service will be celebrated tonight.
 - Presentation of 20-year certificates and pins – Mayor Pro Tem Faith Winter
 - Presentation of 25-year certificates, pins and checks - Mayor Nancy McNally
 - Presentation of 35-year certificates and pins – Councillor Scott Major

Expenditure Required: \$5,000

Source of Funds: General Fund – Fire Department Operating Budget

Policy Issue

None identified

Alternative

None identified

Background Information

The following 20-year employees will be presented with a certificate and service pin:

Jackie Bowers	Administrative Secretary	Public Works & Utilities
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The following 25-year employees will be presented with a check, certificate and service pin:

Harrison Davis III	EMS Field Coordinator	Fire
J.C. Engdahl	Fire Engineer	Fire

The following 35-year employees will be presented with a certificate and service pin:

Bill Morgan	Equipment Operator I	Public Works & Utilities
Mike Normandin	Senior Engineer	Community Development

On September 12, 2012, the City Manager will host an employee awards luncheon. During that time, 6 employees will receive their 15-year service pin, 4 employees will receive their 10-year service pin, and 9 employees will receive their 5-year service pin. Recognition will also be given to those celebrating their 20th, 25th, and 35th anniversaries. This is the fifth luncheon in 2012 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the fifth luncheon is 290 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens.

The recognition of employees' years of service addresses Council's Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services as part of the overall recognition program developed to encourage and recognize employee commitment to the organization. Recognition efforts have long been recognized as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their most valuable resource – employees.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 6 B

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Proclamation re National Preparedness Month

Prepared By: Mike Reddy, Emergency Management Coordinator

Recommended City Council Action

Councillor Atchison to present the proclamation designating September as National Preparedness Month.

Summary Statement

- Annually, the President of the United States proclaims the month of September as National Preparedness Month. This designation always occurs in September in recognition of the terrorism incidents that occurred on September 11, 2001.
- During September and throughout the year, the City of Westminster promotes the Ready Colorado state program and the Ready.gov federal initiatives as a coordinated effort to encourage citizens to be better prepared for disasters and emergencies. The Westminster Fire Department promotes the campaign with emphasis on the City's website, and providing presentations at community events.
- Emergency Management Coordinator Mike Reddy will be present to accept the Proclamation on behalf of the Fire Department.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does City Council wish to designate the month of September as National Preparedness Month?

Alternative

City Council could decide not to proclaim September 2012 as National Preparedness Month in Westminster nor use the national theme as proposed. Staff does not recommend this as designating the entire month as National Preparedness Month allows for greater emphasis on the importance of preparedness and planning. Additionally, tying into the national theme provides greater visibility and continuity in educating the public.

Background Information

National Preparedness Month was established to commemorate the tragic events of September 11, 2001 (9/11) that resulted in almost 3,000 immediate deaths with thousands more injured. In 2004, President George W. Bush issued the first National Preparedness Month proclamation, and since 2004, National Preparedness Month has been observed in September.

During National Preparedness Month the City of Westminster will promote preparedness by encouraging citizens and business to follow the recommendations of the Ready.gov programs by:

- Being informed about what to do before, during and after an emergency
- Making a plan to protect yourself and your family
- Building a kit for disaster to be prepared at home, at work and in our vehicles
- Getting involved in preparing our community by volunteering with community organizations that assist in disasters

The City of Westminster wants to encourage citizens and businesses to take steps now to be prepared for disasters and emergencies. The best way to start is to ask ourselves the questions: Is my family, business, school and community prepared for the types of emergencies and disasters that could strike Westminster?

This proclamation and the public education efforts by the City of Westminster Fire Department support the City of Westminster strategic plan under the guiding principle of a Safe and Secure Community. The means to achieve this principle is having citizens perceive that they are safe and taking personal responsibility for community safety.

Respectfully submitted,

Brent McFall,
City Manager

Attachment - Proclamation

WHEREAS, National Preparedness Month is a nationwide coordinated effort sponsored by the U.S. Department of Homeland Security each September to encourage Americans to prepare for emergencies in their homes, businesses, and schools; and,

WHEREAS, this national effort aims to increase public awareness concerning the importance of preparing for emergencies and to persuade individuals to take action; and,

WHEREAS, during the month of September, the City of Westminster will urge residents to take measures to make themselves and their families better prepared for emergencies; and,

WHEREAS, being prepared includes creating an emergency supply kit containing items that will allow you and your family to survive for at least three days in the event of an emergency, developing a plan that addresses sheltering in place or evacuating the area, staying informed about different threats that could affect your community, and getting involved by training in first aid and emergency response; and,

WHEREAS, throughout the year, the City promotes emergency preparedness by maintaining a City of Westminster Emergency Plan and Management System, providing ongoing preparedness training and exercises for City Staff, providing public education to the community and maintaining emergency management information on the City's web site.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim the month of September as

NATIONAL PREPAREDNESS MONTH

in the City of Westminster, and urge all citizens to heed the important safety messages of National Preparedness Month 2012 and to support the many public safety activities and efforts of the City of Westminster, the State of Colorado and the federal government.

Signed this 10th day of September, 2012.

Nancy McNally, Mayor



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Employee Wellness Clinic Implementation

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

Recommended City Council Action

Authorize the City Manager to enter into a contract with CareHere Management, LLC for the start up and operation of the Employee Wellness Clinic, for a two year period with the option for one, two year renewal of the contract.

Summary Statement

- Staff submitted a Request for Proposal (RFP) for clinic vendor services for the Employee Wellness Clinic. Four vendors submitted responses and Staff recommends the City enter into a contract with CareHere Management LLC (CareHere) to complete the Clinic services as outlined in Attachment 1 of this report. The Clinic is a practical and proactive strategy to mitigate healthcare costs and risk in the self-insured medical plan. Clinic models project up to a 50% healthcare cost trend reduction. Additional expenditure savings are anticipated from direct provision of various medical services through the clinic.
- The fund balance in the Medical/Dental Fund is sufficient to cover the initial expense of start up and first year operating costs for the clinic leaving a very healthy self insured fund reserve of \$4.0 million dollars. This reserve is in place to cover higher than anticipated health care costs in future years.
- Staff anticipates the clinic being open January 2, 2013. Council will find greater detail on the implementation of the clinic and vendor selection process used to identify CareHere as the best vendor for the clinic in the August 20, 2012 Staff Report. The February 13, 2012 Staff Report provides Council background information on the significant benefits of the City pursuing the creation of a Wellness Clinic.

Expenditure Required: \$630,000 (first year operation and start up costs)

Source of Funds: Medical/Dental Fund

Policy Issue

Should City Council award CareHere Management, LLC a contract for the Wellness Clinic operation?

Alternatives

1. Consider other clinic vendors to contract with for the Employee Wellness Clinic.
2. Continue with the existing preventative efforts through current strategies including plan design evaluation and marketing, City Wellness Program efforts, and employee communication encouraging consumerism and personal accountability.
3. Reduce the level of coverage provided in the healthcare plans, thereby reducing the overall cost of the City medical/dental benefit budget.

These alternatives are not recommended over awarding CareHere the contract for the Employee Wellness Clinic. Staff believes CareHere is the best choice for the Wellness Clinic vendor and the other options have limited or no impact on cost containment efforts. The Wellness Clinic will maintain a proactive cost containment approach, reducing overall healthcare cost increase trends for long-term cost impact.

Background Information

On February 13, 2012, Staff presented a proposal to City Council to authorize the development of an Employee Wellness Clinic and authorize the City Manager to contract with a vendor to operate an Employee Wellness Clinic. City Council directed staff to pursue a Request for Proposal for clinic vendors and the investigation of clinic sites. City Council has prioritized healthcare cost containment efforts as part of the City's Strategic Plan. Staff has taken a multi-faceted strategic approach to ensure the City's ability to provide sustainable healthcare to employees. An Employee Wellness Clinic will help to mitigate healthcare cost trends and further enhance the organization's proactive approach to healthcare management.

On August 20, 2012, Staff presented to City Council the details of the Request for Proposal process to select a vendor to provide Employee Wellness Clinic Services. After an extensive vendor selection process, staff discussed with City Council moving forward with contracting CareHere Management, LLC to provide the clinic services.

Four independent health clinic vendors submitted a response to the City's request for proposals. Staff, along with three individuals from the City's benefits broker, Hays Companies of Denver, narrowed the group down to three vendors for further consideration. A City-wide panel of twelve employees participated in extensive interviews with the three remaining vendors. After the employee panel interviews, two vendors – HealthStat and CareHere - were selected for final review. Final interviews and follow up conversations with the two remaining vendors were conducted the week of July 9. Detailed comparison data for CareHere and HealthStat is available in the August 20, 2012 Staff Report to Council.

Vendor Selection Process

After an extensive review and selection process, a final recommendation was made for CareHere as the vendor for the Employee Wellness Clinic. CareHere and HealthStat both provided exceptional vendor services and each offered a slightly different approach. CareHere is being recommended over HealthStat for the following key reasons:

- CareHere has a more comprehensive and integrated approach to wellness and cost containment strategies. The City's wellness program and efforts at health care cost containment is far ahead of most organizations. Staff feels that CareHere offers a model that is a better fit with current tactics and will provide extensive resources and support to further enhance our efforts. Their approach, along with the City's existing structure and efforts, will ultimately help us expand on our success with cost containment. The City is in a unique position to capitalize on clinic savings opportunities because of the comprehensive wellness program and culture we have established over many years. The City would be able to incorporate the medically based evaluations at the clinic with a purposeful laser-like approach in Wellness Program efforts.
- CareHere offers a comprehensive list of 185 disease management and wellness educational programs and support, whereas HealthStat offers only a handful of basic disease management and wellness educational programs and support. HealthStat will offer more disease management and educational programs at an additional cost.
- CareHere offers a 26 panel blood lipid screen (same as what is currently provided to employees through our wellness program) whereas HealthStat's panel is a very basic panel of 7 blood lipid screens.
- CareHere is very willing to work with our existing program and staff to customize based on our needs and existing wellness program. HealthStat's program is more of an "out of the box" program and they were less willing to consider how they might adapt their program to meet our needs.
- Comparative data will show initial start-up costs being slightly greater with CareHere compared with HealthStat and savings being about the same. Operating costs are less with CareHere compared to HealthStat and include more services. It is also important to point out that HealthStat has several add on charges for additional wellness programs and customization, whereas customization and add on charges are included in the fee structure with CareHere.

Clinic Site

The site selected for the Wellness Clinic is the area previously known as the Rapids Training Facility, located on the Northwest side of City Park Fitness Center. The City is fortunate to be in the position to utilize a City owned facility which will provide a separate and private entrance from the recreation area. Staff was able to obtain this prime location through a cooperative effort between several departments and divisions including Information Technology Department, Parks, Recreation and Libraries Department and Building Operations and Maintenance Division. Several components of these operations are being relocated to accommodate the clinic build out. The estimated cost of facility improvements and relocation of current functions located in this space is \$230,000.

The facility will house two exam rooms, a blood work-up lab, offices, restrooms, storage space, a locked area for prescription drugs, and a conference/training room space. The employees of the clinic will be employed by CareHere, ensuring confidentiality of patient information. City Staff will work with clinic staff and consolidated health trend data to target specific employee health needs through the Wellness Program.

Alongside the clinic area is a physical therapist, which Staff would like to collaborate with to address the City's musculoskeletal injuries and large amount of physical therapy claims. Physical therapy is a significant expense in our claims and Staff hopes to work with the physical therapist to address this concern at a much lower cost. The clinicians and wellness staff will also utilize recreation center and program resources by referring employees and their dependents to existing City programs and facilities.

Employee Wellness Clinic Structure

Staff will utilize the Clinic as a practical and proactive strategy to mitigate healthcare costs and risk in the self-insured medical plan. Six key objectives are:

1. To reduce healthcare cost trend by 50%
2. To provide an opportunity for employees and dependents to address ongoing chronic health conditions
3. To enhance wellness efforts to support proactive healthcare management
4. To continue to enhance our culture of health and well-being emphasizing personal accountability
5. To establish a more effective way for employees to share health information with health care providers
6. To consolidate and integrate all participant information into City claims data to be analyzed and used for maximum benefit

Specific approaches that will be utilized to drive the key objectives are:

- Develop incentives that hold all participants accountable for pro-active health care
- Develop wellness participant requirements that encourage dependent involvement
- Continue to require a health risk assessment and blood lipid profile
- Require an initial consultation with the clinician at the clinic
- Develop individual action plans with minimum requirements

Clinic services will include but are not limited to:

- Routine exams, screenings and immunizations
- Acute care including ear infections, cold, flu, muscle strain, respiratory infections, strep, laceration repair
- Limited free prescriptions
- Chronic care maintenance follow-up
- Individualized plans to reduce risk factors
- School/sports/camp physicals

The clinic will be used to encourage health consumer accountability and responsibility and programs will focus on identified key areas. Coaching and Counseling, Educational Classes, and Support Groups are all vehicles to address some of the following known employee health concerns and risk factors: Weight Management; Nutrition; Chronic Disease Management (i.e., Diabetes, Blood Pressure, Cancer); Fitness; Medication Compliance; Musculoskeletal Disorders; Physical Therapy; Alternative/Holistic Medicine; and Mental Health.

CareHere will assign a Director of Clinic Operations (DCO) to work alongside Staff for clinic implementation and to oversee the day-to-day clinic operations. The DCO is the main point of contact regarding all clinic operations and will work closely with City Staff to make sure our needs and expectations are met. A clinic implementation timeline submitted by CareHere is available in the August 20, 2012 Staff Report.

CareHere is recommending that the clinic be staffed by a Physician's Assistant three days a week and a Physician one day a week for a total of 32 hours per week to start. The DCO, along with the clinicians, will be carefully monitoring the use of the clinic and will make recommended adjustments to the days and hours of operation based on how the clinic is utilized once it opens.

Participation in the Wellness Program and corresponding clinic services are on a voluntary basis. All employees who are enrolled in CIGNA, along with their dependents, will be eligible to participate in the general clinic services at no charge. One important decision point was whether to allow employees in the Kaiser fully funded medical plan to utilize the clinic. Staff recommends that employees on Kaiser, in addition to employees who have opted out of medical insurance coverage provided by the City, will be eligible to utilize the clinic for certain limited preventative wellness services including the HRA and blood lipid profile. Kaiser general medical care would continue to be offered through the Kaiser clinics.

All employees will have the option of selecting the CIGNA/City Clinic option at open enrollment in October and November of this year. This two platform approach supports the key objective to contain healthcare costs and avoid future trend increases in claims. Adding the clinic general services to employees' medical coverage in Kaiser or for those who opt-out of healthcare would be counterproductive to the cost containment objective by increasing the benefit and ongoing cost without a comparable reduction in medical premium expense. Projections for cost avoidance in the self insured CIGNA plan estimated by clinic vendors provides a return on investment by the third year of operation. If additional expenses were incurred for Kaiser employees, the City would not see the same return on investment. On-Site Clinic Costing Analysis – 5 Year ROI Projection data is provided in the August 20, 2012 Staff Report.

In 2011, approximately \$22,000 of the wellness budget funded the annual blood lipid panels for employees. These funds will now be used to pay for the additional cost of the HRA and blood lipid panels for spouses of employees receiving a wellness program premium discount. Staff is working to reduce the average cost for their individual coverage by including them in the wellness program.

The health conscious culture of this organization is one that has benefited the employees, the City, and ultimately the taxpayers. The Benefits and Wellness Programs are highly visible and appreciated organizational efforts that directly impact our ability to meet our Strategic Goal of being a Financially Sustainable City Government Providing Exceptional Services by maintaining and enhancing employee morale, productivity and through health care cost containment. The Employee Wellness Clinic provides an opportunity to meet this goal by protecting and enhancing a valuable component of the City's comprehensive compensation package in a fiscally responsible manner. It positions the City as an employer of choice for current and future employees.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - CareHere Contract

**CareHere, LLC and City of Westminster
EMPLOYEE WELLNESS CLINIC AGREEMENT**

This AGREEMENT made this _____ day of _____, 2012, by and between the CITY OF WESTMINSTER, a municipal corporation of the State of Colorado (“City”) and CAREHERE MANAGEMENT, LLC, a limited liability corporation organized pursuant to the laws of the State of Tennessee (the “Clinic Operator”).

WHEREAS, the City wishes to provide an on-site wellness clinic to serve its employees; and

WHEREAS, the City desires to engage the Clinic Operator to render the professional wellness clinic services described in this Agreement; and the Clinic Operator is qualified and willing to perform such services pursuant to the terms and conditions of this Agreement, including any attachments, appendices, exhibits and addendums that may be incorporated into and made a part thereof, and

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

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

In consideration of the payments hereinafter provided for, the keeping and performance of the covenants and agreements by the Clinic Operator hereinafter set forth, the City hereby grants to Clinic Operator the right to operate an employee wellness clinic at a location to be determined (the “Wellness Clinic”). The Clinic Operator has reviewed the equipment and other materials relating to the Wellness Clinic, has had access to and has negotiated with various City officials and accepts the terms and conditions of this Agreement.

1. Definitions.

The following terms, as used in this Agreement, are defined as follows:

- (a) “City” means the City of Westminster, Colorado.
- (b) “Clinic Operator” means the entity shown above to which the City has granted the right to occupy and operate the Wellness Clinic, subject to the terms and conditions herein. This term also includes the agents, employees, or assignees of said Clinic Operator.
- (c) “Director” means General Services Director of the City of Westminster.
- (d) “Director of Clinic Operations” or “DCO” means the individual employed by CareHere to perform the duties and responsibilities as outlined in in the applicable sections of **Appendix B**.
- (e) “Manager” means the Employee Development and Benefits Manager of the City of Westminster or her appointee.
- (f) “Medical Services” means the duties of Clinic Operator contemplated under this Agreement.

(g) “Medical Staff” means those medical professionals staffing the Wellness Clinic, as set out in detail in Section 11(a) herein.

(h) “Wellness Clinic” means the location selected at 10475 Sheridan Boulevard, Westminster, Colorado, paid for, furnished and equipped by the City, as further described herein, where the Clinic Operator shall administer a health clinic by providing the staffing, medical supplies and prescription drugs needed to open and maintain the clinic, as further described herein. Insert the Address.

(i) Unless otherwise noted, all terms and descriptions within this document are deemed to refer to generally accepted and understood nomenclature and terminology within the health care industry.

2. PURPOSE.

(a) It is the intent of this Agreement to provide for the complete administration of an employee wellness clinic by this Agreement, with only such exceptions and limitations as may be specifically noted herein.

(b) In interpreting this Agreement, words describing materials or work that have a well-known technical or professional meaning, unless otherwise specifically defined, shall be construed in accordance with such well-known meaning recognized by the health care profession.

3. TERM OF AGREEMENT: RENEWAL OPTION.

(a) Subject to annual appropriations by the City, the term of this Agreement shall be two (2) years from the effective date first written above. The Agreement may be renewed for a subsequent two (2) year term, each year of which term would be subject to annual appropriations by the City.

(b) The City shall give written notice to Clinic Operator on or before October 1, 2014, of its intent to renew this Agreement for the subsequent two (2) year term (the “Renewal Period”) or of its intent to allow this Agreement to terminate on December 31, 2014. The Clinic Operator shall give 6 months written notice to the City of its renewal period terms and conditions including fees and expenses. Termination of the initial term will occur on December 31, 2014, and the Renewal Period will begin on January 1, 2015, provided that the parties reach agreement as provided below.

(c) The Renewal Period shall be subject to the discretion of the City and the City’s determination of satisfactory performance by Clinic Operator of the terms and conditions of this Agreement, as well as mutual agreement between the parties regarding the compensation to be paid during the Renewal Period. Final negotiations on the Renewal Period, resulting in a final written agreement for the Renewal Period, shall occur on or before October 1, 2014, or as mutually agreed to by both parties.

(i) At any time, the City shall have the right to request proposals for a new Clinic Operator for service beginning on January 1, 2014, unless this Agreement is terminated earlier. The City shall notify the Operator immediately in writing whenever a request for proposals has been issued.

(ii) Clinic Operator agrees to cap increases in the costs for the Renewal Period pursuant to Paragraph 15 of this Agreement provided the scope of work remains consistent with the expectations originally established by the City in the Request for Proposal.

4. SCOPE OF WORK.

(a) The scope of services to be performed under this Agreement is as described in **Appendix A**, attached hereto and incorporated herein (the “Scope of Work”), under such standards of operation as will meet the City’s goals. In addition, the Clinic Operator shall comply with all guidelines and standards that are contained in **Appendix B**, attached hereto and incorporated herein (the “Health Clinic Quality Improvement Program”).

(b) The privilege granted by this Agreement shall be an exclusive right to provide personnel, management, supervision of personnel and supplies necessary to run an efficient and effective health care clinic. However, the City reserves the right to conduct or operate other activities at the Wellness Clinic that do not compete with the Clinic Operator’s use of the Wellness Clinic. Any rights not specifically granted to the Clinic Operator herein are retained by the City.

5. USE OF WELLNESS CLINIC.

(a) Clinic Operator shall have the right to possession of the Wellness Clinic only for the purposes set forth in this Agreement and the Scope of Services (**Appendix A**) and subject to the Health Clinic Quality Improvement Program (**Appendix B**). Clinic Operator shall not use or permit the use of the Wellness Clinic for any purpose that is prohibited by any law or regulation of the State of Colorado or the City of Westminster.

(b) Clinic Operator shall have the right to secure the Clinic Operator and its supplies contained therein by installation and use of a security system approved by the City.

(c) City hereby grants Clinic Operator a non-exclusive and limited license to use of the City’s logos, copyrights, trademarks for use on t-shirts and uniforms worn by employees of the Clinic Operator and for any other reasonable use in connection with operation of the Wellness Clinic. The use of such logos, copyrights, trademarks and trade names will be in proper manner including use of any design or symbol as may be required by the City. The City retains the right to review and approve any and all uses of City logos, copyrights, trademarks, and trade names used by Clinic Operator in connection with the operation of the Wellness Clinic. Clinic Operator warrants that any use of logos, copyrights and trademarks, and used in connection with operation of the Wellness Clinic will be done without violation of any rights therein.

6. RESTRICTIONS ON USE OF WELLNESS CLINIC.

Clinic Operator shall not:

(a) Permit any unlawful practice to be carried on or committed in the Wellness Clinic;

(b) Make any use or allow the Wellness Clinic to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by the City; including storage or use or permitting to be kept or used in the Wellness Clinic any flammable fluids, toxic

materials, or substances of any nature reasonably deemed dangerous by the City or the City's insurance carriers without obtaining prior written consent of the City;

(c) Operate the Wellness Clinic in violation of any local, state, or federal law;

(d) Use any portion of the Wellness Clinic for purposes other than as is necessary and required for the use specified in this Agreement;

(e) Permit tobacco products to be used by any person in, on, or at the Wellness Clinic, which location will be designated in whole as "smoke free" by the City.

7. IMPROVEMENTS.

The City retains the right to modify or alter the Wellness Clinic at any time and in any manner with forty-five (45) days written notice to the Clinic Operator. Clinic Operator shall make no improvements or alterations to the Wellness Clinic without prior written approval by the City; provided however, that Clinic Operator may make corrections necessary to prevent imminent injury to persons or property.

8. MAINTENANCE.

All maintenance and repairs to the Wellness Clinic including plumbing, water lines, sewer lines and City-owned equipment shall be the responsibility of the City; provided, however, that any maintenance and repairs, regardless of cost, necessitated by the gross negligence or intentional acts of the Clinic Operator shall be the sole responsibility of the Clinic Operator. Clinic Operator and the City shall together conduct a thorough examination of the Wellness Clinic location to identify and agree upon any maintenance or repairs that need to be conducted prior to Clinic Operator taking possession of the Wellness Clinic. During the term of this Agreement, and any Renewal Period, the Clinic Operator agrees that, if requested in writing by the City forty-five (45) days in advance of the scheduled closing, the Wellness Clinic may be closed for a reasonable period of time for the City to conduct all necessary work or maintenance. In the event of the Wellness Clinic being closed by the City to conduct necessary work or maintenance, the City shall make reasonable considerations for the care and security of Clinic Operator's assets contained within.

9. EQUIPMENT, UTILITIES AND SUPPLIES.

(a) The Clinic Operator shall furnish to the Wellness Clinic the supplies listed in the attached **Appendix D.**

(b) The City will furnish equipment, furniture, fixtures, and personal property, as set out in **Appendix E**, attached hereto and incorporated herein by this reference, which items shall remain the property of the City. Clinic Operator shall be responsible for proper cleaning, care and maintenance of all City-owned equipment, furniture, fixtures, and personal property set out in **Appendix E** during the term of this Agreement, which items shall be kept in proper repair and working order, and be in good and serviceable condition at the termination of this Agreement, except for normal wear and tear. The City shall be responsible for maintenance and replacement of its equipment, furniture, fixtures, and personal property when the City deems such replacement is necessary; provided however, if replacement is necessary due to gross negligence of Clinic Operator, Clinic Operator shall bear the cost of replacement.

Any and all requests for repairs or contract maintenance of City-owned equipment shall require approval of the City prior to any service contractors being notified. In addition, the City shall provide for the delivery of water, sewer, electricity, phone, internet and gas to the Wellness Clinic at the City's expense.

(c) All items listed in **Appendix D** shall remain the sole property of the Clinic Operator during the term of this Agreement and upon termination or completion of the Agreement except for any items for which the City has directly reimbursed the Clinic Operator. Similarly, equipment, furniture, fixtures, and personal property set out in paragraph 9(b) above **Appendix E** shall remain the sole property of the City during the term of this Agreement and upon termination or completion of the Agreement.

10. OTHER OPERATIONS AND ACTIVITIES.

The Clinic Operator shall operate the Wellness Clinic pursuant to this Agreement and all applicable laws and regulations without infringement upon the rights of others. The Clinic Operator shall not offer services or provide care to any person other than as expressly permitted by this Agreement.

11. DETAILS OF OPERATION.

(a) The Wellness Clinic shall be staffed by a medical doctor approximately 20% of the time, a Physician Assistant approximately 80% of the time, and a Medical Assistant or LPN or RN 100% of the time for thirty two (32) hours per week (hours to be adjustable based on need). The Wellness Clinic shall be open for business at mutually agreed upon days and times.

(b) Prior to the opening date of the Wellness Clinic, Clinic Operator shall employ a DCO to perform the duties and responsibilities as outlined in in the applicable sections of **Appendix B**.

(c) Ongoing problems with late openings may result in the termination of this Agreement.

(d) The Wellness Clinic's hours of operation and level of service may be adjusted in writing by the mutual agreement of the parties. Changes to the hours of operation or level of service may require corresponding revisions to compensation, which shall also be agreed upon and documented in writing.

(e) All other details of operation are as set forth in the Appendices of this Agreement.

12. PERMITS AND LICENSES.

The Clinic Operator shall procure, supply, and post, at its own expense and as required by applicable laws and regulations, all permits and licenses necessary for the operation of the Wellness Clinic.

13. AUTHORITY OF MANAGER

(a) The Manager shall interpret and apply the Scope of Services (**Appendix A**) and the Health Clinic Quality Improvement Program (**Appendix B**). The Manager shall decide all questions that may arise as to the Clinic Operator's fulfillment of the Scope of Services. In the event the Clinic Operator disagrees with a decision of the Manager, Clinic Operator shall have the right to appeal the decision to the Director, provided such appeal is in writing and filed with the Director within ten (10) days after the Clinic Operator's receipt of the Manager's written decision. The Director shall make a

determination within twenty (20) days after his receipt of the appeal. The decision of the Director shall be in writing and shall be sent to each party at the addresses set out in Section 29(a) of this Agreement. The decision of the Director shall be final.

(b) The Clinic Operator's standards of operation must be approved by the Manager in accordance with the Scope of Services (Appendix A) and the Health Clinic Quality Improvement Program (Appendix B).

(c) If the service being performed by the Clinic Operator does not meet the Scope of Services or the Health Clinic Quality Improvement Program or the requirements of this Agreement, the Manager shall immediately notify the Clinic Operator, and the failure shall be deemed a default.

14. ACCESS FOR INSPECTION AND EMERGENCIES.

Clinic Operator shall provide limited access to the Manager at reasonable times for the purpose of inspecting the same for compliance with this Agreement. Any entry onto or inspection of the Wellness Clinic by the City pursuant to this section shall not constitute interference with the operations of the Wellness Clinic, and no abatement of any payments due under this Agreement shall be allowed so long as the scope and length of the entry is reasonable.

15. COMPENSATION.

15.01 Initial Set-Up Fee. The City is responsible for the expense of building-out the clinic. Upon execution of this Agreement, the City shall pay to Clinic Operator \$20,000 to cover Clinic Operator's purchase of the equipment and the supplies listed on Appendix D. If these expenses total less than \$20,000, the City will receive a credit; if the expense exceeds \$20,000, Clinic Operator will bill the City for the difference, which the City will pay in 30 days.

15.02 Monthly Fee for Program Savings Engine and Management Services: Monthly invoicing by Clinic Operator will commence upon the targeted opening date. No later than the 10th day of each calendar month immediately following the receipt of the Clinic Operator invoice, the City shall pay to Clinic Operator to be located at City's place of business the amount of \$20.00 per employee per month (PEPM Fee) participating in the City's health plan for arranging for the Medical Staff and the other services provided under this Agreement during the immediately preceding calendar month. The City will provide an updated census of employees participating in the City's health plan. Services funded by the PEPM Fee are listed on Appendix A. Spouses and Dependents of City employees participating with Spouse and Dependent coverage in the City's health plan are eligible to access the clinic and receive services under the \$20 PEPM Fee. A portion of the \$20 PEPM Fee is subject to a Performance Guarantee and ROI as described in **Appendix G**.

15.03 Additional Pass Through Fees to be reimbursed by the City: In advance of the first day of each month, Clinic Operator shall submit an amount equal to the sum of the estimate of that month's medical expenditures and an adjustment from prior months' actual expenditures for all expenses required to operate and maintain the City clinic in order to provide the Medical Services under this Agreement. These expenses may include, but are not limited to, Medical Staff and/or Medical Assistant compensation, required taxes (federal, state, local, or other), medical supplies, office supplies, equipment and other items that may be required by Clinic Operator or the Medical Staff to provide the Medical Services under this Agreement and any sales taxes (federal, state, local, or other) incurred by Clinic Operator to purchase items necessary to provide the Medical Services under this Agreement. The City shall be responsible to pay Clinic Operator such amount invoiced no later than the 15th day of the calendar

month immediately following the receipt of the Clinic Operator invoice. Past due amounts are subject to a finance charge of 1.5% per month.

15.04 Special Health Risk Assessments. Annual Health Risk Assessments (HRA) will be made available for employees that are not eligible to access the clinic as deemed by the City. HRA's provided to these non-clinic eligible employees will be billed monthly to the City at \$50.00 per HRA. No additional wellness services will be provided to these non-clinic eligible employees.

16. OTHER PAYMENT OBLIGATIONS.

The Clinic Operator shall promptly pay all taxes and fees of whatever nature, applicable to the operation of the Wellness Clinic, and shall maintain all licenses, municipal, state or federal, required for the conduct of business, and shall not permit any of said taxes or fees to become delinquent. The Clinic Operator shall furnish to the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of the social security, unemployment compensation and all taxes and fees referenced above. The Clinic Operator shall pay promptly when due all bills, debts, and obligations, included, but not limited to all charges for telephone service, refuse collection, and all other costs and expenses related to the operation of the Wellness Clinic, and shall not permit the same to become delinquent or suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of the City under this Agreement. All such costs and expenses of the Wellness Clinic (as referenced in Section 15 of this Agreement) are to be borne by the Clinic Operator and reimbursed by the City.

17. RECORDS.

Clinic Operator and each licensee or employee of Wellness Clinic shall keep a permanent, accurate set of records of all activities occurring in the Wellness Clinic, including individual patient records, biometric results, lab work, medications dispensed, health risk assessment information, medical staff notes and recommendations, goals and requirements set for patients and subsequent results, etc. , and copies of all tax returns filed with any governmental authority that reflect in any manner sales, income, or revenue generated in connection with the Wellness Clinic, as may be reasonably required in order to ascertain, document, or substantiate the Wellness Clinic's performance and activities. Unless otherwise required by law, all such records shall be retained for three (3) years after the end of the calendar year to which they relate. Unless otherwise required by law, Clinic Operator shall not be required to retain such books and records for more than three (3) years after termination of this Agreement.

Both CareHere and the City agree to provide access to their books and records, as they relate to this Agreement, to the other party, in compliance with HIPAA.

To the extent that any of Clinic Operator's records made or maintained under this Agreement constitute Protected Health Information, as defined under Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations issued by the U.S. Department of Health and Human Services as outlined in 45 C.F.R. Parts 160, 162 and 164, such records shall be handled appropriately and as more specifically required by the separately executed Business Associate Agreement between the City and Clinic Operator, which agreement is attached hereto as **Appendix F** and incorporated herein by this reference.

The Clinic Operator shall arrange with the Medical Staff to maintain medical records with respect to all of the patients, all of which medical records shall be maintained in a professional manner consistent with the accepted practice of the community in which the Medical Staff provides the Medical Services in connection with this Agreement. Clinic Operator shall also require the Medical Staff comply with the HIPAA privacy standards. All patient records maintained by the Medical Staff in connection with this Agreement shall be the sole property of the Medical Staff and Clinic Operator.

The City understands and agrees that all of the medical records and other protected health information maintained by the Medical Staff will be held by the Medical Staff in strictest confidence, and that the City will not be entitled to have access to the medical records maintained by the Medical Staff, in the absence of an appropriate written authorization from the patient/employee.

In the event of termination for any reason, CareHere agrees to electronically transfer all medical records to any successor clinic administrator selected by the City. The electronic transfer of these records will be in an industry standard format to be agreed upon by CareHere and any successor clinic administrator. Electronic transfer of medical records is dependent upon the successor clinic administrator agreeing to pay \$5,000 to CareHere to cover expenses associated with preparing, packaging, testing, transferring, and verifying the electronic transfer of medical records to the successor clinic administrator.

18. INDEMNIFICATION.

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

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

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

In any and all claims against the City or any of its agents or employees by any employee of the Clinic Operator, any subcontractor of the Clinic Operator, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this

Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Clinic Operator or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

19. ATTORNEYS FEES.

If any action is brought for breach of this Agreement, or for the recovery of the possession of the Wellness Clinic, or otherwise, the prevailing party shall be entitled to recover from the other party, as part of prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment.

20. INSURANCE.

(a) Clinic Operator shall procure and continuously maintain at its own expense the minimum insurance coverages listed below, with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) Commercial General Liability Insurance with combined single limit of \$1,000,000 per occurrence and \$3,000,000 aggregate. This policy must include Contractor Liability; Products Liability; Broad Form Property Damage including, but not limited to, coverage for any damage to any City personal or real property due to fire or water related to Clinic Operator's operations pursuant to this Agreement; and Personal Injury;

(ii) Statutory workers' compensation on all employees;

(iii) Employee Dishonest Coverage with a limit of at least \$25,000, for which a Third Party Coverage endorsement shall be obtained to provide legal liability coverage for employees of Clinic Operator while on City of Westminster premises.

(iv) Professional liability insurance in the minimum amount of \$500,000, but in any event sufficient to cover Consultant's liability under paragraph 18 of this Agreement.

(b) The required insurance policies shall be endorsed to include the City of Westminster as an additional insured as its interests may appear under this Agreement. Every policy required above shall be primary insurance, and any insurance carried by the City, its elected officials, officers, employees, or others working on behalf of the City, or carried by or provided through any self-insurance pool of the City, shall be excess and not contributory insurance to that provided by Clinic Operator. Each party to this Agreement agrees to waive subrogation on respective property insurance.

(c) The Certificate of Insurance provided to the City shall be completed by Clinic Operator's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to the commencement of the Agreement. The certificate shall identify this Agreement and shall provide the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. Certificates of insurance shall be marked to identify this Agreement and shall be sent to:

City of Westminster
Attn: Deborah Mitchell, Director of General Services
General Services Department
4800 W. 92nd Avenue
Westminster, Colorado 80031

A certified copy of any policy required herein shall be provided to the City upon its request.

(d) It shall be an affirmative obligation of the Clinic Operator to provide written notice to the City within two days of the cancellation of or substantive change to any of the insurance policies required herein and failure to do so shall constitute a breach of this Agreement.

(e) The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitation (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et. seq.*, C.R.S., as from time to time amended, or otherwise available to the City of Westminster, its elected officials, officers, or employees.

22. NON-DISCRIMINATION.

(a) The Clinic Operator will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Clinic Operator agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government setting forth the provisions of the Equal Opportunity Laws.

(b) Clinic Operator shall not discriminate against any customer, guest, patient, employee or visitor because of race, color, religion, age, sex, disability, or national origin and shall treat all persons with dignity and respect. Failure to comply with this paragraph shall be an event of default.

23. TERMINATION.

This Agreement shall terminate two (2) years from the date of this Agreement or upon the City's providing Clinic Operator with sixty (60) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, including the City's termination in the event of non-appropriation, the City shall pay Clinic Operator for all services previously authorized and completed prior to the date of termination plus any services the City deems necessary during the notice period. Said compensation shall be paid upon the Clinic Operator's quitting the Wellness Clinic, delivering or otherwise making available to the City all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Clinic Operator in performing work under this Agreement, whether completed or in progress, as permissible by applicable state and federal laws or regulations, including HIPAA.

In the event of Termination, the City acknowledges for a period of one (1) year, the Medical Staff of the Clinic Operator will not be available to work in the Wellness Clinic for a direct competitor of the Clinic Operator without expressed written permission by the Clinic Operator. The City acknowledges that staffed Physicians and Physician Assistants will receive detailed training, education, and other strategic information and intellectual property that is proprietary to the Clinic Operator and essential to compete in the marketplace.

24. DELIVERY AFTER TERMINATION.

Clinic Operator shall deliver the Wellness Clinic and all City-owned equipment thereon to the City at the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear, or loss and damage not otherwise caused by Clinic Operator.

25. CUMULATIVE RIGHTS.

No right or remedy is intended to be exclusive of any other right or remedy and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity. The failure of either party to insist at any time upon the strict performance of any covenant or to exercise any right contained in this Agreement shall not be construed as a future waiver. Neither party shall be deemed to have made any waiver of this or any provision of this Agreement unless expressed in writing and signed by such party.

26. VENUE AND GOVERNING LAW.

Venue for any and all legal action regarding this Agreement shall lie in the District Courts of Adams and Jefferson Counties, Colorado, and this Agreement shall be governed by the laws of the State of Colorado, and the Charter and Municipal Code of the City of Westminster. Clinic Operator agrees that if personal service on Clinic Operator cannot be reasonably accomplished, any and all notices, pleadings, and process may be made by serving two (2) copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado, and by mailing by return mail an additional copy of the same to Clinic Operator at the address shown in Section 29 herein; that said service shall be considered as valid personal service and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, appearance, pleading, or answer is not made.

27. INDEPENDENT CONTRACTOR.

For the purposes of defining Clinic Operator's relationship with City, it is understood and agreed that the Clinic Operator is an independent contractor and nothing herein contained shall constitute or designate the Clinic Operator or any of its employees or agents as agents or employees of the City, nor shall Clinic Operator be deemed to be engaged in a partnership or joint venture with the City. The Clinic Operator understands and agrees that Clinic Operator is not entitled to nor shall receive any City benefits, including vacation, worker's compensation, sick pay or any other benefits from City. In addition, the parties agree that the Clinic Operator is an independent contractor and not the agent, employee or servant of the City, and that:

(a) CLINIC OPERATOR SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSED RESPONSIBILITIES INCLUDING, BUT NOT LIMITED TO,

PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION, SELF-EMPLOYMENT TAXES and PROPERTY TAXES. NO FEDERAL, STATE OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE CITY.

(b) CLINIC OPERATOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS OR WORKERS' COMPENSATION BENEFITS UNLESS SUCH COVERAGES ARE PROVIDED BY THE CLINIC OPERATOR.

(c) Clinic Operator does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City;

(d) Clinic Operator has and hereby retains control of and supervision over the performance of Clinic Operator's obligations hereunder and control over any persons employed by Clinic Operator for performing the services under this Agreement;

(e) The City will not provide training or instruction to Clinic Operator or any of its employees regarding the performance of services under this Agreement;

(f) Neither Clinic Operator, nor its employees, will receive benefits of any type from the City;

(g) Clinic Operator represents that it is engaged in providing similar services to the general public and is not required to work exclusively for the City;

(h) All services required by this Agreement are to be performed solely at the risk of Clinic Operator and Clinic Operator shall take all precautions necessary for the proper and sole performance thereof; and

(i) Clinic Operator will not combine its business operations in any way with the City's business operations and each party shall maintain its business operations as separate and distinct.

28. ASSIGNMENT.

Neither Clinic Operator, nor Clinic Operator's successors or assigns, shall assign this Agreement, in whole or in part, nor shall this Agreement be assigned or transferred by operation of law, or otherwise, without the prior consent in writing of the City in each instance. The sale or transfer of a controlling interest, or any interest in excess of fifty percent (50%) of the capital shares of Clinic Operator or its assigns, or any merger which affects a similar transfer of a controlling interest in Clinic Operator or its assigns, shall be deemed to be an assignment of this Agreement. If this Agreement is assigned or transferred, or the Clinic Operator is occupied by anyone other than the Clinic Operator without the City's prior written consent the party originally constituting the Clinic Operator under this Agreement shall continue liable under this Agreement in accordance with all the agreements, terms, covenants, and conditions of this Agreement. The consent by the City to an assignment or transfer shall not in any way be construed to relieve Clinic Operator from obtaining the express consent in writing of the City to any further assignment or transfer.

29. NOTICES.

(a) All notices, demands and communications hereunder shall be personally served or given by certified or registered mail or via trackable overnight courier, and

(i) If intended for City, shall be addressed to City at:

City of Westminster
Attn: Deborah Mitchell
Director of General Services
General Services Department
4800 W. 92nd Avenue
Westminster, Colorado 80031

With a copy to:

City Attorney
City of Westminster
4800 W. 92nd Avenue
Westminster, Colorado 80031

(ii) If intended for Clinic Operator, shall be addressed to:

Ben Baker, Chief Operating Officer
CareHere, LLC
5141 Virginia Way
Suite 350
Brentwood, TN 37027

(b) Any notice given by mail shall be deemed delivered when sent by certified mail or via trackable overnight courier, addressed as above, with postage prepaid, or when served personally at the applicable address.

30. ENTIRE AGREEMENT.

This is the entire agreement between the parties and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or written, of any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this writing.

31. SEVERABILITY.

If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby. It is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as part of this Agreement a clause or provision as similar in

terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

32. NATURE OF CITY'S OBLIGATIONS.

Nothing in this Agreement shall be construed or deemed as creating a multiple-year fiscal obligation of the City. All obligations of the City pursuant to this Agreement are subject to prior annual appropriation by the City Council. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*

33. IMMIGRATION COMPLIANCE.

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

Clinic Operator certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Clinic Operator shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake pre-employment screening of job applicants while performing this Agreement.

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

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

CareHere Management, LLC

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Title:

City Clerk

(Seal)

Approved as to legal form:

City Attorney

**APPENDICES A – G
TO CLINIC OPERATOR AGREEMENT**

- A) Scope of Services
- B) Health Clinic Quality Improvement
- C) CareHere RFP Submittal
- D) Equipment that Clinic Operator Will Provide
- E) Equipment that the City Will Provide
- F) Business Associate Agreement
- G) Performance Guarantee and ROI

Appendix A - Scope of Services

The Scope of Services include all those services outlined in CareHere's RFP response sent to Hays Companies of Denver on May 5, 2012, (including updated rates sent to Hays Companies of Denver on June 5, 2012). CareHere's RFP response is incorporated into this contract by reference in **Appendix C**. The Scope of services include at a minimum the following:

Medical and Health Services at the Wellness Clinic

- Primary Care
 - Personal hygiene related problems
 - Ordinary and routine care of the nature of a visit to the doctor's office
- Acute Care
 - Sore throats/ears/headache
 - Cough, Sinus
 - Strains/sprains/musculoskeletal problems
 - Acute urinary complaints
- Episodic Care
- Chronic illness evaluation, treatment and management
 - Diabetes
 - High Cholesterol
 - Etc.
- Immunizations
- Sports Physicals
- Lab testing
- Pharmaceutical Dispensary
- Patient Medication Adherence
- Plan of Care Compliance
- Wellness Services
 - Case Management
 - Weight management
 - Hypertension management
 - Pre-diabetes management
 - Lipid management
 - Stress management
 - Health risk assessment/biometric screening
 - Nutritional counseling
 - Plan of care compliance
 - Disease management
 - Tobacco cessation
 - Exercise adherence
 - Cardiovascular risk reduction
 - Mental Health care referral
 - Addiction referral

Long Term Prevention Programs

- LabInsight Health Risk Assessment with comprehensive blood draw analysis
- Aggregate data analysis from your employee population that allows us to develop just the right programs for Pharmaceutical Program Management tailored to your specific population
- Physician/Nurse "Reach Out" Program to touch the people with the highest health risks
- Population Health Management programs targeted for the greatest impact (obesity, diabetes, high blood pressure, etc.)
- Disease/Case Management – we proactively assign a “coach” to help those employees with the greatest need
- Self Care Education Tools and Manual online and in print form
- Comprehensive Health Education Training
- Physician Health Seminars
- Population Promotions

Program Enablers and Infrastructure

- 800 Customer Support
- 24x7 Online Scheduling System
- Online Medical Management & Tracking System
- Clinic Best Practices Sharing
- Clinic Inventory Management (supplies, medications, etc.)
- Physician Recruiting
- Medical Assistant Recruiting
- Physician Management
- Medical Assistant Management
- Analysis, Trends, Reporting & Survey Results
- Account Management
- Consulting Advice
- An assigned Director of Client Operations (DCO)
- Reporting as outlined in the RFP

Wellness Clinic Scope

CareHere will also provide the following services in its operation of the Wellness Clinic.

- Work hand in hand with the current Wellness Program offered by the City by coordinating wellness efforts with the City’s benefits staff, including the Wellness Coordinator; being knowledgeable about the City’s Wellness offerings/classes and referring employees to those resources accordingly; and being willing to obtain employee waiver in order to share information with the City’s Wellness Coordinator.
- Categorize employees based on their health risk and set up individual health plans for each employee (such as high risk individuals must visit the Wellness Clinic X times during the year), work with the City’s Wellness Coordinator to help employees meet their established Wellness Clinic goals, and report back to the City’s benefits staff on which employees have met the established goals. It will be a requirement that employees meet the goal(s) to receive the premium reduction offered on health insurance. If the City decides to have goals set for spouses, the CareHere will set goals for spouses as well.

- Maintain an individual health record for all employees visiting the Wellness Clinic , which record will include but not be limited to the following information:
 - biometric results,
 - any additional lab work results,
 - HRA information,
 - PA notes and recommendations,
 - goals set for employee and
 - Claim information provided by the PPO TPA (Currently CIGNA). Inclusion of claim information by CareHere is contingent upon:
 - CareHere receiving a viable transfer of data electronically from the PPO TPA to CareHere in an acceptable means and format to be agreed upon by CareHere and the PPO TPA.
 - CareHere receives acceptable data in regular and timely manner to be agreed upon by the PPO TPA and CareHere.
 - Claims data received can be clearly and accurately determined to match actual patient records maintained within the CareHere EMR. Accuracy of such matching shall be determined solely by CareHere.

- Work hand in hand with the employee’s primary care provider or specialist by providing the above mentioned information to such providers as needed and by collaborating on treatment plans and goals. Provide referrals to in-network physicians as needed.

- Provide the staffing and medical and medication supplies needed to open and maintain the Wellness Clinic.

- All Wellness Clinic staff will be employees or independent contractors of CareHere.

- Employees and dependents enrolled in one of the City medical plans will be eligible to access services at no cost. This includes enrolled retirees and COBRA participants.

- Wellness Clinic services will include but need not be limited to:
 - Routine exams, screenings, vaccinations and immunizations
 - Acute care (ear infections, cold, flu, muscle strain, respiratory infections, strep, laceration repair, etc.)
 - Dispensing free medications (limited scope)
 - Managing medication compliance by members
 - Chronic care maintenance follow-up
 - Individualized plans to reduce risk factors
 - School/sports/camp physicals
 - Well-being educational classes (nutrition, exercise, etc.)
 - Smoking cessation and weight management support
 - Diabetic and blood pressure management
 - Disease Management
 - Mental health screening and referrals
 - Musculoskeletal consultation

- No occupational health or urgent care services will be provided at the Wellness Clinic.

- In its operation of the Wellness Clinic, CareHere will provide the following clinical outcome services:
 - Self-care education tools
 - Reporting
 - Purchasing coordination
 - Clinic inventory management
 - Patient survey feedback
 - Clinic best practices sharing
 - Integration of services
 - ROI analysis
 - Budget adherence

- CareHere will fulfill its duties under the Agreement by providing the following staffing services and resources:
 - Wellness Coaches which include, but are not limited to, a registered dietician, registered nurse, exercise physiologist, behavioral health coach, tobacco cessation counselor and pharmacist.
 - CareHere Staffing
 - Director of Clinic Operations
 - Care Coordinator/Case Manager
 - Accounting
 - Training
 - Pharmacist
 - Medical Assistant Recruitment and Management
 - Physician Recruitment and Management
 - Medical Malpractice Insurance

- In addition, CareHere will offer the following support and technology services:
 - 24/7 Call-Center
 - 1-800 Customer Support
 - Education Tools
 - Marketing
 - Information Technology Support
 - HRA Employee Events
 - EMR
 - CareHere Connect
 - Information Technology
 - Online Appointment Scheduler
 - Smartphone Application for CareHere Connect
 - EMR Access and Integration with Outside Specialist/PCP/ER as defined by CareHere.

Appendix B

Health Clinic Quality Improvement Program

The CareHere Clinical Quality Improvement (CQI) Team, consisting of the Chief Medical Officer, Director of Risk Management, Sr. VP of Operations, and Director of Client Operations, is responsible for overseeing the quality of care provided in the CareHere Health Centers and Clinics. They will conduct a quarterly audit review of this Health Clinical Quality Improvement Plan. The Chief Medical Officer, Director of Risk Management, Sr. VP of Operations and Director of Health Center Operations may assign responsibility to any member of the CareHere Health Center staff and contracted staff for performance of duties related to the reviews.

Aspects of Care

1. Complete Medical Records (completed documentation)
2. Quality Control of Equipment, Supplies and Medications
3. Follow up of Abnormal Laboratory Results and Diagnostic Tests or Studies
4. Follow up of Referrals

Evaluating Care

Data will be collected, organized and reported according to the attached schedule utilizing the approved reporting forms. Assigned CareHere staff will submit reports to the CQI team. In cases where the threshold is not met, further review at the CareHere Health Center level will occur to identify potential trends, barriers to accomplishing the desired goals and specific action plans to improve the outcomes.

Actions to Improve Care

When a threshold is not met, the action plan must be documented by the CareHere CQI Team. This action plan is to be evaluated on a quarterly basis for its effectiveness. If trends do not improve, action plans should be redesigned.

Goal

The goal of the CQI program is to provide ongoing collection and analysis of data to assure continuous Clinical Quality Improvement.

Aspects of Care Indicators, Thresholds and Data Collection

Aspects of care which are reported quarterly should reflect the CareHere Health Center activity of the prior three months. Aspects of care which are reported semi-annually should reflect CareHere Health Center activity of the prior six months. Aspects of care which are reported annually should reflect CareHere Health Center activity of the previous year.

1. COMPLETE MEDICAL RECORDS

Indicator: Medical record reviews are done in accordance with chart review criteria established

for CareHere corporate audits. Criteria are indicated in the Provider Performance program chart review section. Additional chart review criteria are indicated in the Staff Performance Program chart review section.

Threshold for Evaluation: 100% of cases reviewed will meet all indicators.

Data Collection: Medical record reviews are completed according to the evaluation protocol stated in the Provider Performance Program and Staff Performance Program.

Goal: a minimum of one record will be reviewed for each staff member and provider annually

2. QUALITY CONTROL OF EQUIPMENT, CLIA SUPPLIES AND MEDICATIONS

Indicator: Quality control of equipment and supplies will be performed on predefined CareHere Health Center specific schedule according to protocol stated in CareHere Health Center Programs. Quality control of medications and CLIA waived supplies will be performed on a monthly schedule.

Threshold for Evaluation: 100% of the time the checklists will be completed according to the predefined schedules.

Data Collection: The Cumulative Report for CQI, quality control of medications, equipment and supplies will be completed quarterly by DCO/ Health Center Manager and submitted to the Director of Risk Management for review.

3. FOLLOW-UP OF ABNORMAL LABORATORY RESULTS & DIAGNOSTIC TESTING & STUDIES

Indicator 1: On-Site Provider is notified of all abnormal blood laboratory results that require immediate attention within 24 hours of receipt of findings by the CareHere staff. For the purposes of this CQI review, specific lab results have been defined as *critical* and require this immediate attention. These tests and their trigger parameters are defined by reference laboratory parameters.

Indicator 2: The on-site provider is notified of all other abnormal laboratory and test results during scheduled CareHere Health Center hours and followed up within the guidelines per CareHere policy and procedures.

Threshold for Evaluation: 100% of abnormal laboratory results and diagnostic studies will meet all indicators.

Data Collection: The Cumulative Report for CQI, quality control of Laboratory results and Diagnostic testing studies will be completed quarterly by DCO/ Health Center Manager and submitted to the Director of Risk Management for review.

4. FOLLOW UP OF REFERRALS

Indicator 1: The On Site provider has made a referral to an outside provider. Ensure On-Site provider has received follow up report.

Indicator 2: Notation of receipt and review of follow up report documented in patient EMR by Provider.

Threshold for Evaluation: 100% of follow up reports/results will be reviewed and all indicators meet.

Data Collection: The DCO/Health Center Manager will conduct a review of 5 randomly selected patient records per month. The Cumulative Report for CQI, follow up of referrals will be completed quarterly by DCO/Health Center Manager and submitted to the Director of Risk Management for review.

5. CLINICAL QUALITY IMPROVEMENT

Indicator 1: The medical record will be complete as evidenced by met criteria established for CareHere corporate audits indicated below.

Provider performance Program:

- a. Chart review
- b. Peer Review
- c. Standards of CareHere,
- d. Complaints Review

Staff Performance Program:

- a. Chart review
- b. Administrative Review
- c. Staff Patient Survey
- d. Provider and Staff Survey

Indicator 2: Health Center audit criteria. Health Center audits will be performed by DCO/Health Center Manager on a quarterly and yearly basis.

Indicator 3: Occurrence Reports. All occurrence reports will be reviewed by the Director of Risk Management. Analysis to establish trends will be done quarterly. Action plan to address trends will be put in place to assure ongoing Clinical quality improvement.

Data Collection: Data collection is done in accordance with protocol stated in Provider Performance Program, Staff performance Program, Health Center Audit Program and Occurrence Reporting Policy.

Goal: Provide ongoing collection and analysis of data to assure continuous Clinical Quality Improvement.

**Individual Data Tool for
Quality Control of Equipment, CLIA Supplies and Medication**

Individual data collection tools will be unique for each CareHere Health Center and customized for that CareHere Health Center site. The CQI checklist should contain sections for the following equipment where applicable:

	Frequency
CLIA Logs	Daily
Med Logs	Daily
Testing of defibrillator or AED	Daily or as recommended by manufacturer
Audiometric Calibration	Every day testing is done
Spirometry Calibration	Every day testing is done
Medication, Equipment & Supplies	Should be checked, control procedures implemented and calibrated monthly for adequate supply and correct dating

Essential Duties and Responsibilities of the DCO

- Develop an understanding of the employee population, work environment, and corporate culture to properly support the on-site health centers.
- Facilitate day-to-day health center operations as appropriate.
- Identifies health center efficiencies and deficiencies and develops and implements work instructions accordingly to reach organizational goals and objectives.
- Protects company/employees and their families by enforcing confidentiality, infection control procedures, assuring medication administration consistent with the City Nurse Practice Act, and assuring proper inventory and storage of supplies.
- Ensures proper operation of health center medical equipment and verifies emergency equipment & first aid supplies are available at the various locations.
- Coordinates risk management QRSC meetings following work related injuries/illnesses.
- Accesses the health service needs for the site specific plants and implements programs and services that support those needs.
- Provides clinical management support and guidance to include but not limited to: CareHere Policy and Procedures, CareHere’s mission and philosophy.

- Provides health education & training, counseling & EAP referral within the scope of practice.
- Collaborates & coordinates with Safety & Plant Management in the implementation of hearing conservation and various health related programs.
- Works in conjunction with Safety to provide ergonomic assessments and follow-up recommendations following a work related injury / illness.
- Facilitates the Return to Work Policy
- Facilitates the working relationship with the client's workers' compensation carriers and CareHere staff personnel.
- Resolves quality issues and contributes to health center effectiveness by identifying challenges and developing short-term and long-term countermeasures.
- Seeks and maintains relationships with health care providers, public, and professional agencies.
- Collaborates with CareHere to recruit, interview, hire and orientate new employees.
- Assumes responsibility for staff professional development and continuing education.
- Prepares and communicates to clients and CareHere management both scheduled and ad hoc reports regarding all aspects of health center operations including financial impact, clinical statistics, utilization, patient satisfaction, etc.
- Prepares and publish regular patient and client newsletters and marketing promotions to improve utilization and program participation.
- Initiates and oversees regular patient feedback and surveys to measure and track satisfaction.
- Performs other related duties as assigned.

The DCO has a touch-point weekly with the City contact and makes recommendations to add or improve:

- Current services and practices
- Health center utilization
- Referrals going out to see if the health center could possibly move those referrals in-house and what the costs associated with that would be
- “No Shows” – the DCO will help devise a plan to mitigate the number of patients who are no-shows for appointments
- Communication strategy to encourage participation in upcoming Wellness programs and events
- Future programs
- New processes to improve health center flow and patient satisfaction
- Annual Cost Savings Report.

CareHere will recruit a Director of Clinic Operations who will manage the contract on a day-to-day basis under the direction of the Contract Administrator (Michelle Anglea) and another Senior DCO. The CareHere DCO will attend the employee benefit seminars and online training throughout the city during benefit change periods. The CareHere DCO will be responsible for day-to-day customer service and case management related issues and will act as liaison to the City.

Appendix C

CareHere's RFP Response sent to Hays on May 3, 2012, including updated rates sent to Hays on June 5, 2012, are hereby incorporated into this Agreement.

Appendix D Equipment and Supplies at Start-up

Below is a minimum list of items that will be available at the Wellness Clinic opening to deliver Medical Services in accordance with the Agreement.

Items will be purchased by the Clinic Operator and reimbursed by the City. The Clinic Operator will invoice the City for these items as direct pass-through with no mark up.

Exam table/stool	Disinfectant
Small refrigerator	Waste cans
Lockable cabinet	Waste can liners
Gooseneck light	Gloves
Diag Set 3.5V Halogen/disposable covers	Suture supplies
Sundry jars	Glucose test supplies
Pillow/pillow covers (cloth and disposable)	Urinalysis supplies
Table paper	Strep testing supplies
Thermometer/disposable covers	Mono testing supplies
4 X 4's	Disposable gowns
Tongue depressors	Disposable drapes
Cotton balls	Thermometer (freezer)
Alcohol	3" Elastic bandage
Alcohol dispenser	Cold pack
Blood pressure cuffs	Emesis basins
Stethoscope	Medications/Injectables (by physician order)
Surgical tape	Lab supplies Tubes, requisitions, tourniquets)
Biohazard bags and Removal Service	Wall Posters, Charts
Biohazard stickers	Small desk and chair (if not provided by Employer)
"Allergic To" stickers	Needles
Sharps containers	Syringes
	Trash removal, Clean-up, and General Maintenance
Fire Extinguisher	

Appendix E Equipment that the City will Provide

The City will prepare and furnish a space for the clinic that will be acceptable to the Clinic Operator and the Medical Staff. A sample clinic layout is provided below for illustrative purposes.

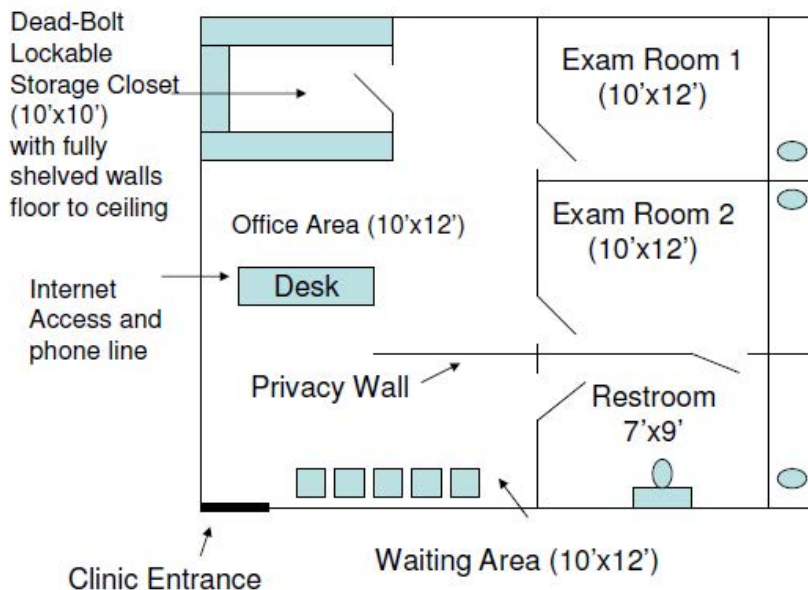
The City will furnish equipment, furniture, fixtures for the clinic.

The city will furnish computers, operating software, multi-function printer and fax machine.

Specifications for the above items will be agreed upon by the City and the Clinic Operator as implementation of the clinic proceeds. Input from the Medical Staff will be included in the final determination of equipment, furniture, and fixtures.

Sample CareHere Clinic Layout

(Each Exam Room should be at least 10' by 12' in size and have internet access connectivity.)



Exam Rooms:

- Internet Access in each exam room

- Phone in Exam Room 2 and in Office area

- Separate fax line in Exam Room 2

- Doors should swing open toward the wall to enhance privacy

- Small sinks for handwashing

- Full length countertops with cabinets below and above

Appendix F

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("*Agreement*") is entered into on this ____ day of _____ 2012 (the "*Effective Date*"), by and between City of Westminster ("*Covered Entity*") and CareHere Management, LLC ("*Business Associate*").

RECITALS:

WHEREAS, Covered Entity and Business Associate mutually desire to outline their individual responsibilities with respect to the use and/or disclosure of Protected Health Information ("*PHI*") as mandated by the Privacy Rule promulgated under the Administrative Simplifications subtitle of the Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*") including all pertinent regulations issued by the U.S. Department of Health and Human Services as outlined in 45 C.F.R. Parts 160, 162 and 164; ("*HIPAA Privacy Rules and/or Security Standards*") and

WHEREAS, Covered Entity and Business Associate understand and agree that the HIPAA Privacy Rules and Security Standards requires the Covered Entity and Business Associate enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of PHI and ePHI.

NOW, THEREFORE, the parties hereto agree as follows:

Article I. Definitions. When used in this Agreement and capitalized, the following terms have the following meanings:

Section 1.01 "*Breach*" shall mean the unauthorized acquisition, access, use, or disclosure of PHI which comprises the security or privacy of such information. However, the term 'breach' shall not include (1) any unintentional acquisition, access, or use of PHI by an employee or individual acting under the authority of a covered entity or business associate if such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and such information is not further acquired, accessed, used, or disclosed by any person; or (2) any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and (3) any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

Section 1.02 "*Electronic Protected Health Information*" or "*ePHI*" shall mean Protected Health Information transmitted by electronic media or maintained in electronic media.

Section 1.03 "*Individual*" shall have the same meaning as the term "Individual" in 45 C.F.R. §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

Section 1.04 "*Privacy Rule*" shall mean the Standards for Privacy of Individual Identifiable Health Information as set forth at 45 C.F.R. Parts 160 and 164 Subparts A and E.

Section 1.05 "*Protected Health Information*" or "*PHI*" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

Section 1.06 "*Required by Law*" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.501.

Section 1.07 "*Secretary*" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

Section 1.08 "*Security Incident*" shall mean any attempted or successful unauthorized access, use, disclosure, modification or destruction of information or systems operations in an electronic information system.

Section 1.09 "*Security Rule*" shall mean the Standards for Security of PHI, including ePHI, as set forth at 45 C.F.R. Parts 160 and 164 Subpart C.

Section 1.10 "*Unsecured Protected Health Information*" shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.

Terms used but not defined in this Agreement shall have the same meaning as those terms in the HIPAA regulations.

Article II. Obligations and Activities of Business Associate Regarding PHI.

Section 2.01 Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.

Section 2.02 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

Section 2.03 Business Associate agrees to ensure that any agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI agree to the same restrictions and conditions that apply to Business Associate with respect to such information.

Section 2.04 Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner designated by Covered Entity, to PHI in a Designated Record Set that is not also in Covered Entity's possession, to Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.524.

Section 2.05 Business Associate agrees to make any amendment to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 in a reasonable time and manner designated by Covered Entity.

Section 2.06 Business Associate agrees to make internal practices books and records relating to the use and disclosure of PHI available to the Secretary, in a reasonable time and manner as designated by the Covered Entity or Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate shall immediately notify Covered Entity upon receipt or notice of any request by the Secretary to conduct an investigation with respect to PHI received from the Covered Entity.

Section 2.07 Business Associate agrees to document any disclosures of PHI that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

Section 2.08 Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (g) above, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

Section 2.09 Business Associate agrees to use or disclose PHI pursuant to the request of Covered Entity; provided, however, that Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

Article III. Permitted Uses and Disclosures of PHI by Business Associate.

Section 3.01 Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

Section 3.02 Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

Section 3.03 Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if:

- (i) such disclosure is Required by Law, or
- (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

Section 3.04 Business Associate shall limit the PHI to the extent practicable, to the limited data set or if needed by the Business Associate, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request subject to exceptions set forth in the Privacy Rule.

Section 3.05 Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

Article IV. Obligations of Covered Entity Regarding PHI.

Section 4.01 Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.

Section 4.02 Covered Entity shall provide Business Associate with any changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

Section 4.03 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, if such restrictions affect Business Associate's permitted or required uses and disclosures.

Section 4.04 Covered Entity shall require all of its employees, agents and representatives to be appropriately informed of its legal obligations pursuant to this Agreement and the Privacy Rule and Security Standards required by HIPAA and will reasonably cooperate with Business Associate in the performance of the mutual obligations under this Agreement.

Article V. Security of Protected Health Information.

Section 5.01 Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of all protected health information ("PHI"), either electronic or otherwise, on behalf of Covered Entity complies with the applicable administrative, physical, and technical safeguards required protecting the confidentiality, availability and integrity of PHI as required by the HIPAA Privacy Rules and Security Standards.

Section 5.02 Business Associate agrees that it will ensure that agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality, availability and integrity of PHI as required by HIPAA Privacy Rules and Security Standards.

Section 5.03 Business Associate agrees to report to Covered Entity any Security Incident (as defined 45 C.F.R. Part 164.304) of which it becomes aware. Business Associate agrees to report the Security Incident to the Covered Entity as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.

Section 5.04 Business Associate agrees to establish procedures to mitigate, to the extent possible, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement.

Section 5.05 Business Associate agrees to immediately notify Covered Entity upon discovery of any Breach of Unsecured Protected Health Information (as defined in 45 C.F.R. §§ 164.402 and 164.410) and provide to Covered Entity, to the extent available to Business Associate, all information required to permit Covered Entity to comply with the requirements of 45 C.F.R. Part 164 Subpart D.

Section 5.06 Covered Entity agrees and understands that the Covered Entity is independently responsible for the security of all PHI in its possession (electronic or otherwise), including all PHI that it receives from outside sources including the Business Associate.

Article VI. Term and Termination.

Section 6.01 *Term.* This Agreement shall be effective as of the Effective Date and shall remain in effect until the Business Associate relationship with the Covered Entity is terminated and all PHI is returned, destroyed or is otherwise protected as set forth in Section 6.05.

Section 6.02 *Termination by Covered Entity.* Covered entity shall have the right to terminate this Agreement at any time by providing thirty (30) days' written notice of such termination to Business Associate.

Section 6.03 *Termination for Cause by Covered Entity.* Covered Entity may terminate its contract(s) or business association with Business Associate if Covered Entity determines that Business Associate has violated a material term of the contract, to include this Agreement.

Section 6.04 *Termination by Business Associate.* This Agreement may be terminated by Business Associate upon 30 days prior written notice to Covered Entity in the event that Business Associate, acting in good faith, believes that the requirements of any law, legislation, consent decree, judicial action, governmental regulation or agency opinion, enacted, issued, or otherwise effective after the date of this Agreement and applicable to PHI or to this Agreement, cannot be met by Business Associate in a commercially reasonable manner and without significant additional expense.

Section 6.05 *Effect of Termination.* Upon termination of this Agreement for any reason, at the request of Covered Entity, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall not retain any copies of the PHI unless necessary for proper document retention/archival purposes only or if such PHI is stored as a result of backup email systems that store emails for emergency backup purposes. If the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

Article VII. Indemnification.

Business Associate agrees to and shall indemnify and hold harmless Covered Entity, its Board of Trustees, officers, agents, employees and personnel against any and all claims, demands, suits, losses, causes of action, or liability which Covered Entity may sustain as a result of Business Associate's material breach of its duties within the terms of this Agreement, or liability of Covered Entity for any act or conduct of Business Associate adjudged to constitute fraud, misrepresentation, or violation of any law, including violation of any statute or regulation.

Article VIII. Amendment.

The parties may agree to amend this Agreement from time to time in any other respect that they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

Article IX. Severability.

The parties intend this Agreement to be enforced as written. However, (i) if any portion or

provision of this Agreement will to any extent be declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (ii) if any provision, or part thereof, is held to be unenforceable because of the duration of such provision, the Covered Entity and the Business Associate agree that the court making such determination will have the power to modify such provision, and such modified provision will then be enforceable to the fullest extent permitted by law.

Article X. Notices.

All notices, requests, consents and other communications hereunder will be in writing, will be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and will be either (i) delivered by hand, (ii) made facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail or certified mail, return receipt requested, postage prepaid.

If to the Covered Entity:

City of Westminster
Deborah Mitchell, Director of General
Services
General Services Department
4800 W. 92nd Avenue
Westminster, Colorado 80031

If to the Business Associate:

CareHere, LLC
Ben Baker, Chief Operating Officer
5141 Virginia Way
Suite 350
Brentwood, TN 37027

Article XI. Regulatory References.

A reference in this Agreement to a section in the Privacy Rule means the referenced section or its successor, and for which compliance is required.

Article XII. Headings and Captions.

The headings and captions of the various subdivisions of the Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

Article XIII. Entire Agreement.

This Agreement sets forth the entire understanding of the parties with respect to the subject matter set forth herein and supersedes all prior agreements, arrangements and communications,

whether oral or written, pertaining to the subject matter hereof.

Article XIV. Binding Effect.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of both Parties and their respective successors and assigns.

Article XV. No Waiver of Rights, Powers and Remedies.

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

Article XVI. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

Article XVII. Interpretation.

It is the Parties' intent to comply strictly with all applicable laws, including without limitation, HIPAA, state statutes, or regulations (collectively, the "Regulatory Laws"), in connection with this Agreement. In the event there shall be a change in the Regulatory Laws, or in the reasoned interpretation of any of the Regulatory Laws or the adoption of new federal or state legislation, any of which are reasonably likely to materially and adversely affect the manner in which either Party may perform or be compensated under this Agreement or which shall make this Agreement unlawful, the Parties shall immediately enter into good faith negotiations regarding a new arrangement or basis for compensation pursuant to this Agreement that complies with the law, regulation or policy and that approximates as closely as possible the economic position of the Parties prior to the change. In addition, the Parties hereto have negotiated and prepared the terms of this Agreement in good faith with the intent that each and every one or the terms, covenants and conditions herein be binding upon and inure to the benefit of the respective Parties. To the extent this Agreement is in violation of applicable law, then the Parties agree to negotiate in good faith to amend this Agreement, to the extent possible consistent with its purposes, to conform to law.

REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the Effective Date.

BUSINESS ASSOCIATE:

CAREHERE MANAGEMENT, LLC

By: _____

Name: _____

Title: _____

COVERED ENTITY:

CITY OF WESTMINSTER

By: _____

Name: _____

Title: _____

Appendix G – Performance Guarantee and Return on Investment (ROI)

The monthly Per Employee Per Month (PEPM) fee as defined in Section 15 of this Agreement, is split into two categories: Program Savings Engine and the Management Fee. These two categories which make up the PEPM will not change during the entire length of the contract. The Management Fee portion is \$4 PEPM. CareHere puts 50% of the Management Fee (\$2 PEPM) at risk for the performance guarantee.

Below are the criteria that can be determined for the performance guarantee categories for Year One (the first 12 months) following the opening of the clinic. The City of Westminster and CareHere will agree to criteria for periods beyond Year One on an annual basis. For the following Performance Guarantee to be in effect, the City must satisfy the following terms and conditions:

1. All levels of City management (including managers and supervisors) EMBRACE and SUPPORT clinic and wellness, including personal usage of the on-site clinic.
2. The City mandates that all eligible employees attend at least one (1) introductory education session facilitated by a CareHere representative detailing the program.
3. The City provides access to the on-site clinic at no cost to the employee, spouse or dependents.
4. The City ensures that the employee is not required to “clock-out” while using the on-site clinic.
5. The City EMPRACES and SUPPORTS the CareHere Medical Staff when discussing the Wellness Clinic with employees.
6. The City and CareHere agree to the calculation used to measure the financial impact of the on-site clinic regarding medical and medication claims prior to the opening of the on-site clinic.
7. The City agrees to remove from the paid claims totals any outlier claim in excess of \$75,000 per claimant per year.
8. The City agrees to provide CareHere detailed medical and prescription drug claims information and demographic data for at least 36-month period prior to the clinic opening and on a quarterly basis after the opening of the clinic. The claims information and demographic data will be provided in an electronic format and content suitable to CareHere.
9. In advance of the clinic opening date, the City will establish and implement a financial reward program to incentivize employees to access the Wellness clinic, receive HRA’s, and participate in Wellness Clinic programs.
10. **All calculations, measurements, and accountability for the Performance Guarantee and ROI evaluation is contingent upon CareHere receiving actual claims data for the entire period under review from the City of Westminster. If actual claims data, as defined by CareHere, is not received in an acceptable electronic format or timely manner, to be defined by CareHere, then CareHere is exempt from all guarantees.**



Performance Guarantees

50% of CareHere Management Fees at Risk

Total Management Fee: \$4 Per Employee Per Month
Total Fees At Risk: 50% of the Management Fee (\$2 PEPM)

Weight		Category	Indicator	Measurement
Total Operations & Financial 20%	10%	Operations	Patient Satisfaction	70% of survey respondents would refer a colleague or family member to the clinic.
	10%	Operations	Patient Engagement	Annual Utilization Average of Appointments exceeds 70%*
Total Administration 30%	10%	Administration	Reporting	Completeness and On-Time Delivery per Agreement
	10%	Administration	Budget Adherence	No more than 15% above Total Budget projection submitted **
	10%	Administration	ROI	ROI of 1.50 in 18 months following Wellness Clinic Opening ***
Engagement of Members that Visit Clinic 50%	25%	Clinical	HRA Screening	70% of All Eligible Employees accessing the clinic complete an HRA
	25%	Clinical	Wellness Engagement	50% of Employees who complete an HRA and are identified as at Risk**** engage in Wellness Programs

* This item is contingent upon the City of Westminster agreeing to promote the CareHere clinic at all department and City employee meetings, inviting the CareHere DCO to speak briefly at all meetings to promote the clinic and wellness programs, and allowing CareHere to regularly reach out to employees via mailers to homes, payroll stuffers, and other promotional means.

** In the event the City and CareHere mutually agree to modify projected clinic hours, services, or other aspects of clinic operations, both parties agree to adjust the budget accordingly for performance guarantee purposes. For example: If it is determined that the clinic should increase total budgeted clinic hours by 10 additional hours to best meet the demand of patients, annual budget adherence calculations will be adjusted to include this mutually agreed upon expansion of hours.

***ROI Calculation:

The CareHere Annual Report Method for overall aggregate data for clinic savings will be utilized. Expected ROI for every \$1 spent \$1.50 saved in 18 months.

For analysis purposes, Annual Claims Trend is assumed at 8% per annum.

ROI = Sum of Medical Claims trended at 8% per annum Per Employee Per Year (PEPY) with individual claims over \$75,000 removed.

Divided by
 Sum of (Actual Medical Claims with individual claims over \$75,000 removed + CareHere Cost) PEPY

Example:

- ROI =
 - \$30,000 / \$20,000

- = 1.5

**** Risk Definitions:

- Diabetes HbA1c ≥ 7
- High Blood Pressure Systolic (top) pressure ≥ 140
- High Cholesterol Total Cholesterol ≥ 220 AND Total Cholesterol/HDL ratio > 4.0

In subsequent years, the City and CareHere will together establish additional threshold targets for patient improvement in identified Risk categories.



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Kings Mill Park Expansion Construction Contract

Prepared By: Becky Eades, Landscape Architect II

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder Goodland Construction, Inc. in the amount of \$118,922.50 for the construction of the Kings Mill Park Expansion and authorize a construction contingency in the amount of \$11,892.00 for a total project expenditure of \$130,814.50.

Summary Statement

- In November 2010, Staff received City Council's approval to apply for a Jefferson County Joint Venture Grant for renovation work at Kings Mill Park, located at 9018 Field Street. In March 2011, the Jefferson County Board of County Commissioners awarded the City \$150,000 toward the Kings Mill Park Renovation.
- Matching funds are available within the 2009 carryover appropriation of \$250,000, which was designated for the demolition of the Kings Mill building and pool and expansion of the existing park at this location, per City Council direction on August 16, 2010.
- A public meeting was held on November 8, 2010. Neighbors attending that meeting requested multi-generational park amenities be added to the park, including a small skatepark (known as a skatespot), a picnic shelter, climbing boulders and a swing.
- The skatespot portion of the park expansion was approved by Council on September 26, 2011, with a contract amendment approved by Council on April 9, 2012 in the amounts of \$143,000 and \$27,500, respectively. The skatespot is nearly complete.
- This contract request is for the remaining portion of the Kings Mill Park expansion and is anticipated to be completed by the end of 2012.

Expenditure Required: \$130,814.50

Source of Funds: Jefferson County Joint Venture Grant and City of Westminster
General Capital Improvement Fund

Policy Issue

Should the City continue with the expansion of Kings Mill Park?

Alternative

The City could choose to not continue with the expansion of Kings Mill Park. Staff does not recommend this as a Jefferson County grant was received for this project and includes funding for the proposed park amenities, and residents in the area were involved in selecting the proposed amenities.

Background Information

During the 2011-2012 budget development process, it was determined to be necessary to close and subsequently demolish the former Head Start facility and neighborhood pool located at Kings Mill Park, 9018 Field Street. Despite ongoing maintenance, the more than 30-year-old facilities required over \$500,000 in capital repairs to remain open. These repairs included structural work, roof replacement, boiler and sand filter replacement for the pool, and overall drainage and storm sewer repairs for the site. In 2010, an average of 24 guests per day used the 1,250-square-foot pool, requiring significant subsidies for staffing and operational costs. This, coupled with no foreseeable operational need for the building, led to City Council direction on August 16, 2010, to demolish the pool and building and to expand the existing park amenities. Demolition was completed in early 2011.

A neighborhood meeting to discuss the future park expansion was held on November 8, 2010. Those in attendance requested kid-friendly activities that would appeal to a range of user groups and ages that would make the park a multi-generational gathering place. Further, the consensus at this meeting was to include a small skatepark, or skatespot, oriented toward beginners; climbing boulders; a picnic shelter; and free standing swings and spinning features that would complement the existing tot play feature and tennis courts. A copy of the conceptual layout for the Kings Mill Park expansion is attached.

In early 2011, Staff was notified that the City had received a \$150,000 Jefferson County Joint Venture Grant to help fund the expansion of the park and include the amenities listed above. The grant, coupled with a 2009 carryover appropriation of \$250,000 brings the total project budget to \$400,000, including demolition. A design/build contract for the skatespot portion of the project was awarded by Council in September of 2011; a contract amendment to deal with geotechnical issues was approved by Council in April of 2012. Construction began in May of 2012 and is nearly complete.

Due to the small size of the development area of the site, it was necessary to complete active construction of the skatespot prior to starting the final park expansion contract. Staff prepared construction drawings for the remainder of the park expansion and bids were formally solicited from three contractors following the City’s procurement process. Proposals were received from the following:

Company:	Bid Amount:
AJI Landscape & Design, Inc.	\$122,127.57
Goodland Construction, Inc.	\$118,922.50
T-2 Construction, Inc.	No bid.

This project supports the City’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 – Site Layout

Kings Mill Park Expansion Conceptual Layout





Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: 120th Avenue Underpass Project – Engineering Design Contract

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with Felsburg, Holt & Ullevig, Inc. for the final design of the 120th Avenue Underpass Project in the amount of \$151,956 and authorize a design contingency in the amount of \$15,000, for a total project budget of \$166,956.

Summary Statement

- City staff proposes the construction of a new pedestrian underpass of 120th Avenue to be located just east of the Ranch Creek crossing of this arterial street, approximately 600 feet east of Federal Boulevard. This underpass would provide a grade-separated connection to the Big Dry Creek Trail system for residents living south of 120th Avenue within the Ranch Subdivision and elsewhere.
- The scope of this project includes the construction of the new underpass of 120th Avenue, a modification of the existing but not yet opened underpass of Federal Boulevard, located immediately north of 120th Avenue, to allow it to also be used by pedestrians, approximately 800 feet of soft trail connecting the two underpasses and a low water crossing of Ranch Creek (see attached map). This project also includes the construction of a concrete sidewalk connecting the sidewalk along the south side of 120th Avenue to the pedestrian underpass.
- City staff is currently working with the Colorado Department of Transportation (CDOT) staff on the design of future 120th Avenue and Federal Boulevard intersection improvements. This federal-aid project is scheduled for construction in 2015, but the scope of that project does not include the subject pedestrian underpass of 120th Avenue. Due to the construction schedule for the 120th Avenue/Federal Boulevard improvements, it is important to construct this proposed underpass in 2014 prior to the intersection improvements project to avoid damage to the future road improvements.
- The “Request for Proposal” for the design of this project was advertised on the City’s website for three weeks, and four proposals were received. City staff reviewed the proposals and selected Felsburg, Holt & Ullevig, Inc (FHU) as the preferred consultant for this project. Staff is very familiar with FHU having worked with this consultant most recently on the 136th Avenue/I-25 and 144th Avenue/I-25 Interchange projects.

Expenditure Required: \$ 166,956

Source of Funds: Storm Water Utility Fund

Policy Issue

Should the City proceed with the design work for the 120th Avenue Underpass Project?

Alternatives

Alternatives to the proposed action include postponing or abandoning the design of this project. These alternatives are not recommended for the following reasons:

- The construction of the 120th Avenue and Federal Boulevard intersection improvements is scheduled for 2015, and this proposed pedestrian underpass should be installed prior to the intersection project to prevent damage to the new roadway.
- Residents living south of 120th Avenue will have a safer grade-separated crossing to gain access to the Big Dry Creek Trail system and businesses located north of 120th Avenue.

Background Information

The 120th Avenue pedestrian underpass has been a desire of the City for many years. This underpass will serve a large residential population living south of 120th Avenue by providing a safe, grade-separated crossing of a major highway (120th Avenue), thus allowing these citizens access to the Big Dry Creek Trail system, Metzger Farms Open Space and the many businesses of the north side of 120th Avenue. A secondary but equally important benefit of this underpass is that it will pass residual 100-year storm water flows that cannot be passed through the existing Ranch Creek box culvert without causing the overtopping of 120th Avenue. While providing major flood prevention benefits, the box will be designed to keep water out of the walkway during minor storm events. The timing of the construction of this underpass has become critical due to the schedule of the pending 120th Avenue and Federal Boulevard Intersection improvement project. This federal-aid project is currently under design and is scheduled for construction in 2015. It is desirable to construct the 120th Avenue pedestrian underpass before the intersection improvements are constructed in order to avoid damage to a newly constructed roadway. Funding for the construction of this first phase of the underpass would also come from the stormwater utility fund in 2014 with the second phase funded in 2015. The second phase would include additional trail connections to the sidewalks along 120th Avenue and the Decatur Street trails to the south; a pond in the open space at the northeast corner of the intersection and improvements to Ranch Creek within the open space area.

This underpass project would include the construction of the pedestrian crossing under 120th Avenue; a modification to the south cell of the existing box culvert under Federal Boulevard located north of 120th Avenue, a low water crossing of Ranch Creek, a "soft" (gravel) trail between the two underpasses and a concrete ramp on the south side of the underpass to connect to the existing sidewalk along the south side of 120th Avenue.

Requests for proposals were advertised for three weeks on the City’s website, and four proposals were received. Based upon the qualifications of the consulting teams and their proposed fees, staff is recommending that Felsburg, Holt & Ullevig, Inc. (FHU) be awarded this contract. FHU’s proposed scope of work as defined in their proposal was well planned and exceeded that of the other firms proposing on this project. The proposed fees of all of the firms are listed below:

Proposer	Proposed Fee
Felsburg, Holt & Ullevig	\$128,796*
JR Engineering	\$137,470
Muller Engineering Company, Inc.	\$169,106
Drexel Barrell & Company	\$180,498

*Originally proposed fee before scope negotiations

The fee from Felsburg, Holt & Ullevig listed above is their original proposal and was used to compare to the fees for similar scopes of work from all of the proposers. After staff identified FHU as the preferred consultant for this project, it became evident that a Conditional Letter of Map Revision (CLOMR) would be needed to comply with the City's floodplain management regulations and that the City would need to obtain clearance from the Federal Emergency Management Agency for the project. Therefore, staff initiated negotiations with FHU to expand the scope of their original proposal to include the preparation of a CLOMR for modifications to the Ranch Creek floodplain as part of this project. These negotiations resulted in a final fee proposal from FHU of \$151,956.

Staff is very familiar with FHU from their work on many other City projects such as the 136th Avenue/I-25 and 144th Avenue/I-25 interchange projects. On those projects, FHU completed their work on time and within budget with excellent results. Staff recommends Felsburg, Holt & Ullevig, Inc. as the best consultant for this particular assignment.

The construction of the 120th Avenue Underpass Project fulfills the City Council's goals of providing a Safe and Secure Community, Vibrant Neighborhoods In One Livable Community and a Beautiful and Environmentally Sensitive City by furnishing a safe means of alternative transportation to connect neighborhoods with the City of Westminster.

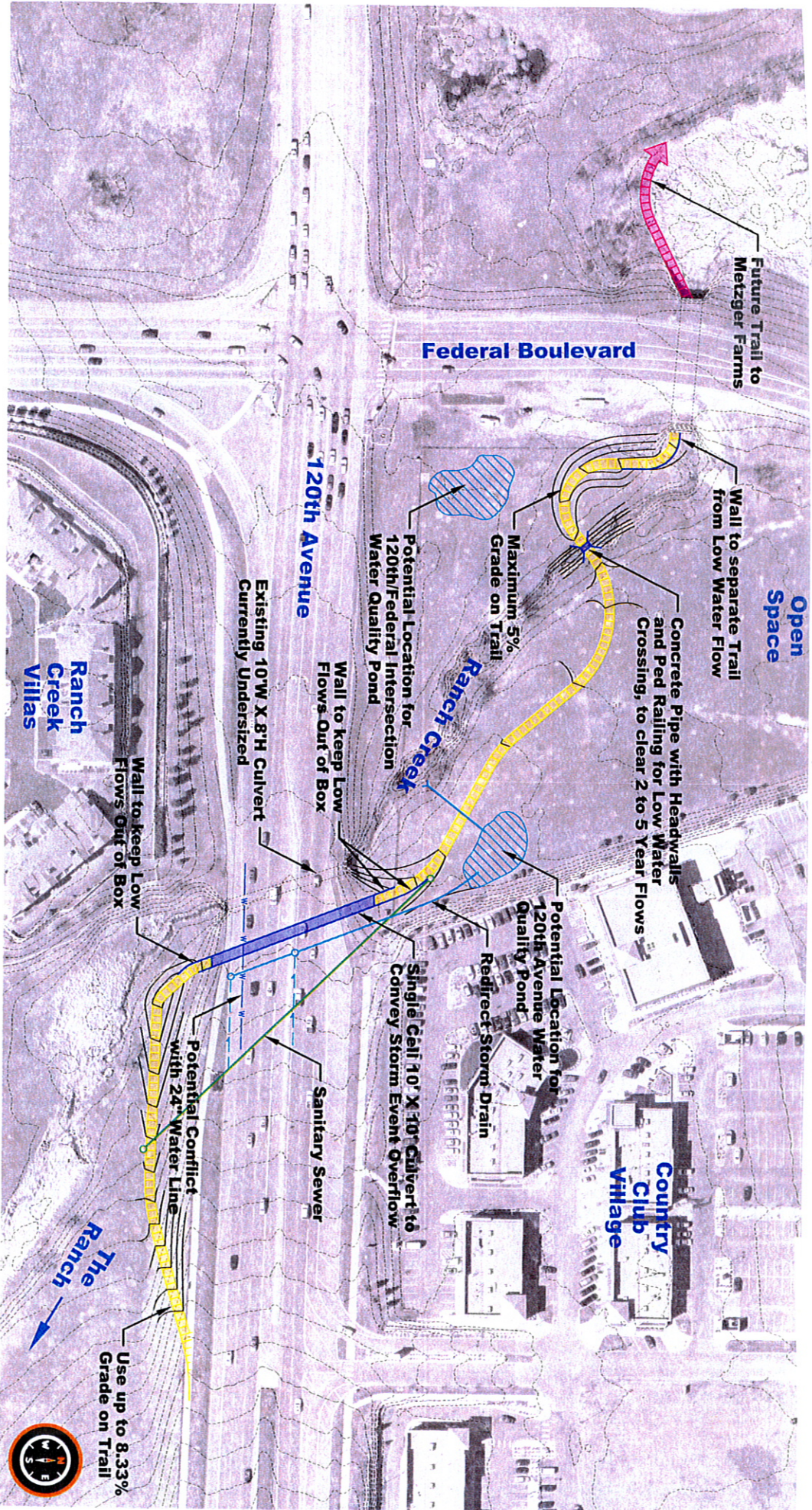
Respectfully submitted,

J. Brent McFall
City Manager

Attachment - 120th Avenue Underpass Exhibit



120TH AVENUE PEDESTRIAN UNDERPASS PROJECT





Agenda Item 8 D

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: City Park Recreation Center, Hot Tub Filtering Equipment Replacement

Prepared By: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will be served by ratifying past purchases of hot tub filterization equipment and authorizing the City Manager to enter into a contract in the amount of \$85,600 with Dr. Guenter Moldizo for design, fabrication, installation and commissioning of City Park Recreation Centers multi-media filterization system and ozone reactor vessel chamber.

Summary Statement

- In early July during routine maintenance of City Park Recreation Center hot tub ozone system, Staff observed minor leaking conditions below the hot tub ozone reactor vessel. Upon further investigation, Staff noted signs of major corrosion and deteriorating conditions at the base of the reactor vessel.
- Staff contacted Dr. Guenter Moldizo, who originally designed and built the ozone generating and filterization system over 20 years ago and a leading expert in ozone systems, to assess the condition of both the ozone reactor vessel and the two multi-media filter tanks. Dr. Moldizo noted it was just a matter of time before the filterization system would no longer be operable.
- Knowing it would take six to seven weeks to fabricate the new stainless filter tanks and another week for shipment, Staff immediately ordered the new reactor vessel and two multi-media filter tanks in an attempt to have them available onsite for installation during City Park Recreation Center’s annual maintenance closure starting on August 20. Any further delay in ordering and installing the equipment would have resulted in another pool closure of up to three more weeks at a later date.
- To avoid losing the amenity of the hot tub and to avoid additional loss of revenue while closing the pool at a later date, Staff ordered the new ozone reactor vessel and two multi-media filterization tanks to be delivered and installed during the two week pool maintenance closing from August 20 through August 31.

Expenditure Required: \$85,600

Source of Funds: General Capital Improvement Fund

- Building Operations Major Maintenance Project (\$65,600)
- Parks & Recreation Major Maintenance Project (\$20,000)

Policy Issue

Should City Council ratify and approve the purchase of filterization equipment for the City Park Recreation Center hot tub?

Alternative

Council could not approve the payment for the work completed to repair the filtering equipment in the facility. This alternative is not recommended based on the critical need that existed for the disinfecting of water in this heavily used amenity at the City Park Recreation Center.

Background Information

During a routine maintenance examination of the hot tub filterization system at City Park Recreation Center, Staff observed water on the floor beneath the ozone system reactor vessel. After further observation, Staff found the vessel was rusting out with water dripping from the base of the equipment. Staff contacted Dr. Guenter Moldizo who had originally designed, built and installed the equipment over 20 years ago. Dr. Moldizo assessed all of the ozone equipment and informed Staff that it was only a matter of time before the base would give way and the facility would no longer be able to operate the filterization system for the hot tub. Knowing that the City Park Recreation Center pool would be closing for two weeks in August and that it would take up to eight weeks to have the new equipment fabricated and shipped from Wisconsin, Staff asked Dr. Moldizo to immediately place an order for the reactor vessel along with two multi-media filtering tanks with the guarantee that the equipment would be delivered by August 20, the first day of the City Park Recreation Center's annual maintenance closing. Any delay in ordering the filterization equipment would have jeopardized Staff's ability to take advantage of the City Park Recreation Center's planned closing on August 20th and would have required the closing of the pool at a later date, once again, inconveniencing the City Park Recreation Center's customers.

Staff would like to point out that the same filterization equipment was identified through the 2007 Bornengineering Long-Term Facility Needs Assessment as needing to be replaced in 2012 at a cost of \$150,000. Staff would also like to point out that the hot tub and associated filterization equipment was not included in the overall pool remodeling in 2009 and 2010. To help reduce the original cost of this project, Dr. Moldizo agreed to supervise the demolition of existing equipment by City Staff and to allow Building Operations & Maintenance Staff to assist with the new equipment installation. These steps reduced the overall cost of the project by more than \$25,000.

The replacement of filterization equipment for the hot tub amenity at City Park Recreation Center supports Council's Strategic Plan goal of a Safe and Secure Community along with a Financially Sustainable City Government Providing Exceptional Services by providing well maintained City facilities and infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 E

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Second Reading of Councillor’s Bill No. 9 re Modifications to the Westminster Municipal Code Title VIII re the Industrial Pretreatment Program

Prepared By: David Meyer, Water Quality Specialist
Mary Fabisiak, Water Quality Administrator
Mike Happe, Utilities Planning & Engineering Manager

Recommended City Council Action

Pass Councillor’s Bill No. 9 on second reading approving the proposed modifications to the Westminster Municipal Code Title VIII relating to the Industrial Pretreatment Program.

Summary Statement

- The City administers an Industrial Pretreatment Program as required by the United States Environmental Protection Agency (U.S. EPA) in order to regulate discharges by industrial users into the sewage collection system.
- The Industrial Pretreatment Program protects the City’s wastewater treatment facility from incompatible pollutants and reduces the possibility of release of contaminants to the environment.
- The proposed modifications to the Municipal Code align definitions with federal definitions, change some paragraph references, update local wastewater discharge limitations based on current facility performance and permit limits, and provide authority to establish sector control programs and issue general wastewater discharge permits applicable to groups of similar users.
- Currently four businesses in the City are issued Industrial Discharge Permits. These businesses will not be negatively impacted by the proposed changes and new businesses will not be at a competitive disadvantage.
- The proposed modifications were submitted to the U.S. EPA after first reading passage and were just recently approved by them.
- This bill was approved on first reading by City Council on March 26, 2012 but required U.S. EPA approval before second reading.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- EPA Program Modification Approval

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2012

COUNCILLOR'S BILL NO. **9**
INTRODUCED BY COUNCILLORS
Lindsey - Kaiser

**A BILL
FOR AN ORDINANCE AMENDING SECTIONS 8-10-1, 8-10-2, 8-10-3, 8-10-4, 8-10-6, AND 8-10-9 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING INDUSTRIAL PRETREATMENT CODE UPDATES**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-10-1, subsection (D), paragraphs (28) and (32) W.M.C., are hereby AMENDED as follows:

8-10-1: GENERAL PROVISIONS - DEFINITIONS: (3381)

(D) DEFINITIONS: Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Chapter, shall have the meanings hereinafter designated:

(28) Publicly Owned Treatment Works or POTW. A treatment works, as defined by Section 212 of the Act (33 U.S.C. Section 1292), which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant. [The term also means the municipality, as defined in Section 502\(4\) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such treatment works.](#)

(32) Slug Load or Slug Discharge. ~~Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 8-10-2(A) of this ordinance.~~ A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions.

Section 2. Section 8-10-2, subsection (A), paragraph (2), subparagraph (o) and subsection (D) paragraphs (3) and (4) W.M.C., are hereby AMENDED as follows:

8-10-2: GENERAL SEWER USE REQUIREMENTS – PRETREATMENT STANDARDS: (3381)

(A) Prohibited Discharge Standards:

(2) Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

(o) Trucked or hauled pollutants, except at discharge points designated by the City Manager and in accordance with Section 8-10-3(D) of this Chapter; ~~Pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.~~

(D) Local Limits:

(3) Daily Maximum Discharge Limits: No person shall discharge wastewater containing in excess of the following maximum limits. These limits apply at the point where the wastewater is discharged to the POTW. The City Manager may impose mass-based limitations in addition to the concentration-based limits below.

~~0.090.13~~ mg/l arsenic (total)
~~0.140.10~~ mg/l cadmium (total)

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~~19.934.63~~ mg/l chromium (total)
~~1.441.26~~ mg/l chromium (VI)
~~2.902.69~~ mg/l copper (total)
~~0.350.77~~ mg/l lead (total)
~~0.00070.0005~~ mg/l mercury (total)
~~0.560.84~~ mg/l molybdenum (total)
~~2.531.82~~ mg/l nickel (total)
~~0.040.13~~ mg/l selenium (total)
~~0.190.91~~ mg/l silver (total)
~~9.248.44~~ mg/l zinc (total)

(4) Pollutant Loadings: The following are the total cumulative pollutant loadings allowed from all commercial dischargers. The City manager may limit the discharge of pollutants from commercial dischargers as necessary to meet the following daily allowable loadings.

~~0.150.07~~ lbs/day arsenic (total)
~~0.240.05~~ lbs/day cadmium (total)
~~33.152.52~~ lbs/day chromium (total)
~~2.400.69~~ lbs/day chromium (VI)
~~4.831.47~~ lbs/day copper (total)
~~0.590.42~~ lbs/day lead (total)
~~0.0240.053~~ lbs/day mercury (total)
~~0.930.46~~ lbs/day molybdenum (total)
~~4.200.99~~ lbs/day nickel (total)
0.07 lbs/day selenium (total)
~~0.340.49~~ lbs/day silver (total)
~~15.374.60~~ lbs/day zinc (total)

Section 3. Section 8-10-3, W.M.C. is hereby AMENDED BY THE ADDITION OF THE FOLLOWING NEW SUBSECTION (E) to read as follows:

8-10-3: PRETREATMENT OF WASTEWATER: (3381)

(E) SECTOR CONTROL PROGRAMS: The City Manager may establish sector control programs to control specific pollutants as necessary to meet the objectives of this chapter for users that engage in similar activities and discharge similar pollutants. The City Manager shall establish policies for each sector control program. Users subject to these sector control programs may be required to install and operate wastewater pretreatment systems and, or implement best management practices and may be required to apply for a wastewater discharge permit.

Section 4. Subsections 8-10-4(B)(1), 8-10-4(C), and 8-10-4(D) are hereby AMENDED; A NEW SUBSECTION (E) IS ADDED to read as follows; and existing subsections (E) through (M), W.M.C., are hereby relettered as subsections (F) through (N):

8-10-4: WASTEWATER DISCHARGE PERMITS: (3381)

(B) WASTEWATER DISCHARGE PERMIT REQUIREMENT:

(1) No significant industrial user shall discharge wastewater into the POTW without first obtaining ~~an individual~~ a wastewater discharge permit from the City of Westminster, except that a significant industrial user that has filed a timely application pursuant to Section 8-10-4(C) of this ordinance may continue to discharge for the time period specified therein.

(C) WASTEWATER DISCHARGE PERMITTING: EXISTING CONNECTIONS: Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges, shall apply for a wastewater

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discharge permit in accordance with Section 8-10-4(EF) within 30 days of the requirement, or within such other time period specified by the City Manager.

(D) WASTEWATER DISCHARGE PERMITTING: NEW CONNECTIONS: Any user required to obtain a wastewater discharge permit who proposes to begin discharging into the POTW must obtain such permit prior to beginning such discharge. An application for this wastewater discharge permit, in accordance with Section 8-10-4(EF), must be filed at least 30 days prior to the date upon which any discharge will begin or recommence.

(E) TYPES OF WASTEWATER DISCHARGE PERMITS: At the discretion of the City Manager, the City Manager may issue either individual wastewater permits or general wastewater discharge permits to control significant industrial user discharges to the POTW. General Permits may be used if the following conditions are met. All Facilities to be covered by a general permit must:

- (1) Involve the same or substantially similar types of operations;
- (2) Discharge the same types of wastes;
- (3) Require the same effluent limitations;
- (4) Require the same or similar monitoring; and
- (5) In the opinion of the City Manager, are more appropriately controlled under a general permit than under individual discharge permits.

Section 5. Subparagraph 8-10-6(A)(2)(a), subsection 8-10-6(C), paragraph 8-10-6(E)(1), and subparagraphs 8-10-6(N)(1) and (2), W.M.C., are hereby AMENDED as follows:

8-10-6: REPORTING REQUIREMENTS: (3381)

(A) BASELINE MONITORING REPORTS:

- (2) Users described above shall submit the information set forth below:
 - (a) All information required in Section 8-10-4(EF)(1)(a)(+), Section 8-10-4(EF)(1)(b), Section 8-10-4(EF)(1)(c)(+), Section 8-10-4(EF)(1)(f) and Section 8-10-4(EF)(1)(g)(+).

(C) REPORTS ON COMPLIANCE WITH CATEGORICAL PRETREATMENT STANDARD DEADLINE: Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the City Manager a report containing the information described in Section 8-10-4(EF)(1)(f) and (g) and 8-10-6(A)(2)(b) of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 8-10-2(B), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 8-10-6(N)(1) of this ordinance. All sampling will be done in conformance with Section 8-10-6(K).

(E) REPORTS OF CHANGED CONDITIONS: Each user must notify the City Manager of any significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change. A significant change for the purposes of this paragraph is an increase in the volume of wastewater of 20% or more, an increase in pollutant concentration or pollutant mass of 20% or more, or the addition any new regulated pollutant.

- (1) The City Manager may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 8-10-4(EF) of this Chapter.

(N) CERTIFICATION STATEMENTS:

(1) Certification of Permit Applications, User Reports and Initial Monitoring Waiver – The following certification statement is required to be signed and submitted by users submitting permit applications in accordance with Section 8-10-4(GH); users submitting baseline monitoring reports under Section 8-10-6(A); users submitting reports on compliance with the categorical pretreatment standard deadlines under Section 8-10-6(C); users submitting periodic compliance reports required by Section 8-10-6(D), and users submitting an initial request to forego sampling of a pollutant based on Section 8-10-6(D)(2). The following certification statement must be signed by an authorized representative as defined by Section 8-10-1(D)(2):

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) Annual Certification for Non-Significant Categorical Industrial Users - A facility determined to be a Non-Significant Categorical Industrial User by the City Manager pursuant to 8-10-1(D)(31)(c) and 8-10-4(GH)(3) must annually submit the following certification statement signed in accordance with the signatory requirements in 8-10-1(D)(2). This certification must accompany an alternative report required by the City Manager:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

- (a) The facility described as _____ [facility name] met the definition of a non-significant categorical Industrial User as described in section 8-10-1(D)(31)(c) [40 CFR 403.3(v)(2)];
- (b) the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based upon the following information.

Section 6. Subsections 8-10-9(A) and (B), W.M.C., are hereby AMENDED as follows:

8-10-9: PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE: (3381)

The City Manager shall publish at least annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to any significant industrial user that meets any of the criteria in paragraphs (A) through (H) below and any other user that meets the definition in paragraphs (C), (D) or (H) below. Significant noncompliance shall mean:

- (A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for the same pollutant parameter taken during a six- (6-)

month period exceed (by any magnitude) a numeric pretreatment standard or requirement, [including instantaneous limits, as defined by 40 CFR 403.3\(L\)](#);

(B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric pretreatment standard [or requirement including instantaneous limits, as defined by 40 CFR 403.3\(L\)](#), multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

Section 7. This ordinance shall take effect upon its passage after second reading.

Section 8. 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 26th day of March, 2012.

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

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

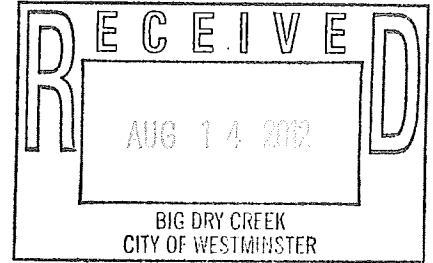
City Attorney's Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

AUG 09 2012



Ref: 8P-W-WW

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David Meyer
Pretreatment Coordinator
City of Westminster
Big Dry Creek Wastewater Treatment Facility
13150 North Huron Street
Westminster, Colorado 80234

Re: Program Modification Approval, National
Pollutant Discharge Elimination System
(NPDES) Number: CO-0024171

Dear Mr. Meyer:

The Environmental Protection Agency public noticed your request for a substantial modification of the City of Westminster's Pretreatment program on June 28, 2012, as required by 40 CFR Section 403.18. Our records indicate that no significant comments were received and that the modifications, as public noticed, have remained unchanged. Therefore, pursuant to 40 CFR Section 403.18(c), the modifications public noticed by the EPA are approved. The revised pretreatment program shall be an enforceable condition of your NPDES permit as of the date of this approval letter (*see 40 CFR Section 122.63(g)*). The City of Westminster should evaluate and update its procedures or permits to ensure these adequately implement the program modification, as required in 40 CFR 403.8(f)(2).

If you have any questions, please contact Al Garcia, the EPA Region 8 Pretreatment Coordinator, at (303) 312-6382 or garcia.al@epa.gov.

Sincerely,

Colleen R.L. Rathbone, Chief
Wastewater Unit

cc: Lisa Knerr, Pretreatment Coordinator
Colorado Department of Public Health and Environment



Agenda Item 8 F

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Second Reading of 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 second 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

- City Council action is requested to adopt the attached Councillor’s Bill on second reading, authorizing a supplemental appropriation to the 2012 Budget of the General, Medical/Dental Self Insurance, Parks Open Space and Trails, and General Capital Improvement Funds.
 - General Fund amendments total: \$ 28,187
 - Medical/Dental Self Insurance Fund amendments total: \$300,000
 - Parks, Open Space and Trails Fund amendments: \$114,230
 - General Capital Improvement Fund amendments: \$316,090
- This Councillor’s Bill was approved on first reading on August 27, 2012.

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.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **31**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

Major - Kaiser

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
September 10, 2012



SUBJECT: Second Reading of Councillor’s Bill No. 32 re 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 second 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

- City Council previously approved the acquisition of the 31.87-acre Bonnie Stewart property located at 8390 West 108th Avenue for \$836,000. Council also 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 Stewart parcel. 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.
- City Council action is needed to appropriate these grant funds into the POST operating budget.
- The City is under a Purchase and Sale Agreement to purchase this property with a closing date of October 31, 2012.
- City Council passed this Councillor’s Bill on first reading on August 27,2012.

Expenditure Required: \$200,000.

Source of Funds: Jefferson County Open Space Grant

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **32**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Briggs - Kaiser

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 #10B, 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



Agenda Item 8 H

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Second Reading of 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 second reading appropriating funds received from Adams County in the amount of \$448,700 for the McKay Overlook open space acquisition grant.

Summary Statement

- City Council previously authorized the acquisition of the 8.8-acre McKay Overlook parcel located at the southeast corner of 144th Avenue and Zuni Street for \$630,000. Council also 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. 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.
- City Council action is needed to appropriate these grant funds.
- 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.
- City Council passed this Councillor's Bill on first reading on August 27, 2012.

Expenditure Required: \$448,700.

Source of Funds: Adams County Open Space Grant

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **33**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Winter - Kaiser

**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 #10C, 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



Agenda Item 8 I

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Second Reading of 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 second 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

- City Council previously approved the acquisition of the 5.12-acre Westminster Hills Elementary School site located at 4105 West 80th Avenue for \$730,000. Council also 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. 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.
- City Council action is needed to appropriate these grant funds.
- The City purchased the Westminster Hills Elementary School site on July 31, 2012 for open space. Adams County brought the grant funds to closing.
- City Council passed this Councillor's Bill on first reading on August 27, 2012.

Expenditure Required: \$408,564.

Source of Funds: Adams County Open Space Grants

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **34**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

Major - Kaiser

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 #10D, 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



Agenda Item 10 A

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Public Hearing on the 2013/2014 City Budget

Prepared By: Barbara Opie, Budget & Special Projects Manager

Recommended City Council Action

Hold a public hearing on the 2013/2014 City Budget and receive citizen comments.

Summary Statement

- Development of the proposed 2013/2014 City Budget has been completed by the City Manager's Office. The draft budget has been distributed to City Council and has been made publicly available on the City's website, in the City Clerk's Office, and at City Libraries.
- Public meetings regarding the 2013/2014 Budget were held on June 11 and July 23 to receive citizen input.
- September 10 is the final public hearing before the City Council Budget Retreat, affording citizens one more opportunity to comment and provide feedback on the 2013/2014 City Budget.
- In accordance with the City Charter, City Council must adopt the budget no later than the October 22nd City Council meeting.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Consider citizen requests, comments and suggestions as they pertain to the 2013/2014 Budget.

Alternative

Council could choose to not conduct a public hearing at this time. This is not recommended as providing citizens an opportunity for input early on in the budget process plays an important role in assuring that the budget reflects community needs. In addition, a public hearing on the budget is required by the City Charter.

Background Information

City Council is scheduled to hold a public hearing to receive input on the 2013/2014 City Budget at the Monday, September 10, City Council meeting. Staff will make a brief presentation at Monday night's City Council meeting on the Proposed 2013/2014 Budget. This public hearing is intended to receive citizen requests, comments and suggestions for both of these budget years.

In August, City Council revisited the goals for 2012-2017. The City Council Goals are listed below:

- Strong, Balanced Local Economy
- Financially Sustainable City Government Providing Exceptional Services
- Safe and Secure Community
- Vibrant Neighborhoods in One Livable Community
- Beautiful and Environmentally Sensitive City

The direction provided by City Council assists City Staff as they develop the 2013/2014 City Budget. Other considerations that go into developing a comprehensive budget are department priorities that strive to maintain existing service levels, and citizen or neighborhood input.

The Departments' efforts culminate in the distribution of the City Manager's Proposed 2013/2014 Budget to City Council. After reviewing the Proposed Budget for two and a half weeks, City Council is scheduled to meet on Monday, September 17, at the regularly scheduled Study Session on the Proposed 2013/2014 Budget to deliberate on final funding decisions on staffing levels, programs, services and capital projects.

In November of 2000, Westminster voters approved a City Charter amendment that allows the City Council to adopt a formal two-year budget. The 2003/2004 Budget was the first officially adopted two-year budget. Staff is pleased to submit to City Council the sixth two-year budget for official adoption.

A copy of the Proposed 2013/2014 Budget document is available to the public in the City Clerk's Office and both City libraries. A copy of the proposed budget is also available on the City's website www.cityofwestminster.us under City Government, City Manager's Office, Budget.

Monday's public hearing was advertised in the *Westminster Window*, *Westsider*, *Weekly Edition* and *City Edition*; on cable Channel 8 and the City's website; and at various public meetings.

Public meetings regarding the 2013/2014 Budget were held on June 11 and July 23. September 10 is the final public hearing before the City Council Budget Retreat, affording citizens one more opportunity to comment and provide feedback on the 2013/2014 City Budget.

Final adoption of the 2013/2014 Budget is required by October 22nd per City Charter requirements. Staff will make a brief presentation at Monday night's City Council meeting on the Proposed 2013/2014 Budget.

City Council's action on this item addresses all five Strategic Planning Goals.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 10 B

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Councillor's Bill No. 35 re Site Agreement Extension with New Cingular Wireless PCS, LLC, for Use of the Fire Station 6 Cell Tower at 999 West 124th Avenue

Prepared By: Doug Hall, Fire Chief
Hilary Graham, Assistant City Attorney

Recommended City Council Action

Pass Councillor's Bill No. 35 on first reading approving the First Amendment to Site Agreement between the City and New Cingular Wireless PCS, LLC, for the continued short-term use of the Fire Station 6 cell tower at 999 West 124th Avenue.

Summary Statement

- Approval of the First Amendment to Site Agreement by ordinance will allow New Cingular Wireless PCS, LLC., (New Cingular), formerly AT&T Wireless, to continue use of the 100-foot monopole located at Fire Station 6 until April 30, 2013, at which time the Agreement will terminate and the equipment and tower will need to be removed.
- New Cingular is requesting an extension of the current Site Agreement for six months to allow additional time to finalize site alternatives for its operations.
- City Council review and approval of the First Amendment to Site Agreement is being sought to comply with Charter Section 13.4 and W.M.C. § 11-4-11(J).
- Use of this site was most recently reviewed and approved by City Council in June 2011. At that time, the City agreed to permit use of this site from May 1, 2011 through October 31, 2012. The pending agreement will allow operation by New Cingular for six additional months.
- Prior to that, a 1991 agreement allowed construction of the monopole and use of the site for twenty years, or until April 30, 2011.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should City Council approve the First Amendment to Site Agreement to allow continued private operation of the monopole at Fire Station 6 until April 30, 2013?

Alternatives

Do not approve the short-term Site Agreement. Without approval, the telecom provider will be compelled to cease operation on October 31, 2012 and remove equipment from the site. Approval of the Site Agreement extension is recommended because it will accomplish removal of the undesirable monopole in the near future while allowing the telecom provider to transition to replacement facilities with minimal interruption to current levels of customer service.

Background Information

In early 2011, following a core-services analysis and pursuant to the new process Council implemented for review of private telecommunications use of City-owned property, the City provided notice that the site would not remain available for private use following expiration of the agreement and, therefore, the City would not be negotiating a long-term renewal at this location.

In order to accommodate existing service and equipment, however, the City offered a short-term extension, by new agreement, during which the private telecom provider could make arrangements for alternative tower locations and equipment removal and relocation.

Through negotiations by the City's Special Counsel for telecom issues, Ken Fellman, a short-term Site Agreement was drafted with improved terms for the City, which extended New Cingular's use of the site until October 31, 2012. New Cingular has since approached the City to request some additional time to operate at the site in order to finalize site alternatives and removal of the monopole with no service interruptions.

An additional short-term extension is acceptable to staff and, as negotiated by Ken Fellman, the First Amendment to Site Agreement allows continuation of the existing Site Agreement with the terms negotiated in 2011, including the monthly payment, for six additional months.

The Fire Department has reviewed the attached Site Agreement drawings and specifications to confirm that it constitutes no change in the location or configuration to the existing structure and equipment. Site Photos show the monopole and adjacent equipment structure which is located just north of Fire Station 6.

As with the prior extension, approval of this Councillor's Bill and the short-term Site Agreement will further the following strategic plan goals: (1) a Safe and Secure Community by allowing the private telecom provider ample time to find and negotiate use of new sites for replacement service, meaning there should be no interruption in current cell service; (2) a Financially Sustainable City Government Providing Exceptional Services by providing reasonable market compensation to the City for the use of its property; and (3) a Beautiful and Environmentally Sensitive City by eventually eliminating the 100-foot monopole and redirecting telecom activities to less visually intrusive sites.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments:

- Ordinance
- Exhibit A - First Amendment to Site Agreement
- Site Agreement – drawings and specifications
- Site Photos

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **35**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE APPROVING AN EXTENSION TO A SITE AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND NEW CINGULAR WIRELESS PCS,
LLC, FOR USE OF THE FIRE STATION #6 CELL TOWER AT 999 WEST 124TH
AVENUE**

THE CITY OF WESTMINSTER ORDAINS:

WHEREAS, City Council previously authorized a site agreement between the City and New Cingular Wireless PCS, LLC, for the purpose of construction and operation of a monopole tower, wireless communications antennas and an equipment structure at 999 West 124th Avenue (a/k/a COU 1253 Cozy Corner ATT); and

WHEREAS, by separate agreement the City and New Cingular Wireless PCS, LLC, agreed to extend the site lease agreement from May 1, 2011, through October 31, 2012; and

WHEREAS, the City and New Cingular Wireless PCS, LLC, have agreed to extend the existing site lease agreement for an addition six (6) month period, expiring April 30, 2013; and

WHEREAS, a short-term extension of the existing site agreement is in the best interest of the City; and

WHEREAS, the final form of the site lease agreement extension has been agreed to by the parties.

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Pursuant to City Charter Section 13.4 and Section 11-4-11(J), W.M.C., a 6-month extension to the Site Agreement between the City and New Cingular Wireless PCS, LLC, for the lease of a portion of the Fire Station #6 cell tower at 999 West 124th Avenue for operation of a monopole tower and wireless communications antennas attached hereto as Exhibit A is hereby approved.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of September, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of September, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

FIRST AMENDMENT TO SITE AGREEMENT

THIS FIRST AMENDMENT TO SITE AGREEMENT ("First Amendment") entered into as of this ___ day of _____, 2012, by and between the City of Westminster ("City") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with its principal office located at 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 ("Company").

RECITALS

A. City is the owner of land and facilities located at 999 West 124th Avenue in the City of Westminster, Adams County, State of Colorado (the "Property"). A 50 by 40 foot parcel (the "Site") within the Property has been previously leased to the Company for construction and operation of a monopole tower, wireless communications antennas and an equipment structure (the "Facilities"). The Company has one subtenant at the Site, which has located an antenna on the Company's monopole and maintains equipment within the Company's equipment structure.

B. Company is a wireless communications provider, and permitted or licensed by the applicable federal or state governmental authority to operate in all or some areas of the City of Westminster.

C. Company and the City entered into a Site Lease Agreement dated December 17, 1990 (the "Site Lease Agreement"). Prior to the expiration of the Site Lease Agreement which granted the Company use of the Site for its Facilities, the City advised the Company that it was not willing to enter into a long term agreement to maintain the Facilities on the Property after the expiration of the Site Lease Agreement.

D. Company and the City entered into a short term Site Agreement dated May 1, 2011 (the "Site Agreement") while the Company sought longer term alternatives for its operations, and the City permitted the continued use by the Company of the Site pursuant to the terms of Site Agreement. The Site Agreement expires on October 31, 2012.

E. The Company continues to finalize alternatives for its operations and requires a six (6) month extension of the Site Agreement. The City agrees to extend the Site Agreement an additional six (6) months and agrees to permit the continued use by the Company of the Site pursuant to the terms of the Site Agreement and this First Amendment.

F. City and the Company believe that the interests of the public will be served by permitting the use of the Site and Facilities in accordance with the terms and conditions of the Site Agreement and this First Amendment.

TERMS

In consideration of the mutual covenants, obligations, terms and conditions recited below, the parties agree as follows:

1. City agrees to extend the Site Agreement an additional six (6) months and will permit the continued use by the Company of the Site pursuant to the terms of the Site Agreement and this First Amendment.

2. Amendments to Site Agreement.

a. Section 2 of the Site Agreement shall be amended to read as follows:

“2. Term and Renewal. The term of this Agreement shall commence on May 1, 2011 (the “Commencement Date”) and end on April 30, 2013.”

b. Section 17 of the Site Agreement shall be amended as follows:

—“17. Effect of Termination. Notice of Company’s termination pursuant to Section 16 shall be given to City in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice. Upon termination pursuant to Section 16, this Agreement shall become null and void and the parties shall have no further obligations to each other except in connection with the warranties and indemnities that by their nature shall survive such termination.”

c. Section 19 of the Site Agreement shall be amended to add the following subparagraph (d):

“19(d) In consideration for the City extending the term of the Site Agreement until April 30, 2013, the City requires a surety in the form of a performance bond [or a letter of credit] in an amount sufficient to cover the removal of the Company Facilities from the Site pursuant to subparagraphs (a) and (b) above. The Company has provided the City with a bid for the removal of the Company Facilities in the amount of approximately \$85,000.00. The Company shall deliver the performance bond [or letter of credit] to the City Engineer in an amount no less than \$85,000.00, which shall cover the costs, if necessary to remove the Company Facilities which consist of a monopole tower, wireless communications antennas and an equipment structure, and restore the premises.”

3. Application of the Existing Site Agreement. The parties acknowledge and agree that all of the terms and conditions of the existing Site Agreement shall continue to apply until the expiration of this First Amendment.

4. No Other Modifications. Except as expressly modified by the terms and conditions contained in this First Amendment, the terms and conditions of the Site Agreement are hereby reaffirmed by the parties hereto without any additional modification.

IN WITNESS WHEREOF, each of the parties has caused this First Amendment to be duly executed on its behalf as of the day and year first above written.

CITY:

CITY OF WESTMINSTER, COLORADO

By: _____
Mayor

COMPANY:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: 
Its: Area Manager, RE & Construction

DNURCO 1753
Cozy Corner



GENERAL DYNAMICS
1400 16TH STREET, SUITE 400
DENVER, CO 80202
1450 Academy Park Loop
Colorado Springs, CO 80910



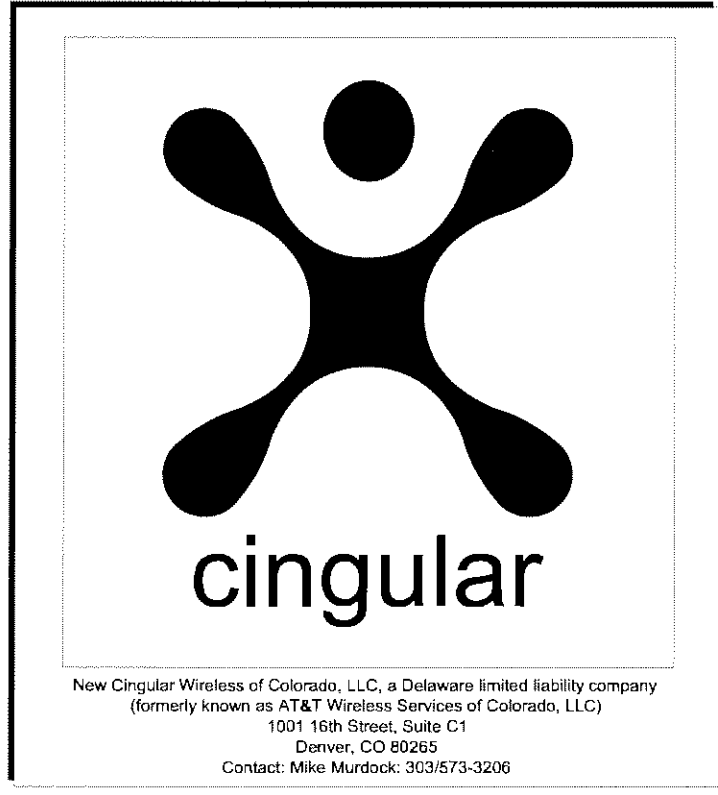
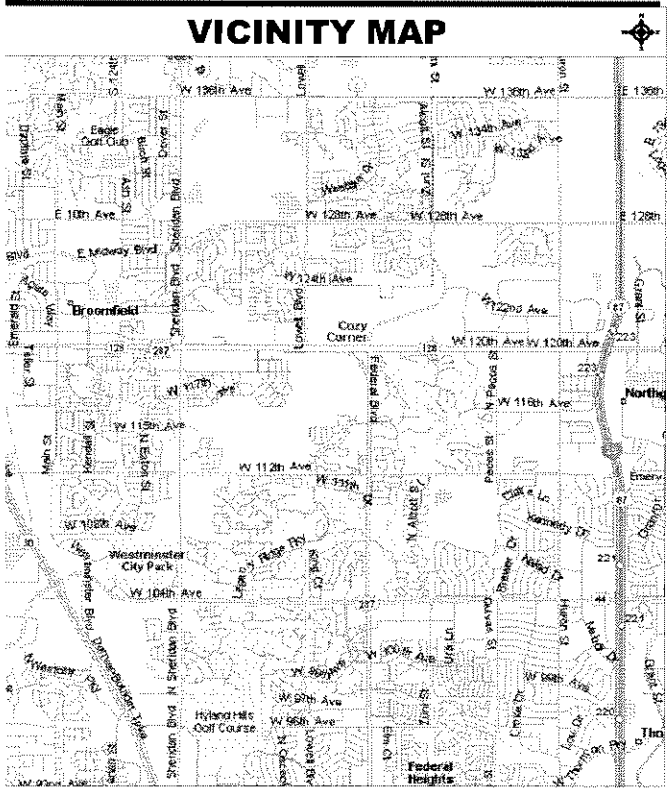
STAMP

THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO THE CLIENT NAMED IS STRICTLY PROHIBITED.

COZY CORNER

999 WEST 124TH AVENUE WESTMINSTER, CO 80030

GMCODN.CX051753 DN1753



PROJECT SUMMARY

APPLICANT / LESEE:
NEW CINGULAR WIRELESS OF COLORADO, LLC,
A DELEWARE LIMITED LIABILITY COMPANY
(FORMERLY KNOWN AS AT&T WIRELESS SERVICES OF COLORADO, LLC)
SUITE C-1
1001 16TH STREET
DENVER, CO. 80265
CONTACT: MIKE MURDOCK
PHONE: 303.573.3206

PROPERTY OWNER:
CITY OF WESTMINSTER
4800 W 92ND AVENUE
WESTMINSTER, CO. 80030

CONTACT: BRENT WORTHINGTON
PHONE: (303) 430-2400

CONSULTANTS:
SITE ACQUISITION & ZONING:
COLLEEN COUSINO
(303) 883-5359

CONSTRUCTION:
GENERAL DYNAMICS
1400 16TH STREET, SUITE 400
DENVER, CO. 80202

SHEET INDEX

ARCHITECTURAL:	
T-1	TITLE SHEET
A-0	GENERAL CONSTRUCTION NOTES
A-1	GENERAL CONSTRUCTION NOTES (CONT'D)
A-2	SITE LAYOUT
A-3	SITE PLAN
A-4	SITE ELEVATION
RADIO FREQUENCY:	
RF-1	ANTENNA SPECIFICATIONS
RF-2	ANTENNA SINGLE LINE SCHEMATICS
STRUCTURAL:	
S-1	STRUCTURAL DETAILS
S-2	COAX MOUNTING DETAILS
ELECTRICAL:	
E-1	EQUIPMENT DIAGRAMS
E-2	ELECTRICAL NOTES AND BREAKER POSITIONS
E-3	UTILITY SITE PLAN
E-4	GROUNDING DETAILS

DRIVING DIRECTIONS

LEFT (NORTH-WEST) ONTO 20TH ST. TAKE RAMP (RIGHT) ONTO I-25 [US-87] TOWARDS I-25. TAKE (LEFT) ONTO US-36 [DENVER-BOULDER TPKE] TOWARDS US-36 / BOULDER. KEEP RIGHT ONTO TOWARDS US-287 / FEDERAL BLVD. TAKE RAMP (RIGHT) ONTO US-287 (FEDERAL BLVD). TURN (WEST) ONTO COTTONWOOD DR. THEN IMMEDIATELY TURN LEFT (SOUTH) ONTO US-287 (FEDERAL BLVD). TURN RIGHT (WEST) ONTO W 74TH AVE. TURN LEFT (SOUTH) ONTO IRVING ST. THEN IMMEDIATELY TURN RIGHT (WEST) ONTO WESTMINSTER PL.

CODE COMPLIANCE

ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF ALL GOVERNING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSTRUCTED TO PERMIT WORK NOT CONFORMING TO THESE CODES.

JURISDICTION

COUNTY:
ADAMS

CITY:
WESTMINSTER

REVISIONS

NO	DATE	DESCRIPTION	BY	CHK	APD
3	10 MAR 2005	AS BUILT DRAWINGS	JCM	GB	
2	28 NOV 2004	CONSTRUCTION DRAWINGS	JCM	GB	
1	03 JUN 2004	AS BUILT DRAWINGS	JCM	GB	
0	01 DEC 2003	CONSTRUCTION DRAWINGS	JCM	GB	

SITE INFORMATION
COZY CORNER
999 W 124TH AVE
WESTMINSTER, CO. 80030
GMCODN.CX051753
DN1753

DESIGN TYPE
AS BUILT DRAWINGS

SHEET TITLE
TITLE SHEET

SHEET NUMBER
T-1

REV.
3

GENERAL NOTES:
 THE PROPOSED FACILITY WILL BE UNMANNED AND DOES NOT REQUIRE POTABLE WATER OR SEWER SERVICE.
 THE PROPOSED FACILITY IS UNMANNED AND IS NOT FOR HUMAN HABITAT. (NO HANDICAP ACCESS IS REQUIRED).
 OCCUPANCY IS LIMITED TO PERIODIC MAINTENANCE AND INSPECTION APPROXIMATELY 2 TIMES PER MONTH.
 NO NOISE, SMOKE, DUST OR ODOR WILL RESULT FROM THIS PROPOSAL.
 THE CONTRACTOR WILL PROVIDE ALL LABOR, MATERIALS, TOOLS, EQUIPMENT, SAFETY EQUIPMENT, TRANSPORTATION, AND SERVICES NECESSARY TO COMPLETE ALL THE WORK OUTLINED IN ALL DRAWINGS, SPECIFICATIONS, SCOPES OF WORK, BILL OF MATERIALS, AND ANY OTHER DOCUMENT ISSUED BY GENERAL DYNAMICS AND AWS.
 THE CONTRACTOR SHALL COMPLY WITH ALL LOCAL AND NATIONAL CODES, LAWS, ORDINANCES, REGULATIONS, SAFETY REGULATIONS, ALL OSHA REGULATIONS, ALL PUBLIC AND MUNICIPAL AUTHORITIES, AND ANY UTILITY COMPANIES REGULATIONS AND DIRECTIVES.

ALL MATERIALS SUPPLIED BY THE OWNER, OWNER'S REPRESENTATIVE, AND THE CONTRACTOR, SHALL BE INSTALLED IN ACCORDANCE WITH ALL LOCAL AND NATIONAL CODES, LAWS, ORDINANCES, REGULATIONS AND PER MANUFACTURER'S RECOMMENDATIONS.

THE CONTRACTOR SUBMITTING BIDS ON ANY OF THE WORK IS REQUIRED TO VISIT EACH SITE PRIOR TO THE BID SUBMITTAL AND FAMILIARIZE HIMSELF/HERSELF WITH THE EXISTING CONDITIONS AND UNDERSTAND THE SCOPE OF WORK INTENDED FOR THE PROJECT. THIS WILL BE PERFORMED AT THE CONTRACTOR'S EXPENSE.

THE DRAWINGS AND SPECIFICATIONS ARE A GENERAL DIRECTIVE FOR THE SCOPE OF WORK. EXACT DIMENSIONS AND LOCATIONS MAY CHANGE IN THE FIELD. THE CONTRACTOR IS TO VERIFY THE DIMENSIONS AND LOCATIONS AND REPORT ANY AND ALL DISCREPANCIES TO GENERAL DYNAMICS PRIOR TO COMMENCING THE RELATED WORK. ANY MINOR ERRORS OR OMISSIONS IN THE DRAWINGS AND SPECIFICATIONS, DOES NOT EXCUSE THE CONTRACTOR FROM COMPLETING THE PROJECT AND IMPROVEMENTS IN ACCORDANCE WITH THE INTENT OF THESE DOCUMENTS.

ALL SITES SHALL BE KEPT CLEAN AND FREE OF DEBRIS ON A DAILY BASIS. ALL TRASH AND MATERIALS NO LONGER BEING USED AT THE SITE MUST BE REMOVED AND PROPERLY DISPOSED OF ON A DAILY BASIS.

THE CONTRACTOR SHALL NOT PROCEED WITH ANY WORK AT THE SITE PRIOR TO A NOTICE TO PROCEED (NTP) BEING ISSUED AND A PRE-CONSTRUCTION MEETING AT THE SITE HAVING TAKEN PLACE.

ALL WORK AND MATERIALS FURNISHED BY THE CONTRACTOR SHALL HAVE A WRITTEN ONE-YEAR WARRANTY STARTING AT THE ACCEPTANCE OF THE SITE FROM THE SITE OWNER.

THE CONTRACTOR SHALL HAVE A DESIGNATED MANAGER ON SITE AT ALL TIMES THAT ANY WORK IS BEING PERFORMED. A SUBCONTRACTOR IS NOT DEFINED AS A DESIGNATED MANAGER.

THE SUCCESSFUL CONTRACTOR SHALL PROVIDE A SCHEDULE, LIST OF ALL SUBCONTRACTORS WITH ADDRESSES, CELL PHONE NUMBERS AND HOME PHONE NUMBERS, VERIFICATION OF INSURANCE, ANY AND ALL PERTINENT LICENSES, AND AN ACCURATE SCHEDULE FOR THE PROJECT PRIOR TO THE ISSUANCE OF A NTP. THE CONTRACTOR IS TO KEEP A COMPLETE AND UP TO DATE SET OF DRAWINGS, SPECIFICATIONS, SCOPE OF WORK, AND BILL OF MATERIAL ON SITE AT ALL TIMES. THIS WILL BE REFERENCED AS THE AS-BUILT DRAWINGS AND MUST BE KEPT CURRENT ON A DAILY BASIS. THIS IS IN ADDITION TO THE PERMIT SET.

A NEW AND CLEAN SET OF CONTRACT DOCUMENTS WILL BE USED TO TRANSFER THE INFORMATION FROM THE OLDEST COPY OF THE AS-BUILT DRAWINGS TO A NEW COPY. THIS NEEDS TO BE SUBMITTED TO GENERAL DYNAMICS WITH THE CLOSE OUT DOCUMENTS.

IN ANY CO-LOCATION SITE, THE CONTRACTOR AND ALL ASSIGNS ARE NOT TO USE EXISTING POWER OR EQUIPMENT WITH ANY EQUIPMENT BELONGING TO ANY OTHER CARRIER. FAILURE TO ADHERE TO THIS WILL CAUSE IMMEDIATE DISMISSAL OF THE CONTRACTOR FROM THE PROJECT.

THE CONTRACTOR IS RESPONSIBLE FOR SCHEDULING ALL INSPECTIONS AND TESTING REQUIRED FOR EACH PROJECT. A 24-HOUR NOTIFICATION TO GENERAL DYNAMICS IS REQUIRED FOR ALL INSPECTIONS AND TESTING. A FIELD COPY OF ALL INSPECTIONS AND TESTING REPORTS AS WELL AS TRUCK TICKETS MUST BE SUBMITTED TO THE OWNERS REPRESENTATIVE WITHIN 24-HOURS OF THE INSPECTION OR TEST.

THE CONTRACTOR IS RESPONSIBLE TO VERIFY ALL MATERIALS ISSUED TO THEM AND REPORT ANY DISCREPANCIES TO GENERAL DYNAMICS AT THE TIME OF ISSUANCE. THE CONTRACTOR SHALL STORE THESE MATERIALS PROPERLY, ACCORDING TO THE MANUFACTURER'S RECOMMENDATIONS AND IN A MANNER THAT WILL NOT VOID THE WARRANTY ON ANY ITEM. IF ANY ITEM IS DAMAGED OR UNUSABLE DUE TO IMPROPER HANDLING AND STORAGE, THE CONTRACTOR WILL REPLACE IT AT THEIR EXPENSE.

THE CONTRACTOR IS RESPONSIBLE TO FURNISH PROPER FACILITIES FOR THE WORKERS ON EACH PROJECT FOR THE DURATION OF THAT PROJECT.

THE CONTRACTOR IS RESPONSIBLE TO MAINTAIN THE PRESENT CONDITION OF ANY EXISTING BUILDINGS, LANDSCAPING, FENCING, EQUIPMENT, WALKS, DRIVES, AND ATTACHMENTS. IF ANY DAMAGE SHOULD OCCUR, THE CONTRACTOR IS RESPONSIBLE TO RESTORE THE DAMAGE TO A BETTER OR NEW CONDITION.

THE GENERAL DYNAMICS REPRESENTATIVE RESERVES THE RIGHT TO RELOCATE ANY EQUIPMENT WITHIN 100 FT. OF THE LOCATION SPECIFIED ON THESE DRAWINGS PRIOR TO INSTALLATION BY THE CONTRACTOR.

IF THE SPECIFIED EQUIPMENT CAN NOT BE INSTALLED AS SHOWN ON THESE DRAWINGS, THE CONTRACTOR SHALL PROPOSE AN ALTERNATIVE INSTALLATION FOR APPROVAL BY THE GENERAL DYNAMICS REPRESENTATIVE.

THE CONTRACTOR IS RESPONSIBLE FOR FIELD MEASUREMENTS TO CONFIRM LENGTHS OF CABLE TRAYS, AND ELECTRICAL LINES.

THE CONTRACTOR IS RESPONSIBLE TO OBTAIN AND PAY FOR ALL ELECTRICAL PERMITS AND INSPECTIONS REQUIRED FOR COMPLETION OF WORK AND ACCEPTANCE. PROVIDE CERTIFICATES TO THE CONSTRUCTION MANAGER VERIFYING THAT THE WORK CONFORMS TO THE REQUIREMENTS OF ALL CODES AND AUTHORITIES HAVING JURISDICTION.

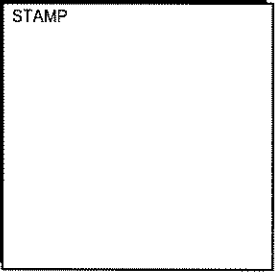
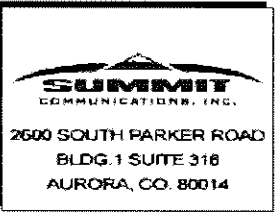
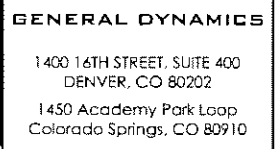
NO DEVIATIONS FROM DESIGN SHOWN ON THESE DRAWINGS IS ALLOWED, WITHOUT PRIOR WRITTEN APPROVAL FROM THE GENERAL DYNAMICS REPRESENTATIVE. FAILURE TO OBSERVE THIS RULE MAY RESULT IN THE CONTRACTOR CORRECTING THE INSTALLATION AT THEIR EXPENSE.

VERIFICATION THAT THE EXISTING MONOPOLE CAN SUPPORT THE PROPOSED ANTENNA LOADING IS TO BE DONE BY OTHERS.

PROVIDE SUPPORTS FOR THE ANTENNA CABLES TO THE ELEVATION OF ALL INITIAL AND FUTURE ANTENNAS. ANTENNA CABLES ARE TO BE SUPPORTED AND RESTRAINED AT THE CENTERS SUITABLE TO THE MANUFACTURER'S REQUIREMENTS.

SITE WORK:

- (1) THE CONTRACTOR SHALL GRUB THE SITE AREA AND ANY ACCESS ROAD CLEARING AND REMOVE A MINIMUM OF 6" TO ACHIEVE A STABLE SUB-BASE TO ACCEPT FILL OR OTHER MATERIAL SPECIFIED FOR THE SITE AND ACCESS ROAD. THE GRUBBING SHALL BE REMOVED FROM THE SITE AND NOT REUSED IN ANY PART OF THIS PROJECT.
- (2) IT IS THE CONTRACTOR'S SOLE RESPONSIBILITY TO CALL THE LOCAL LOCATING AUTHORITIES TO VERIFY THE LOCATION OF ANY UNDERGROUND UTILITIES OR LINES THAT EXIST WITHIN THE ENTIRE PROJECT AREA. THE CONTRACTOR IS RESPONSIBLE FOR THE PROTECTION AND RELOCATION (AS NECESSARY) OF THE UNDERGROUND UTILITIES OR LINES. THE CONTRACTOR SHALL PLACE THESE ITEMS ON THE AS-BUILT DRAWINGS.
- (3) ALL ROADWORK AND MATERIALS SHALL CONFORM TO ALL STATE AND LOCAL CODES AND IN ACCORDANCE WITH THE DEPARTMENT OF HIGHWAY AND PUBLIC TRANSPORTATION STANDARD SPECIFICATIONS.
- (4) THE ACCESS ROAD, IF REQUIRED, WILL BE CONSTRUCTED FIRST BEFORE ANY OTHER WORK ON THE SITE IS PERMITTED. BRING THE ROAD TO SUB-BASE COURSE TO ALLOW CONSTRUCTION TRAFFIC TO USE THE ROAD FOR THE PROJECT AND COMPLETE THE ROAD AFTER THE CONSTRUCTION OF THE SITE IS SUBSTANTIALLY COMPLETE.
- (5) ALL SITES AND ACCESS ROADS ARE TO BE CONSTRUCTED TO HAVE A POSITIVE DRAINAGE FLOW AWAY FROM THE SITE AND EQUIPMENT. ANY DISCREPANCIES IN THE DRAWINGS OR SPECIFICATIONS MUST BE BROUGHT TO THE ATTENTION OF GENERAL DYNAMICS IMMEDIATELY.
- (6) ALL ACCESS ROAD AND SITE AREAS WILL HAVE AN UNDERLAYMENT OF MIRAFI-500X, OR EQUAL.
- (7) A SOIL STERILIZER SHALL BE APPLIED TO ALL GRAVEL SURFACES AND BE EPA REGISTERED LIQUID COMPOSITION AND OF PRE-EMERGENCE DESIGN. THE PRODUCT LABEL AND INFORMATION WILL BE GIVEN TO GENERAL DYNAMICS.
- (8) SUB-BASE COURSE OF GRANULAR "B" MATERIAL SHALL CONSIST OF WELL GRADED SAND AND GRAVEL WITH NOT MORE THAN 8% PASSING THROUGH #200 SIEVE WITH NOT LESS THAN 35% RETAINED ON A #4 SIEVE. CONTRACTOR TO SUPPLY GRADATION FOR REVIEW PRIOR TO PLACEMENT.
- (9) BASE COURSE OF GRANULAR "A" MATERIAL SHALL CONSIST OF 3/4" CRUSHED SAND AND GRAVEL (ROAD MULCH) WITH NOT MORE THAN 8% PASSING THROUGH #200 SIEVE. CONTRACTOR TO SUPPLY GRADATION FOR REVIEW PRIOR TO PLACEMENT.
- (10) ALL FILL DIRT SHALL BE CLEAN AND NATURAL, FREE FROM ANY DELETERIOUS MATERIALS, ROOTS, ICE, SNOW AND RUBBISH. A COPY OF ALL DELIVERY TICKETS SHALL BE SUBMITTED TO THE OWNER'S REPRESENTATIVE WITHIN 24-HOURS FROM THE DELIVERY.
- (11) ALL TRENCHES SHALL HAVE A SIX-INCH BASE OF CLEAN SAND FILL TO ACCEPT THE CONDUITS AND THEN ANOTHER 12" OF CLEAN SAND FILL ON TOP OF THE CONDUITS. THE REMAINDER OF THE TRENCH SHALL HAVE A CLEAN COMPACTABLE FILL PLACED IN MAXIMUM LIFTS OF 8" AND MECHANICALLY COMPACTED TO A DENSITY OF 98% OF STANDARD PROCTOR MAXIMUM DENSITY. METALLIC WARNING TAPE SHALL BE PLACED AT 12" BELOW FINISHED GRADE ALONG THE ENTIRE TRENCH.
- (12) ALL COMPACTION OF SITE AREAS SHALL BE ACCOMPLISHED BY MECHANICAL MEANS. LARGER AREAS SHALL BE COMPACTED BY A SHEEP'S FOOT VIBRATORY ROLLER WEIGHING AT LEAST 5 TONS. SMALLER AREAS SHALL BE COMPACTED BY A POWER DRIVEN HAND HELD TAMPER. ALL COMPACTED AREAS SHALL BE COMPACTED TO WITHIN 95% OF STANDARD PROCTOR MAXIMUM DENSITY AND TESTED BY AN INDEPENDENT LABORATORY, BUT IT WILL BE THE RESPONSIBILITY OF THE CONTRACTOR TO SCHEDULE TESTING. ANY SCHEDULING FOR A PROCTOR WILL BE THE CONTRACTOR'S RESPONSIBILITY AND MUST BE DONE IN A TIMELY FASHION TO ASSURE THE PROJECT WILL NOT BE DELAYED.
- (13) ALL FILL OR STONE WILL BE PLACED IN MAXIMUM 8" LIFTS PRIOR TO COMPACTING.
- (14) FINISH GRADE, INCLUDING TOP SURFACE COURSE, SHALL EXTEND 12" BEYOND THE SITE FENCE AND SHALL COVER THE AREA AS INDICATED.
- (15) USE RIP RAP IN ANY AREAS WITH A SLOPE GREATER THAN 2:1, ENTIRE DITCH FOR 6 FEET IN ALL DIRECTIONS AT CULVERT OPENINGS, AND AS INDICATED ON PLANS.
- (16) SEED, FERTILIZER, AND STRAW COVER SHALL BE APPLIED TO ALL OTHER DISTURBED AREAS, DITCHES, DRAINAGE, AND SWALES NOT OTHERWISE RIP RAPPED. SEED AND FERTILIZER SHALL BE APPLIED TO SURFACE CONDITIONS, WHICH WILL ENCOURAGE ROOTING. PREPARE SURFACE PROPERLY TO ACCEPT THE SEED. SOW SEED IN TWO OPPOSITE DIRECTIONS IN TWICE THE QUANTITY RECOMMENDED BY THE SEED PRODUCER.
- (17) THE CONTRACTOR IS RESPONSIBLE TO ENSURE GROWTH OF THE SEED AND LANDSCAPING AREAS BY WATERING, STRAW, MULCH NET AND ANY OTHER PROPER LANDSCAPING METHOD NECESSARY. ALL AREAS MUST HAVE SUSTAINED GROWTH BY THE TIME OF COMPLETION OF THE PROJECT.
- (18) THE CONTRACTOR IS SOLELY RESPONSIBLE FOR CONTAINMENT OF SEDIMENT AND CONTROL OF EROSION ON SITE. ANY DAMAGE TO ADJACENT OR DOWNSTREAM PROPERTIES WILL BE CORRECTED AT THE CONTRACTOR'S EXPENSE.
- (19) THE CONTRACTOR IS TO MAINTAIN ADEQUATE DRAINAGE AT ALL TIMES. DO NOT ALLOW WATER TO STAND OR POND. ANY DAMAGE TO STRUCTURES OR WORK ON THE SITE CAUSED BY INADEQUATE MAINTENANCE OF DRAINAGE PROVISIONS WILL BE THE RESPONSIBILITY OF THE CONTRACTOR AND ANY COST ASSOCIATED WITH REPAIRS FOR SUCH DAMAGE WILL BE AT THE CONTRACTOR'S EXPENSE.
- (20) THE CONTRACTOR SHALL BE RESPONSIBLE TO CORRECT ALL DAMAGE TO THE SITE SUBSEQUENT TO THE INSTALLATION OF THE POWER AND TELCO LINES.



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SITE INFORMATION	
COZY CORNER 999 W 124TH AVE WESTMINSTER, CO. 80030 GMCODN.CX051753 DN1753	
DESIGN TYPE	
AS BUILT DRAWINGS	
SHEET TITLE	
GENERAL CONSTRUCTION NOTES	
SHEET NUMBER	REV.
A-0	3

CRETE NOTES:

ALL MATERIALS, LABOR, AND METHODS SHALL CONFORM TO ALL APPLICABLE ASTM AND ACI STANDARDS AND REQUIREMENTS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE THAT ALL STANDARDS ARE MET AND BE ABLE TO PRODUCE THE VERIFICATION OF THESE ITEMS UPON REQUEST.

THE CONTRACTOR SHALL SCHEDULE ALL INSPECTIONS AND THE TESTING LABORATORY AND INFORM THE OWNER'S REPRESENTATIVE WITHIN 24-HOURS OF THE INSPECTION OR TEST. THE TEST WILL INCLUDE SLUMP, AIR ENTRAINMENT, TEMPERATURE, AND TEST CYLINDERS. A TOTAL OF FIVE CYLINDERS SHALL BE TAKEN DURING EACH POUR OR FOR EACH 50 YARDS IF THE POUR IS OVER 50 YARDS. THE FIRST CYLINDER WILL BE BROKEN AT 3 1/2 DAYS. A SECOND AT 7 DAYS, THE THIRD AND FOURTH AT 28 DAYS. THE LAST CYLINDER WILL BE KEPT SEPARATELY FOR FUTURE USE IF NECESSARY.

ALL CONCRETE FOR THE PROJECT SHALL HAVE A 28-DAY STRENGTH OF 4,000 PSI (TOWER FOUNDATION = 5,000 PSI) AND A SLUMP OF 5" MAXIMUM WITH THE MIXTURE PROPORTIONS MEETING THE ASTM AND ACI REQUIREMENTS. ALL MIXTURES AND MATERIALS USED FOR THE CONCRETE MIXTURE SHALL ALSO CONFORM TO THE PROPER ASTM REQUIREMENTS.

ALL TOWER FOUNDATIONS SHALL BE TREMIE PLACED AND VIBRATED.

THE CONTRACTOR IS RESPONSIBLE FOR ALL EMBEDMENT LOCATIONS, SIZES, AND PROPER ANCHORING TO HOLD THE ITEMS IN PLACE ACCURATELY.

THE CONTRACTOR WILL SUPPLY AND USE RELEASING AGENT ON ALL FORMS. ANY ATTACHMENT TO EXISTING CONCRETE AREAS WILL BE DONE WITH SMOOTH DOWELS AT 18" O.C. WITH A MINIMUM 6" EMBEDMENT IN EACH DIRECTION AND AN APPROVED BONDING AGENT TO BE APPLIED TO THE EXISTING SURFACE.

ALL EXPOSED CONCRETE WILL HAVE A UNIFORM FINISH AND BE SLOPED FOR DRAINAGE OFF THE SURFACE UNLESS OTHERWISE NOTED IN THE PLANS OR SPECIFICATIONS.

THE CONTRACTOR SHALL PROTECT THE CONCRETE FROM ANY ADVERSE WEATHER CONDITIONS, PREMATURE CURING AND MECHANICAL INJURY TO INSURE PROPER CURING.

ALL CONCRETE WITH SURFACES EXPOSED TO STANDING WATER OR FREEZING SHALL BE AIR-ENTRAINED WITH AN AIR-ENTRAINING AGENT CONFORMING TO ASTM C260, C494, C618, C989, AND C1017. TOTAL AIR CONTENT SHALL BE IN ACCORDANCE WITH TABLES 19-A-1 OF THE UBC 1997.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE USE AND CONTROL OF ANY MECHANICAL EQUIPMENT TO INSURE THE PROPER PLACEMENT OF THE CONCRETE TO PREVENT ANY VOIDS OR GAPS.

CONCRETE SHALL BE MIXED, PROPORTIONED, CONVEYED AND PLACED IN ACCORDANCE WITH UBC 1997 SECTION 305 AND ACI 301. STRENGTHS AT 28 DAYS AND MIX CRITERIA SHALL BE AS FOLLOWS.

TYPE OF CONSTRUCTION:

1) SLABS ON GRADE, TOPPING SLABS, SLABS ON METAL DECK STAIR LANDINGS AND TREADS

- 28 DAY STRENGTH (f'c) 4000 PSI
- W/C RATIO GREATER THAN OR EQUAL TO .45
- MINIMUM CONTENT PER CUBIC YARD 5 1/2 SACKS

2) ALL STRUCTURAL CONCRETE (EXCEPT WALLS)

- 28 DAY STRENGTH (f'c) 4000 PSI
- W/C RATIO GREATER THAN OR EQUAL TO .45
- MINIMUM CONTENT PER CUBIC YARD 6 1/2 SACKS

3) CONCRETE WALLS

- 28 DAY STRENGTH (f'c) 4000 PSI
- W/C RATIO GREATER THAN OR EQUAL TO .45
- MINIMUM CONTENT PER CUBIC YARD 6 1/2 SACKS

4) CONCRETE FOUNDATIONS

- 28 DAY STRENGTH (f'c) 5000 PSI
- W/C RATIO GREATER THAN OR EQUAL TO .45
- MINIMUM CONTENT PER CUBIC YARD 6 1/2 SACKS

EMENT SHALL BE ASTM C150, PORTLAND CEMENT TYPE II U.N.O.

THE GENERAL CONTRACTOR SHALL SUPERVISE AND BE RESPONSIBLE FOR THE METHODS AND PROCEDURES OF CONCRETE PLACEMENT.

REINFORCING STEEL SHALL CONFORM TO ASTM A615 (INCLUDING SUPPLEMENT S1). GRADE 60, fy=60,000 PSI.

EXCEPTIONS: ANY BARS SPECIFICALLY SO NOTED ON THE DRAWINGS SHALL BE GRADE 40, fy=40,000 PSI. GRADE

60 REINFORCING BARS INDICATED ON DRAWINGS TO BE WELDED SHALL CONFORM TO ASTM A706. REINFORCING BARS COMPLYING WITH ASTM A615(S1) MAY BE WELDED ONLY IF MATERIAL PROPERTY REPORTS INDICATING CONFORMANCE WITH WELDING PROCEDURES SPECIFIED IN A.W.S. D14 ARE SUBMITTED.

REINFORCING STEEL SHALL BE DETAILED (INCLUDING HOOKS AND BENDS) IN ACCORDANCE WITH AC1 315 AND 318.

AP ALL CONTINUOUS REINFORCEMENT AT LEAST 30 BAR DIAMETERS OR A MINIMUM OF 2'-0". PROVIDE CORNER BARS

AT ALL WALL AND FOOTING INTERSECTIONS. LAP CORNER BARS AT LEAST 30 BAR DIAMETERS OR A MINIMUM OF 2'-0".

AP ADJACENT MATS OF WELDED WIRE FABRIC A MINIMUM OF 8" AT SIDES AND ENDS. TOWER FOUNDATION AS PER ENGINEER'S STAMPED DRAWINGS.

WELDED WIRE FABRIC SHALL CONFORM TO ASTM A-185.

SPIRAL REINFORCEMENT SHALL BE PLAIN WIRE CONFORMING TO ASTM A615, GRADE 60, fy=60,000 PSI.

DO BARS PARTIALLY EMBEDDED IN HARDENED CONCRETE SHALL BE FIELD BENT UNLESS SPECIFICALLY SO DETAILED AND APPROVED BY THE GENERAL DYNAMICS REPRESENTATIVE.

CONCRETE PROTECTION (COVER) FOR REINFORCING STEEL SHALL BE AS FOLLOWS:

FOOTINGS AND OTHER UNFORMED SURFACES, EARTH FACE = 3"

FORMED SURFACES EXPOSED TO EARTH OR WEATHER (#6 BARS OR LARGER) = 2"

FORMED SURFACES EXPOSED TO EARTH OR WEATHER (#5 BARS OR SMALLER) = 1-1/2"

SLABS AND WALLS (INTERIOR FACE) = 3/4"

BARS SHALL BE SUPPORTED ON CHAIRS OR EQUAL.

ANCHOR BOLTS TO CONFORM TO ASTM A307.

NON-SHRINK GROUT SHALL BE FURNISHED BY AN APPROVED MANUFACTURER AND SHALL BE MIXED AND PLACED IN STRICT ACCORDANCE WITH THE MANUFACTURER'S PUBLISHED RECOMMENDATIONS. GROUT STRENGTH SHALL BE AT LEAST EQUAL TO THE MATERIAL ON WHICH IT IS PLACED (3,000 PSI MINIMUM).

ALL EXPANSION ANCHORS TO BE HILTI BRAND. ADHESIVE ANCHORS REQUIRE TESTING TO CONFIRM CAPACITY UNLESS WAIVED BY ENGINEER.

STRUCTURAL STEEL NOTES:

(1) SHOP DRAWINGS FOR STRUCTURAL STEEL SHALL BE SUBMITTED TO THE GENERAL DYNAMICS REPRESENTATIVE FOR REVIEW PRIOR TO FABRICATION.

(2) STRUCTURAL STEEL DESIGN, FABRICATION AND ERECTION (INCLUDING FIELD WELDING, HIGH STRENGTH FIELD BOLTING, EXPANSION BOLTS, AND THREADED EXPANSION ANCHORS) SHALL BE BASED ON THE A.I.S.C. "SPECIFICATION FOR THE DESIGN, FABRICATION, AND ERECTION OF STRUCTURAL STEEL FOR BUILDINGS" LATEST EDITION. SUPERVISION SHALL BE IN ACCORDANCE WITH SECTION 1701 OF THE UBC 1997, BY A QUALIFIED TESTING AGENCY DESIGNATED BY THE GENERAL DYNAMICS REPRESENTATIVE. THE GENERAL DYNAMICS REPRESENTATIVE SHALL BE FURNISHED WITH A COPY OF ALL INSPECTION REPORTS AND TEST RESULTS.

(3) STRUCTURAL STEEL SHALL CONFORM TO THE FOLLOWING REQUIREMENTS:

TYPE OF MEMBER:

- (A) PLATES, SHAPES, ANGLES, AND RODS = ASTM A36, Fy 36 KSI
- (B) SPECIAL SHAPES AND PLATES = ASTM A572, Fy 50 KSI
- (C) PIPE COLUMNS = ASTM A53, Fy 35 KSI
- (D) STRUCTURAL TUBING = ASTM A500, Fy 46 KSI
- (E) ANCHOR BOLTS = ASTM A307
- (F) CONNECTION BOLTS = ASTM A325-X

(4) ALL MATERIAL TO BE HOT DIPPED GALVANIZED AFTER FABRICATION PER A123/A123M-00.

(5) ALL WELDING SHALL BE IN CONFORMANCE WITH A.I.S.C. AND AWS STANDARDS AND SHALL BE PERFORMED BY W.A.B.O. CERTIFIED WELDERS USING E70 XX ELECTRODES. ONLY PRE-QUALIFIED WELDS (AS DEFINED BY AWS) SHALL BE USED. WELDING OF GRADE 60 REINFORCING BARS (IF REQUIRED) SHALL BE PERFORMED USING LOW HYDROGEN ELECTRODES. WELDING OF GRADE 40 REINFORCING BARS (IF REQUIRED) SHALL BE PERFORMED USING E70 XX ELECTRODES. WELDING WITHIN 4" OF COLD BENDS IN REINFORCING STEEL IS NOT PERMITTED. SEE REINFORCING NOTE FOR MATERIAL REQUIREMENTS OF WELDED BARS.

(6) COLD-FORMED STEEL FRAMING MEMBERS SHALL BE OF THE SHAPE, SIZE, AND GAGE SHOWN ON THE PLANS. PROVIDE MINIMUM SECTION PROPERTIES INDICATED. ALL COLD-FORMED STEEL FRAMING SHALL CONFORM TO THE A.I.S.S. "SPECIFICATION FOR THE DESIGN OF COLD-FORMED STEEL STRUCTURAL MEMBERS."

(7) BOLTED CONNECTIONS SHALL USE BEARING TYPE ASTM A325 BOLTS (3/4" DIA.) AND SHALL HAVE A MINIMUM OF TWO BOLTS UNLESS NOTED OTHERWISE.

(8) NON-STRUCTURAL CONNECTIONS FOR STEEL GRATING MAY USE 5/8" DIA. ASTM A307 BOLTS UNLESS NOTED OTHERWISE.

(9) STEEL WORK SPECIFIED TO BE PAINTED SHALL BE PAINTED IN ACCORDANCE WITH ASTM A36.

(10) ALL WELDS TO BE 1/4" FILLET UNLESS NOTED OTHERWISE.

(11) TOUCH UP ALL FIELD DRILLING AND WELDING WITH 2 COATS OF GALVACON (ZINC RICH PAINT) OR APPROVED EQUAL.

CLOSE-OUT DOCUMENTS:

(1) CONTRACTOR CLOSE-OUT DOCUMENTS INCLUDE, BUT ARE NOT LIMITED TO:

- RED LINE "AS BUILT" DRAWINGS INDICATING ANY FIELD CHANGES.
- PHOTOGRAPHS OF EACH INSPECTION ITEM (ANTENNA AND GENERAL INSPECTIONS, DIGITAL CAMERA TO BE UTILIZED BY CONTRACTOR.)
- ANTENNA PACKETS WITH ORIENTATIONS ON TOWER (Rx 1-2-3, Tx 1-2-3).
- CERTIFIED COPIES OF ALL GROUND TESTS/CONCRETE TESTS.
- MANUFACTURER SUPPLIED OWNER'S MANUALS FOR ALL APPLICABLE EQUIPMENT.
- COPIES OF BUILDING PERMITS, ELECTRICAL PERMITS, BUILDING INSPECTIONS, ALONG WITH THE ORIGINALS.
- CERTIFICATES OF OCCUPANCY (C-of-O).
- GROUND SYSTEM Ohms TEST RESULTS.
- COPIES OF RF SWEEP TEST (3 HARD COPIES AND 1 SOFT COPY)
- COMPLETED WARRANTY FORM.
- COPIES OF MUNICIPALITY REQUIRED SPECIAL INSPECTIONS.
- FINAL RELEASE OF LIENS.
- COMPLETED FINAL PUNCH LIST CHECKLIST.
- COPIES OF ALL TAILGATE SAFETY MEETINGS.



NEW CINGULAR WIRELESS OF COLORADO
1001 16th Street, Suite C1
Denver, CO 80202

GENERAL DYNAMICS

1400 16TH STREET, SUITE 400
DENVER, CO 80202

1450 Academy Park Loop
Colorado Springs, CO 80910



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3	03 JUN 2004	AS BUILT DRAWINGS	JCM	GB		
4	01 DEC 2003	CONSTRUCTION DRAWINGS	JCM	GB		

SITE INFORMATION

COZY CORNER
999 W 124TH AVE
WESTMINSTER, CO. 80030
GMCODN.CX051753
DN1753

DESIGN TYPE

AS BUILT DRAWINGS

SHEET TITLE

GENERAL CONSTRUCTION NOTES (CONT.)

SHEET NUMBER **REV**

A-1 **3**

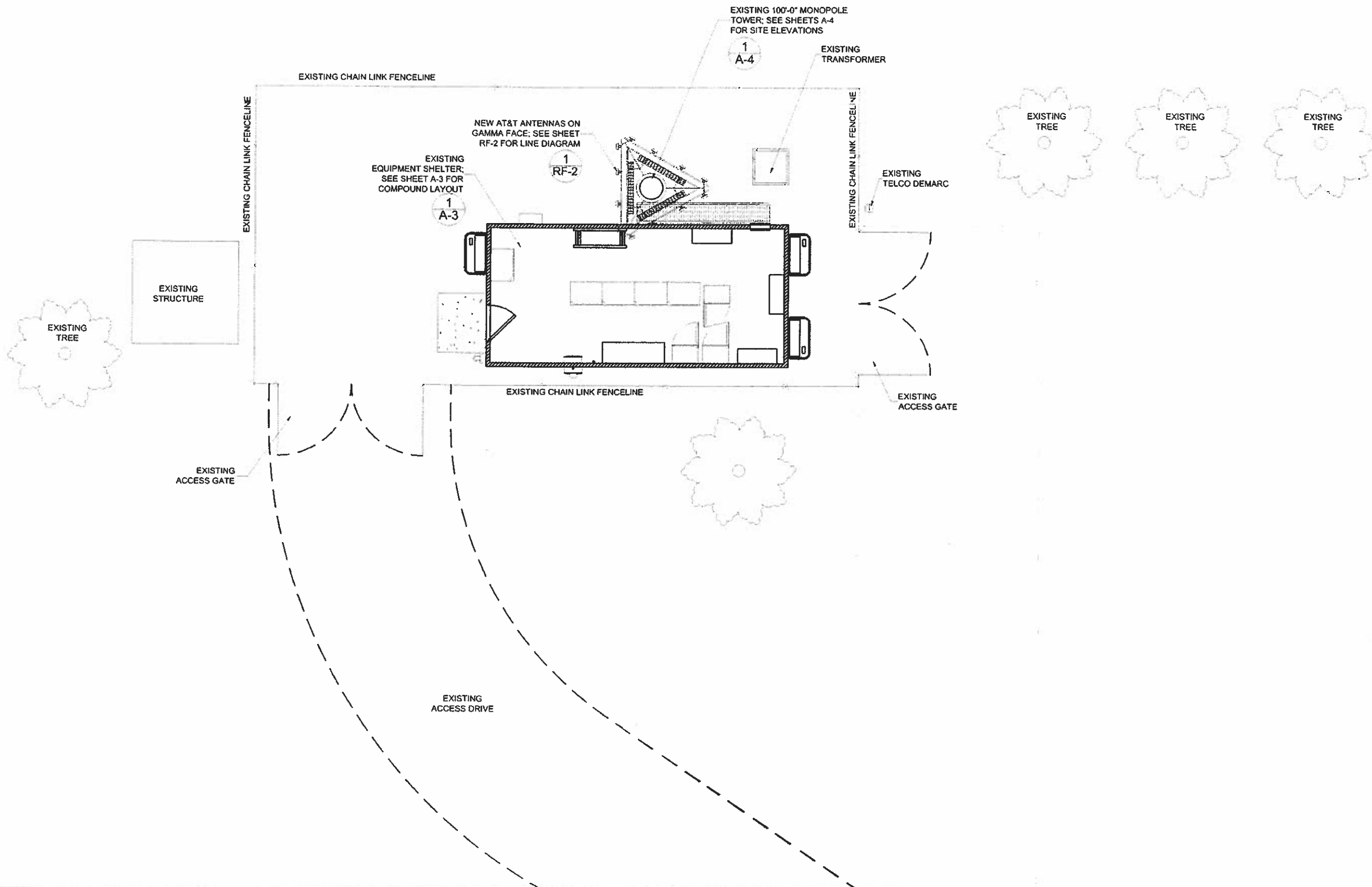


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SITE LAYOUT	
SHEET NUMBER	REV
A-2	3



WORK GENERAL NOTES

CONTRACTOR TO CONTACT ALL UTILITIES TO LOCATE AND MARK LOCATION OF UNDERGROUND SERVICES. THESE LOCATIONS TO BE CONFIRMED PRIOR TO CONSTRUCTION.

CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS, AND CONDITIONS PRIOR TO BEGINNING ANY WORK. ALL DIMENSIONS OF NEW CONSTRUCTION SHOWN ON THE DRAWINGS ARE INTENDED AS GUIDELINES ONLY AND MUST BE VERIFIED.

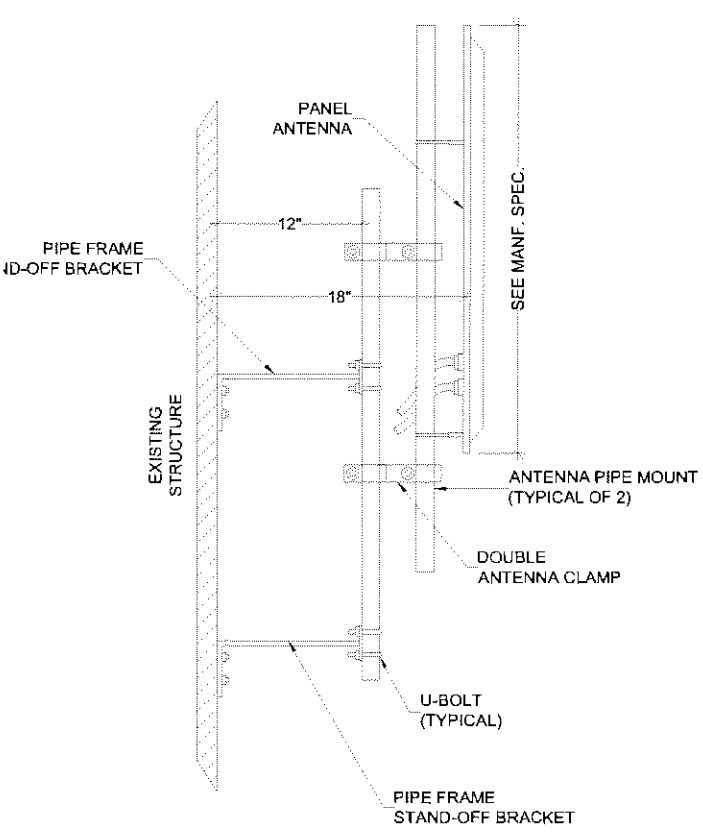
EXISTING ACTIVE SEWER, WATER, GAS, ELECTRIC AND OTHER UTILITIES WHERE INTERFERED IN THE WORK, SHALL BE PROTECTED AT ALL TIMES, AND WHERE REQUIRED FOR THE PROPER EXECUTION OF WORK, SHALL BE RELOCATED AS REQUIRED BY ENGINEERS (AT CONTRACTOR'S EXPENSE). EXTREME CAUTION SHOULD BE EXERCISED BY THE CONTRACTOR WHEN EXCAVATING OR DRILLING AROUND OR NEAR UTILITIES. THE WORK CREW SHALL HAVE PRIOR TRAINING THAT INCLUDES BUT IS NOT LIMITED TO:

- UNDERGROUND UTILITY PROTECTION
- DEFINING WORK SPACE
- CRITICAL SAFETY
- SHIELDING AND EXCAVATION
- NECESSARY RUBBISH, STUMPS, DEBRIS, STONES AND OTHER REFUSE SHALL BE REMOVED FROM THE SITE AND DISPOSED OF PROPERLY.

EXISTING INACTIVE SEWER, WATER, GAS, ELECTRIC AND OTHER UTILITIES WHICH INTERFERE WITH THE EXECUTION OF THE WORK, SHALL BE REMOVED AND/OR CAPPED, PLUGGED OR OTHERWISE DISCONTINUED AT POINTS WHICH DO NOT INTERFERE WITH THE EXECUTION OF THE WORK, SUBJECT TO THE APPROVAL OF THE ENGINEERING, OWNER AND/OR LOCAL AGENCIES (AT CONTRACTOR'S EXPENSE).

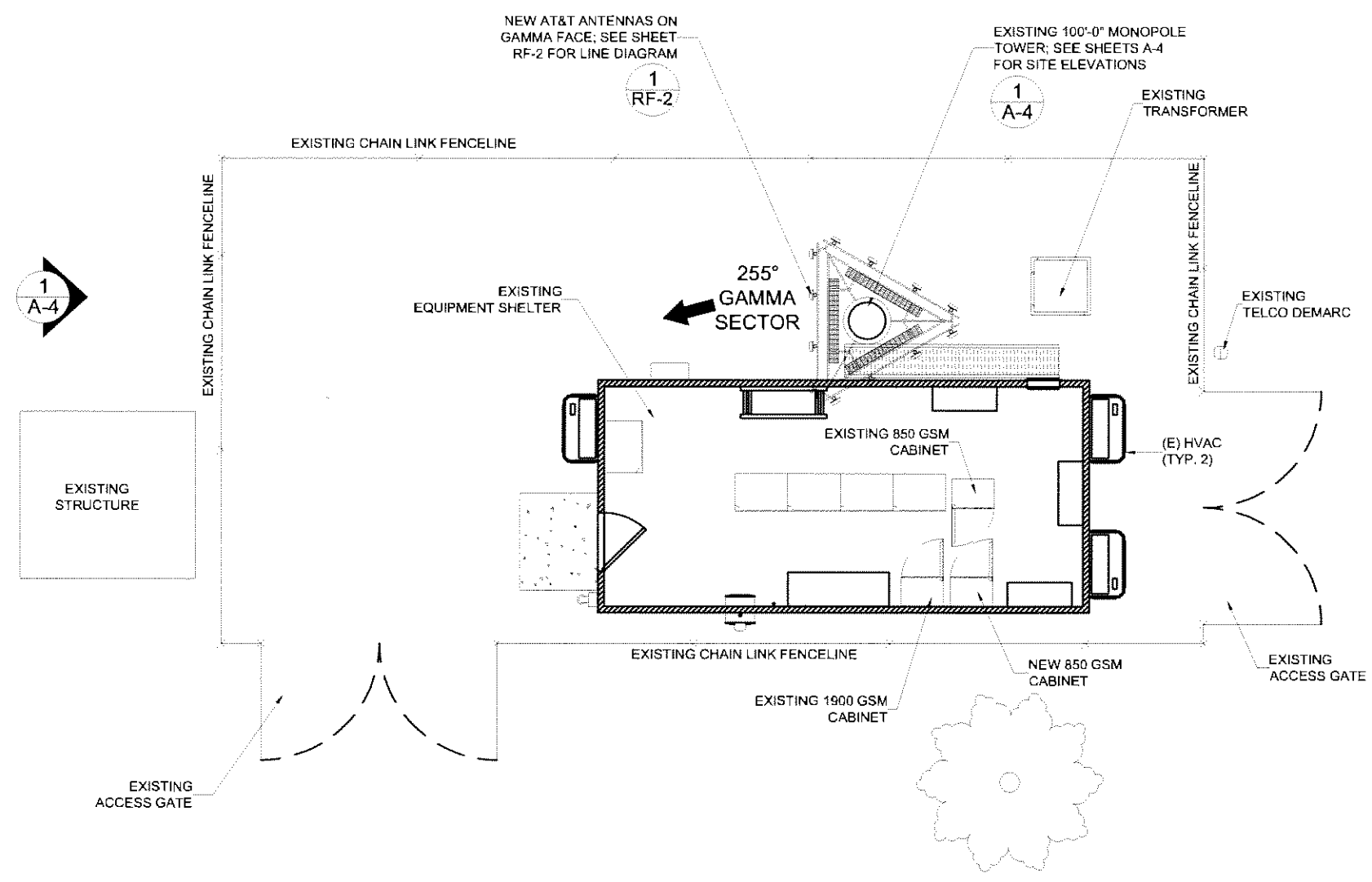
UPON COMPLETION OF CONSTRUCTION, ALL EXISTING UTILITY AREAS ARE TO BE REINSTITUTED TO ORIGINAL CONSTRUCTION CONDITIONS.

WORK GENERAL NOTES 3



ANTENNA MOUNT (TYPICAL) 2

EQUIPMENT ROOM LAYOUT 1



cingular
 NEW CINGULAR WIRELESS OF COLORADO
 1001 16th Street, Suite C1
 Denver, CO 80265

GENERAL DYNAMICS
 1400 16TH STREET, SUITE 400
 DENVER, CO 80202
 1450 Academy Park Loop
 Colorado Springs, CO 80910

SUMMIT COMMUNICATIONS, INC.
 2600 SOUTH PARKER ROAD
 BLDG 1 SUITE 316
 AURORA, CO. 80014

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AS BUILT DRAWINGS

COMPOUND PLAN

A-3 3

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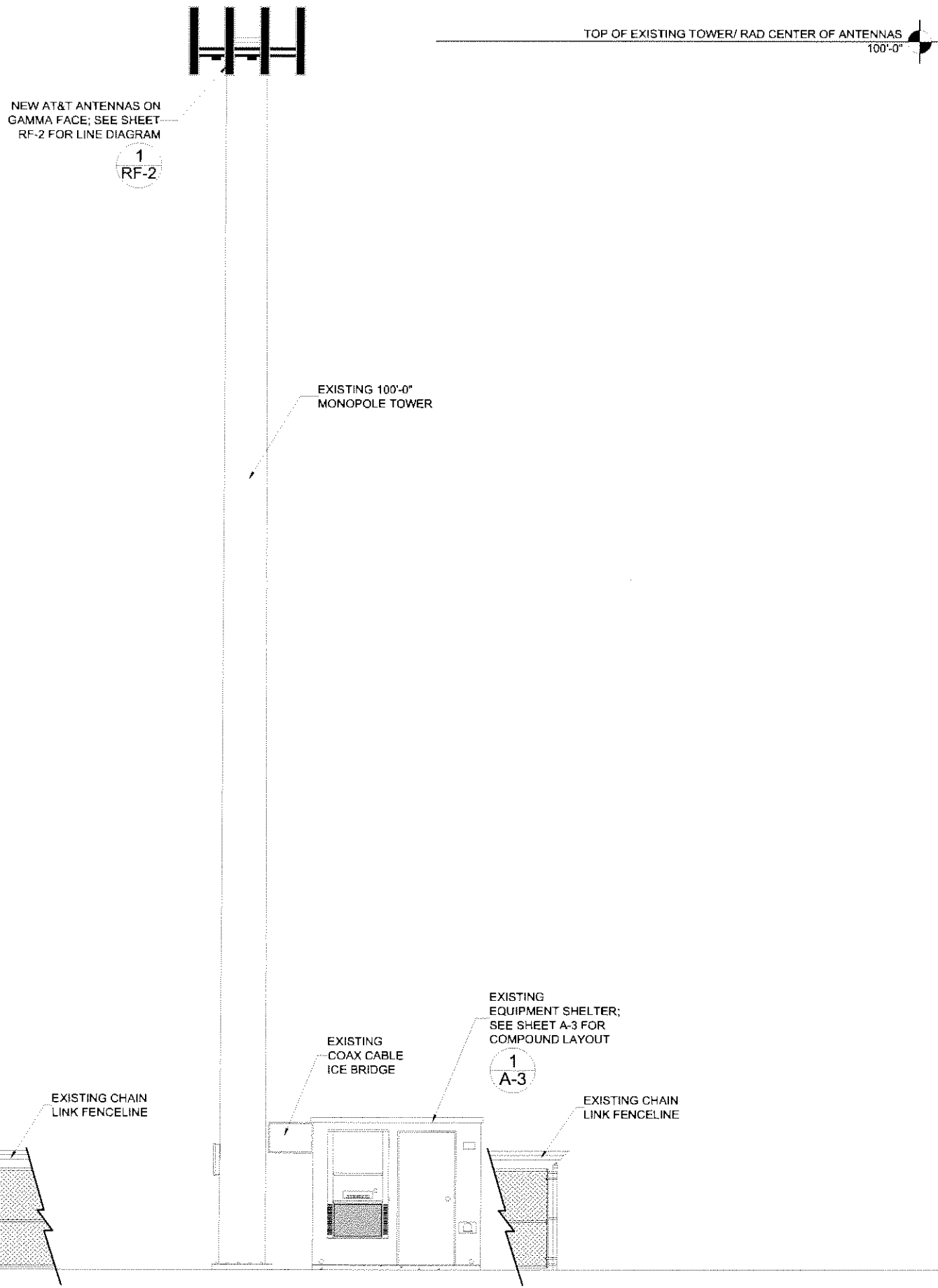
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A-4
 REV
3



ANTENNA CABLE LABELING		
ALPHA	ATX - 1 RED	ARX - 2 RED
BETA	BTX - 1 BLUE	BRX - 2 BLUE
GAMMA	CTX - 1 GREEN	CRX - 2 GREEN

NOTES:

- ALL ANTENNAS WILL FOLLOW A STANDARD COLOR COATING.
- COLOR-CODING WILL BE APPLIED WITH 1" WIDE RINGS OF THE APPROPRIATE COLOR-CODE.
- CONTRACTOR WILL LABEL THE COAX AT THE BOTTOM MASTER GROUND BAR 8" FROM THE BOTTOM CONNECTOR OF THE PRIMARY COAX AND 8" FROM THE TOP CONNECTOR OF THE PRIMARY COAX. THE JUMPERS WILL ALSO BE LABELED IN THE SAME FASHION.

SWEEP TESTING

- CONTRACTOR TO PERFORM TESTING ON EACH COAXIAL CABLE TO MEASURE INSERTION LOSS, AND TO ENSURE THAT EACH CABLE IS INSTALLED AND CONNECTED TO THE APPROPRIATE ANTENNA. THESE MEASUREMENTS MUST BE PERFORMED ON THE COAXIAL CABLE WITH THE JUMPER ATTACHED.
- PRELIMINARY INSPECTION: PRIOR TO TESTING, CONTRACTOR WILL PERFORM INSPECTION OF ANTENNA AND COAXIAL SYSTEM AND DOCUMENT FINDINGS.
- EQUIPMENT: TEST EQUIPMENT SHALL BE WILTRON 331S OR GENERAL DYNAMICS - WTS APPROVED ALTERNATIVE.
- FREQUENCIES: ALL TEST SHALL BE PERFORMED FOR THE FOLLOWING FREQUENCIES:
 A BLOCK: RECEIVE 1830 TO 1865, TRANSMIT 1930 TO 1945
 B BLOCK: RECEIVE 1870 TO 1885, TRANSMIT 1950 TO 1965
 C BLOCK: RECEIVE 1895 TO 1910, TRANSMIT 1975 TO 1990
 D BLOCK: RECEIVE 1865 TO 1870, TRANSMIT 1945 TO 1950
 E BLOCK: RECEIVE 1885 TO 1890, TRANSMIT 1965 TO 1970
 F BLOCK: RECEIVE 1890 TO 1895, TRANSMIT 1970 TO 1975
- NOTIFICATION: CONTRACTOR SHALL NOTIFY THE GENERAL DYNAMICS - WTS DESIGNATED REPRESENTATIVE A MINIMUM OF 24 HOURS PRIOR TO ANTENNA SYSTEMS TESTING.
- AZIMUTH VERIFICATION: PRIOR TO TESTING, CONTRACTOR SHALL VERIFY THAT ALL AZIMUTHS AND DOWNTILTS ARE TRUE. CONTRACTOR SHALL ENSURE THAT ALL CONNECTORS HAVE BEEN INSTALLED TO THE SPECIFIED TORQUE VALUES.
- DOCUMENTATION: ONE HARD COPY WILL BE LEFT AT THE SITE AND 1 HARD COPY AND TWO SOFT COPIES WILL BE SUPPLIED TO GENERAL DYNAMICS - WTS AS PART OF THE CLOSEOUT DOCUMENTATION.
- REQUIRED TEST: CONTRACTOR SHALL PERFORM THE FOLLOWING ON EACH COAXIAL LINE AND RECORD EACH READING ON BASE STATION ANTENNA SYSTEM SUMMARY SHEET. OPEN VSWR, SYSTEM VSWR, LOAD VSWR, SYSTEM RETURN LOSS, OPEN RETURN LOSS, DISTANCE TO FAULT. ALL TO BE DOCUMENTED IN - DB FORM.
- CONTRACTOR SHALL CONDUCT AUDIT OF MATERIALS TO INCLUDE: ANTENNA SERIAL NUMBERS AND MODEL NUMBERS PER IDENTIFIED SECTOR. CONTRACTOR SHALL RECORD FINDINGS, SUPPLYING GENERAL DYNAMICS - WTS.
- PHOTOS: CONTRACTOR SHALL TAKE DIGITAL PHOTOS OF EACH ANTENNA SYSTEM, PHOTOS SHALL BE SUBMITTED AS PART OF THE CLOSEOUT DOCUMENTATION. CONTRACTOR IS REQUIRED TO SUBMIT QUALITY PHOTOS, PHOTOS TAKEN WITH INSUFFICIENT LIGHT OR LACKING IN DETAIL WILL BE REJECTED AND WILL BE RE-PHOTOGRAPHED AT CONTRACTOR'S EXPENSE. CONTRACTOR SHALL PAY DEVELOPING COSTS OF ALL NON-DIGITAL PHOTOGRAPHS. PHOTOS REQUIRED OF THE FOLLOWING:
 A) ANTENNA AZIMUTHS (3 REQUIRED, 1 PER SECTOR). PICTURE SHOULD INCLUDE THE TOP OF EACH ANTENNA AS A SIDE VIEW AND WILL BE USED TO VERIFY THAT CORRECT DOWNTILT HAS BEEN APPLIED TO EACH SECTOR.
 B) VIEW FROM FACE (3 REQUIRED, 1 PER SECTOR). PICTURE TO BE VIEWED FROM BACK OF TRANSMIT ANTENNA TO INCLUDE THE TOP OF THE TRANSMIT ANTENNA AND SURROUNDING LANDSCAPE.
 C) TOP BUSS BAR (1 PER BUSS BAR). PICTURE SHALL BE USED TO INDICATE GROUNDING KITS HAVE BEEN GROUNDED APPROPRIATELY.
- ALL LINES, ANTENNAS AND EQUIPMENT SHALL BE LABELED IN ACCORDANCE WITH AWS SPECIFICATIONS.



GENERAL DYNAMICS
1400 16TH STREET, SUITE 400
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1450 Academy Park Loop
Colorado Springs, CO 80910

SUMMIT COMMUNICATIONS, INC.
2600 SOUTH PARKER ROAD
BLDG. 1 SUITE 318
AURORA, CO. 80014

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3	28 NOV 2004	CONSTRUCTION DRAWINGS	JCM	GB		
4	28 MAR 2005	AS BUILT DRAWINGS	JCM	GB		

SITE INFORMATION
COZY CORNER
999 W 124TH AVE
WESTMINSTER, CO, 80030
GMCODN.CX051753
DN1753

DESIGN: TYPE
AS BUILT DRAWINGS

SHEET TITLE
ANTENNA SPECIFICATIONS

SHEET NUMBER
RF-1 3

ANTENNA LABELING

SCALE: NOT TO SCALE 4

SWEEP TESTING

SCALE: NOT TO SCALE 3

COMMUNICATION SPECIFICATIONS

CONTRACTOR TO PERFORM PRE AND POST INSTALLATION TESTS AND PROVIDE TEST RESULTS TO OWNER AND LEAVE A COPY ON SITE FOR TECHNICIAN.

ALL JUMPER CABLES TO THESE ANTENNAS MUST BE OF PROPER LENGTH WITH LESS THAN 1/4" BLACK.

CONTRACTOR TO LABEL AND COLOR CODE ANTENNAS AND JUMPER CABLES AS PER OWNERS SPECIFICATIONS.

ONLY QUALIFIED PERSONNEL HAVING COMPLETED AN ANDREWS CONNECTOR COURSE SHALL COMPLETE THE INSTALLATION OF CONNECTORS, GROUND KITS AND WEATHERPROOFING KITS. PROOF OF CERTIFICATION OF PERSONNEL MAY BE REQUESTED AT SITE BY CONTRACTOR OR ENGINEER. FAILURE TO PRODUCE MAY REQUIRE A CHANGE OF PERSONNEL TO A QUALIFIED PERSON.

PROVIDE ANTENNA CABLE TERMINATIONS AND TERMINATE NEW ANTENNA CABLES WITHIN SHELTER AT LOCATION SPECIFIED BY OWNER.

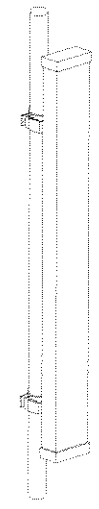
PROVIDE GROUND KITS ON NEW ANTENNA CABLES AT LOCATIONS TO MATCH EXISTING.

UTILIZE THE FOLLOWING TABLE TO DETERMINE THE MINIMUM BENDING RADIUS FOR INSTALLATION OF ANTENNA CABLES:

ANTENNA CABLE BENDING RADII			
NOMINAL SIZE	ACTUAL SIZE	LODF#	RADIUS
5/8"	1/2"	2	3-3/4"
1/2"	5/8"	4	5"
7/8"	1"	5	10"
1-5/8"	2"	7	20"
2-1/4"	2-3/8"	12	24"

PROVIDE LAMINATED ENTRY PORT DIAGRAM WITH COAX ASSIGNMENTS AT SITE AND A COPY FOR CLOSE-OUT DOCUMENTS.

SECTOR	ANTENNA TYPE	QTY.	DOWNTILT	AZIMUTH	RAD. CENTER	CABLE TYPE	CABLE LENGTH (APPROX.)
GAMMA	ALLGON 7391.06	2	0°	255°	100'-0" C.L.	(1)TX/RX +(1) TX/RX	110'-0"±



MODEL NUMBER: 7391.06
 MANUFACTURER: ALLGON
 MOUNTING BRACKET: INCLUDED
 LENGTH: 53"
 WIDTH: 11"
 DEPTH: 4.9"
 WEIGHT: 18.7 lbs.

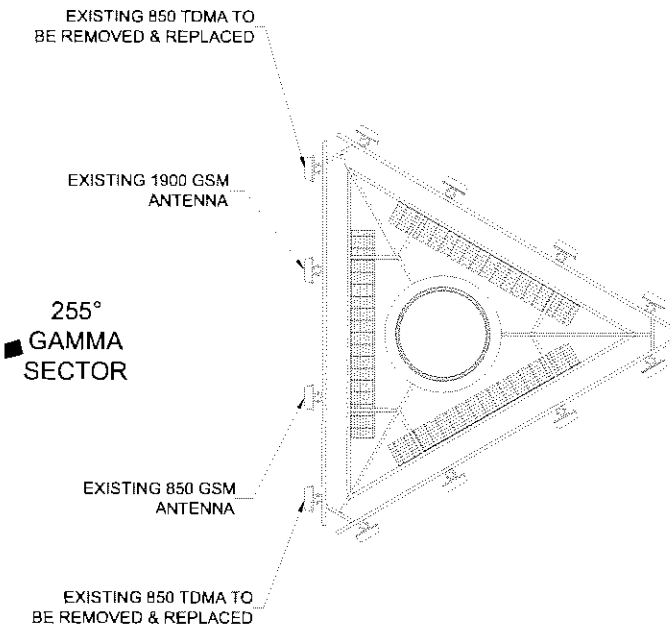
ANTENNA AND CABLE NOTES

SCALE: NOT TO SCALE 2

ANTENNA PANEL SPECS

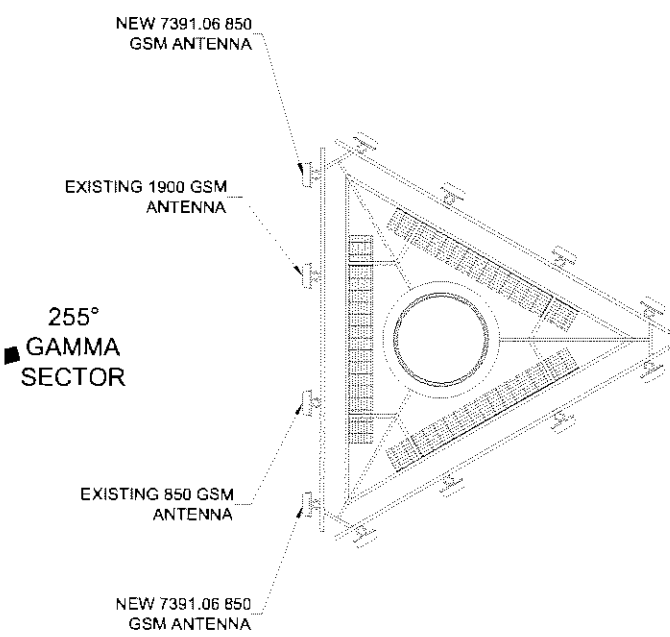
SCALE: NOT TO SCALE 1

NO.	DATE	DESCRIPTION	BY	CHK	APD
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2	JUN 2004	AS BUILT DRAWINGS	JCM	GB	
3	NOV 2004	CONSTRUCTION DRAWINGS	JCM	GB	
4	MAR 2005	AS BUILT DRAWINGS	JCM	GB	

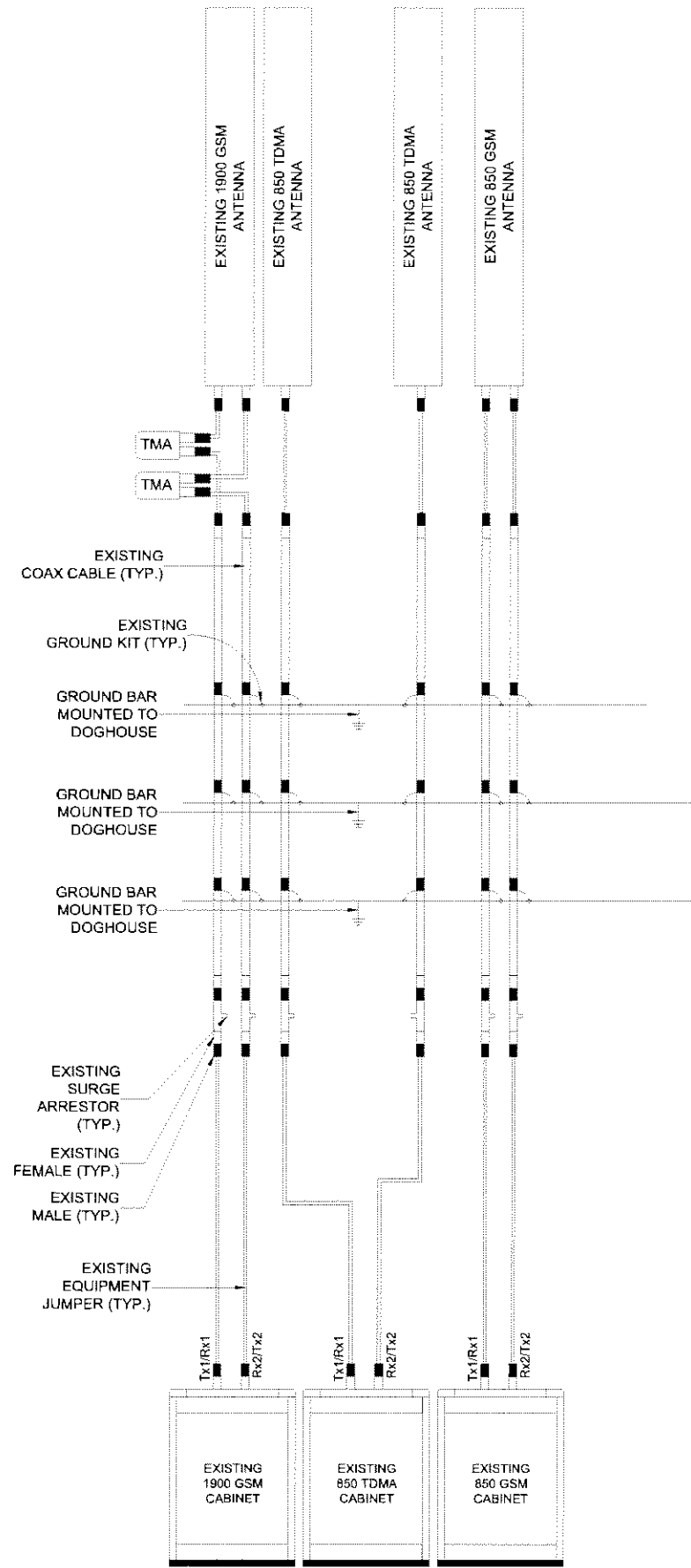


(OLD) TYPICAL ANTENNA CONFIGURATION DIAGRAM AT GAMMA SECTOR, 255° @ 100'-0"

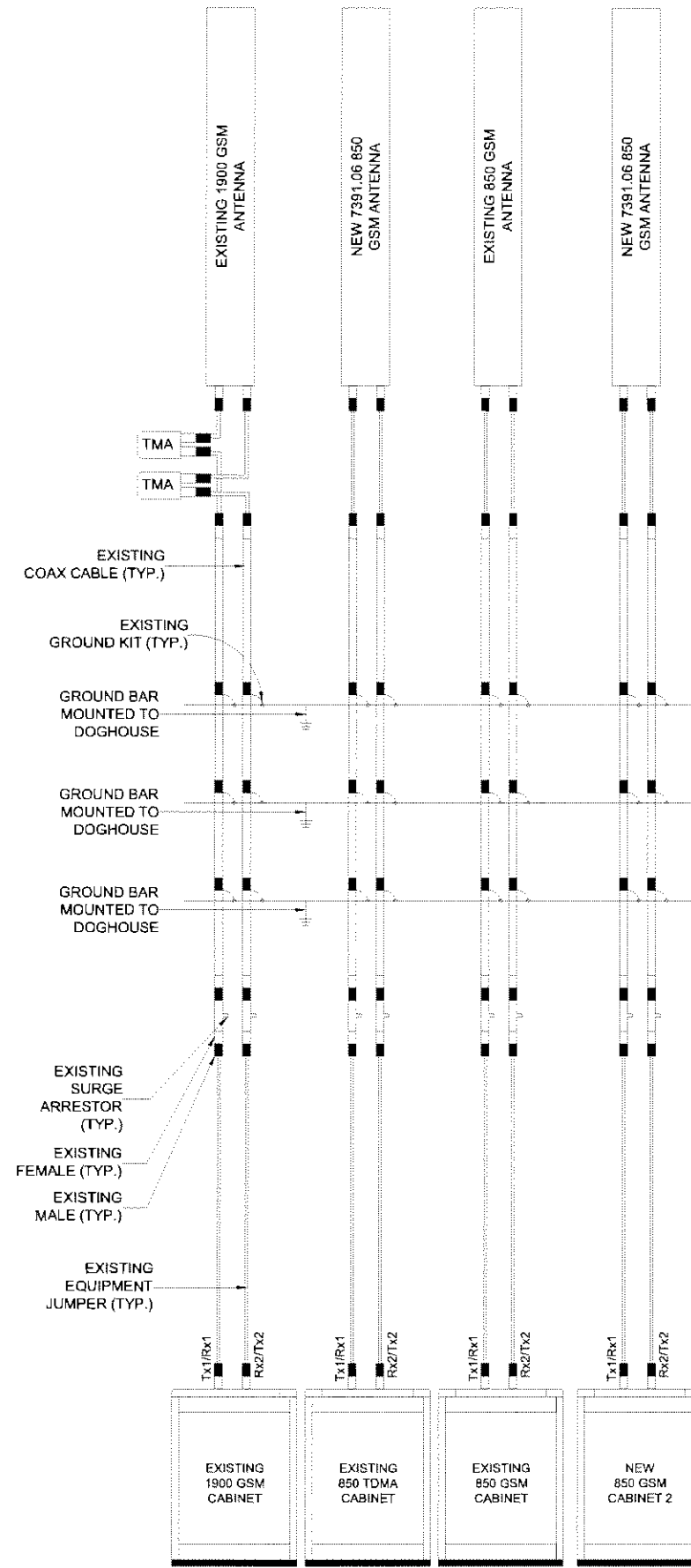
INA AZIMUTHS
DR C: 255° @ 100'-0"



(NEW) TYPICAL ANTENNA CONFIGURATION DIAGRAM AT GAMMA SECTOR, 255° @ 100'-0"



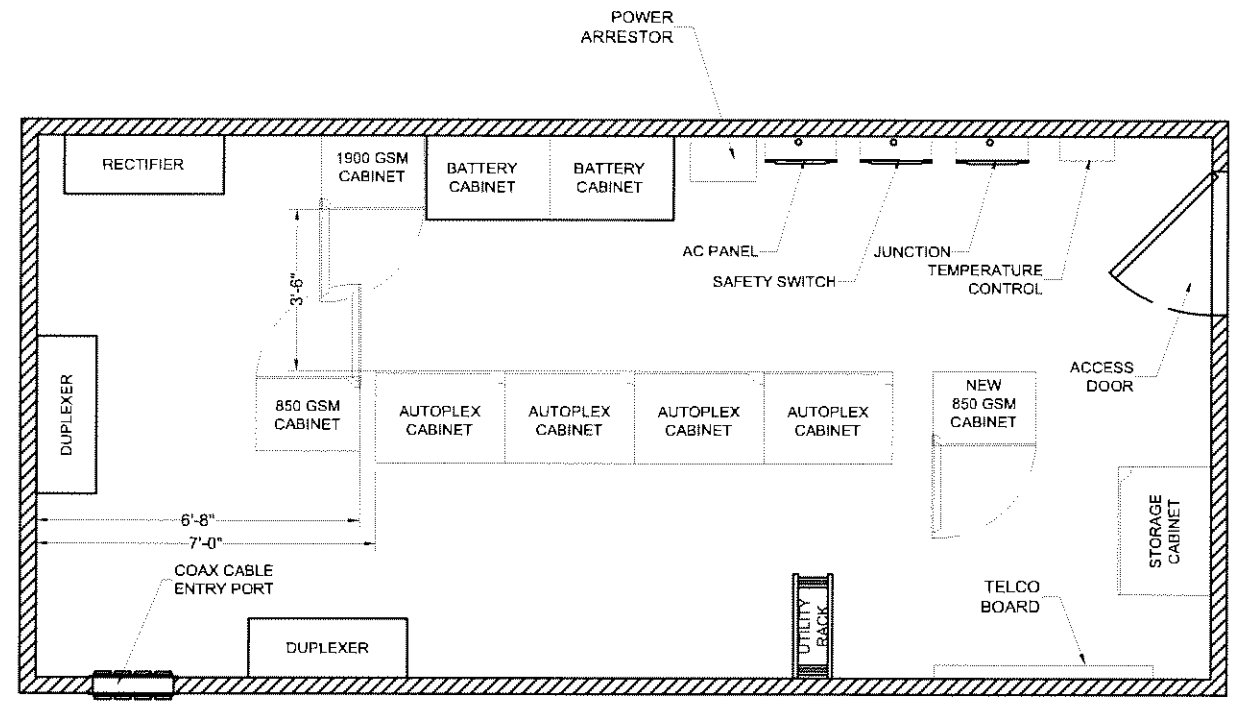
(OLD) TYPICAL ANTENNA CONFIGURATION DIAGRAM AT GAMMA SECTOR, 255° @ 100'-0"



(NEW) TYPICAL ANTENNA CONFIGURATION DIAGRAM AT GAMMA SECTOR, 255° @ 100'-0"

STAMP

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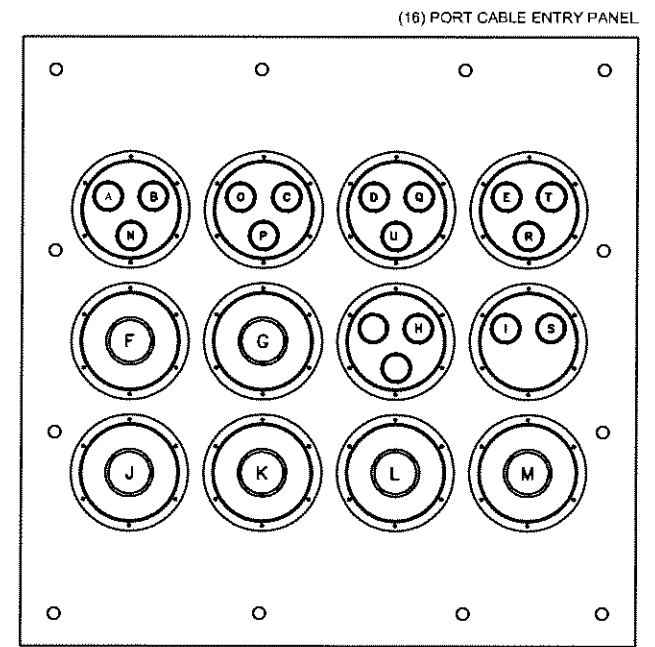


SCALE: NOT TO SCALE 1

MENT SHELTER LAYOUT

TENNA LABEL SCHEDULE

- 2" Rx1 GAMMA TDMA
- 2" Rx12 BETA TDMA
- 2" Rx1/ Tx2 ALPHA TDMA
- 2" Rx1 ALPHA TDMA
- 2" Rx0/ Tx1 ALPHA TDMA
- 2" SECTOR B ATTWS GSM
- 2" SECTOR G ATTWS GSM
- E911 TDMA
- 2" Rx13 GAMMA TDMA
- 2" SECTOR G ATTWS GSM
- 2" SECTOR A ATTWS GSM
- 2" SECTOR B ATTWS GSM
- 2" SECTOR A ATTWS GSM
- Tx3 850 GSM GAMMA
- Tx2 850 GSM BETA
- Tx5 850 GSM BETA
- Tx4 850 GSM ALPHA
- Tx1 850 GSM ALPHA
- Tx6 850 GSM GAMMA
- 3SM 2 GAMMA RX1
- 3SM 2 GAMMA 1 RX0



REVISIONS					
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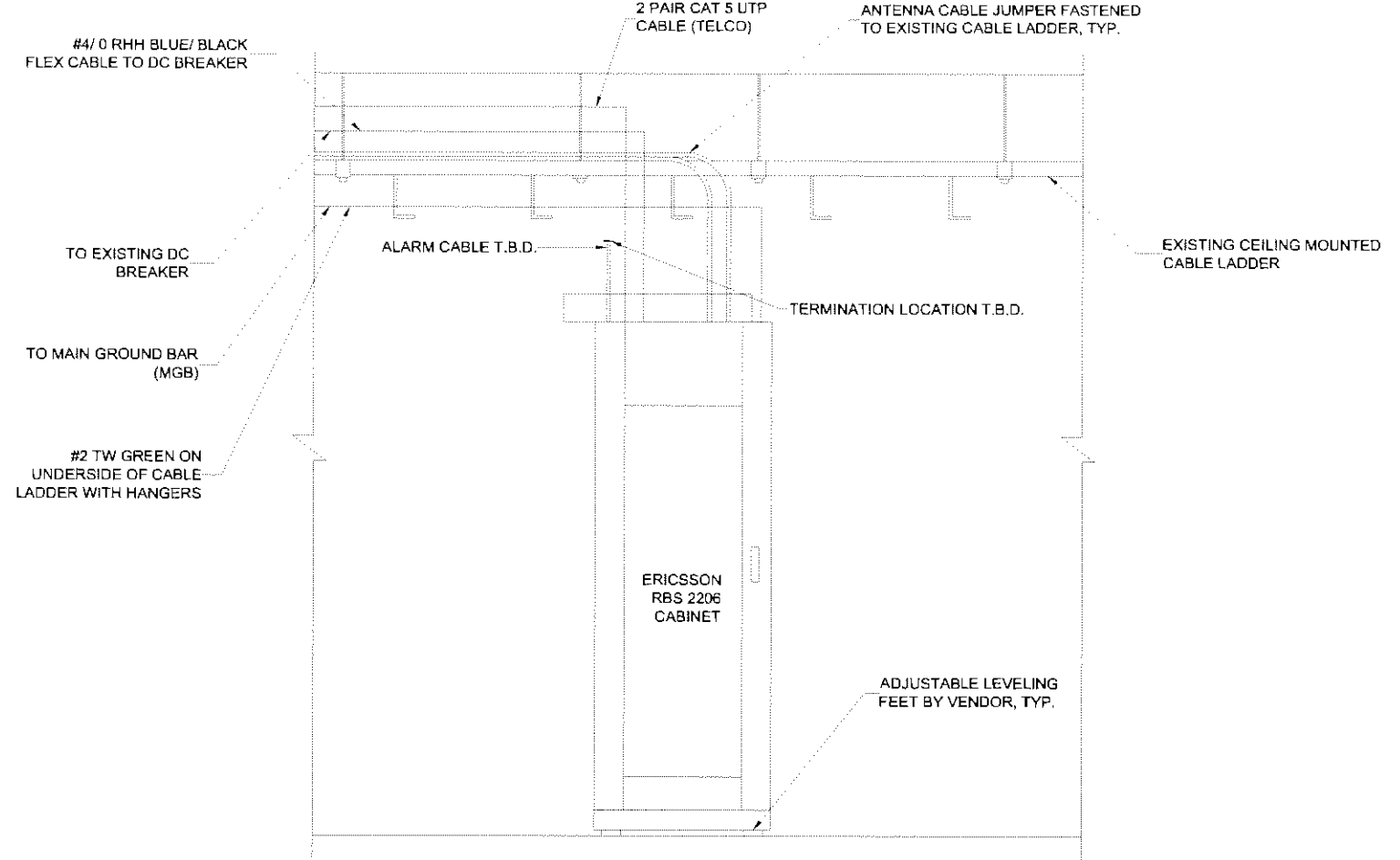
DESIGN TYPE
AS BUILT DRAWINGS

SHEET TITLE
STRUCTURAL DETAILS

SHEET NUMBER REV
S-1 3

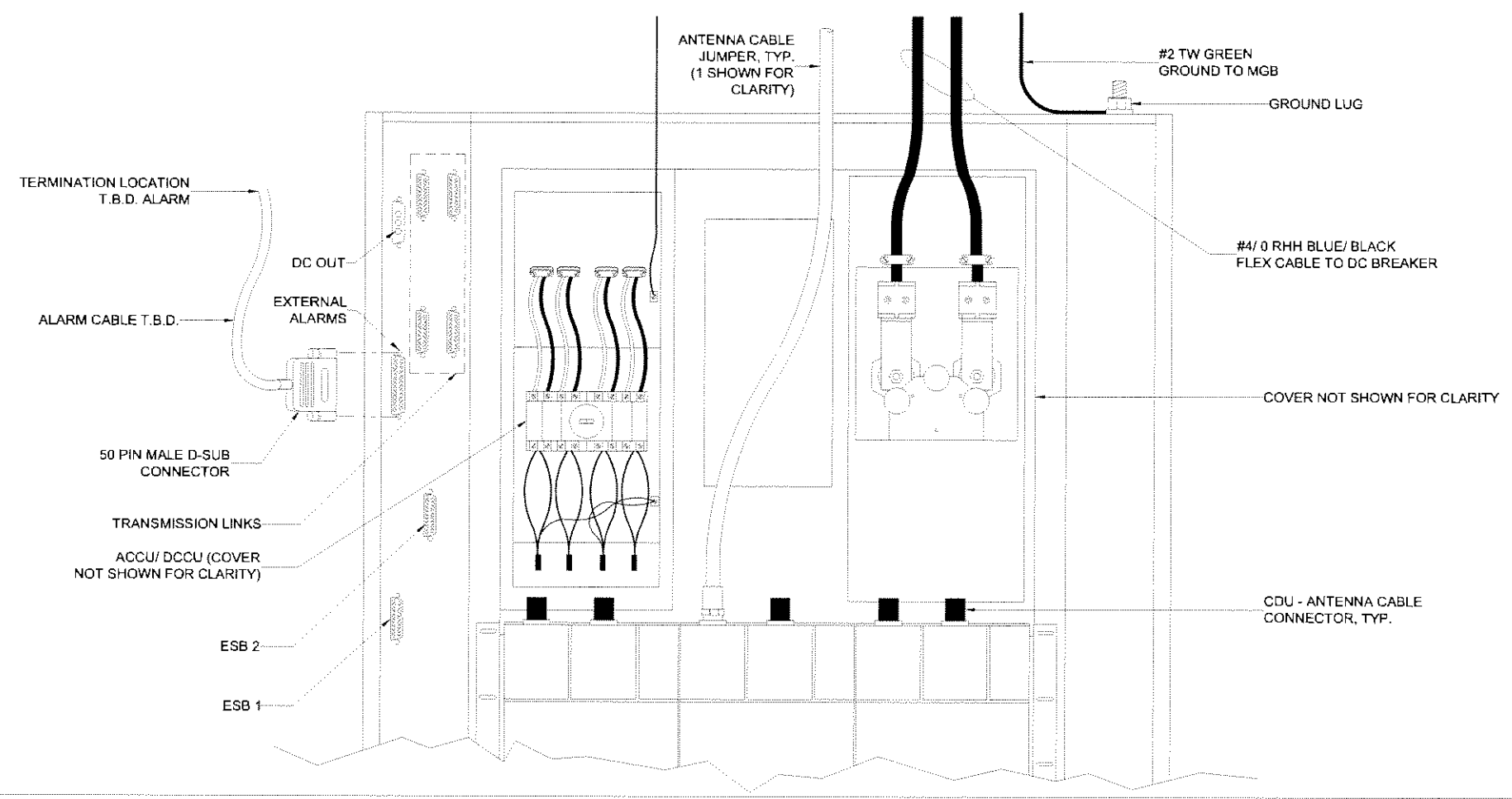
SCALE: NOT TO SCALE 1

ABLE PORT



FRONT ELEVATION

SCALE: NOT TO SCALE 2



REAR INTERFACE

SCALE: NOT TO SCALE 1

REVISIONS						
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AS BUILT DRAWINGS

EQUIPMENT DIAGRAMS

SHEET NUMBER	REV
E-1	3

GENERAL NOTES:

1. ELECTRICAL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL ELECTRICAL CODE, COMPLY WITH THE LATEST EDITION OF THE UNIFORM BUILDING CODE, THE REQUIREMENTS OF ALL APPLICABLE MUNICIPAL AND STATE CODES, REGULATIONS, AND UTILITY GUIDELINES.

2. PERFORM ALL VERIFICATION, OBSERVATIONS, TESTING AND EXAMINATION OF WORK PRIOR TO THE ORDERING OF ELECTRICAL EQUIPMENT AND DURING ACTUAL CONSTRUCTION. ISSUE A WRITTEN NOTICE OF ALL FINDINGS TO THE CONSTRUCTION MANAGER LISTING ALL MALFUNCTIONS, DEFECTIVE EQUIPMENT AND DISCREPANCIES.

3. UNDERGROUND CONDUIT SHALL BE RIGID POLYVINYL CHLORIDE CONDUIT, SCHEDULE 40, TYPE I, CONFORMING TO UL ARTICLE 651; OR STEEL PLASTICS OF CARBON MANUFACTURER. COUPLINGS SHALL BE SLIP-ON, SOLVENT SEALED T PIPE, SOLVENT, WESTERN TYPE COMPATIBLE WITH PVC DUCT, ALL BENDS SHALL BE 36" MINIMUM RADIUS.

4. WIRING SHALL BE STRANDED COPPER TYPE THHN WITH MINIMUM 600V INSULATION (UNLESS OTHERWISE NOTED). WIRING SHALL BE COLOR CODED. INSULATION SHALL BE CROSS-LINKED POLYETHYLENE.

5. WIRING DEVICES AND EQUIPMENT SHALL BE NEW AND UL APPROVED. EQUIPMENT OF SAME TYPE SHALL BE OF THE SAME MANUFACTURER.

6. CIRCUIT BREAKERS, FUSES, AND ELECTRICAL EQUIPMENT SHALL HAVE AN INTERRUPTING SHORT CIRCUIT CURRENT RATING EXCEEDING THAT TO WHICH THEY MAY BE SUBJECTED, (AS NOTED ON DRAWINGS), AND A MINIMUM 10,000 A.I.C.

7. INSTALL A DOUBLE RATED 1/8" H/8" H/8" FULL CORE IN ALL EMPTY CONDUITS.

8. PROVIDE ALL NECESSARY GROUNDING AS REQUIRED BY LOCAL AUTHORITIES AND THE LATEST EDITION OF THE NATIONAL ELECTRICAL CODE.

9. UNINSULATED GROUND CABLE TO BE GREEN STRANDED COPPER.

10. PROVIDE A SEPARATE GROUND WIRE IN ALL RACEWAYS AND CABLES.

11. RIGID FLEXIBLE METAL CONDUIT: USED WHERE PERMITTED BY CODE.

12. PROVIDE PHENOLIC PLASTIC LAMINATE NAMEPLATES WITH MACHINE ENGRAVED WHITE PLATE, BLACK LETTERS, EXCEPT AS NOTED. NAMEPLATES SHALL BE FASTENED WITH APPROVED ADHESIVES. (UNLESS NOTED OTHERWISE). REFER TO NAMEPLATE SCHEDULE.

13. COMPLETE SET OF FULL SIZE ELECTRICAL DRAWINGS MUST BE ON SITE AT ALL TIMES. MARK "AS-BUILT" INFORMATION, IN RED, ON SITE DRAWINGS ONLY.

14. CONTRACTOR TO CONTACT ALL UTILITIES FOR LOCATION OF UNDERGROUND SERVICES. SERVICE LOCATIONS TO BE CONFIRMED PRIOR TO CONSTRUCTION.

75A DC POWER

BREAKER POSITION	AMP	DESCRIPTION	BREAKER POSITION	AMP	DESCRIPTION
01	175	EXISTING 1900 GSM	02	175	NEW AT&T 850 GSM ERICSSON RBS 2206
03			04		
05			06		
07			08		
09			10		
11			12		
13			14		
15			16		
17			18		
19			20		
21			22		
23			24		
25			26		
27			28		
29			30		
31			32		
33			34		

NOTE:
DC POWER, 600A CAPACITY
W/ EXISTING 261A LOAD



GENERAL DYNAMICS
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GENERAL NOTES SCALE: NOT TO SCALE 2 **SERVICE BREAKER POSITIONS** SCALE: NOT TO SCALE 1

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SITE INFORMATION
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DN1753

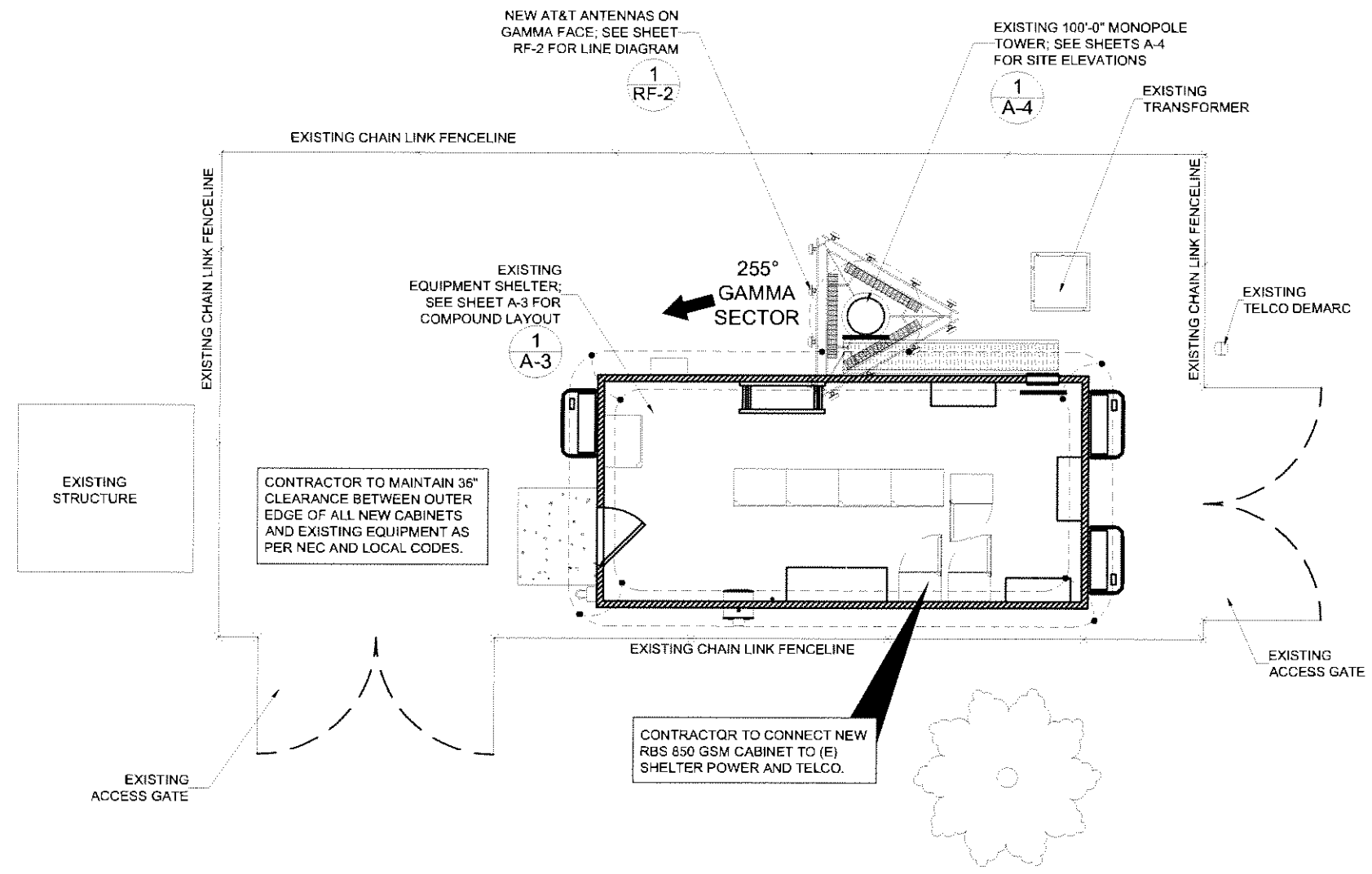
DESIGN: T-PE
AS BUILT DRAWINGS

SHEET TITLE
ELECTRICAL NOTES AND BREAKER POSITIONS

SHEET NUMBER: **E-2** REV: **3**

END

- - - EXISTING UNDERGROUND TELCO
- EXISTING UNDERGROUND POWER
- EXISTING SITE GROUNDING
- EXISTING COAX CABLE RUN
- EXISTING GROUND BAR



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SITE INFORMATION
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WESTMINSTER, CO. 80030
GMCODN.CX051753
DN1753

DESIGN TYPE
AS BUILT DRAWINGS

SHEET TITLE
UTILITY SITE PLAN

SHEET NUMBER: **E-3** REV: **3**

GENERAL DYNAMICS

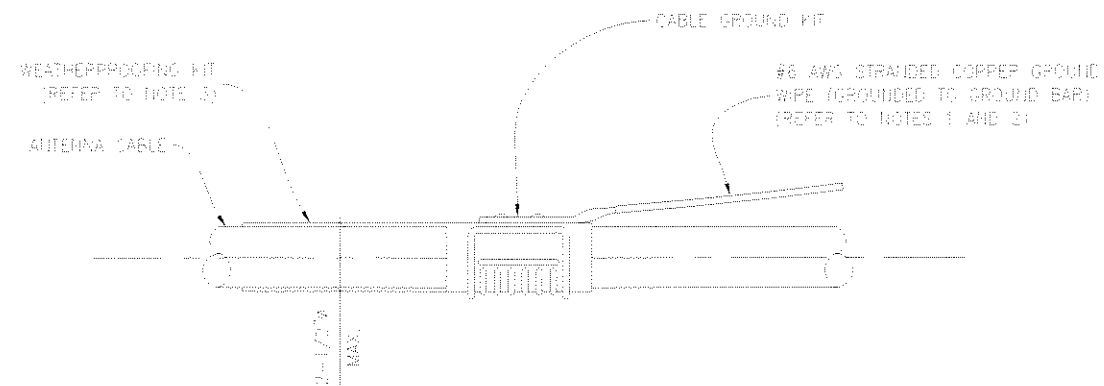
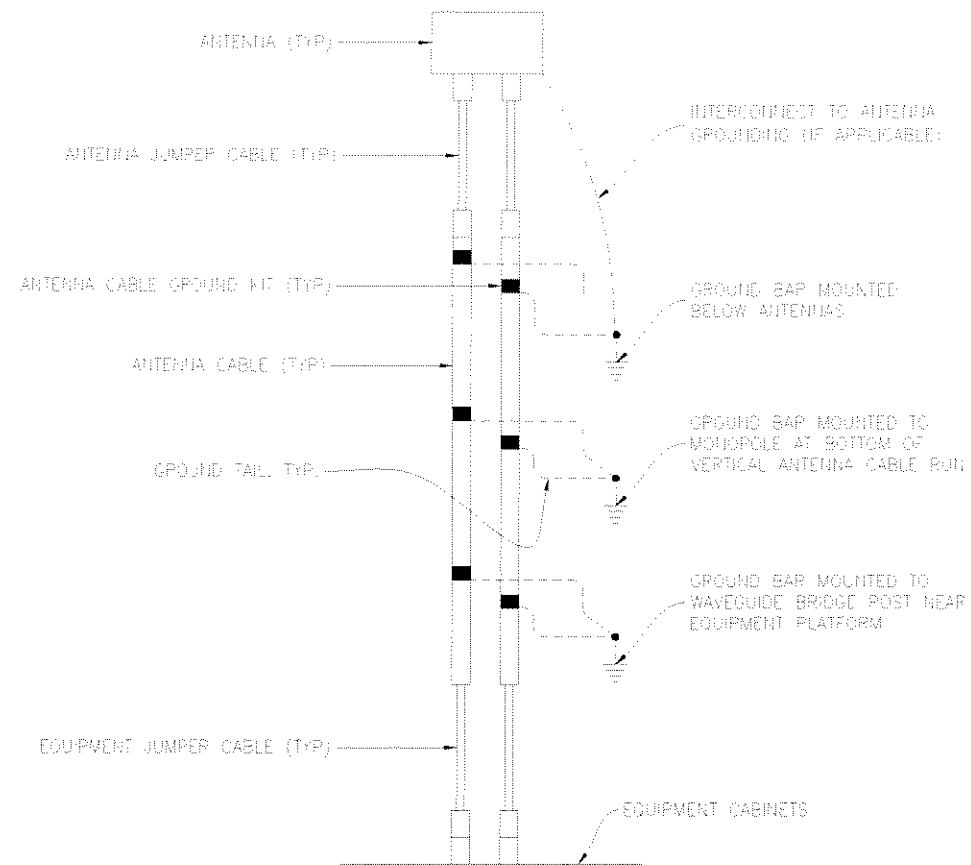
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NOTES:

- (1) DO NOT INSTALL CABLE GROUND KIT AT A BEND AND ALWAYS DIRECT GROUND WIPE DOWN TO GROUND BAR.
- (2) GROUNDING KIT SHALL BE TYPE AND PART NUMBER AS SUPPLIED OR RECOMMENDED BY CABLE MANUFACTURER.
- (3) WEATHER PROOFING SHALL BE TYPE AND PART NUMBER AS SUPPLIED OR RECOMMENDED BY CABLE MANUFACTURER.

INA CABLE GROUNDING RISER

SCALE: NOT TO SCALE

2

ANTENNA CABLE GROUND KIT

SCALE: NOT TO SCALE

1

REVISIONS						
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DESIGN TYPE
 AS BUILT DRAWINGS

SHEET TITLE
 GROUNDING DETAILS

SHEET NUMBER
E-4

REV
3





DANGER



Agenda Item 10 C

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Councillor's Bill No. 36 re Housekeeping Amendments to Titles V, VI, VIII and IX of the Westminster Municipal Code

Prepared By: Linda Yeager, City Clerk
Marty McCullough, City Attorney

Recommended City Council Action

Pass Councillor's Bill No. 36 making housekeeping amendments to Titles V, VI, VIII and IX of the Westminster Municipal Code.

Summary Statement

- As City Council is aware, the Westminster Municipal Code (W.M.C. or Code) is a codification of general ordinances of the City and serves as a major resource to Staff and citizens, both in print and electronically.
- Staff attempts to keep the Code current by regularly seeking Council approval of necessary amendments. Council has requested Staff review and update the Code on a regular basis to maintain accuracy and ensure it is as free of errors as possible. In general, state, federal and city codes benefit from regular housekeeping measures such as those being proposed at this time for Westminster.
- Staff considers these proposed amendments to be primarily housekeeping in nature, but beyond the scope of authority granted to the City Clerk in Section 1-1-5, W.M.C., to correct errors of punctuation, capitalization, formatting, grammar and spelling, and internal references.
- Staff believes these amendments will improve the overall quality of the Code.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City make general housekeeping and administrative amendments to the Westminster Municipal Code as proposed?

Alternatives

1. Direct Staff to leave the current Code provisions in place and do not advance the recommendations through the formal adoption process. Staff does not recommend this alternative, because the proposed amendments result in standardized formatting, updated provisions, and numerous minor corrections to Titles.
2. Direct Staff to make only certain changes to the Code, while excluding others. Although this approach would help address some issues in the Code, Staff does not recommend this alternative, because it may not address all of the concerns with the current Code.

Background Information

In response to Council's request to regularly review and maintain the City Code, in January 2012, the City Clerk's Office began a comprehensive review of each Code provision for typographical, grammatical, cross-reference and other errors, and outdated or inaccurate information, while applying standard formatting conventions. Although the Westminster Municipal Code contains a section on "Rules for Construction," standard formatting conventions were only recently established by Staff. The attached ordinance is the second of its kind and contains those amendments identified thus far within Titles V and VI, in particular, including the deletion or correction of outdated information beyond the scope of authority granted to the City Clerk.

Several changes to Chapters 12 and 14 of Title V pertain to removing applicability dates that have expired and are no longer of any significance. For instance, certain provisions within the Rental Housing Code (Chapter 12) were effective on or before March 1, 2011. Elimination of the effective date now is of no consequence to the actions required in each provision. Similarly, application fees pertaining to liquor licenses were increased by State statute in 2008 for the first time in decades. City Council elected to increase some of these fees incrementally over a three-year period, in order to minimize the financial impact to licensees. The incremental adjustments and associated effective dates are being eliminated in the attached ordinance and will now show only the final (current) application fee for new, transferred, or renewed liquor licenses. None of these fees are being modified.

Other amendments include consolidating definitions within various Chapters and deleting or adding penalty sections within individual Chapters. Penalty provisions are in Section 1-8-1, W.M.C. Noncriminal penalties do not need to be set forth in individual Chapters of the Code; criminal penalties are set forth when violations of provisions in the Code are more egregious, justifying the need for a stronger range of penalties.

Chapter 10 of Title VI is currently entitled, "Trains; Litter." The attached ordinance separates these two totally unrelated topics. Chapter 10 will be entitled, "Trains" and a new Chapter 18 will be entitled, "Litter." Other than separating the two topics, there are no substantive changes to the text in either Chapter.

The final proposed amendment pertains to Title VIII. Staff identified the language proposed for deletion in Section 8-7-3(C)(4) as a subparagraph that should have been deleted when Ordinance No. 3546, which related to modification of water regulations, was adopted in October 2010. Subparagraph (4) currently conflicts with the balance of Section 8-7-3(C), W.M.C.

SUBJECT: Councillor's Bill re Amendments to W.M.C. Titles V, VI, VIII and IX

Page 3

Revisions to the Municipal Code support all of the City's Strategic Plan goals. In concert with the Charter, the Municipal Code serves as a foundation for the City's operations and incorrect or out-of-date information could potentially have a significant impact on the community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **36**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 5-8-7, 5-9-8, 5-11-5, 5-12-3, 5-12-4, 5-14-5, 5-17-2, 5-22-5, 6-1-1, 6-1-4, 6-1-7, 6-9-1, 6-9-4, 6-10-2, 6-12-1, 6-12-6, 6-18-1, 8-7-3, AND 9-6-4 OF THE WESTMINSTER MUNICIPAL CODE AS HOUSEKEEPING MEASURES THROUGH AUGUST 2012

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 5-8-7, W.M.C., is hereby AMENDED to read as follows:

5-8-7: BOND REQUIRED: (1965) Before any license shall be issued to an applicant pursuant to this Chapter, each applicant shall file with the City Clerk a cash bond, certified funds payable to the City, or a surety bond running to the City in the sum of ten thousand dollars (\$10,000). If a surety bond is provided, it shall be executed by the applicant as principal and at least one surety upon which service of process may be made in the State of Colorado. The bond shall be conditioned that the applicant shall comply fully with all the provisions of the laws of the City and the statutes of the State of Colorado regulating and concerning the applicant's business, and will pay all judgments rendered against the applicant for any violation of said laws or statutes, together with all judgments and costs that may be recovered against him by any person for damage growing out of any such business with the applicant. Action on the bond may be brought in the name of the City ~~to the use~~ for the benefit of the aggrieved person. Such bond must be approved by the City Attorney, both as to form and as to the responsibility of the surety.

Section 2. Section 5-9-8, subsection (B), W.M.C., is hereby AMENDED to read as follows:

5-9-8: SECURITY GUARDS: (1959 3016 3563)

(B) For premises licensed for more than fifty (50) machines or tables, any requirements for security guards in excess of one (1) security guard, imposed pursuant to subsection (A) of this Section, shall be stated on the license. These conditions shall be reviewed annually by the City Manager upon application for renewal of the license or at any time at the request of the City Council or the Chief of Police, based on a finding that security measures are insufficient to protect the public health, safety and welfare. The City Manager may adjust these conditions, based on, but not limited to, the following factors: The number of machines, the location and design of the premises, the number of occupants, peak hours of operation, and staffing levels. The City Manager's decision regarding additional security shall be mailed to the licensee. ~~Unless the licensee~~ may request a hearing on the matter before the Special Permit and License Board within ten (10) days after the letter is mailed to the licensee. Failure to timely request a hearing shall be deemed a waiver of a hearing.

Section 3. Section 5-11-5, subsection (B), W.M.C., is hereby AMENDED to read as follows:

5-11-5: LOCATION, SPACE AND GENERAL LAYOUT: (487) The mobile home park shall be located on a well drained site and shall be so located that its drainage will not endanger any water supply. All such mobile home parks shall be in areas free from swamps or other potential breeding places for insects or rodents.

(B) MOBILE HOME SPACE: Each mobile home shall be at least thirty-five feet (35') wide, and shall abut on a driveway or other clear area with unobstructed access to a public street. Such spaces shall be clearly defined, and mobile homes shall be parked in such spaces so that no mobile home will be less than five feet (5') from the side and rear boundaries of the mobile home space, and no mobile home shall be less than ten feet (10') from the exterior boundary of the mobile home park. No mobile home shall be parked less than twenty-five feet (25') from any front property line abutting a street or highway or walkway. Areas between mobile home spaces and public right-of-way not used for roadway purposes shall be grassed and/or landscaped and kept free from weeds, rubbish or trash. No mobile home shall be allowed to remain in a mobile home park except on a mobile home space ~~as set forth herein is available~~.

Section 4. Section 5-12-3, subsection (A), W.M.C., is hereby AMENDED to read as follows:

5-12-3: LICENSE REQUIRED; RENTAL PROPERTY:

(A) ~~On or before March 1, 2011, e~~Every owner of rental property shall file with the City Manager, acting by and through the Building Division, an application for a rental property license.

Section 5. Section 5-12-4, subsection (A), W.M.C., is hereby AMENDED to read as follows:

5-12-4: REGISTRATION REQUIRED; RENTAL DWELLING:

(A) ~~On or before March 1, 2011, e~~Every owner of a rental dwelling(s) shall register the rental dwelling(s) with the City Manager, acting by and through the Building Division, according to the application process for licensing outlined in Section 5-12-5, W.M.C., below.

Section 6. Section 5-14-5, subsection (A), W.M.C., is hereby AMENDED to read as follows:

5-14-5: FEES: (1959 2037 2229 2524 3325 3380 3483)

(A) Each application for a license or transfer of a license shall be accompanied by the following application fees:

- (1) For a new license:
 - ~~(a) — on or before July 1, 2008, six hundred twenty five dollars (\$625);~~
 - ~~(b) — after July 1, 2008, and before July 2, 2009, seven hundred fifty dollars (\$750);~~
 - ~~(c) — after July 1, 2009, and before July 2, 2010, eight hundred seventy five dollars (\$875);~~
 - ~~(d) — after July 2, 2010, one thousand dollars (\$1,000).~~
- (2) For a transfer of location or ownership:
 - ~~(a) — on or before July 1, 2008 six hundred twenty five dollars (\$625);~~
 - ~~(b) — after July 1, 2008, seven hundred fifty dollars (\$750).~~
- (3) For renewal of a license:
 - ~~(a) — on or before July 1, 2008, seventy five dollars (\$75);~~
 - ~~(b) — after July 1, 2008, one hundred dollars (\$100).~~
- (4) For a manager registration, seventy-five dollars (\$75).
- (5) For a late renewal application fee where the license has expired, five hundred dollars (\$500).

(6) For a temporary permit to continue selling pending a transfer of the permanent license, one hundred dollars (\$100).

(7) Change of corporate structure or transfer of stock, one hundred dollars (\$100) per person investigated by the City of Westminster.

(8) Special events permit, one hundred dollars (\$100).

(9) Art gallery permit, one hundred three and 75/100 dollars (\$103.75).

Section 7. Section 5-17-2, specifically, "Substantial Enlargement," W.M.C., is hereby AMENDED to read as follows:

5-17-2: DEFINITIONS: (2687) The following words, terms and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Substantial Enlargement" of an adult business shall mean the increase in floor areas occupied by the business by more than twenty-five percent (25%), ~~as the floor areas existed on September 25, 1990.~~

Section 8. Section 5-22-5, W.M.C., is hereby REPEALED IN ITS ENTIRETY, and the index for Chapter 22 of Title V is hereby AMENDED as follows.

CHAPTER 22

MINI WAREHOUSE SPACE LEASE OR RENTAL

5-22-1: DEFINITIONS

5-22-2: LICENSE REQUIRED

5-22-3: EXEMPTIONS

5-22-4: REGULATIONS

~~**5-22-5: PENALTY**~~

~~**5-22-5: PENALTY:** It shall be unlawful for any person to violate a provision of this Chapter. Violators shall be subject to the penalties provided by Section 1-8-1, W.M.C., and may also be subject to civil remedies provided by Chapter 4 of Title VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.~~

Section 9. Sections 6-1-1, W.M.C., is hereby AMENDED, Section 6-1-4, subsection (C), W.M.C., is hereby DELETED IN ITS ENTIRETY, and Section 6-1-7, subsection (G), W.M.C., is hereby AMENDED as follows:

6-1-1: DEFINITIONS: (1224 2001 2138 2365 2900 3070) Definitions set forth in any Section of this Title apply whenever the same term is used in the same sense in another Section of this Title, unless the definition is specifically limited, or the context indicates it is inapplicable. The following words, terms and phrases, when used in this Title, shall have the following meaning, unless the context clearly indicates otherwise:

[The following definitions to be added alphabetically]

"Agent" shall mean any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation.

"High Managerial Agent" shall mean an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a

managerial capacity of subordinate employees.

“Protected Person” shall mean the person or persons identified in the mandatory protection order as the person or persons for whose benefit the mandatory protection order was issued.

“Protection Order” shall mean any order that prohibited the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any protected person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises, or any other provision to protect the protected person from imminent danger to life or health, that is issued by a court of this State or a municipal court, and that is issued pursuant to Article 14 of Title 13, C.R.S., Sections 14-4-101 to 14-4-105, C.R.S., Section 14-10-107, C.R.S., Section 14-10-108, C.R.S., Section 18-1-1001, C.R.S., Section 19-2-707, C.R.S., Section 19-3-316, C.R.S., Section 19-4-111, or Rule 365 of the Colorado Rules of the County Court Civil Procedure, an order issues as part of the proceedings concerning a criminal municipal ordinance violation, or any other order of a court that prohibited a person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises. For purposes of Section 6-1-7, W.M.C., only, “mandatory protection order” includes any order that amends, modifies, supplements, or supersedes the initial mandatory protection order. “Mandatory protection order” also includes any restraining order entered prior to July 1, 2003, and any foreign protection order as defined in Section 18-6-803.8, C.R.S.

“Registry” shall mean the computerized information system created in Section 18-6-803.7, C.R.S., or the National Crime Information Center created pursuant to 28 U.S.C. Sec. 534.

“Restrained Person” shall mean the person identified in the order as the person prohibited from doing the specified act or acts.

6-1-4: CRIMINAL LIABILITY FOR CORPORATE CONDUCT: (1400 2001)

~~(C) DEFINITIONS:~~

~~(1) — “Agent” shall mean any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation.~~

~~(2) — “High Managerial Agent” shall mean an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.~~

6-1-7: MANDATORY PROTECTION ORDER AGAINST DEFENDANT: (1998 3057)

~~(G) As used in this Section:~~

~~(1) — “Protected Person” shall mean the person or persons identified in the mandatory protection order as the person or persons for whose benefit the mandatory protection order was issued.~~

~~(2) — “Registry” shall mean the computerized information system created in Section 18-6-803.7, C.R.S., or the National Crime Information Center created pursuant to 28 U.S.C. Sec. 534.~~

~~(3) — “Restrained Person” shall mean the person identified in the order as the person prohibited from doing the specified act or acts.~~

~~(4) — “Protection Order” shall mean any order that prohibited the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any protected person, or from entering or remaining on premises, or from coming within a specified distance of a protected person~~

~~or premises, or any other provision to protect the protected person from imminent danger to life or health, that is issued by a court of this State or a municipal court, and that is issued pursuant to Article 14 of Title 13, C.R.S., Sections 14-4-101 to 14-4-105, C.R.S., Section 14-10-107, C.R.S., Section 14-10-108, C.R.S., Section 18-1-1001, C.R.S., Section 19-2-707, C.R.S., Section 19-3-316, C.R.S., Section 19-4-111, C.R.S., or Rule 365 of the Colorado Rules of the County Court Civil Procedure, an order issued as part of the proceedings concerning a criminal municipal ordinance violation, or any other order of a court that prohibited a person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises. For purposes of this Section only, "mandatory protection order" includes any order that amends, modifies, supplements, or supersedes the initial mandatory protection order. "Mandatory protection order" also includes any restraining order entered prior to July 1, 2003, and any foreign protection order as defined in Section 18-6-803.8, C.R.S.~~

~~(5) — Whenever a protection order is issued, the protected person shall be provided with a copy of such order. A peace officer shall use every reasonable means to enforce a protection order.~~

Section 10. Section 6-9-1, W.M.C., is hereby AMENDED and Section 6-9-4, subsection (A), W.M.C., is hereby DELETED, AND THE REMAINING SUBSECTIONS (B)-(F) RELETTERED as follows:

6-9-1: DEFINITIONS: (1224 2001 3325) The following words, terms and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

[The following definitions to be added alphabetically]

"Lewd or Indecent Displays" shall mean scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the activities described below or the performance of an act of or an act that simulates:

- (a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts that are prohibited by law;
- (b) The touching, caressing or fondling of the breast, buttocks, anus or genitals;
- (c) The displaying of the pubic hair, anus, vulva, or genitals; or
- (d) The displaying of the post-pubertal human female breast below a point immediately above the top of the areola or the displaying of the post-pubertal human female breast where the nipple only, or the nipple and areola only, are covered.

"Licensee" shall mean any person duly licensed by State and local licensing authorities to sell alcoholic beverages within the City, or any agent, servant or employee of such licensee.

"Nudity" shall mean uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only, or the nipple and areola only, are covered.

"Premises" shall mean all or any part of the physical boundaries of any establishment duly licensed for the sale of alcoholic beverages in the City. The term "premises" shall include not only the building wherein the business is conducted, but also the parking lot adjacent thereto.

6-9-4: CONDUCT PROHIBITED IN LIQUOR AND BEER ESTABLISHMENTS: (1224 2001 2812 3325)

~~(A) Definitions: As used in this Section, the following words and phrases shall have the following meaning:~~

~~"Lewd or Indecent Displays" shall mean scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the activities described below or the performance of an act of or an act that simulates:~~

- ~~(a) — Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts that are prohibited by law;~~
- ~~(b) — The touching, caressing or fondling of the breast, buttocks, anus or genitals;~~
- ~~(c) — The displaying of the pubic hair, anus, vulva, or genitals; or~~
- ~~(d) — The displaying of the post-pubertal human female breast below a point immediately above the top of the areola or the displaying of the post-pubertal human female breast where the nipple only, or the nipple and areola only, are covered.~~

~~"Licensee" shall mean any person duly licensed by State and local licensing authorities to sell alcoholic beverages within the City, or any agent, servant or employee of such licensee.~~

~~"Nudity" shall mean uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only, or the nipple and areola only, are covered.~~

~~"Premises" shall mean all or any part of the physical boundaries of any establishment duly licensed for the sale of alcoholic beverages in the City. The term "premises" shall include not only the building wherein the business is conducted, but also the parking lot adjacent thereto.~~

~~(B) PROHIBITED ACTS:~~

Section 11. The index for Chapter 10 of Title VI, W.M.C., is hereby AMENDED, and Section 6-10-2, W.M.C., is hereby DELETED AND MOVED TO A NEW CHAPTER 18, as follows:

CHAPTER 10

TRAINS;~~LITTER~~

6-10-1: RULES GOVERNING TRAINS OR LOCOMOTIVES

~~6-10-2: LITTERING~~

CHAPTER 18

LITTER

6-18-1: LITTERING

6-10-26-18-1: LITTERING: (1224)

(A) It shall be unlawful to commit littering. Any person who deposits, throws, or leaves any litter on any public or private property, or in any waters commits littering.

(B) It shall be an affirmative defense that:

(1) Such property is an area designated by law for the disposal of such material, and the person is authorized by the proper public authority to so use the property; or

(2) The litter is placed in a receptacle or container installed on such property for that purpose; or

(3) Such person is the owner or tenant in lawful possession of such property, or he has first obtained written consent of the owner or tenant in lawful possession, or the act is done under the personal direction of said owner or tenant.

(C) DEFINITIONS: The following words, terms and phrases, when used in this ~~Section~~Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Littering” shall mean all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind and description.

“Public or Private Property” shall include, but is not limited to, the right-of-way of any road or highway, any body of water or watercourse, including frozen areas or the shores or beaches thereof, any park, playground, building, refuge, conservation or recreation area and any residential, farm or ranch properties or timberland.

(D) It is in the discretion of the Court upon conviction of any person, and the imposition of a fine under this Section, to suspend the fine, upon the condition that the convicted person gather and remove from specified public property, or specified private property, with prior permission of the owner or tenant in lawful possession thereof, any litter found thereon.

(E) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle in violation of this Section, the operator of said motor vehicle is presumed to have caused or permitted the litter to be so thrown, deposited, dropped or dumped therefrom.

Section 12. Section 6-12-1, W.M.C., is hereby AMENDED, Section 6-12-6, subsection (A), W.M.C., is hereby DELETED, and the remaining subsections (B)-(D) RELETTERED, as follows:

6-12-1: DEFINITIONS: (1590 2001) The following words, terms and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

[The following definitions to be added alphabetically]

“Controlled Substance” shall mean a controlled substance, as that term is defined in Section 18-18-102(5), C.R.S., which term shall include controlled substance analog, as defined in Section 18-18-102(6)(A), C.R.S.

“Drug Paraphernalia” shall mean all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, possessing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of the State or this City. Drug paraphernalia includes, but is not limited to:

(1) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State or this City;

(2) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(3) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(4) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(5) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(6) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(7) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes, which means pipes made of any substance with bowls large enough to hold water used for filtering the smoke to be inhaled;

(c) Carburetion tubes and devices;

(d) Smoking and c/carburetion masks;

(e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs; or

(m) Ice pipes or chillers.

6-12-6: POSSESSION OF DRUG PARAPHERNALIA: (2781)

~~(A) DEFINITIONS: The following words, terms and phrases, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~“Controlled Substance” shall mean a controlled substance, as that term is defined in Section 18-18-102(5), C.R.S., which term shall include controlled substance analog, as defined in Section 18-18-102(6)(A), C.R.S.~~

~~“Drug Paraphernalia” shall mean all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, possessing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of the State or this City. Drug paraphernalia includes, but is not limited to:~~

~~(1) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State or this City;~~

~~(2) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;~~

~~(3) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;~~

~~(4) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;~~

~~(5) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;~~

~~(6) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;~~

~~(7) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing~~

~~marijuana, cocaine, hashish, or hashish oil into the human body, such as:~~

- ~~(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;~~
- ~~(b) Water pipes, which means pipes made of any substance with bowls large enough to hold water used for filtering the smoke to be inhaled;~~
- ~~(c) Carburetion tubes and devices;~~
- ~~(d) Smoking and e/carburetion masks;~~
- ~~(e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;~~
- ~~(f) Miniature cocaine spoons and cocaine vials;~~
- ~~(g) Chamber pipes;~~
- ~~(h) Carburetor pipes;~~
- ~~(i) Electric pipes;~~
- ~~(j) Air driven pipes;~~
- ~~(k) Chillums;~~
- ~~(l) Bongs; or~~
- ~~(m) Ice pipes or chillers.~~

~~(B) DRUG PARAPHERNALIA DETERMINATION, CONSIDERATIONS:~~

Section 13. Section 8-7-3, subsection (C)(4), W.M.C., is hereby DELETED as follows:

8-7-3: WATER TAP FEES AND CREDITS: (1129 1217 1311 1365 1456 1527 1664 1788 2097 2123 2257 2298 2440 2634 2956 3281 3306 3546)

(C) NON-RESIDENTIAL WATER TAPS: The following regulations apply to non-residential water taps:

~~(4) All non-residential developments that contain an irrigated area less than 40,000 square feet, which area is served by the water tap and meter for the building, shall pay the irrigation tap fees calculated pursuant to subsection (D)(4) below, in addition to the Water Tap Fee for the building.~~

Section 14. Chapter 6 of Title IX, W.M.C., and the index therefor, is hereby amended BY THE ADDITION OF A NEW SECTION 9-6-4 to read as follows:

CHAPTER 6

DISPOSAL OF INFLAMMABLES

9-6-1: TRASH

9-6-2: ASHES

9-6-3: OILY WASTE OR RAGS

9-6-4: VIOLATIONS

9-6-4: VIOLATIONS: A violation of this Chapter is a criminal offense, punishable by a fine or imprisonment or both, as provided in Section 1-8-1, W.M.C.

Section 15. This ordinance shall take effect upon its passage after second reading.

Section 16. 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 10th day of September, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 24th day of September, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Item 10 D

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Councillors Bill No. 37 re Amend the Westminster Municipal Code, Section 10-1-12 (B) to Prohibit Parking in Public Rights-of-Way between the Curb and the Sidewalk

Prepared By: Mike Normandin, Transportation Engineer

Recommended City Council Action

Pass Councillor's Bill No. 37 amending Section 10-1-12 (B) of the Westminster Municipal Code to prohibit parking on that portion of the public right-of-way located between the curb and the sidewalk.

Summary Statement

- Some street sections located within residential neighborhoods in the City contain a relatively narrow buffer between the sidewalk and the curb. The intended uses of this buffer are to supply an area for the potential placement of landscaping and to provide a separation between the sidewalk and the traveled roadway for the enhanced safety of pedestrians.
- The current City Code does not have provisions for the enforcement of parking restrictions within these buffered areas, and Staff has noticed that some residents park their vehicles behind the curb rather than within the paved portion of the street adjacent to the curb. Therefore, Staff is proposing a revision to the Municipal Code to prohibit parking within these narrow buffers.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City prohibit parking within that portion of the public right-of-way located between the street curb and the sidewalk?

Alternative

The City Council could elect to continue the practice of allowing residents to park their vehicles behind the curb of the street.

Background Information

There are certain locations in the City where the buffer between the curb and the sidewalk is not landscaped, so a few owners of adjacent lots occasionally park within these areas even though parking is allowed on the street. It is assumed that residents park in this manner simply to reduce the possibility of having their vehicles “sideswiped” by street traffic. Parking within these buffered areas causes unnecessary wear to the curb and, potentially, the sidewalk. Furthermore, pedestrian safety is compromised to some extent by the reduced visibility that results from vehicles parked immediately adjacent to the sidewalk. Finally, it is staff’s opinion that vehicles parked behind the curb are an unnecessary eyesore that does not project a desirable image of the City.

If passed by City Council, the attached ordinance will amend Section 10-1-12 (B) of the Municipal Code to prohibit parking on public rights-of-way between the curb and sidewalk.

This proposed revision to the Municipal Code supports the City Council Strategic Plan Goals including: 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. **37**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING SECTION 10-1-12(B) OF THE WESTMINSTER
MUNICIPAL CODE TO PROHIBIT PARKING ON PUBLIC RIGHT-OF-WAY
BETWEEN THE CURB AND SIDEWALK**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 10-1-12, subsection (B), W.M.C., is hereby AMENDED by the addition of a new subparagraph (10), which shall read as follows:

10-1-12: PARKING RESTRICTIONS:

(B) The following restrictions shall apply to the parking of vehicles on public streets within the City of Westminster:

(10) It shall be unlawful to park any vehicle on public right-of-way located between the curb and sidewalk.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of September, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of September, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Item 10 E

Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Resolution No. 25 re Nomination to Designate the Metzger Farm to the National Register of Historic Places

Prepared By: Patrick Caldwell, Community Development, Planner III

Recommended City Council Action

Adopt Resolution No. 25 in support of the nomination of the Metzger Farm to the National Register of Historic Places.

Summary

- An application has been submitted by the City to nominate the Metzger Farm to the National Register of Historic Places. The farm and the 150.9-acre site at 12080 Lowell Boulevard have been owned by the Broomfield-Westminster Open Space Foundation since 2006.
- The Metzger Farm exhibits a high level of integrity from its period of significance between 1943 and 1962. It contains dozens of contributing buildings, structures, objects and sites.
- The Metzger Farm exemplifies the mid-twentieth century hobby farm, including its location, design, setting, materials, workmanship, feeling and association.
- The Metzger Farm represents an association with notable persons in the history of Westminster, John Metzger, a prominent Denver lawyer, Colorado attorney general, political leader and entrepreneur.
- The Metzger Farm represents a good example in its Colonial Revival style farmhouse, late 19th and early 20th Century American Movements style caretakers' house, and the type, period and method of construction of its mid-century barn and various outbuildings.
- The Metzger Farm is an established visual feature of the community and has not changed significantly or been moved since it was constructed.
- On September 4, 2012, the Westminster Historic Landmark Board reviewed the nomination and voted unanimously (5-0) to support the nomination.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the Council support the application for nomination of the Metzger Farm for the National Register of Historic Places?

Alternative

Do not support the application for nomination to the National Register.

Staff does not recommend this alternative because:

- The property contains one of the few significant examples of a mid-twentieth century hobby farm in Westminster;
- There are significant contributing buildings, structures, objects and sites that have been minimally altered that represent good examples of period architecture and a working hobby farm, and the farm conveys a sense of history of the time in which it was built;
- The Metzger Farm is associated with a prominent person in the community.

Background Information

In accordance with Colorado's Certified Local Government guidelines, nominations to the National Register of Historic Places must be presented to the local historic landmark board and the chief elected official for review and comment. The Colorado Historic Preservation Review Board will review and consider the Metzger Farm property for National Register listing at its next meeting on September 21, 2012.

The attached application contains a detailed description of all aspects of the property.

The Metzger Farm is located at the northeast corner of the intersection of 120th Avenue and Lowell Boulevard in the City of Westminster. In October and November of 2005, the City of Westminster and the City and County of Broomfield approved an Intergovernmental Agreement (IGA) to create a foundation for the acquisition, financing, management and maintenance of the Metzger Farm. Metzger Farm was acquired by the Broomfield-Westminster Open Space Foundation on May 1, 2006.

Responsibilities and costs of maintenance of the property are shared equally between the City of Westminster and the City and County of Broomfield.

The Metzger Farm is not currently designated as a Local Historic Landmark.

Recommendation by the Historic Landmark Board

The Historic Landmark Board reviewed the application at its September 4, 2012, meeting and considered the nomination. The nomination was supported on a 5-0 vote.

This proposed action would meet City Council's Strategic Goals of Vibrant Neighborhoods in One Livable Community and Beautiful and Environmentally Sensitive City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments:

- Resolution
- A – National Register of Historic Places Registration Form

B – Historic Landmark Board Resolution

C – Vicinity Map

RESOLUTION

RESOLUTION NO. **25**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

**A RESOLUTION
SUPPORTING THE NOMINATION OF THE METZGER FARM
TO THE NATIONAL REGISTER OF HISTORIC PLACES**

WHEREAS, the Metzger Farm property, located at 12080 Lowell Boulevard, Westminster, Colorado, is owned by the Broomfield-Westminster Open Space Foundation since 2006; and

WHEREAS, in October and November of 2005, the City of Westminster and the City and County of Broomfield approved an Intergovernmental Agreement (IGA) to create a foundation for the acquisition, financing, management and maintenance of the Metzger Farm; and

WHEREAS, an application for nomination of the Metzger Farm to the National Register of Historic Places has been made; and

WHEREAS, the Colorado Historic Preservation Review Board will consider the application at an upcoming meeting; and

WHEREAS, the City Council considers the Metzger Farm to be a good example of period architecture and a working hobby farm, and the property is associated with a notable person who was prominent in the community and the history of the area; and

WHEREAS, the Westminster Historic Landmark Board adopted a resolution of support on September 4, 2012, for the nomination of the Metzger Farm to the National Register of Historic Places.

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

1. The City Council supports the nomination of the Metzger Farm to the National Register of Historic Places.

PASSED AND ADOPTED this 10th day of September, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

United States Department of the Interior
National Park Service

ATTACHMENT A

National Register of Historic Places Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in National Register Bulletin, *How to Complete the National Register of Historic Places Registration Form*. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional certification comments, entries, and narrative items on continuation sheets if needed (NPS Form 10-900a).

1. Name of Property

historic name METZGER FARM
other names/site number LOCH-IN-VALE FARMS / 5AM.2830

2. Location

street & number 12080 LOWELL BLVD. N/A not for publication
city or town WESTMINSTER vicinity
state COLORADO code CO county ADAMS code 001 zip code 80234

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended,

I hereby certify that this nomination request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60.

In my opinion, the property meets does not meet the National Register Criteria. I recommend that this property be considered significant at the following level(s) of significance:

national statewide local

CLG Draft

Signature of certifying official/Title _____ Date _____
Date, Historic Preservation Officer

Office of Archaeology and Historic Preservation, History Colorado
State or Federal agency/bureau or Tribal Government

In my opinion, the property meets does not meet the National Register criteria.

Signature of commenting official _____ Date _____

Title _____ State or Federal agency/bureau or Tribal Government

4. National Park Service Certification

I hereby certify that this property is:

- entered in the National Register
- determined eligible for the National Register
- determined not eligible for the National Register
- removed from the National Register
- other (explain:) _____

Signature of the Keeper _____ Date of Action _____

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5. Classification

Ownership of Property
 (Check as many boxes as apply.)

- private
- public - Local
- public - State
- public - Federal

Category of Property
 (Check only one box.)

- building(s)
- district
- site
- structure
- object

Number of Resources within Property
 (Do not include previously listed resources in the count.)

Contributing	Noncontributing	
		buildings
		district
		site
		structure
		object
SEE ATTACHED RESOURCE COUNT		Total

Name of related multiple property listing
 (Enter "N/A" if property is not part of a multiple property listing)

N/A

Number of contributing resources previously listed in the National Register

N/A

6. Function or Use

Historic Functions
 (Enter categories from instructions.)

- DOMESTIC / single dwelling
- DOMESTIC / secondary structure
- AGRICULTURE / animal facility
- AGRICULTURE / agricultural outbuilding
- AGRICULTURE / irrigation facility
- AGRICULTURE / storage
- AGRICULTURE / agricultural field

Current Functions
 (Enter categories from instructions.)

- VACANT / not in use
- Front Porch

7. Description

Architectural Classification
 (Enter categories from instructions.)

- LATE 19TH & 20TH CENTURY REVIVALS /
- Colonial Revival
- LATE 19th & EARLY 20th CENTURY AMERICAN
- MOVEMENTS

Materials
 (Enter categories from instructions.)

- foundation: CONCRETE
- walls: WEATHERBOARD
- roof: ASPHALT
- other: _____

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Narrative Description

NARRATIVE DESCRIPTION

Summary Paragraph: The Metzger Farm occupies much of the southwest quarter of Section 32, Township 1 South, Range 68 West, and has a current street address of 12080 Lowell Blvd. in Westminster, Colorado. Its historic mailing address was Box 71, Broomfield. The 150.9-acre property is bordered on the north by 124th Ave., the east by Big Dry Creek, the south by 120th Ave., and on the west by Lowell Blvd. and the City of Broomfield. The farm consists predominantly of former crop fields that are currently fallow and planted with short native grasses. These fields are found throughout the northern two-thirds of the site, as well as in its southwest quarter. A segment of Big Dry Creek runs through the southeast quadrant of the property from southwest to northeast. The creek corridor also contains trees and scrubland that support a diversity of wildlife. The south-central area of the site holds two ponds. Together, the ponds, creek, marshlands, and wooded areas occupy an estimated one-quarter of the Metzger Farm. Stretching along an east-west axis just north of the ponds, the intact linear farmstead dating from the 1930s-1950s holds numerous buildings along with historic equipment and features.

Historic Farmsteads: Two earlier farmsteads that predate the Metzger Farm were historically associated with this site. During the late 1800s, the current Metzger Farm was split for some time into two side-by-side 80-acre homestead parcels, each under separate ownership and holding its own farmstead. The farmhouse for the western parcel appears to have been located close to where the Metzger House is found today. This was replaced during the 1930s with a Colonial Revival residence, and no evidence of the earlier farmhouse or any outbuildings remains on the property. The eastern parcel included a farmstead located in the southeast area of today's Metzger Farm, just north of 120th Ave. and south of the eastern lake's east shore. This location is now marked by a grove of mature trees, with an opening in the middle where the farmhouse once stood. No visible foundations or other remnants of that farmstead are found in this area.

SETTING

The Metzger farmstead was constructed in a relatively central location on the property, just southwest of the center of the quarter-square-mile site. This provided privacy from the public roads and easy access to any part of the acreage. Two man-made farm lakes border the farmstead to the south, and agricultural fields occupy much of the remainder of the property. Big Dry Creek runs from southwest to northeast through the farm's far southeast quadrant, bordered by a corridor of vegetation and wetlands. The Metzger Farm is surrounded by residential neighborhoods to the north and west, and by predominantly open land to the east and south.

Farmstead Design: Most of the farmstead's buildings were oriented toward the south and east to take advantage of the winter sun and face away from the prevailing northern and western winter winds and weather. For the same reason, few windows, doors or other openings face toward the north and west. The primary exception to this is the main house, which faces toward the west and the property's entrance along Lowell Blvd. This western orientation appears to have been a formality because rather than using the front door on the west, the east-facing rear entrance became the regular access into and out of the house, both for family members and casual visitors.

The buildings were constructed during the 1940s and 1950s along two parallel east-west lines that run along the north and south edges of the farmyard. The north line held the main house, caretakers' house, garage/shop, vegetable garden, storage sheds, root cellar, granary, and milk house. All of these involved residential, automobile, workshop, records storage, and food-related uses. The south line held the equipment shed, fuel pumps, chicken coop, brooder house, dairy barn, loafing shed, and corrals. These improvements all involved animal and equipment uses related to operation of the farm.

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Color Scheme: Planned color schemes are not usually associated with agricultural operations. Traditionally, many American farmers painted their buildings white, a sign of cleanliness, efficiency, and conservative values. Red barns became common throughout Europe and America hundreds of years ago through the addition of ferrous oxide to the paint mix. This turned the paint red and the ferrous oxide protected the wood from rot caused by moss and fungi. The Metzger Farm was designed with a specific color palette in mind. John Metzger's favorite color was green. He used the color in his home, farm buildings, equipment, and even used green ink in his law practice. Metzger also preferred to purchase John Deere farm equipment because the factory finished everything it sold with green paint. As the farm was constructed during the 1940s and 1950s, Metzger employed a color palette of green, white and red. The wood frame buildings were all painted white with green trimwork and roofs. Red was employed along the main entry drive, which was finished with crushed red sandstone. Metzger's purebred Scotch Shorthorn cattle were chosen in part for their pure white and deep red colors so they would match the overall color scheme of his farm. Although the red drive and cattle are no longer present, the white and green buildings still exhibit their intended colors.

Farmhouse Grounds: Landscaped grounds surround the Metzger house in all directions. The front yard (west of the house) was originally occupied by a circular drive of crushed red sandstone that entered from a gate near its southwest corner. John Metzger had the sandstone installed to cut down on dust, but also so it would look elegant against the white house with its green roof and trim. Flagstone pavers ran from the front porch and circular drive to a gate in the fence along the south edge of the yard at the main road. Some of these pavers are still found in this area. The circular drive was eventually replaced with the sod found there today. John planted most of the trees and shrubs that are located on the Metzger Farm. A row of crabapple trees frames the house's front yard, planted to produce alternating white and red blossoms. In the fall, Betty and Karen used to pick the apples to make jelly. Several years after the crabapple trees were planted, John decided to make a windbreak around the yard. Parallel to the crabapple trees, he planted a row of 6"-tall pine trees that have since matured.

The circular garden in the rear yard (east of the house), bordered by concrete coping, was Betty's rose garden. The garden had a birdbath in the middle surrounded by rose bushes, with irises around the perimeter. The roses are now gone, but some of the irises are still there. The tall trees that surround the rear yard and extend along the north side of the house are mature Dutch elms. Several became diseased or reached the end of their natural life span and were removed, so there are now a few gaps where trees used to be. The landscaping around the house was watered by a pump and piping system from the pond to the south. When the pond was low, or there was something wrong with the pump, irrigation water could not be brought to the yard. A tall pole-mounted light from the 1950s is still found in the southern area of the yard. A segment of historic woven wire fencing remains along the yard's eastern edge.

The septic lines from the main house and caretakers' house meet at the septic tank under the rose garden. A deep brick-lined pit provides access to the system. From there, the septic line runs to the south under the drive and pine grove to end at a leach field just north of the lakes. North of the dam/causeway between the lakes is a round metal plate on the ground. This covers an inspection pit for the leach field, where the effluent could be tested before it ran into the lakes.

Farm Trees (1940s-1950s): Eager to improve his new farm, John Metzger planted numerous trees around the property during the 1940s and 1950s. In addition to the trees surrounding the farmhouse, he planted a grove of pinon pines south of the main drive between the farmhouse and west pond because he was toying with the idea of selling pine nuts. However, the plans never panned out because wild animals ate too many of them. Following Native American tradition, Metzger placed a fish in each hole before every tree was planted on the property to ensure their health and growth. Along the course of Big Dry Creek, extending from 120th Ave. for about one mile to the north, he planted Russian Olive trees, now considered an invasive species.

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Metzger obtained 3" seedlings from Colorado Agricultural & Mechanical College and planted them to stabilize the banks of the creek. Finally, he planted the numerous trees around the lakes, although those along the dam wall that retains the western lake are volunteers. The large trees lining the south shore of the east lake now support a protected heron rookery.

CONTRIBUTING BUILDINGS

Farmhouse (circa 1935, expanded mid-1950s): The 1½-story Colonial Revival style Metzger farmhouse is a wood frame building with a roughly rectangular footprint that measures approximately 32' x 60'. When John Metzger purchased the property in 1943, the house was much smaller than it is today. The original home can be seen where the taller roofline and basement walls mark its location at the center of the building. Dating from around 1935, the west-facing Colonial Revival farmhouse consisted of this central core with concrete entry stoops on the west and southeast.

During the mid-1950s, the small house was expanded to the north and south in phases with the construction of additions designed to provide extra living, office, music room and bedroom space. Until then, the Metzger family's bedrooms were all upstairs. John and his wife Betty had the bedroom on the south, and their children Bill and Karen shared the north bedroom. Seeking more space for their family, the Metzgers had the north and south additions completed. The west-facing front porch and main entry were added to tie the remodel together with a formal facade. Completed by 1957, the project changed the appearance and size of the original building to what remains there today, although it retained its original Colonial Revival elements.

Resting upon a concrete foundation, the house's exterior walls are finished with wide horizontal metal siding that provides the appearance of white clapboards. The tall main roof, and the lower north and south addition roofs, are side-gabled and finished with green asphalt shingles and no eaves. A brick chimney with twin concrete and metal caps rises from the main ridgeline. The front (west) roof slope holds two small front-gabled dormers with clapboard siding and a six-over-one double hung sash window in each. The rear (east) roof slope is dominated by a large shed dormer with clapboard siding and three six-over-one double hung sash windows.

West Facade: This side of the residence holds the primary façade and formal front entry, and faces onto the landscaped front yard. An open porch dominates the elevation, running the width of the home's 1½-story core. The porch is reached by way of three red tiled steps, and is constructed with a raised red tile floor, square wood posts, and hanging lamps. A decorative wood balustrade runs along the top of the porch at the leading edge of the roofline, and extends along the perimeters of the north and south additions. The balusters form geometric patterns, with the letter "M" for Metzger centered above the main entry. The entrance, centered on the elevation, holds a metal storm door with grillwork containing the letter "M", and a main door with vertical tongue-in-groove boards, a small off-center six-light window, and metal strapwork. Wood surrounds at the entry include fluted faux columns with a dentil course above. The main floor holds four eight-over-one double hung sash wood windows that face onto the front porch. A three-sided bay is located in the north addition, consisting of a central single-light window flanked by diamond-pattern double hung sash windows. The southwest addition holds two floor-to-ceiling single light windows. The two small dormers on the main roof each hold a six-over-one double hung sash wood window.

North Side: This side faces onto the band of trees and shrubs that run along the house, beyond which is a large crop field. It holds no entries. Fenestration is limited to a three-sided bay with clear glass

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block windows. The central window has 24 blocks and the flanking windows each hold eighteen blocks.

East Side (rear): This side holds the rear entry into the building, and faces onto the landscaped back yard. An open porch is located at the southeast corner of the home. This is raised on a concrete foundation and is reached from the main entry drive by way of five red tiled steps with a metal handrail. Another set of steps descends from the north side of the porch, although these are now overgrown by a large shrub. The porch has a red tiled floor, square wood posts, and a flat roof bordered by a decorative wood balustrade as on the front of the house. The entrance holds a metal storm door with metal grillwork containing the letter "M", and a wood panel door with a single light. Fenestration on this elevation includes three three-light metal basement awning windows (with lights painted black), a combination of three-over-one, six-over-one and eight-over-one double hung sash windows on the main floor, and six-over-one double hung sash windows in the large roof dormer.

South Side: This side faces onto a band of trees and shrubs, beyond which is the main entry drive. A second floor door provides access to the flat roof over the building's southwest addition, which is bordered by a decorative wood balustrade. Fenestration on the main floor consists of a band of three 6/1 double hung sash wood windows in the southeast addition, and two large floor-to-ceiling single light windows in the southwest addition. The upper floor contains a six-over-one double hung sash window in the gable end wall of the southeast addition.

One morning during the mid-1950s construction, John Metzger was standing in the front yard with his architect and builder, whose identities are no longer known. They were discussing the design of the front porch and how to make the decorative spans fit along its roofline balustrade. John's young son Bill was there as well, listening in on the conversation. Bill suggested that they install the letter "M" for Metzger into the rail, in the narrow span centered above the front door. The adults initially brushed off the idea, but soon agreed and the "M" remains there today. The roof dormers are original and contain closets that the kids used to climb in to play. While the exterior of the house was originally covered with wood clapboard siding, John had it refaced during the mid-1950s with metal siding that was easier to maintain.

Although they worked with an architect, John and Betty decided to retain the original building's style and character in their expansion plans. The equipment shed southeast of the house holds green painted window shutters that were previously mounted on the home. These would have contributed to the building's Colonial Style of architecture. The shutters were operable and used to insulate the home in the winter. However, they were removed and put into storage decades ago, probably during the 1970s, when double-paned storm windows were installed.

Inside the house, the 1950s expansion included converting the original dining room into a wood-paneled library. At the same time, the doorway from the kitchen to the dining room was sealed. The dining room was then moved north of the kitchen. A small main-floor restroom and coat closet with a laundry chute were removed to create a short hallway that provided direct access from the kitchen to the front entrance. The north addition provided the home with a living room/music room for Betty's organ and baby grand piano, and a master bedroom with its own bathroom. This bathroom retains its 1950s-era fixtures.

On the south, the new addition and subsequent changes provided an office and meeting room on the first floor, with bedroom space above. The 16' x 16' southwest office was originally constructed as an open porch with tongue-in-groove wood flooring. The family regularly sanded and oiled the woodwork with linseed oil so it wouldn't be ruined by the weather. John hung an old airplane propeller from the ceiling to serve as a light fixture. However the porch wasn't used as much as they had anticipated, so it was enclosed and converted

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into an office by the early 1960s since he was spending more time working from home. The large floor-to-ceiling windows in this room are Lexan (probably dating from around 1968, when Lexan windows came onto the market) and the solid panels between were installed so bookcases could be set behind them. This room was where John Metzger kept his desk, law books, and business papers.

In addition to spending time in the home office, John enjoyed working in the more comfortable southeast room known to the family as the "back porch." Originally an open porch, this space was half its current size. During the 1950s, it was expanded toward the south, enclosed, and a cork floor was installed. The open porch that still extends to the east was added at that time. The informal "back porch" working room was where John met with clients and hosted numerous meetings of community organizations. He also maintained an office in downtown Denver. The home's basement contains two bedrooms, a laundry/utility room, a boiler room, and a former coal room that was converted into a cedar closet. The family used the home's fireplace often and stored firewood in one of the sheds on the farmstead. The house was originally heated with a coal-fired boiler. Coal was delivered to the basement coal room through the window. The boiler was converted to a fuel oil system, which was replaced by natural gas in more recent decades.

When the 1950s construction work was done, Karen moved downstairs to the new main-floor north bedroom. She was thrilled to have her own bedroom along with its own private bathroom. However, she came home from school one day to find that her parents had moved themselves into the new main floor bedroom. She had been moved back upstairs to the north bedroom, and Bill was moved to the second floor south bedroom. The two basement bedrooms were used during the hot summer months when it was too uncomfortable to sleep on the second floor.

Caretakers' House (circa 1945): The one-story Late 19th and Early 20th Century American Movements style caretakers' house is a wood frame building with a rectangular footprint of 21' x 36'. It is located across the yard to the east of the main farmhouse. This small building faces toward the east and rests upon a concrete foundation. Its exterior walls are finished with white weatherboard siding and a smaller amount of clapboard siding. The building has a side-gabled roof with green asphalt shingles and exposed rafter ends. A short brick chimney with a tall tin cap rises from the ridgeline. The house appears to have been expanded during its early years with a full-width, shed-roof addition to the east. This expansion may have taken place in more than one phase. By 1950, the building had reached its current size and appearance. Segments of historic woven wire fencing remain along the west and southeast edges of the yard.

East Facade: This side holds the façade and two entries into the home. The southern entry is occupied by a wood screen door and panel door, both of which are unpainted. The northern entry holds a wood storm door with four lights, along with a wood panel door with a single light. Fenestration on this elevation consists of three 1/1 double hung sash windows with wood frames. A concrete walk is located outside of the entries, extending southward to the edge of the drive.

South Side: This side faces onto a small yard area and holds no entries into the building. The main body of the house holds a small 1/1 double hung sash window with a wood frame. A larger single-light fixed horizontal window is found in the east shed-roof addition.

West Side (rear): This side faces onto a woven wire fence and band of trees, beyond which is the main farmhouse's backyard. No entries are located on this side of the building. Fenestration consists of two 1/1 double hung sash windows with wood frames, and a larger single-light fixed window.

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North Side: This side faces onto a band of trees, beyond which is a large crop field. No entries are found here. Fenestration consists of two 1/1 double hung sash windows with wood frames. A homemade wood birdhouse is mounted on the wall.

John Metzger recruited married couples to do caretaking and farm the land, and in return provided them with this small house. Right after World War II, he arranged through Catholic Charities for a displaced German couple named Vladimir and Anna Kiebert to immigrate to the United States and live on the farm with their young son Karl. Shortly after they arrived, they had another son. Vladimir farmed the land and Anna looked after her own children as well as Bill and Karen Metzger because John and Betty were gone a lot of the time due to his political and legal work. The Kiebert family lived on the farm for several years before moving to a home of their own. Gip and Betty Wilson then moved into the caretakers' house in 1952 and lived there for three years. They eventually moved on to Broomfield, but remained close with the Metzger family. After the Wilsons left, a series of caretakers lived in the house. None of these were farmers, but instead did maintenance work around the property.

Garage & Shop (circa 1945): The one-story garage and shop is a wood frame building with a rectangular footprint of 20' x 36'. It is located just east of the caretakers' house. The building faces toward the south and rests upon a concrete foundation. Its exterior walls are finished with white weatherboard siding. The garage/shop has a side-gabled saltbox roof finished with green asphalt shingles and exposed rafter ends. This roof was designed to shed precipitation primarily toward the north and away from the front of the building.

South Facade: This side faces onto the farmyard and holds two entries. The western half of the building has an open doublewide garage space with no door and a metal rail above. A wood sliding door hanging from a metal rail and constructed of horizontal weatherboard planks provides access into the eastern half of the building. Fenestration is limited to a single small four-light window with wood frame, located near the building's southeast corner.

West Side: This side holds no entries. Fenestration is limited to two small four-light windows with wood frames.

North Side (rear): This side holds no entries or windows.

East Side: This side holds no entries. Fenestration is limited to two small four-light windows with wood frames.

The western half of the building holds parking space for two autos. The opening originally had wood sliding doors that were removed and placed into storage in the equipment shed. These were apparently taken down for ease of access, and so the garage could be used like a carport. The eastern half of the building was used as a shop and tool room. It contains a workbench with a vise, grinder, and other tools and equipment necessary for maintaining the farm.

Loafing Shed (circa 1952): The loafing shed is located east of the barn in the southeast corner of the farmstead. It faces toward the south and is connected to a corral that extends southward toward the pond. This long rectangular one-story wood frame building has a footprint of 20' x 80' and rests upon a raised concrete foundation that runs along its north, east and west sides. Its exterior walls are finished with white weatherboard wood siding, with no doors or windows present. The roof is side-gabled and finished with green asphalt shingles and exposed rafter ends. With its saltbox shape, the roof has its predominant slope toward the north so precipitation would shed away from the corral. Six open bays extend along the width of the south side. Square wood posts resting upon short concrete piers separate the bays from one another and support

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the roof above. The loafing shed has a dirt floor and was used for livestock to take shelter from winter storms and summer sun.

Barn & Corrals (circa 1945): The barn is located in the southeast area of the farmstead between the loafing shed and brooder house. It is connected on the south to a corral that extends toward the pond. This one-story wood frame building is accessed from the east and west. It rests upon a raised concrete foundation and has a relatively compact rectangular footprint measuring 28' x 48'. The building is finished on the exterior with white weatherboard siding and has a gabled roof with green asphalt shingles and exposed rafter ends. A wood frame ventilator finished with weatherboard siding, louvered sides, and a gabled roof with exposed rafter ends is centered on the ridgeline.

South Side: This side faces onto the corral and holds no entries into the building. It is marked by the presence of nine small windows. These were originally four-light windows with wood frames, surrounds, and shaped lintels. Today, seven of the windows retain all or most of their four-light pattern. The remaining two hold single lights in the original surrounds. The wood sills on most of the windows have been partly chewed away by livestock.

West Side: This side holds two entries that fit into the raised concrete foundation. These are both Dutch swinging doors constructed of vertical wood tongue-in-groove paneling, with shaped lintels above and original metal hardware. The doors allowed the upper portions to remain open for ventilation while the lower portions were kept closed to keep animals in or out. Fenestration is limited to one single-light fixed window with a wood frame and shaped lintel. This is likely to have originally been a four-light window, as on most of the rest of the building. A large light mounted on the upper gable end wall illuminates this side of the barn.

North Side: This side faces the farmyard and truck scale, and holds no entries into the building. It is marked by the presence of eleven small windows. As on the south elevation, these were originally four-light windows with wood frames, surrounds and shaped lintels. Today, seven of the windows retain all or most of their four-light pattern. The remaining four hold single lights in the original surrounds.

East Side: This side holds three entries that fit into the raised concrete foundation. These are all Dutch swinging doors constructed of vertical wood tongue-in-groove paneling, with shaped lintels above and original metal hardware. No windows are located along this elevation. A small light is mounted on the wall above the door at the building's southeast corner. The entries were designed so that dairy cattle could be moved into and out of the building for milking primarily through the southeast and northeast doors.

Entering the barn through the northern door on the west side, the first room on the left (in the northwest corner of the building) was the washroom. This space was designed for the cleaning and sterilizing of milking equipment, which had to be washed regularly with hot water and a disinfectant. The next room to the east was used for calf feeding. It still holds an automatic calf feeder that is mounted to the wall. Calf formula powder was put into the top of the machine, which was hooked up to a water line. The powder (some of which remains in the machine) and water were mixed and each calf was fed from a nipple at the bottom of the unit. With this system installed, milk could be sold instead of going to the calves.

The milking room occupies the entire eastern half of the barn. It contains twenty intact wood stanchions used to hold the cows in place while they were being milked. Troughs along the middle aisle allowed the cows to eat as they stood there. The concrete floors the cows stood on were slanted away from the middle of the room

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so they could be washed out through drain slots at the eastern doors. This practice typically had the effect of undermining and washing away concrete foundations over time, and the concrete thresholds at the east doors are cracked as a result of floor washing. The ceiling is dropped, and the attic space above was never used for storing hay or feed as in some barns.

The southwest room in the barn was used as an infirmary for cows that were not doing well and needed treatment or to be isolated. It was also utilized as necessary during periods of calving. For many years, the young Karen Metzger kept her horse in this space. The south wall in the interior hallway has long horizontal tongue-in-groove wood panels that could swing open to allow for feed to be placed into the troughs inside the southwest room.

In addition to being used for dairy cattle, John Metzger kept his herd of prized Scotch shorthorn cattle in the barn and corral south of this building. Two adjacent loafing sheds were also used for the livestock, although these were demolished in the early 1950s and replaced with the larger loafing shed that remains there today. Metzger engaged a top-notch veterinarian from Brighton to treat his expensive prize cattle. He would come to the farm frequently, sometimes daily in calving season, to care for the animals' health. Manure from the corrals was collected with a front-end loader and then spread in the crop fields using a manure spreader (see below).

Corn was planted in the eastern fields and used as cattle feed. A north-south concrete trough was built along the east line of the corrals next to the loafing shed. Alfalfa hay was stacked to the east of the corrals so it could be thrown over the fence into the troughs. Once a day the cows were also fed corn. In the fall, when the corn was processed, it was chopped (ears and stalks together) and placed into a silage pit in the northern fields next to the windmill. It was then loaded as needed into a truck and brought over to the corrals to be fed to the cows. The animals got water from the east pond by simply walking through a gate in the corral fence so they could reach the shore to drink. The corral area was divided into several pens with post-and-rail fencing and metal gates, much of which remains in place today.

A stock waterer is mounted on a concrete pad outside the south wall of the barn. This Pride of the Farm unit, manufactured by the Hawkeye Steel Products Co. of Waterloo, Iowa, was connected to the well near the chicken coop by an underground pipe. It was used during the winter months when the pond froze over, providing warmed drinking water for the cattle. The Hawkeye Steel Products Co. was founded in 1920 and since then has manufactured numerous products for the agricultural industry under the brand name Pride of the Farm.

Brooder House (circa 1945): The brooder house is located between the barn and the chicken coop. It is a small rectangular one-story wood-frame building with a footprint of 10' x 12'. Resting upon a concrete foundation, the building's exterior walls are finished with weatherboard siding. It has a shed roof with green asphalt shingles, exposed rafter ends, and a short metal flue projecting from the center. The brooder house faces toward the south. On most farms, these buildings were oriented toward the south to capture the warmth of the winter sun. They were often small so they could retain heat for the chicks to survive.

South Side: This side faces onto a small pen enclosed by a wood and wire fence. Two chicken entries closed with boards are located in the lower half of the wall. The upper wall holds two windows. One of these is a single-light window and the other a four-light window, both with wood frames and surrounds.

West Side: This side holds the only entry into the building. This has an old wood panel door that appears to be much older than the shed itself. No windows are found on this elevation.

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North Side: This side faces the farmyard and holds no entries or windows.

East Side: This side holds no entries or windows.

Every spring, the Metzgers ordered a crate of baby chicks from Sears. The chicks would either be delivered to the farm by the mailman or the family would get a call from the elevator in Broomfield to let them know they had arrived. The brooder house became their home until they were old enough to move next door to the chicken coop. Roosts were mounted along the interior walls for laying chickens, and a band of these remains inside the building. Moveable panels at ground level on the south wall could be opened or closed, depending upon whether the chicks were to be let out into their small fenced yard. By the mid-1950s, the building was no longer in use and Karen Metzger convinced her parents to let her convert it to a tack shed for equine equipment.

Chicken Coop (circa 1945): The chicken coop is located between the brooder house and equipment shed. This one-story wood-frame building rests upon a concrete foundation, with a footprint of 16' x 36'. It is finished with weatherboard siding and has a shed roof with green asphalt shingles and exposed rafter ends. A small wood ventilator and metal flue rise from the middle of the roof. The building faces toward the south. Similar to the brooder house, coops were often oriented toward the south to capture the warmth of the winter sun.

South Side: This side faces onto a corral and holds no entries other than two small arched ports in the lower wall that allowed the chickens to come and go. Five windows are found along the elevation. Four of these hold 6-light windows, and the fifth has had the window replaced with a single light. All have wood frames and surrounds, with shaped lintels.

West Side: This side holds the original entry into the building. This holds a vertical wood tongue-in-groove plank door with a shaped lintel above. No windows are found on this elevation.

North Side: This side faces the farmyard and holds no windows. A pair of swinging doors was cut into the siding after the building was no longer in use as a chicken coop. Constructed of the original siding, this secondary entrance allowed the building to be accessed directly from the farmyard.

East Side: This side holds no entries. Fenestration consists of a band of three four-light windows in the lower wall, with wood frames and surrounds, and a shared shaped lintel.

The Metzgers raised numerous chickens, which explains the good size of this chicken house. One year, John and Betty decided they also wanted to raise a flock of geese to give as Christmas gifts, and they were also kept in this area. The concrete pad and cover in the yard south of the building contains the chicken coop well. Pipes in the pit sent water in different directions to outside spigots and supplied the chicken coop, barn and milking house. The pump is gone and was removed once the well was no longer needed.

Equipment Shed (circa 1945): The equipment shed is located in the southwest corner of the farmstead, to the west of the chicken coop and south of the caretakers' house. This wood frame building was constructed to store farm equipment that needed to be kept out of the weather. The shed rests upon a raised concrete foundation and has a footprint of 20' x 40'. It is open to the south and has a dirt floor. The south side has two open bays framed by square wood posts with diagonal braces at the top. Its north, east and west sides are finished with weatherboard siding, and no doors or windows are present along these walls. The side-gabled roof has a saltbox shape that sheds precipitation predominantly to the north and away from the front of the building. The roof is finished with green asphalt shingles and exposed rafter ends. Several pieces of equipment related to the Metzger farm and mine operations are stored in this building (see below).

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East Lake Pump House (circa 1955): The pump house is isolated from view in the woods below the east lake's dam wall, and was constructed there to pump water from the Calkins Ditch into the east lake. It was constructed around the time that the east pond was developed. The wood frame structure rests upon a concrete foundation and has a footprint of approximately 8' x 10'. Facing toward the southeast, its exterior walls are finished with weatherboard siding. Its gabled roof is finished with green asphalt shingles and exposed rafter ends. An electric meter box affixed to the south wall has conduit rising above that projects through the eave, allowing the electric wires to run overhead to a nearby power pole. Water piping emerges from a hole in the west wall of the building and runs into the ground. Another pipe runs through a hole in the building's north wall and drops down into the ditch.

East Facade: This side of the pump house holds its only entry, which consists of a wood panel door. No windows are located on this elevation.

South Side: This side holds no entries or windows.

West Side (rear): This side holds no entries. One window with a wood sill and shaped wood lintel is present, although it is boarded closed.

North Side: This side holds no entries. It has one window with a wood sill and shaped wood lintel, although it is boarded closed.

CONTRIBUTING SITES

Playground (circa 1952): The small open area south of the caretakers' house and north of the drive, where there are two aboveground tanks today, was originally a small playground for the Metzger kids. It had sand on the ground, along with swings and a slide. The adjacent tree provided shade and the kids would play there for hours. Betty could see them from the main house's kitchen, and the caretakers could also help keep an eye on them in this location.

Garden (circa 1950): The large fenced rectangular space that runs from east of the caretakers' house and yard, along the north side of the garage and file storage sheds, and continues to the eastern fence line beyond the granary held the Metzger family's vegetable garden. The western area of the garden contained row vegetables, and the central portion was planted with corn. The eastern area of the garden held vine plants growing produce such as pumpkins and squashes. The entire garden was planted for family consumption.

The garden was irrigated with pond water, and some of the pipes and sprinklers are still present along its northern length. The piping system was buried underground for watering the grounds around the houses, but emerged aboveground for the garden. A constant challenge was keeping rabbits out of the garden and the family had to continuously fix the fencing every growing season (most of this fencing is now gone). Before the piping was installed, they would flood the garden when the adjacent alfalfa field was irrigated.

Collapsed Root Cellar (circa 1950): A root cellar was located in the currently open space south of the garden, between the file storage sheds and granary. Betty would can and store food in the root cellar. It had a bulkhead door and stairs going down into the ground. Lighting was provided by a single light bulb inside the cellar that had to be screwed in for it to turn on. This belowground feature was demolished and filled several decades ago, and no physical evidence remains visible today.

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Milk House Foundation (1952): The milk house, now demolished, was located on the concrete foundation that can still be seen just east of the granary. It was likely a wood frame building that faced toward the south, with a footprint measuring 6' x 8'. This small building was used to temporarily store milk from the dairy cattle operation run by caretaker Gip Wilson between 1952 and 1955. It was placed in this location to be close to the barn, yet far enough away that it could be kept cold and sanitary. A water line ran underground from the barn to the milk house, providing clean water needed to keep the building sanitized in compliance with good practices and dairy standards. A spigot is still found at this location. Regular washing of the building's interior may have resulted in its deterioration to the point that it had to be removed.

Crop Fields & Pasture (1880s): When John Metzger acquired the farm in the early 1940s, it extended a quarter-mile farther to the east than it does today, and was 320 acres in size (it occupied the entire south half of Section 32). Open crop fields and pasture occupied most of this land. Metzger later sold the eastern half of the acreage, bringing the site to its current size and configuration. The open fields that remain on the property today were planted with a variety of crops between the late 1800s and mid-1900s. John Metzger worked with the Colorado Agricultural & Mechanical College (now Colorado State University) to plant test crops and staff from the school periodically visited the farm. This may be what reportedly led to the property being mentioned, or possibly designated, as a "model farm" in the late 1940s (this anecdotal status, reported by the Metzger children in recent years, could not be confirmed). According to Bill and Karen Metzger, during one of his visits to Denver in the early 1950s, President Eisenhower visited the farm and walked through the cornfield where test varieties were being grown.

Gip Wilson was the last farmer to work the property as it became increasingly difficult during the 1950s to bring irrigation water to the northern fields. Development of post-World War II residential subdivisions to the north began cutting off the water supply, much of which came from Tom Frost Reservoir through an open ditch. The northern ditch and irrigation system eventually had to be abandoned. Before he left the Metzger Farm in 1955, Gip plowed under the crop fields and planted them with several types of grass so they could be used for grazing. For years afterward, the fields were good for one or two cuttings of dryland grass hay each growing season and the Metzgers leased the land to a Angus cow-calf operation. Stacks of hay were stored in a fenced area to the north of the family garden and granary. Electric fencing was installed along the perimeters of the property to prevent the livestock from getting out.

The southern sixteen acres south of the ponds were used by John Metzger to grow crested wheat. This area was supplied with irrigation water from a well in the southwest corner of the property. Karen Metzger later pastured her horse on this acreage, which was planted with grass after the wheat production halted. She was very involved with a competitive riding group known as the West Eastlake Range Riders and participated annually in Denver's National Western Stock Show.

CONTRIBUTING STRUCTURES

Main Entry Road (circa 1935): The property is entered through a gate located along the east side of Lowell Blvd. about 500' north of 120th Ave. From this entry, a narrow asphalt-paved, tree-lined driveway extends eastward for about 500' before reaching the farmstead. During the 1940s and 1950s, the unpaved drive was improved with crushed red sandstone. This was paved over in the early 1960s and remains paved with asphalt today. After passing the farmhouse, the entry road widens and becomes a graveled central farmyard that extends east as far as the barn. A single pole-mounted streetlight fixture illuminates the driveway south of the farmhouse.

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Granary (circa 1945): The granary is located in the northeast area of the farmstead, east of the file storage sheds, and faces south onto the farmyard. Dating from the 1940s, it is a one-story wood frame structure that rests upon a concrete foundation, with a rectangular footprint measuring 18' x 30'. The granary's exterior walls are finished with white weatherboard siding. It has a side-gabled roof with green asphalt shingles and exposed rafter ends. The interior holds a central hallway flanked by grain cribs constructed with smooth tightly fitted tongue-in-groove wall paneling and flooring designed to keep the weather and pests out.

South Façade: This side faces onto the farmyard and holds three entries. The central opening is a man-door constructed of horizontal weatherboard siding cut from the wall. Two pairs of large vertical wood tongue-in-groove swinging doors with wood plank braces and clasps flank this entrance. No windows are found on this side of the structure.

West Side: This side holds no entries. Fenestration is limited to a single four-light fixed window with wood frame located high in the gable end wall. Centered on the upper wall below the window is a horizontal panel of weatherboard siding.

North Side (rear): This side holds no entries or windows.

East Side: This side holds no entries. Fenestration is limited to a single four-light fixed window with wood frame located high in the gable end wall. Centered on the upper wall below the window is a horizontal panel of weatherboard siding with wood framing.

The horizontal hinged wood-siding panels on the upper east and west walls were historically opened to the interior of the cribs so they could be loaded with grain. Loading was accomplished with the help of an auger, which was set onto the ground outside the structure. The auger lifted the grain up and into the openings, depositing it into the cribs and filling them from the bottom up. Inside the central hallway are small panels near the floor that were opened to allow grain to pour out. From the floor, an auger and shovels were used to put the grain into a truck, farm wagon or bucket so it could be taken to feed the livestock.

This structure was altered somewhat shortly after 1955 when the two pairs of large wood swinging doors were installed along its south elevation. These opened up the cribs, which were no longer needed for grain storage by that time. After that, the structure was used for farm and household storage.

Truck Scale (circa 1945): The truck scale is found outside the north wall of the barn. This consists of an approximately 8' x 10' wooden platform that trucks would drive upon to be weighed and to determine the value of grain or other agricultural products they might contain. A tall wooden box housing the scale is situated adjacent to the platform. The Moline Scale Factory of East Moline, Illinois manufactured this unit. Representing an advance in truck scale design, this "Pitless Scale" functioned without requiring the owner to excavate a pit below the platform. While the scale and its housing remain intact, the wooden boards that the trucks would drive onto are present but are no longer mounted securely in place.

Irrigation & Water Wells: Farms in the arid Rocky Mountain West require stable water sources for them to be successful, and the Metzger farm was no exception to this rule. During the late 1800s and 1900s, the property included water rights to Tom Frost Reservoir along with rights to water from the Golden, Ralston Creek & Church Ditch Company, Equity Ditch Company, and the Farmers Reservoir Irrigation Company (these are now owned by the City of Westminster). These water rights were transferred every time the property was sold. The only irrigation canals known to have crossed the nominated acreage were an unnamed ditch from Tom Frost Reservoir and the Calkins Ditch. While these various surface water rights were developed and exercised as a

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source of irrigation for crops and livestock, the availability of adequate water for the farm became increasingly problematic during the post-WWII years of suburban development.

On-site sources of domestic and irrigation water were needed and these became more important over time. Once he acquired the property in the early 1940s, John Metzger set about ensuring that the farm had ample supplies of water from various sources. Most of the wells on the farm were placed by a Denver well driller hired by the Metzger family. **In compliance with Colorado House Bill 11-1289, the subject of this nomination focuses only upon real property and not water rights.** However, the following details are provided about each of the farm's various historic sources of water:

Unnamed Ditch (circa 1880): The northern and eastern crop fields on the property were watered for decades through an unnamed irrigation ditch that originated at Tom Frost Reservoir, located over one-half mile northwest of the Metzger Farm on the northwest corner of 128th Ave. and Lowell Blvd. The ditch had to be abandoned as housing developments to the north began to cut off its route in the late 1940s and 1950s. No remnants of the ditch remain on the Metzger Farm today.

Calkins Ditch (1883-1884): The Calkins Ditch originated from Big Dry Creek at a headgate about $\frac{3}{4}$ mile south of the Metzger Farm, just north of today's Front Range Community College. From this point, the unlined earthen ditch ran to the northeast, crossing through the Metzger Farm from southwest to northeast along the west side of and parallel to Big Dry Creek. The ditch terminated a distance to the northeast in the Bull Canal, northeast of the intersection of 136th Ave. and Huron St. A short segment of the Calkins Ditch survives today on the Metzger Farm. Raised above Big Dry Creek, it extends toward the northeast from the east pond's dam wall and exits the property along its east-central border. The ditch is significantly eroded and in several locations has been broken and has trees and shrubs growing from its bed.

Constructed in 1883-1884, the Calkins Ditch was then enlarged in 1887 to irrigate 280 acres of farmland. It was originally owned and developed by a small group of area farmers that consisted of Wallace D. Calkins, Edward D. Calkins, William Lindza, Charles Wilber and E. N. Foster (the ditch was mistakenly identified on the 1899 Willits Farm Map as the Wilbur Ditch). Securing their appropriation rights from Big Dry Creek, on 9 May 1887 the owners filed a sworn statement with the state describing the ditch's headgate, alignment and other features. The following year, the water rights were adjudicated in district court and determined to have the third priority in appropriation from Big Dry Creek. The Calkins Ditch continued to run into the 1960s and possibly 1970s, and its water was used to refill the east lake on the Metzger Farm through a pump house located below the east dam wall. It was officially abandoned through the state engineer's 1990 revised abandonment list, filed with the state water clerk on 31 December 1991 (<http://water.state.co.us/pubs/abandonment.asp>).

North Well & Windmill (circa 1955): After the crop fields were plowed under and put to use as pasture, a well was excavated in the north field to provide livestock with a source of drinking water. This location is marked by the presence of a self-oiling Dempster No. 12 windmill, manufactured in Beatrice, Nebraska. Introduced on the market in 1922, the No. 12 windmill is still produced today. Water was pumped from the ground by the windmill into an adjacent stock tank. Although still present, the well and windmill have long been out of use.

Chicken Coop Well (circa 1948): A covered concrete pad in the yard south of the chicken coop marks the location of this well. The pipes in the bottom of the vault are transfer points with valves to send water in different directions. These terminate at outside spigots to the north and west, and also

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serve the chicken coop, barn and milk shed. The pump is gone and was probably removed once the well was no longer needed. This well has been out of use for many years.

Domestic Well (circa 1950): The domestic water well is located in a vault to the north of the west pond and south of the main house. A concrete pad with a square tin-clad hatch covers the well and its associated equipment. This well provided a clean source of domestic water for the main house and caretakers' house, and could also supply the chicken coop, dairy barn, and milk shed as needed. The vault contains a pump, piping, valves, and a pressure tank. The pressure tank holds both water and air. Water pumped from the well into the tank pressurizes the air until it reaches a certain pressure, causing the pump to shut off. When the pressure goes down as the water is used, the pump goes on again and adds water to the tank. This system provided a reliable supply of water to the houses, with the pressurization bringing the water to the taps. This well is still operational, although the property is vacant and it is not being utilized.

Abandoned Well (circa 1935): This abandoned water well is located adjacent to the domestic well described above. It is an earlier domestic water well that was closed when the current well was installed, leaving a short riser of capped pipe visible above the surface of the ground.

Landscape & Garden Irrigation System (circa 1950s): Water was piped underground from the west pond toward the north to irrigate the adjacent pine grove, the grounds around the main house and caretakers' house, and the Metzger family's large vegetable garden east of the homes. Just north of the pier, above the shore of the pond, is a small concrete vault holding the pump for the irrigation water. A hose extends from the pond into the vault. From there, it first runs to a spigot that waters the nearby pine trees. The pipe then runs under the road to the sprinkler system around the houses. It emerges from the ground for the system that waters the vegetable garden. While this irrigation system is still operational, it has not been used for a number of years.

East & West Lakes (circa 1945-1955): The two lakes on the Metzger farm, both man-made reservoirs, were developed for irrigation, stock-watering, and fire-fighting purposes. They were constructed along a natural drainage that ran from west to east, terminating in Big Dry Creek. The drainage funneled area stormwater runoff and directed outflow from Broomfield Reservoir, now known as Brunner Reservoir, located more than one mile to the west. A natural spring, no longer present, also supplied the drainage with water.

When John Metzger bought the farm in 1943, neither of the lakes existed but the drainage was present. He simply took advantage of the natural topography of the drainage to create the lakes and improve the property. During lean water periods, such as the statewide drought that occurred from 1950 to 1956, the lakes would get quite low. To address this problem, Metzger installed the pump house below the east lake to draw from the Calkins Ditch. After the well in the southwest corner of the property had to be abandoned due to widening of 120th Ave., another well was placed near the west end of the west lake. Since then, this well has served both bodies of water. Periodically, when there is a downpour upstream in Broomfield, surface water will run through natural drainages into the lakes. The west lake has been known to fill so quickly during some of these events that the water will top the dam wall and flow into the east lake. Today, the Metzger lakes have matured into a nature preserve and scenic feature of the farm that is among its most defining features.

The earthen dam walls were excavated and cored several decades ago, probably during the 1970s, due to engineering concerns. Coring involved strengthening the earthen dams with compacted and better-prepared materials that also reduced seepage. This effort does not appear to have substantially changed the original character of the lakes, or the visual appearance of the dam walls.

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West Lake: The west lake was the first to be developed in the mid-1940s after John Metzger acquired the property. Its eastern dam wall, covered with concrete riprap and lined with trees, forms a causeway between the two lakes that provides access to the southern acreage. This body of water was originally much more open than it is today, as it has steadily filled with marsh vegetation and sediment. Water enters the shallow lake from the west and then flows into the deeper east lake through a spillway located at the south end of the dam. The Metzger children used the west lake for summer swimming and boating, and for winter ice-skating. A wooden pier on the northeast shore, just south of the house, provided the family with access to the lake. This pier was originally constructed in the 1940s, and was rebuilt during the 1950s by Gip Wilson because it was deteriorating.

East Lake: During the 1940s and early 1950s, the east lake's grounds were occupied by a natural drainage and marsh filled with cattails and surrounded by prairie grass. During the mid-1950s, John Metzger launched a project to create the east lake. He brought in earth-moving equipment to build up a dam wall and made it sturdy enough to hold a sizable amount of water. The marsh and drainage were excavated to bring the lake to its current size. The spillway from this lake, draining from its southeast shore, transports excess water to the east into Big Dry Creek. The east lake was used for watering livestock and during dry years for irrigating the eastern crop fields. Metzger installed an aluminum piping system with sprinklers that ran aboveground from the northeast shore of the lake into the eastern fields. The lake has not been used for livestock or irrigating purposes for several decades.

CONTRIBUTING OBJECTS

Clothesline (circa 1955): A metal clothesline is located in the rear yard just northeast of the farmhouse. During the summer months, Bill and Karen Metzger strung sheets on the line and played in the shade beneath. For many years, the clothesline was used to dry the family's laundry, which was washed in the basement laundry room. The Metzgers made a point of washing and hanging all of the bed linens, quilts, and blankets on the clothesline when the alfalfa was being cut in the adjacent field, as the harvest made the linens and bedding smell especially wonderful.

Farm Bell (manufactured 1886, installed here circa 1950): A pole-mounted bell is located off the southeast corner of the farmhouse along the main drive. Forged in 1886 but installed here in the 1950s (its origins are unknown), the bell could be heard for a great distance unless one was operating machinery. When the family and farmhands heard it ringing, they knew that they needed to head to the house right away. This could be for a meal, to answer a phone call, or due to some sort of emergency.

Agricultural Equipment: A number of historic farm implements and pieces of agricultural machinery and equipment are present in various locations throughout the farmstead. These were all utilized on the farm during its historic period.

Farmall Tractor (circa 1955): This is a McCormick Farmall Model SH (Super H) tractor, manufactured by the International Harvester Co. of Chicago. It was used on the farm to pull various agricultural implements.

Case Tractor (circa 1962): This is a Case Construction King tractor. With its front-end loader and optional equipment, this versatile tractor was used to pull farm implements and to complete various projects such as loading and unloading the grain bins, scraping the corrals, and hauling dirt and equipment from one place to another. It came with a rotary auger attachment that was used to dig post holes when fencing needed to be installed or replaced.

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Disk Plow & Chisel Plow (circa 1940s): Both of these implements were pulled behind a tractor. The chisel plow was used to tear up sod or a crop field a few inches below the surface and pull out the plant roots. The disk was then used to turn the soil so the plants would decompose and add to the soil's nutrients. In addition, the 16-plate disk plow was used to break up chunks of soil throughout a crop field into smaller pieces.

Ditchers & Standard Plow (circa early 1900s): Two old ditchers are located on the grounds. These heavy metal implements were pulled behind a tractor to clean out the shallow irrigation ditches on the farm in the spring so the crops could be watered. The depth and width that the ditchers would dig could be adjusted with handles on the implements. A long block of sandstone was wired to one of the ditchers to provide extra weight. The three crop fields to the north of the farmstead and two to the east had feeder ditches running through them that had to be opened and kept clear of vegetation and fill. The three-bottom standard plow was the typical implement used for a farm of this size. When the ground was soft, this was pulled behind a tractor to open crop rows for planting.

Oat Roller (circa early 1950s): This small piece of equipment, of unknown manufacture, was used to roll oats and other grains for animal feed. This made them easier for the livestock to chew. The oats were typically mixed with molasses and other ingredients before being fed to the animals.

Weed Burner (circa 1950s): The weed burner, manufactured by the Agri-Quip Agricultural Equipment Corporation of La Junta, Colorado, was pulled behind a tractor and used to burn weeds along the ditches. To the Metzger children, the weed burner was something from science fiction and an adventure to operate. It spewed flames from three jets that were lowered close to the ground to start the weeds on fire.

Manure Spreader (1940s): This is a John Deere Model K, Series 47 manure spreader that was pulled by a tractor. Although manufactured in the 1940s, its design changed very little since it first came on the market in the 1800s. As the spreader was pulled along, the turning of its wheels rotated a chain on the side. This chain moved the floor of the spreader, where the manure was stacked, and turned the tines and blades at the rear. The manure moved into the tines and was sprayed onto the crop field behind the machine, with the turning blades breaking up the larger chunks.

Fire Fighting Equipment (1950s): During its historic period, no fire department existed near the Metzger Farm in unincorporated Adams County. Eastlake, about five miles to the east, was the closest place that had a volunteer fire department. Because fire was always a concern in the countryside, John Metzger purchased firefighting equipment (hoses and a pump) so the family could fight a fire on its own if necessary. Adequate lengths of hose were purchased to reach from the ponds to any of the buildings on the farmstead. A red Hale fire pump is located on the site, mounted on a chassis with wheels so it could be moved around. The first length of hose that ran from the pond to the pump, screened to keep out debris, still hangs on the east wall of the equipment shed. Much of the additional hosing appears to have been discarded, probably due to deterioration and the fact that it was no longer needed in recent decades.

Mining Equipment: A number of pieces of mining machinery and related items are present inside the equipment shed and on the grounds east of the granary. John Metzger used these in an early 1960s gold-mining operation that he pursued outside of Georgetown. It appears that he probably acquired used equipment for the mine whenever possible. The following mining items were brought out of the mountains and stored on the farm after the operation came to a halt during the 1970s.

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Industrial Blower (1950s): This piece of machinery, manufactured by General Power Inc. of Quapaw, Oklahoma, was used to bring fresh air into the mine. The blower system included lengths of flexible rubberized hosing that carried the fresh air. The hoses are resting on the ground in a pile east of the granary and fence. These were hung from metal hooks along the shafts and tunnels. Large metal rings next to this pile of hoses were used to hold the ventilation system together.

Mining Pump (1950s): This heavy pump, painted red and black, consists of an induction motor manufactured by the Louis Allis Co. of Milwaukee, Wisconsin, along with a short section of attached pipe. It is likely to have been used in the mine for pumping water.

Drill Steel (1950s): Numerous pieces of drill steel of varying lengths are leaning against the walls of the equipment shed. Attached to air hammers, they were used to drill holes into the rock walls of the mine for explosive charges to be placed.

Gardner-Denver Compressor (1950s): This heavy piece of equipment on wheels is a compressor manufactured by Gardner-Denver in Quincy, Illinois with a General Motors diesel engine. The compressor provided pneumatic pressure for the air hammers used in the mine. The yellow, white and pink pneumatic hoses on the ground east of the compressor are short lengths of the hoses that ran from the compressor to the air hammers.

Truck Mounted Compressor (circa 1952): This Ford truck, with a large LeRoi compressor mounted on the back (manufactured in Milwaukee), was used in John Metzger's mining operation. Signs on the truck doors refer to Armco Metal Products Division, evidently a previous owner of the vehicle.

Ore Sample Crusher (1950s): This small-scale grey crusher with flywheels on the sides was used at the mine to crush ore samples for testing. It was manufactured by the Nevada Engineering Works of Reno, Nevada.

Miscellaneous Equipment (1950s): Miscellaneous mining equipment is found on the ground across the fence east of the granary. This includes metal ladders that were connected to one another inside the mine. Several pieces of rail are also found on the ground, part of the narrow-gauge system used to run ore cars through the mine.

Loch-in-Vale Signs (1940s-1950s): When John Metzger started breeding and showing registered Scotch shorthorn cattle in the 1940s, he decided that his new farm needed a name, which was common among purebred cattle breeders. He came up with the idyllic Scottish name "Loch-in-Vale Farms" (Lake in the Valley). The shorthorn cattle were a deep russet red color, with curly hair, white faces, and white tufts on the ends of their tails. Metzger had signage fabricated so it could be mounted to advertise the farm. Small wood signs bearing the new name were placed at the entrance to the property along Lowell Blvd. These are now stored in the equipment shed on the site. Fitting into John's overall color scheme for the farm, the signs were painted white and green. Photos of the signage and cattle were taken to promote the breeding operation.

A much larger sign found on the floor of the equipment shed was the result of John's love of hunting. Because agriculture was not that profitable, he came up with the idea of turning the farm into a hunting club. John planned to bring in game birds and charge a fee for hunting. He intended to mount the massive sign on the farm, probably along 120th Ave., to advertise the enterprise. The concept was based upon Nilo Farms, which he had visited. Nilo Farms was owned by the Olin Matheson Company, a well-known manufacturer of shotgun shells and hunting equipment, and was founded in 1952 on a square mile property outside of Brighton, Illinois. The firm developed a model system for how a small game preserve could be established for hunters. The idea

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was that the birds would be fed on the Metzger farmstead and then transported to the eastern edge of the property, which at that time extended one-half mile farther east than it does today. There they were to be released and as the birds flew back to the farmstead to eat, hunters would shoot them. Betty, Karen and Bill were horrified by the idea of their farm being turned into a hunting club. Tears were shed and they had many arguments with John over the idea. In the end, the sign was never put up and the idea faded away.

NON-CONTRIBUTING BUILDINGS

File Storage Sheds (circa 1965): These two small one-story sheds are located east of the garage and rest upon a shared concrete pad. Both were brought onto the property to store John Metzger's voluminous legal files and political records in a secure, weatherproof environment. The smaller metal shed was acquired first and the larger wood frame shed was installed shortly afterward. The location of the storage sheds previously held a wood frame bunkhouse. Farmhands who came to help with planting and the harvest were housed in this building. For a short time, John Metzger used the bunkhouse for storage. However, it was too open to mice and the weather. By the early 1960s, the small building succumbed to deterioration and collapsed, and was soon removed. No features from this building remain on the site today.

Around 1965, a new concrete pad was poured to support two file storage sheds that were brought onto the property. The larger of these sheds is sometimes mistakenly referred to today as a bunkhouse, but was never used for anything other than file and records storage. It exhibits the appearance of a prefabricated building designed for use as a mobile field office for construction sites or similar purpose. Where John Metzger acquired the sheds is no longer known, although they both appear to date from the 1960s and may have been new when purchased.

The larger file storage shed faces south, is of wood frame construction, and has a footprint of 12' x 24'. Its exterior walls are finished with wide horizontal composite board siding, with metal corner caps. The shed has a side-gabled roof with a low slope, asphalt shingles, and boxed eaves. It rests upon wood skids above the concrete pad.

South Façade (front): This side faces onto the farmyard and holds a single entry with a wood slab door. Fenestration is limited to two pairs of sliding windows with metal frames. A small porch light is mounted on the wall next to the door.

West Side: This side holds no entries. Fenestration is limited to a single pair of sliding windows with metal frames.

North Side (rear): This side holds no entries or windows.

East Side: This side holds no entries. Fenestration is limited to a single pair of sliding windows with metal frames.

The smaller file storage shed, manufactured by Childers Steel Buildings of Denver, is located to the north of and behind the larger shed. It faces toward the east, rests upon skids, is of galvanized metal construction, and has a footprint of 10' x 18'. The shed has a front-gabled, low-sloped metal roof. Its exterior walls are covered with horizontal galvanized metal siding. The east (front) holds a metal slab door. No windows or other features are found on the building.

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NON-CONTRIBUTING STRUCTURES

West Lake Well (circa 1970s): This well was installed on the west end of the west lake after the well in the southwest corner of the farm had to be abandoned for the widening of 120th Ave. and the natural spring nearby dried up. It was needed to keep the ponds filled since the outflow from Broomfield Reservoir also became less reliable over time. Since it was completed, this well has provided a reliable source of water that keeps both of the ponds filled.

Southwest Well (circa 1945): Another well was placed in the southwest corner of the property, with a small wood frame pump house above that sheltered a 25 horsepower electric motor. This well provided excellent water for the southern sixteen acres, which were used to grow wheat. However, the well had to be abandoned sometime around the 1970s when 120th Ave. was widened. The small 6' x 6' pump house was removed and stored in the northeast corner of the farmstead, where it remains today in severely dilapidated condition. The original well location is now outside the nomination boundary.

NON-CONTRIBUTING OBJECTS

Aboveground Tanks (circa 1970s-1980s): Two aboveground tanks are located in the former playground area south of the Caretakers' House. The large silver tank was installed during the energy crisis of 1973, and was manufactured by Eidson Metal Products of Albuquerque, New Mexico. At that time, the boiler in the main house was fueled by No. 2 heating oil and John Metzger wanted to make sure the family could be self-sufficient. He bought the tank and had it installed so the family wouldn't have to worry about keeping the house heated during current or future fuel oil shortages. Next to this tank is a smaller, more modern propane tank that has been used to heat the caretakers' house. Another non-historic and out-of-use propane tank is sitting on the former milk house foundation, although it was not related to this contributing site.

Gasoline Pumps (manufactured circa 1955, installed here circa 1966): Two historic gasoline pumps, currently stored in the equipment shed, were until recently standing directly behind the shed along the south side of the farmyard. The pumps were mounted above two buried fuel tanks that had to be removed to comply with environmental regulations since they were out of use. This location originally held two tall manually operated Tokheim pumps that John Metzger used to fuel vehicles. However, one year in the mid-1960s the ground became so saturated by a heavy snow that the buried tanks beneath the pumps floated to the surface. Connected to the tanks by piping, the Tokheim pumps tilted over so far that they almost touched the ground. Since the tanks had to be reburied, John Metzger decided to upgrade the system to electric pumps.

Around that same time, the gas station at Cozy Corner, just south of the farm at 120th and Federal, was replacing their pumps with more modern ones. John purchased their used Bennett Model 966 electric pumps and moved them to the farm to replace the even older Tokheim pumps. The Bennett pumps, manufactured by the John Wood Company of Muskegon, Michigan, are now valuable collectors' items. When John Metzger purchased the pumps, gas was selling for \$.32 regular and \$.35 premium. These prices, dating from around 1966, remain on the pumps today like a clock that stopped keeping time. The system was used to dispense these two grades of gasoline for the Metzgers' cars and farm vehicles, none of which required diesel fuel. Current plans for the site include mounting the pumps in their original location behind the equipment shed.

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INTEGRITY

The nominated Metzger Farm exhibits a high level of integrity from its period of significance between 1943 and 1962. It retains almost all of its historic buildings, sites, structures and objects from this period, most of which have changed little since they were constructed or brought onto the property. No significant non-historic exterior alterations have taken place that might have seriously diminished the character and integrity of the contributing resources or diminished the overall character of the site. There are also very few non-contributing resources on the property. In general, the Metzger Farm retains numerous characteristics of a mid-twentieth century agricultural enterprise and hobby farm, including its location, design, setting, materials, workmanship, feeling and association. Not one of these aspects of integrity is lacking in relation to this resource, and the property adequately conveys its significance under more than one of the National Register criteria.

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8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes.)

- A Property is associated with events that have made a significant contribution to the broad patterns of our history.
- B Property is associated with the lives of persons significant in our past.
- C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- D Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

Property is:

- A Owned by a religious institution or used for religious purposes.
- B removed from its original location.
- C a birthplace or grave.
- D a cemetery.
- E a reconstructed building, object, or structure.
- F a commemorative property.
- G less than 50 years old or achieving significance within the past 50 years.

Areas of Significance

(Enter categories from instructions.)

AGRICULTURE
LAW
POLITICS / GOVERNMENT
ARCHITECTURE

Period of Significance

1943-1962

Significant Dates

N/A

Significant Person

(Complete only if Criterion B is marked above.)

JOHN METZGER

Cultural Affiliation

N/A

Architect/Builder

N/A

Period of Significance The period of significance for this property runs from 1943, when it was acquired by John Metzger, through the fifty-year mark in 1962 when improvements were complete and the farm was still occupied by the Metzger family.

Criteria Considerations N/A

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STATEMENT OF SIGNIFICANCE

Summary Paragraph

The Metzger Farm, an intact complex of farmhouse, caretakers' house, barn, outbuildings, gardens, lakes, crop fields/pasture and equipment, is locally significant under National Register Criterion A in the area of Agriculture as an excellent example of a mid-twentieth century hobby farm. Additionally, it is locally significant under Criterion B in the area of Law and Politics/Government for its association with John Metzger, a prominent Denver lawyer, Colorado attorney general, political leader and entrepreneur. Finally, the farm is locally significant under Criterion C in the area of Architecture for its good example of a Colonial Revival style farmhouse, its Late 19th and Early 20th Century American Movements style caretakers' house, and for the type, period and method of construction of its mid-century barn and various outbuildings.

Narrative Statement of Significance

Criterion A – The Metzger Farm is nominated under Criterion A in the area of Agriculture for its significant association with the development of hobby farms in Colorado during the twentieth century, especially during the decades following World War II. Although the number of historic hobby farms in the state is unknown, what is clear is that the Metzger Farm is emblematic of the development of such farms and is an intact agricultural complex dating from the 1940s and 1950s. Small farms played a central role in American history for centuries, as farmers across the nation worked to make a living from the land. While many succeeded in their efforts, others failed due to the challenges and unpredictable nature of agricultural life. Weather patterns, market changes, soil conditions, financial concerns, family life, agricultural pests and a host of other challenges made farming a constantly difficult yet rewarding undertaking. For many, the appeal of the small farm declined significantly during the Depression and Dust Bowl years of the 1930s, as many family farms failed and their owners had little choice but to give up on agriculture and move into the cities.

Different from a family farm, by definition a hobby farm was developed and operated as secondary to the main source of its owner's income. Farms such as this provided their owners with a rural setting in which to live and raise a family, with opportunities to engage in agricultural interests such as raising livestock, breeding and riding horses, operating small dairies, growing produce, and even producing crops. In many cases owners hired caretakers or managers, or leased the acreage for others to farm or run livestock. This allowed the property owner to live on the site and enjoy a country lifestyle, while not spending the bulk of their time actually tending the farm. Agricultural pursuits were undertaken as a hobby, or perhaps to make a secondary income, rather than to ensure a primary living. Hobby farms were not expected to generate a great deal of income, and owners often spent more money than they made from such enterprises.

While small farmers of modest means struggled to keep their farms afloat, during the twentieth century urban dwellers of means, particularly captains of industry, management, finance and the professions, began looking to the countryside just outside of metropolitan areas as a refuge from the hectic pace of business and city life. In previous centuries, the country estate or gentlemen's farm was hailed as a showplace and refuge for the nation's elite, and estate farms dating back to the colonial era could be found in the eastern states. By the early 1900s, the rise of the professional class increased the number of people in cities such as Denver with discretionary income adequate to buy the lifestyle they and their families desired. Among these professionals were educated, successful men and women who began to view country life as more attractive than city living. Aided by the development of the automobile in the early twentieth century, travel between the city and nearby countryside became increasingly

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convenient. Suddenly it became practical to live in the country and commute into the city for work each day. Supported by primary income from an urban profession, the hobby farm became a desirable and achievable option for those who wished to maintain their professional careers, retain access to urban amenities, and at the same time dabble in agriculture and raise a family in the country.

In some cases, hobby farms were built from scratch on parcels with no prior development. Other owners acquired modest-sized properties that held aging buildings and other improvements. In 1943, John Metzger purchased an agricultural parcel that included a circa 1935 farmhouse and crop fields. Over the following two decades, he and his wife Betty proceeded to remodel and enlarge the house, construct numerous outbuildings, plant gardens and trees, and excavate two lakes. A color scheme adopted for the farmstead employed the colors white, green and red. This effort fit with the general trend of hobby farmers to improve their properties not only for functionality, but also with an emphasis upon aesthetics. John continued to practice law from his office in downtown Denver, and his primary income derived almost entirely from his legal work and service as attorney general. The Metzgers raised their two children on the farm and resided there the rest of their lives, even as they pursued other work, hobbies and entrepreneurial enterprises, including breeding high-end Scotch Shorthorn cattle. Resident caretakers were hired to oversee maintenance and actively work the farm, although John Metzger remained integrally involved in both farm work and management of the property. During the mid-1950s, the crop fields were plowed under and from that time forward much of the acreage was leased to stockmen who ran cattle on the open land. All of these uses, approaches and characteristics were typical of hobby farm operations in the mid-twentieth century.

Criterion B – The Metzger Farm is nominated under Criterion B in the areas of Law and Politics/Government for its association with the life and career of John Metzger. After overcoming childhood adversity and living a rags-to-riches experience as a teenager and young man between the 1910s and early 1930s, Metzger became a Denver “people’s attorney” dedicated to helping veterans, pensioners, widows and others of modest means and social status. He also became involved in Democratic Party politics on the local and state levels, and by 1940 was recognized as a rising young activist. Turned down for military service in World War II, Metzger found a way to contribute by opening and operating a Denver munitions plant that provided millions of anti-aircraft shells to the US Navy.

In 1943, Metzger acquired an agricultural property north of Denver to serve as his home. Over the following two decades, as he developed the farm into what remains there today, Metzger served as Colorado’s attorney general, ran for the office of governor, continued to operate a successful law practice, and remained integrally involved in state and local Democratic Party politics. As attorney general from 1949 to 1951, he developed a reputation as Colorado’s “volcanic boy wonder.” Devoted to serving the public good, John combined fiery rhetoric with fearless pursuit of wrongdoing and illegality to root out long-standing corruption, closed-door decision-making, and cronyism. In the post-World War II era, he worked zealously to usher Colorado government and law enforcement into a new era of openness, legality and professionalism. Metzger also took on organized crime, as he worked fearlessly to eliminate illegal gambling and racketeering throughout the state. The remainder of John’s life was spent practicing the law and pursuing various interests as an entrepreneur.

The Metzger Farm is the most intact resource associated with John Metzger’s productive life. Although he maintained a small law office in downtown Denver that periodically moved from one building to another, from the 1940s on the farm was also used as an office where he visited with clients and held meetings. This was also where Metzger pursued his agricultural interests as a hobby farmer and where he and his wife Betty raised their children and found refuge from his busy public career. No other property exists that offers a more direct association with the life and achievements of John Metzger.

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Criterion C – The Metzger Farm is nominated under Criterion C in the area of Architecture for its good example of a Colonial Revival style farmhouse, Late 19th and Early 20th Century style caretakers' house, and for the type, period and method of construction of the barn and outbuildings. The Colonial Revival house was built around 1935 and then remodeled and expanded in the mid-1950s into the home that remains there today. Character-defining features of the style found on this building include its symmetrical façade, side-gabled roof, large open porch supported by square posts, decorative wood balustrade along the roofline, front-gabled dormers, multiple-pane double hung sash windows, and centered main entry ornamented with fluted faux columns and a dentil course above. The Colonial Revival style remained popular in the United States from the 1890s through the 1950s, and the one-story variant has long been commonly known as the Cape Cod cottage. In this case, the Metzger farmhouse represents a good example of the style applied to an agricultural setting.

The caretakers' house exhibits features of the Late 19th and Early 20th Century Movements styles of architecture. This is characterized by its modest size, design lacking in ornamentation, side-gabled roof, overhanging eaves with exposed rafter ends, wood siding, and one-over-one double hung sash windows.

A number of wood frame buildings erected under the direction of John Metzger occupy the rest of the farmstead, most of them constructed during the 1940s. This intact complex of buildings is representative of mid-twentieth century rural architecture. Division of the farmstead into two distinct use areas separated by the linear farmyard provides evidence of a design that sought to remove farm operations from the residences, effectively delineating between human households and food processing/storage north of the yard, and animal uses and equipment storage south of the yard. The distinction of these building types and their placement shows evidence of planning related to how a mid-twentieth century model farm should have been constructed. These concepts would have been accessible through agricultural literature of the period that advised rural residents on the many scientific and engineering aspects of operating a modern farm in the post-World War II era.

The Metzger Farm's period of significance runs from 1943, when it was acquired by John Metzger, through 1962, the fifty-year mark and end of the period during which the site was developed with the buildings and other features that remain there today. This was also the period during which Metzger rose to prominence in his career as an attorney, munitions manufacturer, state attorney general, political leader and entrepreneur. The property retains nearly all of its historic buildings, sites, structures and objects from its period of significance. In addition, the site's numerous wood frame buildings and structures have changed little since they were constructed. In general, the property exhibits an excellent degree of integrity related to its period of significance.

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HISTORIC CONTEXT

(CONTINUATION SHEETS)

Early History of the Property: circa 1880-1940

Albert B. Gay first settled the 80-acre agricultural property on the northeast corner of today's 120th Ave. and Lowell Blvd. in the early 1880s. In January 1885, he received the patent on the farm from the US government. Albert was born in Kansas in 1856, and in early 1884 married Mary Hoback, another Kansas native. Over the following years, the couple had two daughters, Estella and Nellie, and settled in to farm their homestead in the countryside north of Denver. Directly east of Gay's parcel was another 80-acre homestead that had been claimed by Edgar G. Bates in 1875. Born in Vermont in 1840, Bates headed west to the Colorado Territory during the Civil War and Gold Rush, and in 1864 married Johanna Hammond, a native of Massachusetts. Although he claimed the homestead north of Denver in 1875, by 1880 Edgar and Johanna had moved southwest with their children to a farm in La Plata County, Colorado, where they remained the rest of their lives.

By the late 1890s, the two adjacent farm parcels were held by the Gay family. Susan Gay owned the eastern acreage previously homesteaded by Edgar Bates, and the western parcel was still owned by Albert and Mary Gay. Born in Kentucky in 1831 and married to George Gay in 1847 in Missouri when they were both teenagers, Susan appears to have been a relative of Albert, although the relationship is unclear. She is also known to have been a close relative, probably a sister, of Pleasant DeSpain, who has long been credited as the founder of the north Denver suburb of Westminster, where the farm is located today. Prior to moving to Colorado, Susan and George Gay were country neighbors of the DeSpains in Doniphan County, Kansas. Tragedy hit the Gay family shortly after they arrived in Denver in 1863, when George died followed by two of their children within six months of one another. Susan stayed in Denver into the early 1880s, and then moved north of the city to settle in the vicinity of Westminster and Broomfield. Although widowed and in her sixties, by 1900 she remained actively engaged in farming.

Separate homes were found on each of the Gay parcels. The Susan Gay house was located in the southwest corner of her parcel, just north of 120th Ave. (known at the time as Road No. 120) and west of Big Dry Creek. During the period around 1900 to 1910, she appears to have lived there with her nephew, William DeSpain, who was just nine years younger. This home, along with whatever outbuildings might have surrounded it, was removed prior to the 1940s. No physical evidence remains of its historic presence there other than a grove of mature trees surrounding a clearing. The Albert and Mary Gay residence was in the vicinity of where the Metzger farmhouse is located today. This early building was removed by 1935 and no evidence remains of its presence there. Sometime after 1910, Susan Gay moved to a home in north Denver, where she died in 1918 and was buried in the Arvada Cemetery.

A natural drainage historically ran from west to east through the farm parcels where the lakes are found today, terminating in Big Dry Creek. This draw later acted as an outflow channel for Broomfield (now Brunner) Reservoir, 1¼ mile to the west. Bisecting the eastern Susan Gay parcel around 1900 were the Calkins Ditch and Big Dry Creek, both oriented on a southwest to northeast axis. The earthen Calkins Ditch continued to run into the 1960s and possibly 1970s. Formally abandoned in 1990, a visible but eroded stretch of the ditch survives to the east and northeast of the east lake, terminating along the Metzger Farm's east-central edge.

By 1920, Albert and Mary Gay had retired and moved into the town of Brighton, Colorado although they retained ownership of the farm. It appears that their daughter Nellie, and her husband Charles Nipko, continued to farm and run livestock there for many years. In October 1934, the property was transferred from Mary to Nellie. Eight months later, in August 1935, around the time that Mary died and was buried in Denver's

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Fairmount Cemetery, the family sold the property to Denver attorney James T. Burke. Burke was born in Minneapolis in 1898, served in France during World War I, and came to Denver in 1921. Five years later he obtained a law degree from Denver's Westminster Law School. After working in private practice for a few years, Burke took a job with the district attorney's office and served there from 1929 to 1935. He was elected to two terms as Denver district attorney, holding the position throughout the 1940s. In 1940, Burke purchased additional water rights for the farm, which by then consisted of the entire south half of Section 32 (bordered by 120th Ave. on the south, 124th Ave. on the north, Zuni St. on the east and Lowell Blvd. on the west). At that time, he acquired twenty-five inches of water from the Golden, Ralston Creek & Church Ditch Company, together with twenty-five shares of stock in the Equity Ditch Company.

Three years later, in August 1943, James and his wife Isabel tired of country life and sold the entire 320 acres to fellow Denver attorney John Metzger. This purchase included sixty-five inches of water from the Golden, Ralston Creek & Church Ditch Company, eighty-five shares of stock in the Equity Ditch Company, and ten shares in the Farmers Reservoir Irrigation Company. A separate transaction between the same parties transferred ownership of Tom Frost Reservoir in the southeast corner of Section 30, a short distance north of the farm.

The Life of John Metzger: 1911-1984

The Early Years, 1910s-1920s: The full story of John Metzger's childhood and years as a young adult has long been shrouded in fog. This was largely because throughout his adult life he was reluctant to provide family, friends or the media with a substantial, reliable account of his early years. Orphaned and on his own at a relatively young age, he lost contact with his heritage and most of his remaining family. Metzger's failure to share details about his past appears to have been rooted in the difficulty of his childhood, although his penchant for telling tales and shaping his own image to gain political office may also have come into play. While he provided tidbits of information to his wife and children, and for numerous newspaper articles and other publications throughout his career, the details did not always correlate and often danced around essential facts. Metzger's children, Bill and Karen, admit that even they are not completely sure what was fact and what was merely a tale told by their father. As Karen stated in a 2006 interview, her father "was full of homespun tales. He loved to spin yarns. And part of the problem was, he'd get himself going and you never knew how much was fluff and how much wasn't. But it was always entertaining." What the family does know is that John endured a stressful upbringing and that he had difficulty speaking of those years throughout the remainder of his life. When the family's stories are combined with information gleaned from published records and archival materials, a more complete picture of John Metzger's life begins to emerge.

John William Metzger was the son of Charles William and Nora A. Metzger. Charles was born in Muscatine, Iowa in 1874 to parents who were immigrants from Bavaria, Germany (his father was a boot and shoe maker). He remained in Muscatine until at least 1895. Sometime over the following few years, he moved west and enlisted as a private in Company L, 1st Regiment of the Colorado Volunteer Infantry, stationed at Fort Logan south of Denver. In 1898, Metzger was shipped with his unit to San Francisco, Hawaii, Wake Island, and finally the Philippines, where they participated in the conquest and occupation of Manila. After being mustered out in San Francisco in 1899, he returned to Denver as a veteran of the Spanish-American War. Around 1905, Charles married Nora Mahoney, an Ohio native, divorcee, and mother of two young boys. The couple settled in Denver, where their first child, Helen, was born in 1906. Three years later, in 1909, another daughter they named Marguerite (or Margaret) was born. During this time, Charles went to work as a miner in the mountains west of the city.

By the summer of 1910, the Metzgers were living on a farm in Washington County, Colorado with Nora's boys Bryan and James, and their own young daughters. Nora ran the farm and Charles was employed as a

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foreman in a gold mine. Since the farm was located on the plains of northeastern Colorado, far from the mountains, this indicates that Charles would have been away from home for extended periods of time. On 4 April 1911, the couple gave birth to their last child, a son they named John William, known to his parents and siblings as "Billy". Given their documented presence on the farm in 1910, just months before the birth of their son, it appears that John William Metzger may have been born either on the home farm or at the hospital in nearby Sterling.

At some point, Charles became employed in the gold mines west of Pike's Peak, where around 1920 he was living in a boarding house in the town of Victor. By that time, Nora and the children had left the farm and moved into a rental house in Colorado Springs. The children were enrolled in school there, and the family attended the Catholic Church in Woodland Park. Around September 1920, Charles was apparently injured in a mining accident and Nora applied for his military benefits as an invalid. He died on 24 July 1921 and was buried in Colorado Springs' Evergreen Cemetery. Nora took a job as a nurse to support her family. Several years later, in March 1925, she submitted an application to receive her deceased husband's military pension as his widow. In 1928, Nora died of ovarian cancer, leaving her children stranded. At that time, her son John would have been about seventeen years old.

Orphaned as teenagers, siblings Margaret and John Metzger were left with no family nearby to whom they could turn for support. Their older sister Helen moved to Denver and became a nurse, but died of tuberculosis at a young age. Margaret and John reportedly became wards of the state for a short time, and were sent to live in the Colorado State Children's Home in Denver. They were soon removed from the home and indentured to different families. Margaret was placed with a family in Denver, where she worked as a nanny, housekeeper, and cook. She graduated from South High School and then trained as a nurse at St. Anthony's Hospital. After receiving her certification, Margaret worked in the emergency room and pursued a long and successful career in nursing, education and public health. John had a more difficult time than Margaret. Indentured to the Johnson family near Sterling, he was put to work on their farm in exchange for room and board. Isolated and assigned the most difficult chores, John reportedly developed a contentious relationship with a son in the family. Blamed for leaving a gate open and allowing the livestock to run loose, he denied the accusation, left the farm, and made his way to Denver. On his own and living in downtown rooming houses, he supported himself by taking odd jobs washing dishes, waiting tables in a hospital, and milking dairy cows.

Entering Law and Politics, 1930s: John Metzger took a job as a typewriter salesman and one day stopped by the downtown office of successful pension and probate attorney Hugh Neville. The persuasive youth talked his way past the secretary and proved so convincing a salesman that the attorney purchased a typewriter that he didn't need. Neville took the boy under his wing and pushed him to enter night school to study law. John accepted his new mentor's advice and registered for classes at the Westminster School of Law, now part of Denver University. By 1930, he was employed as Hugh Neville's law clerk, and he continued in this position through 1933. Neville suffered from cancer of either the jaw or throat and had increasing difficulty speaking. His practice largely involved representing many of Colorado's Spanish-American War veterans and their widows. Whenever he had to speak in court, Neville asked Metzger to present on his behalf and came to rely heavily upon the young man, who had essentially become his apprentice and representative. During this period, Metzger got to know many of the veterans and their families, and he continued to serve their legal needs for years afterward. People who knew John from this period called him "Billy" the rest of his life. Those who met him later simply called him "John".

Hugh Neville had a close friend in Colorado Supreme Court Chief Justice Haslett P. Burke. Burke was a long-time resident of Sterling, a veteran of the Spanish-American War, and a former lecturer at the Westminster Law School. Acting upon Neville's recommendation, Burke admitted John Metzger to the Colorado bar on motion although the young man had not yet received a formal law degree. This is considered one of the last

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times in Colorado that anyone entered the field of law under such circumstances. The newly minted attorney assumed Neville's practice as the cancer spread and his health declined. Following Neville's death in 1933, Metzger continued to be mentored by Haslett Burke, who looked after him and steered work in his direction. In 1934, the Denver City Directory listed John Metzger as a pension solicitor. The following year, he appeared as a pension attorney occupying an office in downtown's Majestic Building, a stone's throw from the State Capitol. Within a short period of four to five years, Metzger had reinvented himself. From a homeless teenage orphan with little family and few prospects, he turned himself into a working professional with a promising future.

During his association with Hugh Neville, John Metzger became a "people's attorney" who based his general legal practice upon the varied needs of his clients, most of whom were common people. His views of the law were shaped by his early loss of family, his struggle to survive as a young adult, and his coming of age during the difficult years of the Depression. Throughout his career, Metzger emphasized the "counselor" part of his mandate as an attorney and took this element of his work most seriously. He advised and represented clients to resolve issues involving veterans and widows' pensions, probate matters, estate planning, real estate, and small business. Metzger was not interested in complex civil litigation, although he was quite bright and capable when it came to taking on complicated cases. Every task he took on for the remainder of his life was pursued with energy, enthusiasm, and a passion for self-education. In addition to his private practice, he took a position as clerk and referee of the Denver Juvenile Court, where he served from 1938 to 1941.

During the late 1930s and early 1940s, John Metzger supplemented his income by purchasing neglected homes, living in them while completing repairs, and then renting them out to pay the mortgage or selling them for a profit. The first home of his own was at 779 Glencoe St. in Denver, which he had built as a duplex in 1940 -- he lived in one unit and rented the other to a tenant. John worked primarily as a sole legal practitioner and was fiercely independent. Never with a larger firm, he shared downtown offices with other attorneys who split the costs of overhead and support staff. Following the Majestic Building, in the 1940s Metzger moved to the First National/American National Bank Building (now the Magnolia Hotel at 17th and Stout). According to his children, at one time he also had an office in the venerable Equitable Building. Metzger maintained a small office downtown through at least the 1960s, even when he was later living in the countryside and working mostly out of his home. Although not an accountant, John found that he could supplement his income preparing his client's tax returns, which he tackled each season.

As a young single lawyer, John Metzger did not cook for himself. Instead, he took all of his meals at area restaurants and as a consequence found a surrogate family for himself with Fred and Emily Hunt, and their son Fred Jr. The family owned Hunt's Tea Room, a restaurant located near East High School that Metzger frequented. In addition to the restaurant, Fred Hunt owned a busy real estate office, Hunt For Real Estate, on East Colfax. During the 1930s, he engaged John to handle the legal research and documents needed for the firm's transactions. Because title companies were not yet in existence, an attorney was typically hired to examine the abstract and make sure the chain of title was clean. Paid as much as \$25 to examine each abstract, this work typically required research at county courthouses although review of the documents could be accomplished in the evenings and on weekends to pick up extra cash. The opportunity provided Metzger with an introduction to real estate law that served him well the remainder of his career.

Metzger claimed to have had his first taste of politics when he attended the 1928 national Democratic Party convention in Houston, where he cheered the nomination of Alfred E. Smith for president. Whether he could have made the trip as a seventeen-year-old, broke and living in Denver boardinghouses doing menial jobs, is suspect and may have simply been a tall tale told in his later years. What is known is that during the Depression, President Roosevelt gave people hope and John became involved in Democratic politics, frequently rooting and fighting for the underdog. In 1934, he and friend Charles Brannan organized the Colorado Young Democrats. Brannan became a lawyer and went on to serve as Colorado's secretary of

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agriculture. A loyal supporter of President Roosevelt and his New Deal programs, Metzger was elected to three terms in the 1930s as the organization's president and in 1937 became the editor of *Colorado Young Democrat*. Late in the decade, Metzger was offered an opportunity to serve on the Veterans Administration's Civilian Board of Review for Colorado to review pension and compensation claims. However, he declined the appointment in favor of directly representing the interests of veterans and their families. Because of his work on their behalf, John was awarded honorary membership in the United Spanish War Veterans.

World War II, Farm & Family, 1940-1948: John Metzger was turned down for active service in World War II due to ulcers. Eager to support the war effort, he partnered with Fred Wallace, a brother of Bess Truman (whose husband Harry was serving as the United States' vice-president at the time), with the goal of opening a munitions plant in Denver. They engaged engineer Herbert Tautz and established the John W. Metzger Co., later known as the Arapahoe Manufacturing Company. The firm built a plant in the south Denver suburb of Englewood at W. Oxford Ave. and S. Santa Fe Dr., and hired as many as 200 employees to manufacture twenty-two million 20mm anti-aircraft projectiles for the navy. Metzger later recalled that the firm did not make a lot of money, yet he expressed pride in the fact that they reduced the cost of the projectiles from an initial thirty-one cents to nine cents each, with an extremely low failure rate that gained the plant an Army-Navy "E" for excellence. John's sister Margaret worked there for some time as an occupational health nurse before joining the navy and serving in a field hospital in Guam.

In August 1943, while still a bachelor, Metzger purchased a 320-acre farm property in the countryside north of Denver near the town of Broomfield. By that time, he was a good friend of James T. Burke, Denver's district attorney. One day, the two were talking about living in the country and Burke mentioned that he and his wife Isabel were discussing moving back into the city because she found it too lonely on their farm. They arranged for John to visit them for lunch. He took a look at the place, which at the time consisted of crop fields along with a small Colonial Revival home that the Burkes had built about eight years earlier. Metzger liked the property and struck a deal to purchase it together with its water rights and Tom Frost Reservoir, located just over one-half mile north along Lowell Blvd. To raise funds, he sold the rental homes he had acquired in Denver over the previous years. Several days after selling the farm, Burke returned and said that he had made a mistake. Metzger replied that he was happy with the arrangement and would not change his mind.

Through this purchase he became a hobby farmer, an urban professional who lived in the countryside and operated an agricultural enterprise that was secondary to his primary form of work and income. Metzger initially established a dairy on the property, although this was soon scrapped in favor of breeding registered Scotch Shorthorn cattle. He began to purchase and import bulls and cows that cost as much as \$5,000 each, and hired a large-animal veterinarian from Brighton who visited the farm frequently to check on the animals. He named his farm "Loch-in-Vale," Scottish for Lake in the Valley. Before long, the farm held an extremely valuable herd of animals that required constant care, and the arrival of calves added to the number and worth of his livestock.

John resided on the farm as a bachelor for just a short time. By 1944, he was a successful lawyer and munitions manufacturer. His secretary, who was very interested in him, was from Fort Morgan and that summer invited John to drive there for a visit, including a stop at her friend Betty Amen's family farm. Betty played the piano for her guests and John found her intriguing. He discovered that Betty was living in Denver and after returning to the city asked her for a date. They were married on 26 December 1944.

Betty Bernice Amen was born in Brush, Colorado on 27 October 1922. She was the first of three children born to John and Pauline Eisenach Amen, who were in the cattle and seed corn business. Both of her parents' families were Germans from Russia who had immigrated to Nebraska and then Colorado in the late 1800s. Betty grew up on the farm between Fort Morgan and Brush in Morgan County, surrounded by a large close

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family. After graduating from school in Brush, she moved to Denver in 1940 to attend the Lamont School of Music at Denver University on a scholarship. During the war she performed in USO shows, played with a traveling group called the Promenaders, and graduated in 1944 with a degree in piano performance. Through their marriage, John Metzger gained the family and stability he had lacked since childhood, and the couple remained close with Betty's family the remainder of their lives. One year after their wedding, they started a family of their own with the birth of their daughter Karen in 1945, followed by John William in 1949. Betty continued to play the piano on Denver's KOA radio, served for decades as the organist at two area churches, and taught private piano lessons.

Although John remained employed as a full-time lawyer, he and Betty decided to improve their farmstead. During the 1940s and 1950s, they had additional buildings constructed, excavated two lakes, and planted numerous trees around the farm and along Big Dry Creek. Around 1950, the Metzgers turned down an offer of \$150,000 for the farm and remained there the rest of their lives. John worked with the extension service at Colorado Agricultural & Mechanical College (now Colorado State University) to design test plots for crops. By 1957, John and Betty had also completely renovated and enlarged the farmhouse. The farmstead, as it exists today, dates from this post-war period of renewal and expansion.

Colorado Attorney General, 1948-1951: By the late 1940s, Colorado was emerging from years of Depression and war, and numerous civic concerns had been set aside for too long. Emerging into the post-war world, the old ways of doing business and conducting politics seemed no longer appropriate, and in some cases even unethical. As with the rest of the nation, the state suffered from neglected infrastructure, both in terms of its highways and technologies, and in the structure of its government and law enforcement. Reforms were greatly needed, and a new generation of politicians and community leaders rose to meet the challenge.

John Metzger attended the Democratic National Convention in Philadelphia in 1948 as a delegate. From his new home north of Denver, he had involved himself in local politics and betterment of the community. Metzger soon found himself serving as the county Democratic Party chair and Colorado's Second Congressional District chairman. In the countryside surrounding his farm, Metzger helped organized a volunteer fire department, a soil conservation district of two hundred thousand acres, and a weed control district. As the 1948 elections approached, he was asked by party officials to run as the Democratic candidate for the office of state attorney general. Metzger accepted the invitation. Riding upon a wave of support for President Truman and other Democratic candidates, he was elected to office and found himself going to work daily at the statehouse.

In December 1948, attorney general-elect Metzger was in the process of selecting a staff of lawyers for his office. All of the young attorneys he appointed as assistants and deputies were recent World War II veterans, many of them graduates of the University of Denver's law school. The group included Benjamin Stapleton Jr., son of the city's famed mayor of the 1920s, who had been involved in legal work with navy veterans. Metzger's preference for hiring veterans was based in his belief that men who served in the military were better suited to work together as a team. He added racial diversity to his staff through the hiring of Denverite Wendell Sayers, an African-American attorney who specialized in real estate. Breaking a racial boundary, Sayers appears to have been the first African-American appointed to serve in the attorney general's office. On 11 January 1949, Metzger took office prepared to deal with the state's legal issues.

Within days, Attorney General Metzger and his staff began pursuing a backlog of more than 1,600 cases. Among these were numerous inheritance tax cases, condemnation suits brought by the highway department, and a number of Supreme Court appeals. Metzger immediately began raising concerns about a host of problems regarding methods used by state agencies to conduct their business. During his first few months in office, he began to address legal concerns with the state legislature's recent vote to raise its pay, the illegal

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hiring of outside attorneys by state agencies, and problems with the recently-legalized dog and horse racing business in Colorado. The attorney general's office was also flooded with requests from state agencies for legal opinions on a variety of issues.

In early 1949, Metzger got into a disagreement with the state highway department after criticizing the agency for what he termed "extravagant practices" in purchasing rights-of-way for highway construction. After reviewing a contract for the acquisition of a small parcel of land for what appeared to be an exorbitant price, Metzger exercised his authority as attorney general and insisted that this and all future purchases be approved by the state highway board rather than being subject to the sole discretion of the state highway engineer. Mark Watrous, the state highway engineer, countered that this requirement would make the development of highways in the state too complicated. However, Metzger insisted that the department follow the law by providing written reports to the highway board detailing planned acquisitions. Watrous responded by asserting that, "if we have to do this, go through all these delays, we might as well quit building highways." (*Denver Post*, 25 March 1949, p. 3) This case was just an early example of Metzger's goal of shaking up business as usual.

Metzger raised additional questions about state practices in April, this time regarding a contract the state industrial commission had signed with General Rose Memorial Hospital in Denver. The contract called for the commission to pay more than \$51,000 to the hospital from the workman's compensation fund in exchange for a guarantee that fourteen beds would be reserved for patients covered by the insurance fund. The attorney general objected to the arrangement, stating that the exclusive agreement violated the state's constitution and unfairly made an award without being put out to bid.

A few months later, Metzger took on the issue of gambling and organized crime in the former mining towns of Central City and Cripple Creek, along with other mountain resort towns. The attorney general's office, together with news outlets across the state, had become concerned about evidence showing that the Smaldones, Denver's organized crime family, had teamed with other crime leaders in Denver and Pueblo to control gaming throughout the state. These activities were clearly in violation of the state's anti-gambling law, and the media reported that tavern owners across Colorado were being pressured by racketeers to introduce slot machines into their establishments. However, because the communities benefited financially from gambling by taking a cut of the revenues in the form of taxes, local authorities were reluctant to enforce the law. By July, Denver's newspapers were printing bold headlines about Metzger's efforts to eliminate illegal gambling from the state and to act against the Smaldones and other crime syndicates. Tavern owners demanded that if they were going to be required to remove slot machines, the state should also force their removal from other locations. Metzger agreed with them, and launched a statewide effort to end illegal gambling in Colorado. This thorny issue persisted throughout the remainder of his term as attorney general.

In June 1949, Metzger began working to remove legal obstacles to the construction of a toll road between Denver and Boulder. The Golden Chamber of Commerce filed suit to stop the project, and the Longmont Chamber launched a petition drive to force the issue to be presented as a referendum. The issue ended up in court, where Metzger represented the state's interest in seeing the project continue. He became involved with this effort again as a private attorney in the 1950s (more about this below).

Another issue faced by the attorney general revolved around a claim that many of the families of patients residing in the state mental hospital in Pueblo were failing to contribute to the cost of their care. Metzger sought to uphold state law, which explicitly required that families with adequate financial resources pay for the care of their relatives. In addition, he found that war veterans were required to pay a per diem charge for their stays in the facility. By September 1949, his office was launching cases against families who were financially capable of paying for their relatives' stays in the state hospital but had so far avoided contributing to the cost of

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their care. That same month, Metzger threatened to remove county judges who failed to enforce the law and determine the financial status of people committed to the state hospital.

If all of these issues were not enough to keep his office busy, Metzger then got into a fight with the University of Colorado over control of Colorado General Hospital and the Colorado Psychopathic Hospital, both of which were managed by the university board of regents. Metzger was of the opinion that the hospitals were not part of the university, that their employees needed to be classified as civil servants, and that the state treasurer and controller's offices should handle appropriations for the facilities. He accused the board of regents of commingling funds earmarked for these two facilities and the university itself, charging that some of the hospital's resources were being used for unrelated university expenses. The board of regents vowed to resist Metzger's decree and challenged him to prove the claims in court. They insisted that oversight of the hospitals and university finances was conducted above board, audited annually, and open for public review. The *Rocky Mountain News* editorial board took aim at Metzger, criticizing him for overreaching (7/20/49, p. 24): "Attorney General Metzger, who has been conducting a one-man band at the Statehouse for several months, is badly out of tune in his latest standoff against the management of the University of Colorado." After failing to have the case dismissed, Metzger and the board of regents settled on a compromise in their dispute and the issue faded away.

In July, Metzger appealed to President Truman to intervene in war department plans to disinter the bodies of 373 veterans from the recently closed Fort Logan cemetery. The government planned to remove the bodies to a cemetery in the eastern United States after Congress declared the site surplus. Metzger met with Colorado veterans groups to discuss their desire to see the war department continue to care for the site until a state agency or veterans' group could be found to take on its \$2,000 annual maintenance cost. Because of his intervention, the graves were left in place and the site remains a National Cemetery today.

During the same election that brought Metzger into office, Colorado voters approved a pari-mutuel racing law that allowed for the licensing of horse and dog tracks throughout the state. In July 1949, Metzger ordered the state racing commission's Chicago-based consultant to clear out of what had essentially turned into a long-term job. The consultant refused to resign from the \$800 per month position. However, he was soon pushed out by both Metzger and Colorado Governor Knous after the racing commission decided that it had no choice but to release the consultant from his contract. Continuing his review of the state racing commission's operations, Metzger conducted hearings and questioned witnesses at the State Capitol. The hearings exposed the fact that members of the state legislature had been pressuring the racing commission to approve franchises for racetrack applicants in exchange for political favors.

Editorial columnist Lee Casey wrote about the state's youthful, active attorney general in the 12 July 1949 issue of the *Rocky Mountain News* (p. 19). In his column, Casey provided the following analysis:

"Thus far in his career, Mr. Metzger has not demonstrated the possession of a great store of legal learning. But he is certainly active, he pokes his long nose into everything and he doesn't mind trouble. And thereby he affords a decided contrast to most of the incumbents of his high office. To date, he has no called strikes against his record. He never hesitates to try. More than a few citizens viewed Mr. Metzger's elevation to his high position with concern. Their fears have not been justified. He affords welcome relief from the reluctance of so many officials to take a position. He may get into trouble but at least he gives the action that is badly needed in public life."

Later that same month, the *Rocky Mountain News* (7/24/49, p. 1A) ran a full-page feature article that answered their own headline question: "Who is this Fellow John Metzger?" In the article, the paper declared Metzger a political accident, claiming he was swept into office as an unlikely Democratic Party replacement for another candidate who had withdrawn his name from consideration at the last moment. On the stump, Metzger had

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spoken energetically in favor of presidential candidate Harry Truman. With Truman's win, Metzger had landed a plum position with the state as numerous other Democratic candidates rode into office on the Democratic wave that characterized the 1948 election. According to the paper, Metzger attacked his new job with "the courage of the movies' version of Tarzan wrestling an alligator." His bold decisions as attorney general frequently startled (and often worried) both Republican and Democratic leaders as he shook up the old ways of doing business in the state on every level. The paper's columnist declared him "the hottest thing on the Democratic horizon."

In terms of his personal style as attorney general, Metzger was said to enjoy digging up forgotten or little-used laws and employing them to help his cases. He reportedly took great pleasure in citing these laws and then watching his opponents struggle with their responses. A strategic thinker and planner, Metzger sometimes arranged to lose cases in the lower courts in favor of the opportunity to win them upon appeal, which often sped up the process of getting the result he wanted. On 5 June 1949, *The Denver Post* (p. 1C) wrote that Metzger "became a lawyer in a way it can't be done. He won his office in an election he couldn't win. He has ignored politics and protocol, meddling in matters that would mean the political scalp of another man. Thus far, Metzger's luck has held and officialdom could only gnash its collective teeth."

In August 1949 Metzger became entangled in a dispute with the state planning commission, which accused the attorney general of improperly criticizing its work with prominent Denver architect Robert Fuller to improve a building at the State Industrial School for Boys. The project's management contract had been awarded to Fuller without being put out for bid and Metzger blasted the commission for not handling the award in compliance with state purchasing laws. Governor Knous agreed with Metzger and ordered that the project be re-awarded based upon a competitive bid process and that Fuller be engaged at a lower rate of remuneration.

On the twentieth of that same month, the *Rocky Mountain News* printed the bold front-page headline: "Public Schools Shut To Religion By Metzger Ban." For years, students throughout Colorado had been provided with approved "released time" during regular school hours so they could attend religious classes. Instructors from different denominations and not employed by the school districts often taught these classes within the school buildings. Issuing a decision with broad implications, the attorney general ruled that students were no longer to be released from their regular classes for religious instruction, and that the state's public school facilities could not be used for such purposes. Objections to released time for religious instruction had been raised for years by the leading national Jewish organizations, which argued that the practice violated the separation of church and state. Released time, they asserted, also underscored religious differences in the public schools and led to inter-religious friction, proselytizing by school authorities, and the occasional pressuring of minority children to attend religious training outside of their beliefs and family backgrounds.

Although a dedicated member of the Catholic Church, Metzger agreed with this argument and demanded enforcement of the Colorado Constitution (Section 8, Article IX), which declares that "No sectarian tenets or doctrines shall ever be taught in the public schools." In addition, he cited the recent US Supreme Court decision banning the use of public school buildings or facilities for religious classes, which violated the first amendment to the Constitution (*McCollum v. Board of Education*, 1948). Buttoning his argument tightly against objections that were sure to come, Colorado's attorney general stated that these long-time practices were to be halted because children released from classes for religious instruction were in violation of the state's compulsory education laws.

For months, rumors ran through Colorado's political circles that John Metzger planned to run for governor the following year. In August 1949, he stated emphatically that he had no intention to become a candidate in any future political race, including the office of attorney general. While speculation continued about his future plans, Metzger pursued a battle against the Bureau of Reclamation regarding its plans to alter the Colorado

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River and Gunnison River in such a way that trout fishing would be damaged. His successful efforts made him a hero to fishing enthusiasts throughout the state.

The following month, Metzger traveled secretly to Kansas City, Missouri to meet with President Truman and other Democratic Party leaders. Rumored to be close to the president, he appears to have been called to the meeting to discuss strategic political issues in Colorado. During the attorney general's absence, his office staff failed to coordinate their stories and informed the media that he was both home ill and busy transacting cattle business. The discrepancy raised suspicions and the media soon tracked Betty Metzger down at the family farm outside of Broomfield, although she declined to comment on her husband's whereabouts. Dogged research by a *Denver Post* reporter revealed that Metzger had indeed checked into a Kansas City hotel. When the reporter called the room, Byron Rogers, Denver's Democratic county chairman, answered the phone and confirmed that the state attorney general was in the vicinity. The reporter also learned that the Colorado delegation had traveled to Kansas City not only for meetings but also to attend a dinner that evening for the national Democratic Party chairman, where Truman was scheduled to speak. Although the mystery of Metzger's disappearance from Denver was solved, the trip had the direct consequence of heightening speculation that John Metzger was laying plans for higher political office. Over the following months, his interest in the governorship became increasingly apparent and a fact he no longer denied.

Whether one agreed with his opinions and brash style or not, John Metzger was consistently portrayed in the media as an energetic, principle-driven attorney general. *Rocky Mountain News* columnist Lee Casey described him in 1950 as a political figure "as intense in his beliefs as he is explosive in his utterances." Describing the "Metzger charm," Casey went on to say that, "he has brought to the Statehouse the impudence that has been sadly lacking. While other dignitaries sat and waited for something to happen and played their hands close to their vests, Metzger has made things happen. He frequently plays a pair of deuces as though he held an ace-full. Nonetheless he has shaken, to the public benefit, a lot of dry bones at the Capitol. He has been known to issue in a week more opinions than some attorneys general have put out during a full two-year term."

In November 1949, in a headline-making move, John Metzger asked the Colorado Supreme Court to remove state highway engineer Mark Watrous from his position as head of the highway department. Frustration with the department kept reappearing in the form of complaints from the governor, good roads advocates, and motorists, all of them dissatisfied with the poor condition of the state's highways. The department was known to engage in little planning for highway improvements, and as discussed earlier, sometimes paid exorbitant prices for right-of-way acquisitions. According to the attorney general, these and other problems stemmed directly from the inexperience and stubbornness of the department's long-time director. In his request for removal, Metzger claimed that Watrous was wholly unqualified for his position and was unlicensed as an engineer when hired. The battle that ensued between the attorney general and highway department director played itself out in public among the headlines of the *The Denver Post* and *Rocky Mountain News*, with each party throwing verbal barbs aimed to discredit one another.

The following month Metzger stirred up a firestorm when, in a shocking move, he publicly criticized the state's county sheriffs and local law officers for their failure to move against illegal gambling. He called for the legislature to provide the state patrol with the power to step in and enforce the law, no matter the location. The state's law enforcement community responded with outrage at what they regarded as Metzger's outlandish claims. The *Colorado Springs Gazette Telegraph* quoted Larimer County's sheriff, who posed the question "What does Attorney General Metzger think he is, king of Colorado or what?" (28 December 1949) Newspaper articles throughout the state asked similar questions. For its part, the head of the state patrol announced that his agency was busy enough with its already-assigned duties that it could hardly afford to take

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on a broadly based, statewide enforcement role with no limitations. Metzger shrugged off concerns that with such powers the state patrol could eventually become a militia controlled by an unscrupulous future governor.

The 1950 *Colorado Employees Year Book* included a section on attorney general John Metzger, stating that "never in the history of the state has the office of the Attorney General been so well known and so much respected." Metzger was described as having rendered twice as many opinions as any preceding attorney general. It continued, "Always when such a character moves into the political limelight there are those who criticize him fiercely and there are those who support him. But over and above all of the criticism or praise, out at the family home near Broomfield is a little woman, a happy boy and a sweet girl who say 'Dad is the greatest man on earth.'"

Metzger launched into the year 1950 as controversial as ever, speaking out against temperance supporters who were preparing to blanket the state's schools with their anti-alcohol message. He was convinced that it was "just as harmful for these do-gooders to be propagandizing the children in the schools as it would be for the wets to be propagandizing the children." Metzger stated that not only was the effort inappropriate, it was also likely to be against the law. Some local school officials, who were required to provide alcohol abuse education, became incensed that the attorney general was telling them who they could or could not engage for such instruction. In May, Metzger stirred up anger at the statehouse when he suggested that the Colorado State Historical Society be removed from its museum building at 14th Ave. and Sherman St. near the capitol so the property could be turned into offices for his department and the state supreme court. He informed the media that in his opinion the historical relics in the museum's collection were worthless and should be dumped into City Park Lake. Although Metzger appeared to be joking, as attorney general his comments were taken seriously and were not well received by either legislators or the keepers of the state's heritage.

The following month, the attorney general continued his criticism of law enforcement officials, although this time he included district attorneys throughout the state. Metzger leveled the charge that Colorado's district attorneys were failing to enforce laws against gambling, largely due to what he described as their own laziness. The *Rocky Mountain News* spoke out on its editorial page with a terse June 14th statement that more action and less oratory were needed from the state's attorney general. The newspaper's editors felt that Metzger was making far too many claims about organized crime, illegal gambling, and the failure of law enforcement in the state with too few details provided to the public to support his outcry. Around the same time, Metzger and Governor Johnson got into a public dispute, aired in the newspapers, about the extent of vice and its impact upon local law enforcement. Metzger took one last swing at the issue, claiming that there was an "unholy alliance" in Colorado between law officers, gamblers and organized crime that protected illegal gambling and vice throughout the state.

Subject to withering criticism from law enforcement statewide, much of it aired in the newspapers, Metzger responded to his attackers in a 15 June 1950 *Rocky Mountain News* article (p. 44). Portraying himself as an embattled crusader for good, Metzger stated that, "All through history, there've been men like me -- men with the courage to stand up and fight. We're always subjects for attack. They assassinated McKinley and Lincoln. What will they do to me?" Over the following years, after Metzger had finished his term as attorney general, his claims against organized crime in the state and the collusion of certain public officials were proven to be true. Because of his efforts in Colorado, John received an offer from Senator Estes Kefauver to join his Washington-based national commission against organized crime. This was one of several offers Metzger received to leave Colorado and fight crime in other states, all of which he turned down.

With a wife and children living in the countryside during his crusade against corruption and organized crime, Metzger was concerned for their safety. When the family returned home to the farm at the end of each day, Betty and the kids waited at the back door while John walked through the house making sure that everything

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was safe. He was justifiably concerned about reprisals and carried a revolver in the glove compartment of his car because he wasn't sure if someone might try to harm the family, particularly by coming to the farmhouse when they weren't home. There were no burglar alarms in those days, and the place was accessible. The family wasn't living in tremendous fear, but did feel that it was reasonable to exercise care for many years. They were miles from town and surrounded by good-hearted farmers. Even so, John always double-checked the doors and windows on the house, autos, and farm buildings to make sure that everything was kept locked.

That August, Metzger was appointed by Governor Johnson to a special committee tasked with the job of investigating charges that long-time state prison warden Roy Best had misused public funds for his own benefit. Best had served as warden of the prison in Canon City since 1932, and had made substantial improvements to the facility and the way it was run. While he ran the prison without being tyrannical, he was also investigated for using flogging as a form of punishment. By the end of September, Warden Best was indicted on five charges of embezzlement. He was removed from the post and died in 1954. One month later, John Metzger reported to the media that he was calling for legislation outlawing the Communist Party in Colorado. He claimed that his office had proof that the party's leadership was plotting to bomb Denver communications and utilities facilities, and to seize city and state government offices. The local office of the FBI refused to comment on the charges and Metzger declined to identify his source of information. In the end, his charges were determined to be unfounded and the whole matter was dropped.

During the summer of 1950, Metzger announced plans to run for re-election to the office of attorney general. However, the voters turned down his bid for office and in early 1951 he found himself packing to leave. By that time, John Metzger had issued well over 700 opinions on legal issues throughout the state and his staff had handled more than 1,300 cases. Among the numerous actions that he initiated, while some were dropped by the attorney general's office, he was reportedly reversed by the state Supreme Court on only one occasion, a record hailed as a testament to the legal strength of his arguments.

The OPS and Running for Governor, 1951-1952: In March 1951, the Boulder Valley Soil Conservation District and Colorado Bankers Association presented John Metzger with their annual Conservation Achievement Award for his work on the farm to conserve soil and water. The following month, Denver's newspapers reported that the former attorney general had accepted a position as regional enforcement officer with the Office of Price Stabilization. He was appointed to serve as the agency's enforcement watchdog, with an official title of special assistant US Attorney. During his time there, the OPS staff was primarily engaged in reviewing prices at regional businesses such as restaurants, used car dealerships, and meat packing plants.

Metzger continued with the OPS until resigning in February 1952, sparking rumors that he might be launching an effort to be re-elected to office. According to Metzger, he was simply leaving the position to resume his private legal practice. However, as suspected he soon announced himself to be a Democratic gubernatorial candidate, running under the campaign slogan "A man with a plan and a record of performance." In the election, Metzger sought to oust incumbent Republican governor Dan Thornton. By the time the campaign was under way, he was well known throughout the state as an attorney, former clerk of Denver's Juvenile Court, an outspoken state Attorney General, and recent OPS enforcement officer. That March, Metzger accepted a three-year term of service on the board of directors of Denver's Democratic Club.

In his campaign, Metzger played upon a number of his diverse characteristics as he ran for the governorship. He had actively practiced law and was involved with Democratic politics in Colorado for almost two decades. He also had experience with farming and cattle ranching. John brought with him to the race his personal appeal as an orphan who made something of himself, his directness when arguing in favor of law enforcement, and his willingness to stand up against political corruption and the old (and sometimes illegal) ways of doing things. On 10 September 1952, the *Rocky Mountain News* declared "Metzger Wins!" in a bold front page

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headline announcing his successful trouncing of his competitors in the Democratic primary. To finish off the race, he engaged the assistance of a campaign manager, Benjamin Stapleton Jr., who had worked for Metzger in the office of attorney general.

The remaining weeks prior to the November election were spent traversing the state conducting a door-to-door effort seeking voter support. John Metzger drove an estimated 6,000 miles during the course of the campaign. At each of more than 200 stops, he made speeches focusing upon an eleven-point program of statewide issues that he felt needed to be addressed. This program included tackling concerns he had about the economy, public institutions, mining, industrialization, and taxation. Metzger impressed many along the campaign route. He was witty and engaging with audiences, speaking to groups numbering in the hundreds at each stop. Some challenged him because of his youthful looks, insisting that he appeared to be too young to become governor. Metzger was quick to point out that he had been practicing law for many years and was only slightly younger than Governor Thornton. He also impressed rural audiences with his extensive knowledge of farming and ranching, talking with them about crops and cattle and the agricultural market.

W. H. Adams, the Democratic Party's patriarch, endorsed John Metzger for office. Perhaps even more important, he gained the active and vocal endorsement of Colorado's senior senator, Ed Johnson. This single endorsement garnered additional support for the candidate in statewide Democratic circles, both among the party's leadership and its electorate. One week before the election Johnson predicted that Metzger would win, but only by a narrow margin. Metzger received an additional boost from President Truman, who spoke highly of him while on a whistle-stop tour of Colorado. Finally, John turned to broadcasting to get his campaign message out, using not only radio but also the new medium of television.

The election of November 1952 resulted in a surprise for Colorado Democrats as the Republicans swept both national and state offices, riding the wave of Dwight D. Eisenhower's tremendous post-war popularity. In spite of all his efforts and endorsements, incumbent Republican Governor Dan Thornton trounced Metzger by a margin of two to one. With this single election, John Metzger's hopes of attaining the governorship, and his short but active career as an elected official, came to an abrupt end.

Attorney and Occasional Candidate, 1952-1962: Following his bitter defeat in the 1952 gubernatorial election, John Metzger remained active in local and state politics as a vocal member of the opposition party. The Democratic conventions, and even the Adams County conventions in Brighton, were exciting for the entire Metzger family to attend as they remained part of the party's inner circle of activists. Betty played the Star-Spangled Banner on the piano to get everyone singing. Halfway through the convention, as attendees became tired and frustrated and started swinging at each other, she would play the national anthem again to get everyone refocused. The conventions would go on far into the night with discussions and speeches and the counting of ballots.

The former attorney general continued to appear in newspaper articles throughout the state, primarily due to his fierce criticism of the Republican administrations in Washington and Denver. Always outspoken, Metzger felt the Republicans were failing to fulfill their campaign promises and provide reputable leadership. By 1954, he was attacking McCarthyism, leveling criticism against the Republicans' handling of state and national affairs, and sounding like a seasoned Democratic Party political strategist. During this decade, Metzger also made several half-hearted passes at running for attorney general, governor, lieutenant governor, and a seat in Congress. None of these races proved successful.

The same period also brought Metzger much success with his law practice. He had a thriving farm, investments, and property holdings that provided good income for his family. Freed from the demands of elected office, Metzger organized the West Adams County volunteer fire department, a soil conservation

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district, and served as director of a ditch company. He was reportedly one of the first farmers in the region to employ the method of applying herbicides to crop fields by airplane. When area farmers needed to discuss and negotiate ditch rights, John organized the meetings and they were held in the family home. Marital squabbles and problems with wayward children in the community were also brought to John Metzger, the "people's attorney," to handle.

During the mid-1950s, when it became clear that the Denver to Boulder toll road was going to be constructed, a company was formed known as the Turnpike Land Company. This involved Bal Swan of Empire Savings & Loan, housing developer Kenneth Enser, and several others. The company purchased hundreds of acres several miles west of the Metzger Farm with plans to develop the land into the Broomfield Heights subdivision. John Metzger was engaged to prepare the incorporation papers. In order to develop the land and build houses, they needed more water. Metzger handled the real estate transaction and negotiated with area farmers to purchase as much of their water rights as possible. He amassed adequate water rights for the company to build Great Western Reservoir, which became the source of water for the town of Broomfield for many years. Because of this effort, John handled the groundbreaking legal work that resulted in the growth of today's City of Broomfield.

Despite Metzger's vocal criticism of the Republican administration in Washington, according to Bill and Karen Metzger President Eisenhower visited the farm during one of his trips to Denver. While there, the president observed the family's work with cattle breeding and walked through a field of test crops. Another benefit of John Metzger's high profile in the state was that during the presidential campaign of 1959, he was asked to drive Robert Kennedy from Denver to Cheyenne. This gave them a chance to discuss regional issues that would be pertinent to the campaign. John became an avid Kennedy Democrat, and he was particularly fond of Bobby Kennedy because of their shared interest in the law. In 1962, Metzger chose to make a serious run for a repeated term as attorney general. On the campaign trail he spoke to the public of his continued vigor and determination, coupled with maturity and years of experience with the law and with life. Unfortunately, Metzger endured another defeat in the election. Finally finished with high-profile politics and campaigning, he turned to other interests and pursuits that occupied him throughout the remainder of his life.

The Trianon, 1960-1967: By 1960, the Sisters of St. Francis of Perpetual Adoration operated St. Anthony's Hospital in Denver, St. Francis Hospital in Colorado Springs, and various other hospitals. The Sisters was an order of nuns devoted to nursing and teaching. John Metzger's sister Margaret was on the faculty of Loretto Heights and worked at St. Anthony's Hospital, where she came to know many of the nuns. Years earlier, the nuns had developed a relationship with Blevins Davis, who owned a mansion in the Broadmoor area of Colorado Springs. Located at 21 Broadmoor Ave., the 22,000-square-foot Davis home was a scaled-down replica of the Grand Trianon at Versailles. He also owned the former Modern Woodmen Tuberculosis Sanitarium located on the west side of Interstate 25 between Denver and Colorado Springs just north of the Air Force Academy. Operational from 1909 to 1947, this 1,000-acre facility included a number of large brick buildings and cottages.

Constructed in 1907 by Charles and Virginia Baldwin, the Broadmoor area estate was originally named Claremont. Charles Baldwin, the son of an admiral, graduated from Harvard, became a business executive, and was known in Colorado Springs as an avid polo player. Virginia was the heiress of an estate originating in Nevada's Comstock Lode, and came to the marriage holding massive silver, gold and timber interests. The wealthy couple settled in Colorado Springs around 1900 and engaged prominent architect Stanford White to prepare plans for a showplace home to be built near the Broadmoor that would be based upon the design of France's Trianon palace. The building was constructed of steel and concrete, with facing of white terra cotta. Many of its rich interior finishes were imported from Europe, and the home was furnished with antiques. A lover of fine art, Virginia amassed an extraordinary collection of paintings and sculptures. The grounds

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themselves were carefully landscaped and also ornamented with sculptures. Well-read and fond of literature, Charles built a collection of 15,000 books, many of them signed first editions. Filled with artwork, antiques, and a two-story library, the mansion and its grounds became the scene of numerous extravagant parties and dinners hosted by the Baldwins. However, the charmed life they lived could not last forever. The couple suffered tragedy as their two children died in childhood, leaving them with no heirs. Charles Baldwin later became debilitated by a stroke and died in 1934. Virginia remarried, this time to a Russian nobleman, and moved to San Francisco.

The Baldwin property sold in 1949 for a reported \$250,000 to Charles Blevins Davis. He abandoned its earlier name and simply called it the Trianon. By that time a bon vivant and theater impresario, Davis started his career as a high school principal in Independence, Missouri, where he befriended Harry and Bess Truman. He then went into the radio business in New York City and by the 1940s was producing Broadway shows. From 1952 to 1956, Davis produced the revival of *Porgy and Bess*. He financed the American Ballet Theater production at a cost of \$350,000 per year and was the company's president when the show launched a worldwide tour that included its famous performance in Moscow. In 1946, Davis married Marguerite Sawyer Hill, the widow of James N. Hill and an heir to the Great Northern Railroad fortune. When she died in 1948, Davis was named executor of her \$9 million estate. The following year he purchased the mansion in Colorado Springs and spent a fortune restoring and remodeling the building. However, when Marguerite's estate went through probate in New York it was discovered that she had willed \$2.75 million to charity. The high cost of maintaining the Colorado Springs property, combined with his financial commitments on Broadway, appear to have pushed Davis to donate the Trianon to the Sisters of St. Francis as a way of fulfilling his deceased wife's charitable wishes. The donation was completed despite objections raised by some of Marguerite's family members.

Because of his connection to the Sisters of St. Francis through his sister Margaret, John Metzger was hired to represent the order in the complex transaction through which they received not only the Trianon, but also the several-hundred-acre Woodmen of the World property. Metzger arranged for the properties to be transferred to the Sisters in 1952 at virtually no cost to them. He traveled to New York several times to take part in the negotiations, and accepted virtually no fee for the work. For years afterwards, the Sisters sent a box of hand-crocheted and embroidered linens to the Metzger family each Christmas to thank John for his work on their behalf. By the end of the 1950s, the Sisters began to realize that they could not handle the Trianon due to the high cost of its upkeep. In addition, they found that they had no good use for the property. John Metzger brought in investors from Denver and a foundation was established to run the property as a salon, complete with lectures, concerts, classes and cultural events. However, the residential neighbors and the nearby Broadmoor Hotel were less than thrilled with these plans. They began to exert pressure to have the Trianon closed.

Around 1960, the Trianon was transferred into a private Metzger family foundation and John laid plans to operate the property as a museum. To raise funds for its purchase and operation, he sold the eastern 160-acres of the family farm near Broomfield. John, Betty, Karen and Bill traveled to Colorado Springs every weekend to clean the building, make repairs, and prepare it for opening. The family began providing tours of the mansion and its extensive grounds, along with the surviving art and book collection, charging \$1.00 per adult (children were admitted for free). Although busloads of visitors arrived in 1961 and 1962, they did not come in numbers large enough to cover repayment of the mortgage and the high cost of the property's maintenance and insurance.

Because the city's zoning regulations prohibited the property's use as a commercial operation, even an admission-charging museum, John renamed it the Trianon School of Fine Arts because schools were an allowed use in a residential zone. A lengthy zoning battle took place throughout 1963 with Metzger on one

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side, the Broadmoor Hotel and wealthy area property owners on the other, and the city in the middle. On 23 January 1964, a rally attended by 3,000 citizens was held in the Colorado Springs City Auditorium. While many of those who attended supported Metzger's efforts, the zoning change was denied by the city. By the fall of 1964, John Metzger had established a "Save the Trianon" fund and was proposing to dismantle the building and move it north to the family farm near Broomfield. Although the fund, managed by the First National Bank of Denver, collected \$175,000 in donations from across the state, this was far short of the estimated moving cost of \$675,000. The move was eventually determined to be too costly and in April 1965 John Metzger directed that the donations be returned.

By 1966, Metzger found it necessary to sell large portions of the Trianon's art and book collection. Guests were still being taken on paid tours, but the revenue was hardly enough to cover the property's expenses. Many of the 15,000 books in the library were sold to Colorado State University and today form the core of its rare book collection. Pieces from the art collection were also auctioned off to raise funds. Eventually, John Metzger reached the point where he could no longer maintain the property, and it was sold in 1967 to the Colorado Springs School for Girls. This later became the co-ed and exclusive Colorado Springs School, which is still housed there today. During the sale, the Metzger family foundation retained ownership of the remaining art collection from the Trianon. The artwork was brought to Denver and placed in a building at 14th Ave. and Tremont St., which John and Betty named the Trianon Museum and Art Gallery. John purchased and devoured numerous books about the world of international art collecting, and he spent hours educating himself in the field of art just as he did years earlier in the field of law. He and Betty ran the museum and gallery for years, and the Metzger children continued to own and operate the facility through 2004.

In addition to his many other interests, John Metzger was also fond of firearms. He carefully acquired a collection of historical weapons, many of them with ornate tooling and inlaid materials. His gun collection was displayed together with the Trianon art in the museum in Denver. It included a Serial #1 Gatling gun and a ten-pound mountain Howitzer. John became a licensed dealer so he could trade in guns that could only be held by collectors. Some of these had to be disposed of to other collectors after his death. He befriended a young man who was also seriously involved in collecting, who he engaged to make bullets for the antique guns. The Metzger family has film footage of the Gatling gun being used on the farm, where they would shoot at hay bales stacked one-half mile away. Every Independence Day, the family and their guests were allowed to take turns operating the antique hand-cranked machine gun.

Mining for Gold, 1960s-1970s: The subject of mining was another of John Metzger's lifelong interests. In the 1950s, he became president of the *Mining Record*, one of Colorado's oldest newspapers. Early in the following decade, he joined the Colorado Mining Association and through a series of trades ended up owning a historic mine in Clear Creek County. Known as the Grizzly Mine, it was located several miles southwest of Silverplume toward the back of Torrey's Peak (possibly among a group of mines in the area of Grizzly Gulch). Metzger purchased equipment and reopened the mine with a partner. However, the bottom soon fell out of the market and the mine sat inactive for many years. In the 1970s he opened the mine again, this time with the son of a good friend and legal colleague.

The men knew that the mine had produced in its earlier years and with new technology and rising ore values could possibly be profitable again. This pursuit became John's weekend project and replaced his focus upon the Trianon, especially once the art collection found its home in the Denver museum and was being run comfortably by Betty. The Metzger family still owns the Grizzly Mine, which today retains some of its old buildings and sections of rail. The portal is now closed with padlocked steel doors and the tunnel is probably collapsing behind them. When the operation was finally abandoned, pieces of mining equipment were transported to the Metzger Farm for storage, and these remain there today.

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John Metzger's Legacy: John Metzger grew up in a household that experienced a degree of adversity that might have crushed many young people's hopes for the future. With his father employed as a miner, the family was certainly poor. In addition, both of his parents died by the time he was about seventeen. Placed into an orphanage and then indentured to a farm family, John ran away and emancipated himself in Denver, where he lived in boarding houses and survived by taking on menial jobs. Through a remarkable chain of events reminiscent of the tales of O. Henry, he talked his way into an apprenticeship with a successful attorney and within a few years rose from being a penniless, homeless orphan to a practicing lawyer with his own office in downtown Denver.

Over the following decades, Metzger became energetically involved in numerous pursuits. In the 1930s, he built a successful law practice devoted to the legal needs of average people, many of them veterans and their families. Eager to assist the nation during World War II, he founded a munitions plant south of Denver that provided the Navy with millions of anti-aircraft shells. In the post-war era, his legal guidance laid the groundwork for development of the Denver to Boulder Turnpike and the resulting growth of Denver's northwestern suburbs. As Colorado's youthful attorney general in the late 1940s and early 1950s, Metzger staffed his office with World War II veterans and hired the first African-American attorney to work there, breaking down a substantial racial barrier. He proceeded to develop a reputation as a law enforcement and open government firebrand, ruffling old-guard feathers through his crusade to reform state government and fight organized crime. Metzger pursued his responsibility to the citizens seriously and with tremendous vigor and dedication. Demanding compliance with the law to a degree bordering upon zealotry, he rooted out long-standing graft, corruption, criminal activity and sloth as he worked to extract Colorado from the closed-door ways of running government and back-room methods of doing business, and move it toward a new era of efficiency, legality and openness.

Although Metzger's subsequent run for governor proved unsuccessful, for the rest of his life he remained centrally involved with Democratic Party efforts on the county and state levels. From his farm north of Denver, he continued to serve legal clients and became a community organizer, helping to establish a volunteer fire district, weed control district, and a large soil conservation district. Between the mid-1940s and late 1950s, John and his wife Betty substantially developed the farm by remodeling and enlarging the original house, constructing outbuildings and ponds, and planting numerous trees. He imported and bred high-end cattle, had a dairy and chickens on the property, and planted the fields with livestock feed and test crops in conjunction with experts from Colorado State University. For many years, the farm provided the Metzgers with not only a fine home, but a much-needed sense of family and stability.

John involved his wife and children in many of his interests, and as each developed the family was brought along on the adventure. Beyond the law, politics and farming, these interests included museum operation, antique gun collecting, art exhibition and mining. Lacking in educational opportunities and encouragement as an orphaned teenager, he spent his adult years deeply studying whatever subjects interested him. Characteristic of a traditional marriage, Betty held everything together for the household and pursued her musical skills wherever possible. Through frequent meetings with his wife and children, John regularly sought their opinions and then made his decisions, no matter how large or small.

Although he kept moving, the frenetic pace of his life resulted in physical ailments that eventually wore him down. John Metzger died of cancer at Denver's Rose Memorial Hospital on 25 January 1984 at the age of 72, and his remains were placed in the mausoleum at Fairmount Cemetery. Following his death, Betty continued to operate the Trianon Art Museum & Gallery in downtown Denver through the early 2000s. Their daughter Karen became an attorney and went on to fill out an honorable career as a Denver District Court judge and served on the Colorado Court of Appeals. Bill became a movie writer and producer in Hollywood and Florida.

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In *The Denver Post* obituary published on 26 January 1984 (p. 8A), John Metzger was remembered as "the volcanic boy wonder of Colorado politics...who displayed a unique, bipartisan flare for public insult and criticism that disturbed more staid politicians. He was especially fond of criticizing district attorneys and what he called the breakdown in local law enforcement in Colorado". According to his family, John was a born politician, in the best sense of the word. During the period when he grew up, many sensed that a small class of people in society really ran things, mostly from behind closed doors. It didn't really matter what the merits were of any cause, or how hard people worked. If individuals were part of that relatively small coterie, their desires and opinions were important. And if they were outsiders, their needs and thoughts were largely neglected. Metzger disliked the fact that society was like that. He favored meritocracy, because his life was built upon achieving things through his own efforts. He loved people and organizations. He enjoyed serving as attorney general and working for the people of Colorado because he loved crusades. Metzger was a genuine idealist and firebrand, always ready to fight for fairness and the rule of law.

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- "Metzger Files 1st Suit in Mental Case Fight" (9/8/1949)
- "Metzger Files For 2nd Place in Demo Race" (4/29/1954)
- "Metzger Files Suit to Ban Red Flag" (10/30/1950)
- "Metzger Hits Stone as Political Plotter" (12/1/1949)
- "Metzger Holds Issues Outlined One By One" (11/3/1952)
- "Metzger in Demo Governorship Bid" (6/24/1952)
- "Metzger Leads in Denver Area" (clipping, no date)
- "Metzger Made OPS Enforcer" (4/28/1951)
- "Metzger, McGinley Feud Over Phone Bills" (7/15/1949)
- "Metzger's Museum Proposal Gets Cold Reception at Capitol" (5/28/1950)
- "Metzger Not Yet Certain He'll Run for Congress" (3/5/1954, p2)
- "Metzger Quits Job as OPS 'Enforcer'" (2/3/1952, p1A)
- "Metzger Renews Feud with Stone on Water Setup" (9/20/1949)
- "Metzger Seeks Hearing on Toll Road Legality" (6/8/1949)
- "Metzger Speeds Action on Toll Road" (clipping, no date)
- "Metzger-Truman Talk Seen" (9/30/1949)
- "Metzger Was a Self-Made Lawyer" (1/30/1984, p1C)
- "Metzger Won't Budge an Inch on Breitenstein" (1/4/1949)
- "Metzger Writes Book on State Gaming Laws" (6/4/1950, p12)
- "Metzger's Fight with Colorado U. Heads for Court" (6/10/1949, p3B)
- "Might Get Job, Metzger Admits" (3/25/1950, p1)
- "Mr. Metzger Gets Out The Broom" (11/16/1949)
- "Nellie Nipko (obituary)" (3/22/1984, p. 14C)
- "Newest Political Star Brashly, Steadily Shines" (6/5/1949, p1C)
- "Nominees Announced for Appeals Court Vacancy" (2/11/1983, p21)
- "Now It's Metzger Who Doesn't Choose to Run" (12/2/1949, p48)
- "On Naming Knous After D.C. Talks" (clipping, no date)
- "Planning Board Funds Stripped" (clipping, no date)
- "Poll Shows Majority of Voters Pick Johnson for Governor in '50" (2/25/1950)
- "Principal Characters in the Investigation That Wasn't There" (9/25/1950)
- "Prohibition Lectures in Schools Violate Law, Metzger Announces" (clipping, no date)
- "Racing Board Sidetracks Metzger, Praises Foster" (7/12/1949, p12)
- "Raw Gambling Rackets Hand State Hot Issue" (clipping, no date)

METZGER FARM

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ADAMS, COLORADO

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"Red Seizure of Denver Set, Metzger Charges" (9/15/1950)
"Regents Demand Metzger Prove Charges on CU" (7/19/1949, p3)
"Reporter Threatened; 'Slots' Close Suddenly" (clipping, no date)
"Self- Made Attorney Always a Fighter" (1/30/1984, p1C)
"Smaldone Bared Gaming King; Post Warned to End Probe" (7/7/1949, p1)
"State Board's \$51,100 Contract with Rose Hospital Under Fire" (clipping, no date)
"State Home to Request Payments" (clipping, no date)
"State's Opinion Divided on Metzger, Poll Finds" (2/27/1950)
"State Orders 10 Freed Cons Jailed Again" (clipping, no date)
"Stearns Denies Charge C.U. Squandering Funds" (7/18/1949)
"Straining at The Leash" (clipping, no date)
"Supreme Court Asked to Oust Watrous" (11/15/1949, p5C)
"Surprise Move Claims Office Illegally Taken" (clipping, no date)
"Tavern Shuffleboard Row Heads for Court" (clipping, no date)
"The Law West of Panhandle Creek" (6/7/1950)
"Top Officials 'Paid Off' In Slots Racket: Metzger" (6/8/1950)
"University, Medic Moneys Juggled, Metzger Charges" (clipping, no date)

Durango News

"One Interpretation of The Golden Rule" (1/19/1950)

Gazette Telegraph (Colorado Springs)

"Is Metzger King Irate Sheriff Asks?" (12/28/1949)

"A Century of Opulence" (25 March 2007)

Geography

R. L. Layton. "Hobby Farming." (July 1980, vol. 65, no. 3, p. 220-224)

Hobby Farms

"Once Upon a Time." (November-December 2005, vol. 5, no.6)

Rocky Mountain News (clippings located in the Denver Public Library's Western History Collection)

"Action Not Oratory, Mr. Metzger" (6/14/1950, p26)
"An Active Attorney General" (7/12/1949)
"Appeals Court Judge Named" (6/4/1983, p7)
"Arguments Begin in Suit to Block Toll Road Work" (clipping, no date)
"Assembly's Pay Held Up Due to Slip-Up in Bill" (1/16/1949)
"Backlog of 1600 Cases Greet Atty General" (1/16/1949)
"Betty Metzger, 85, Pianist, Art Museum Owner" (2/28/2008)
"Biscoe to Sue Metzger on Slander Charge" (11/18/1952, p23)
"Brofman's Successor Appointed" (4/28/1951)
"Carrel, Sheriffs Rap Metzger's Police Plan" (12/28/1949, p5)
"Central Gamblers Made 3 Foes Recant, JP Says" (10/9/1949)
"Charles Nipko (obituary)" (11/9/1961, p. 101)
"Colorado Dems Concede To GOP" (11/5/1952)
"Counties Held Liable For Defectives' Care" (6/18/1949)
"Democrats Pick Metzger as Governor Candidate" (9/10/1952, p6)
"Each Party State Candidate Short" (7/19/1962, p36)
"Former Denver DA, James Burke, Dies" (8/5/1961, p12A)

METZGER FARM

Name of Property

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- "Governor, Metzger Snap and Sneer on Gambling Setup" (6/13/1950, p22)
"Ike and Metzger Favored to Win" (11/3/1952, p12)
"Is Metzger Running? Well, Maybe" (8/25/1949)
"Ike Thornton Continue to Hike State Leads" (11/5/1952, p6)
"John W. Metzger" (8/17/1952)
"Keep CU Out of Politics!" (7/20/1949, p24)
"Knous to Run for Senate Snub Bench, Metzger Says" (clipping, no date)
"Lawyers Battle 2½ Hours in Tamarack Ranch Feud" (5/6/1950)
"Longmont Chamber Launches Petition to Bar Boulder Toll Road" (6/18/1949)
"Metzger Bans 'Released Time' Religion Classes for Colorado" (clipping, no date)
"Metzger Blasts GOP Efforts in Colorado and Nation" (3/14/1954, p30)
"Metzger, C.U. Compromise in Fund Dispute" (7/31/1949, p1)
"Metzger Decides-He'll Run for State Attorney" (7/12/1950)
"Metzger Declines to Describe Kansas City Chat with Truman" (10/1/1949, p5)
"Metzger Files Answer To \$10,000 Libel Suit" (4/20/1950, p61)
"Metzger Names Ass'ts, Deputies for Coming 2 Years" (clipping, no date)
"Metzger Plan to Seize State Museum for His Office Evokes Outcry" (5/27/1950)
"Metzger Resigns as OPS Watchdog" (2/3/1952, p6)
"Metzger Says Russ Flag at Civic Center Must Go" (clipping, no date)
"Metzger Seems Ready for Congress Race" (6/5/1958, p32)
"Metzger Seen Way Out in Front" (clipping, no date)
"Metzger Stung by News' Editorial; Can't Tell All He Knows" (6/15/1950, p44)
"Metzger Takes Over Whole Task of Prosecuting Central Gamers" (clipping, no date)
"Metzger Threatened With 2nd Slander Suit" (12/11/1949)
"Metzger to Broaden Scope in School Suit" (10/7/1949, p8)
"Metzger Urges Fullest Powers for State Police" (12/28/1949)
"Metzger Warns Judge to Do Duty" (8/20/1949)
"Metzger Wins!" (9/10/1952)
"Metzger Wins Golden School Row" (8/12/1949, p16)
"Mob Czar in Control of State's Gambling" (6/27/1949)
"Monaghan Sobs at Race Inquiry" (7/23/1949, p5)
"Moore Picked For Metzger's State Staff" (clipping, no date)
"Ms. Metzger is Appointed District Judge" (2/24/1979, p56)
"Nellie Nipko (obituary)" (3/17/1984, p. 133)
"Nobody Authorized To Shut Dam Valves, Metzger Told" (2/14/1949)
"Old Fashion Primaries" (8/12/1962, p51)
"Planners Lash Metzger's 'Insinuation' of Dishonesty" (8/17/1949)
"Pressure Laid To Legislatures" (7/19/1949)
"Pro and Cahn" (7/23/1949)
"Public Schools Shut to Religion By Metzger Ban" (8/20/1949, p1)
"Pueblo Packing Plant First Hit in OPS Drive" (9/28/1951)
"Racing Aide Defies order by Metzger to 'Clear Out'" (7/10/1949, p5)
"Racing Board Spurned Bribes, Threats, Probe Told" (7/20/1949, p6)
"Regents Pan Metzger, Ask He Withdraw" (clipping, no date)
"Sheriffs Rap Metzger's Plan" (12/28/1949, p42)
"Senate Thinks House's Holiday Is Illegal, but it's Soon Fixed Up" (clipping, no date)
"So Everybody's Wrong but John" (5/17/1950, p28)
"State Attorney General Adds Three to Staff" (12/30/1948)
"State Moves To Slap Lid on Racketeers" (6/26/1949)

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"State Plan Board Stripped of Powers in Metzger Ruling" (clipping, no date)
"State's OPS Leads Nation In Controls Enforcement" (clipping, no date)
"Stormy Attorney General Seeks Return Engagement" (7/29/1962, p32)
"Thornton or Metzger? Tomorrow Tells" (11/3/1952, p1)
"Three Appointed to Staff of Attorney-General Elect" (12/29/1948)
"Truman's Aid in Cemetery Case Sought" (7/16/1949)
"Warden Roy Best is Indicted" (11/30/1950, p5)
"Who is This Fellow John Metzger?" (7/24/1949)
"Why Civil Service Doesn't Work" (9/22/1949, p23)

Time

"The Beau from Mo" (10 September 1951)

Up The Creek (Denver)

"Here Comes The Judge" (clipping, no date)

Unknown Sources (Clippings – Denver Public Library)

"Declares War on Colorado Gamblers Pleads For Police Powers for Patrol" (12/28/1949)
"Former Attorney General to Talk to Luncheon Club" (3/21/1951)
"John Metzger to Run For Governor- Maybe" (clipping, no date)
"Johnson and Metzger Both Announce They'll Run for Re-Election" (7/9/1950)
"Legal Problem Posed When House Takes Four-Day Holiday" (clipping, no date)
"Loretto Concludes Law Conference" (3/15/1951)
"McCarthy Aids Lenin Plan, Metzger Says" (clipping, no date)
"Metzger as Special Prosecutor" (9/10/1949)
"Metzger Charges Big Firms Seek to Corner Colorado Gas Reserves" (clipping, no date)
"Metzger Contended In Law Practice" (3/3/1951)
"Metzger Does More Than Talk" (clipping, no date)
"Metzger: He Pokes a Nose" (clipping, no date)
"Metzger Hints Counter lawsuit Against Briscoe" (clipping, no date)
"Metzger Is a Harsh Man" (3/3/1950)
"Metzger Says 'Gangster Type Hoodlums' Infiltrating Parties" (clipping, no date)
"Metzger Starts Job for OPS" (clipping, no date)
"Metzger Story Is Horatio Alger Saga" (9/4/1952)
"Metzger Tags Act 'Hitlerian'" (4/17/1950)
"Metzger Warns Offices: Keep Contracts Legal" (clipping, no date)
"Metzger Will Not Run For Anything, He Says" (8/23/1949)
"Metzger's Wise Decision" (8/25/1949)
"Rather A Good Fellow" (clipping, no date)
"Stapleton Named" (9/6/1952)
"Stick Around and Watch the Fun" (12/29/1950)
"The Record of John W. Metzger" (clipping, no date)
"Tolerate Slots, Metzger Urged" (clipping, no date)
"War Vets in State Asylum Must Pay, Metzger Holds" (10/20/1949)

METZGER FARM

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Interviews

Bill Metzger & Karen Metzger Keithley. Conducted by Ron Sladek, Tatanka Historical Associates Inc., at Westminster City Hall, 11/13/2006. (Transcript located in the offices of Tatanka Historical Associates, Fort Collins, CO)

Bill Metzger & Karen Metzger Keithley. Conducted by Ron Sladek, Tatanka Historical Associates Inc., at the Metzger Farm, 3/19/2007. (Transcript located in the offices of Tatanka Historical Associates, Fort Collins, CO)

Karen Metzger Keithley. Conducted by Ron Sladek, Tatanka Historical Associates Inc., by telephone, 6/6/2012. (Transcript located in the offices of Tatanka Historical Associates, Fort Collins, CO)

Gip Wilson. Conducted by Ron Sladek, Tatanka Historical Associates Inc., at the Metzger Farm, 2/27/2006. (Transcript located in the offices of Tatanka Historical Associates, Fort Collins, CO)

Websites

The Political Graveyard - www.politicalgraveyard.com (accessed May 2012)

Colorado Springs School - www.css.org (accessed May 2012)

Colorado State Archives – www.colorado.gov (accessed May 2012)

Hobby Farms – www.hobbyfarms.com (accessed May 2012)

Local Government Documents

Chain of Title, Adams County Clerk & Recorder (Brighton, CO), 1904-1943

Property Profile, Adams County Assessor (Brighton, CO)

Metzger Farm Open Space Master Plan. Prepared for the Broomfield-Westminster Open Space Foundation by Wenk Associates, Winter 2010.

Metzger Farm Preservation Plan. Prepared for the Broomfield-Westminster Open Space Foundation by Tatanka Historical Associates, June 2007.

Census Records

Population Schedules, US Department of Commerce, Census Bureau, 1850-1930

General Land Office / Bureau of Land Management Records

Albert Gay, Patentee. Issue Date: 1/30/1885. Acres: 80 (W½, SW¼, Sec. 32, T1S-R68W). Homestead Certificate #3644. BLM Serial #COCOAA 066903.

METZGER FARM

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Edgar G. Bates, Patentee. Issue Date: 10/15/1875. Acres: 80 (E $\frac{1}{2}$, SW $\frac{1}{4}$, Sec. 32, T1S-R68W). Homestead Certificate #542. BLM Serial #COCOAA 066841.

Unpublished Materials

"Sales Log of Loch-in-Vale Farms, Shorthorn Dispersion Sale." Brochure developed by John Metzger for the sale of his prize winning Scotch Shorthorn cattle herd at the National Western Stock Show in Denver, Colorado on 18 January 1950. (From the collection of Karen Metzger Keithley.)

METZGER FARM
Name of Property

ADAMS, COLORADO
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Previous documentation on file (NPS):

preliminary determination of individual listing (36 CFR 67 has been requested)
 previously listed in the National Register
 previously determined eligible by the National Register
 designated a National Historic Landmark
 recorded by Historic American Buildings Survey # _____
 recorded by Historic American Engineering Record # _____
 recorded by Historic American Landscape Survey # _____

Primary location of additional data:

State Historic Preservation Office
 Other State agency
 Federal agency
 Local government
 University
 Other Metzger Family
Name of repository: Denver Public Library
History Colorado

Historic Resources Survey Number (if assigned): _____

10. Geographical Data

Acreage of Property 150.9 acres
(Do not include previously listed resource acreage.)

The UTM reference point was derived from heads up digitization on Digital Raster Graphic (DRG) maps provided to OAHF by the U.S. Bureau of Land Management.

UTM References

(Place additional UTM references on a continuation sheet.)

(NAD 27)

1 _____
Zone Easting Northing

3 _____
Zone Easting Northing

2 _____
Zone Easting Northing

4 _____
Zone Easting Northing

Verbal Boundary Description

The boundary of the nominated property encompasses 150.9 acres that make up much of the southwest quarter of Section 32, Township 1 South, Range 68 West. The complete and detailed legal description is found in the attached title documents related to transfer of the property from the Metzger family to the Broomfield-Westminster Open Space Foundation. In general terms, the site is bordered by West 120th Avenue on the south, Lowell Boulevard on the west, West 124th Avenue on the north, and by a legal property line on the east.

Boundary Justification

The nominated boundary for this historic property follows its legal description and includes the entire mid-twentieth century farmstead, together with the surrounding lakes and agricultural buffer of crop fields and pasture. Together, these features maintain and preserve the site's historical and physical integrity dating from the period of significance between 1943 and 1962. The boundaries include all of the land and built features that were transferred from the Metzger family to the Broomfield-Westminster Open Space Foundation in 2006.

METZGER FARM

Name of Property

ADAMS, COLORADO

County and State

11. Form Prepared By

name/title RON SLADEK, PRESIDENT

organization TATANKA HISTORICAL ASSOCIATES INC.

date 7 JUNE 2012 (REVISED 7/13/12)

street & number P.O. BOX 1909

telephone 970/221-1095

city or town FORT COLLINS

state CO

zip code 80522

e-mail tatanka@verinet.com

Property Owner:

(Complete this item at the request of the SHPO or FPO.)

name BROOMFIELD-WESTMINSTER OPEN SPACE FOUNDATION

street & number 4800 W. 92nd AVE.

telephone 303/658-2400

city or town WESTMINSTER

state CO

zip code 80031

Photograph Log

The following information applies to all of the black and white photographs submitted with this registration form:

Name of property:	Metzger Farm
City, county and state:	Westminster, Adams County, Colorado
Photographer:	Ron Sladek
Date photographed:	14 May 2012
Location of originals:	Tatanka Historical Associates Inc. 612 S. College Ave., Suite 21 P.O. Box 1909 Fort Collins, CO 80522

Photograph #1:	General View of the Farmstead from the East Pond. View to the NW.
Photograph #2:	Farmhouse. View to the E.
Photograph #3:	Farmhouse. View to the SW.
Photograph #4:	Farmhouse. View to the NE.
Photograph #5:	Farmhouse. View to the NW.
Photograph #6:	Farmstead. View to the W.
Photograph #7:	Caretakers' House. View to the NW.
Photograph #8:	Caretakers' House. View to the SE.

METZGER FARM

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- Photograph #9: Garage/Shop. View to the NW.
- Photograph #10: Garage/Shop. View to the SE.
- Photograph #11: Large File Storage Shed. View to the NW.
- Photograph #12: Small File Storage Shed. View to the SW.
- Photograph #13: Granary. View to the NE.
- Photograph #14: Granary. View to the SW.
- Photograph #15: Milk House Foundation. View to the NE.
- Photograph #16: General View of the Farmstead. View to the NW.
- Photograph #17: Barn. View to the NE.
- Photograph #18: Barn. View to the SW.
- Photograph #19: Loafing Shed. View to the NE.
- Photograph #20: Loafing Shed. View to the SW.
- Photograph #21: Brooder House. View to the NW.
- Photograph #22: Brooder House. View to the SE.
- Photograph #23: Chicken Coop. View to the NE.
- Photograph #24: Chicken Coop. View to the SW.
- Photograph #25: Equipment Shed. View to the NW.
- Photograph #26: Equipment Shed. View to the SW.
- Photograph #27: East Pond Pump House. View to the NW.
- Photograph #28: East Pond Pump House. View to the S.
- Photograph #29: Corrals North of the East Pond. View to the SE.
- Photograph #30: Vegetable Garden. View to the W.
- Photograph #31: Vegetable Garden. View to the E.
- Photograph #32: Truck Scale. View to the S.
- Photograph #33: Equipment on Site. View to the NE.

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- Photograph #34: Weed Burner.
- Photograph #35: Industrial Blower.
- Photograph #36: Air Compressor.
- Photograph #37: Farmall Tractor.
- Photograph #38: Ditcher & Manure Spreader.
- Photograph #39: Chicken Coop Well. View to the NE.
- Photograph #40: Domestic Wells. View to the NE.
- Photograph #41: East Pond. View to the W.
- Photograph #42: East Pond. View to the SE.
- Photograph #43: West Pond. View to the SW.
- Photograph #44: West Pond & Pier. View to the SW.
- Photograph #45: Entry Drive. View to the E.
- Photograph #46: Entry Drive. View to the W.
- Photograph #47: North Crop Field. View to the N.
- Photograph #48: Windmill & Well in North Field. View to the NE.
- Photograph #49: Calkins Ditch. View to the SW.

METZGER FARM
Name of Property

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Figure 2
Aerial Photograph – Northern Area of Farm

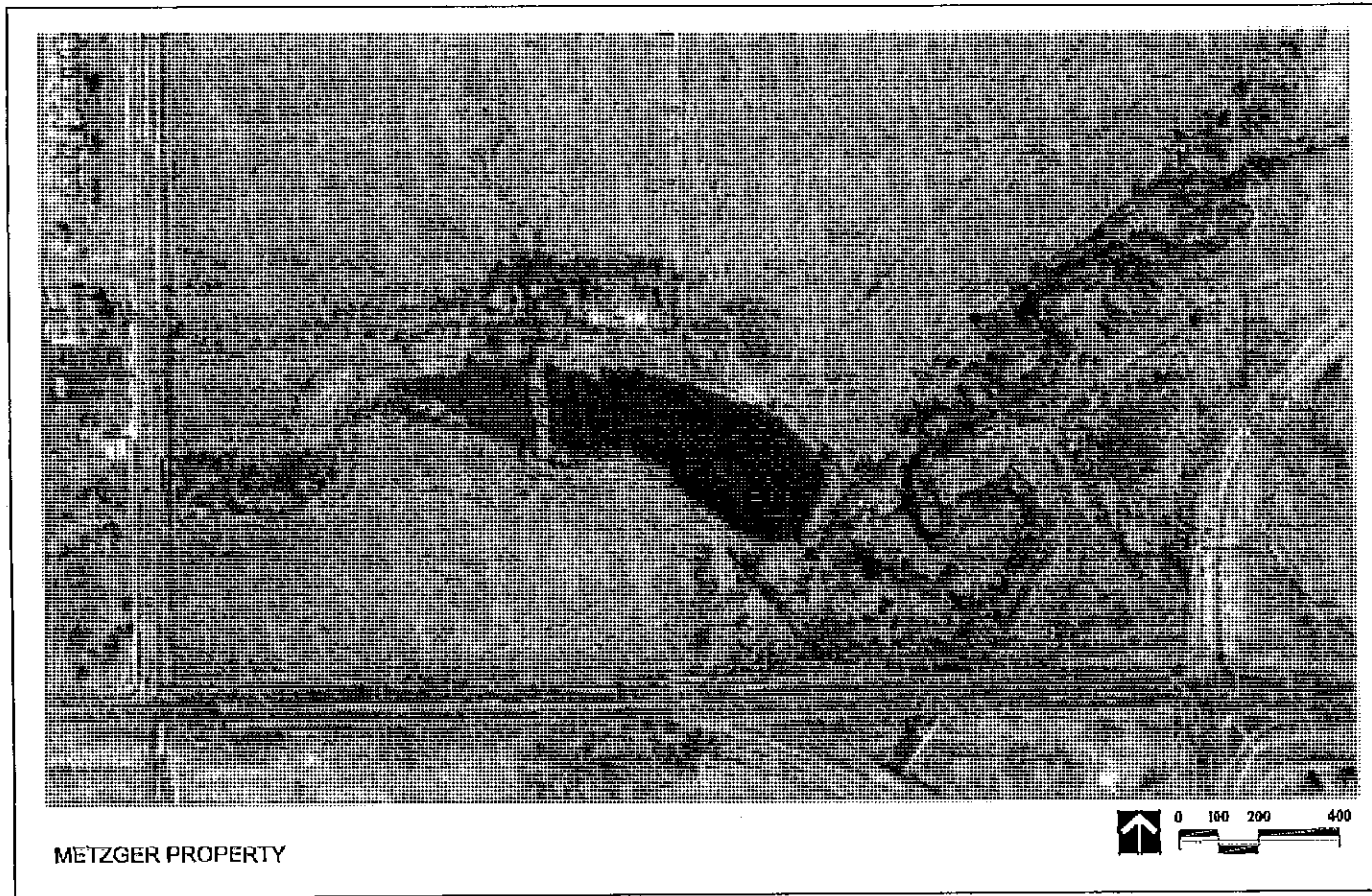


Circa 2010

METZGER FARM
Name of Property

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Figure 3
Aerial Photograph – Southern Area of Farm

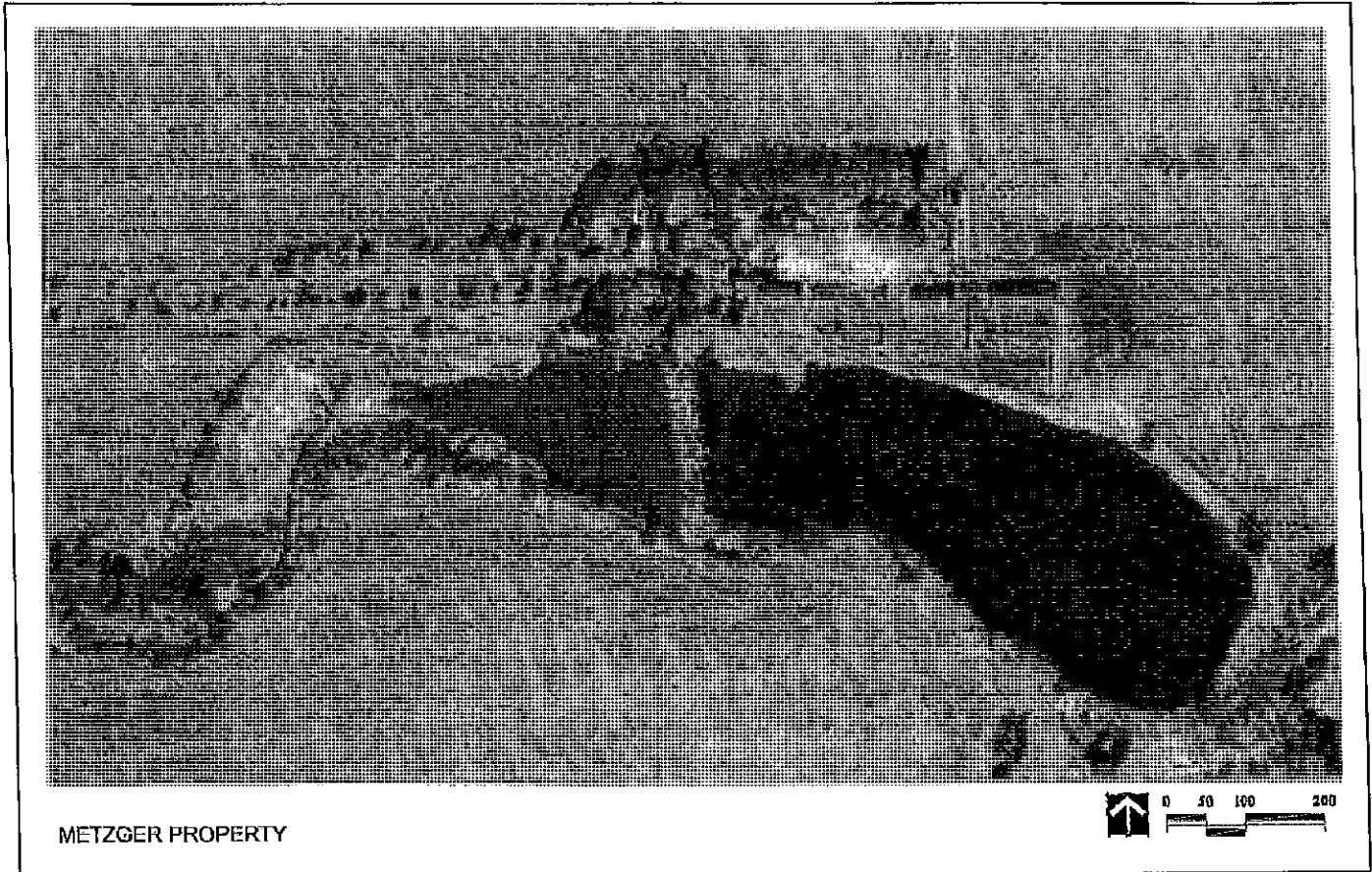


Circa 2010

METZGER FARM
Name of Property

ADAMS, COLORADO
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Figure 4
Aerial Photograph – Farmstead & Ponds



Circa 2010

METZGER FARM
Name of Property

ADAMS, COLORADO
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Figure 5
Farmstead Plan

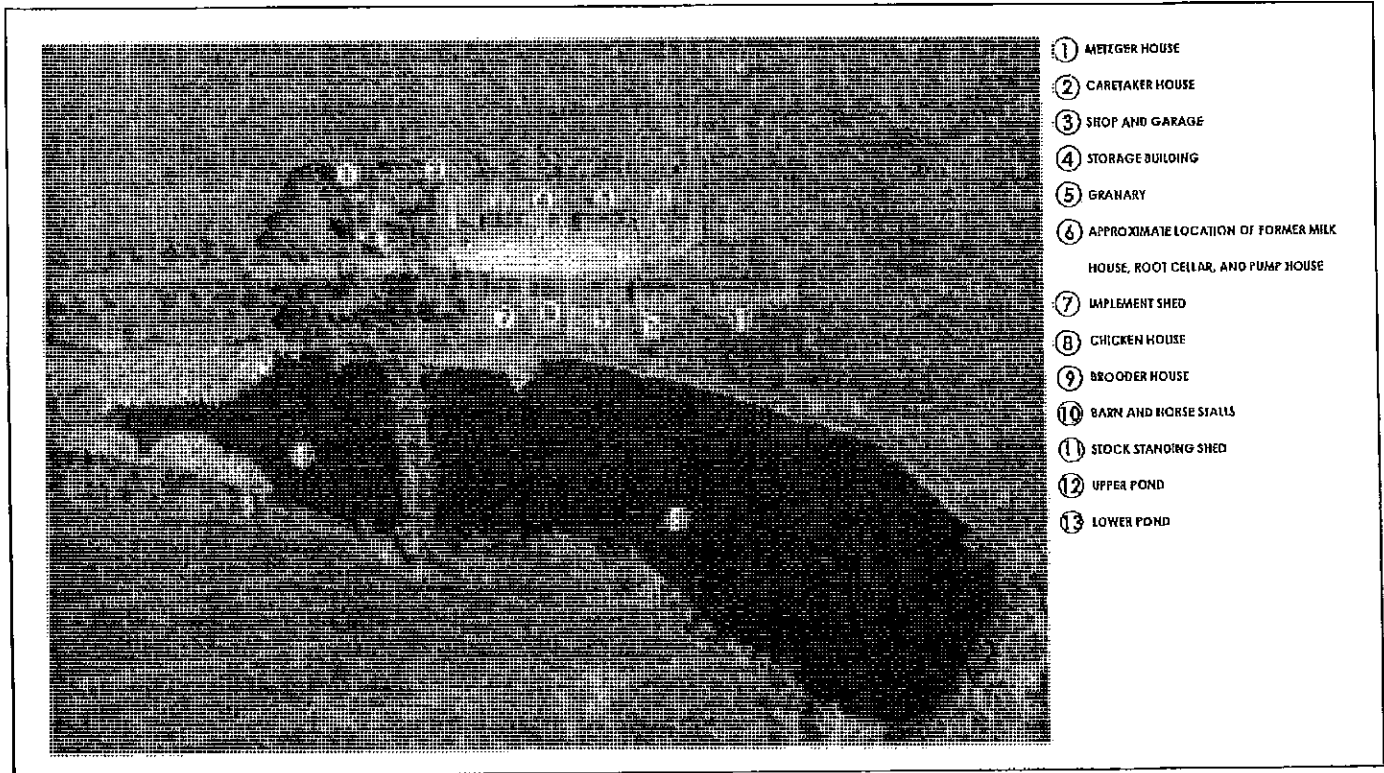
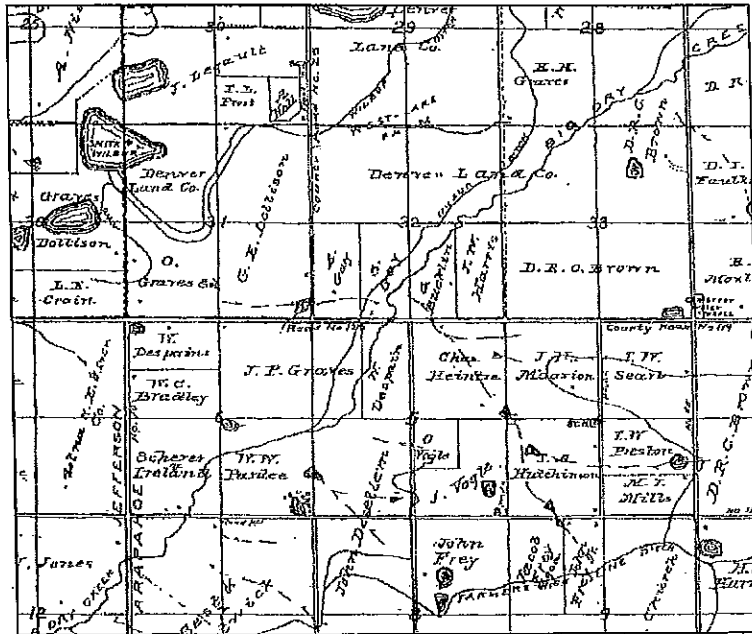


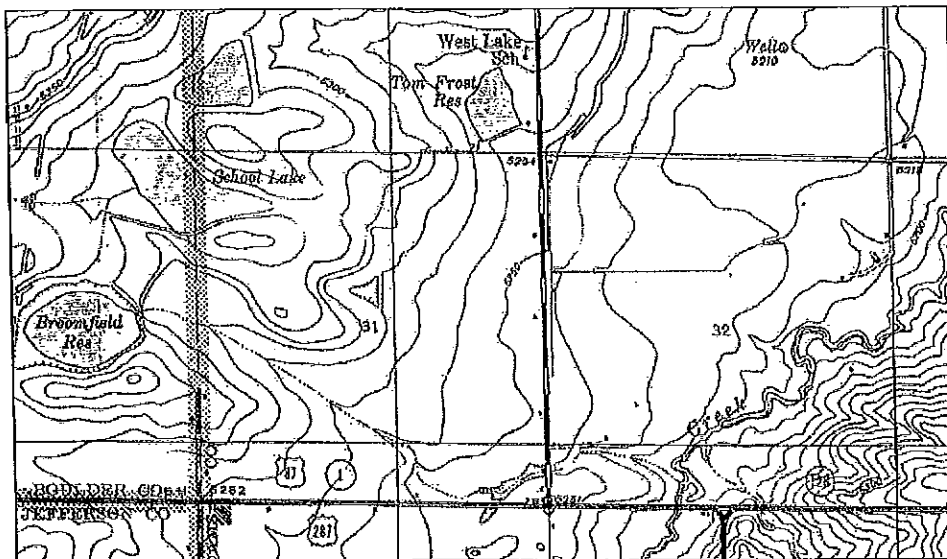
Figure 6
Historic Maps

METZGER FARM
Name of Property

ADAMS, COLORADO
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**Willits Farm Map
1899**



**Lafayette 7.5' Quadrangle
1944**

**Figure 7
Historic Images**

METZGER FARM
Name of Property

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Denver Post
5 June 1949



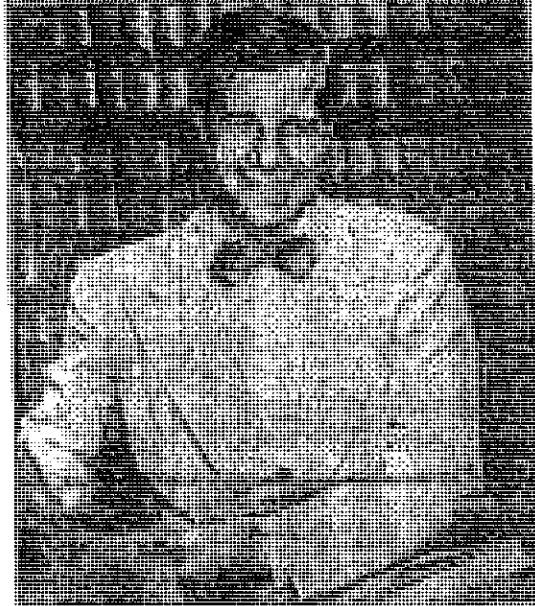
The Metzger family portrait features the attorney general's wife, Betty, his laughing daughter, Karen, 3, and his 3-month-old son and heir, John W. Metzger II, a handsome foursome.

METZGER FARM

Name of Property

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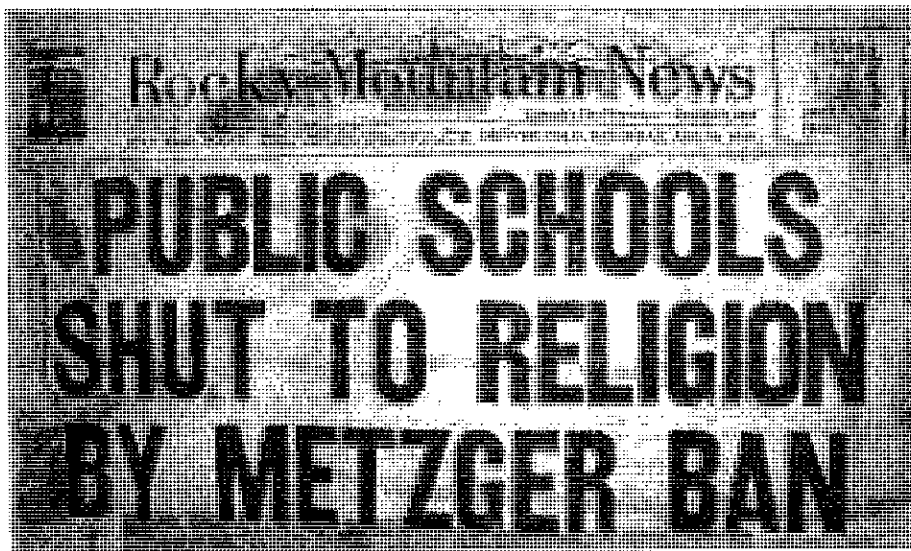
**John Metzger, Attorney General
Rocky Mountain News
1949**



**Racing Commission Hearings at the State Capitol
20 July 1949**

METZGER FARM
Name of Property

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Rocky Mountain News
20 August 1949



Denver Post
13 June 1950

METZGER FARM
Name of Property

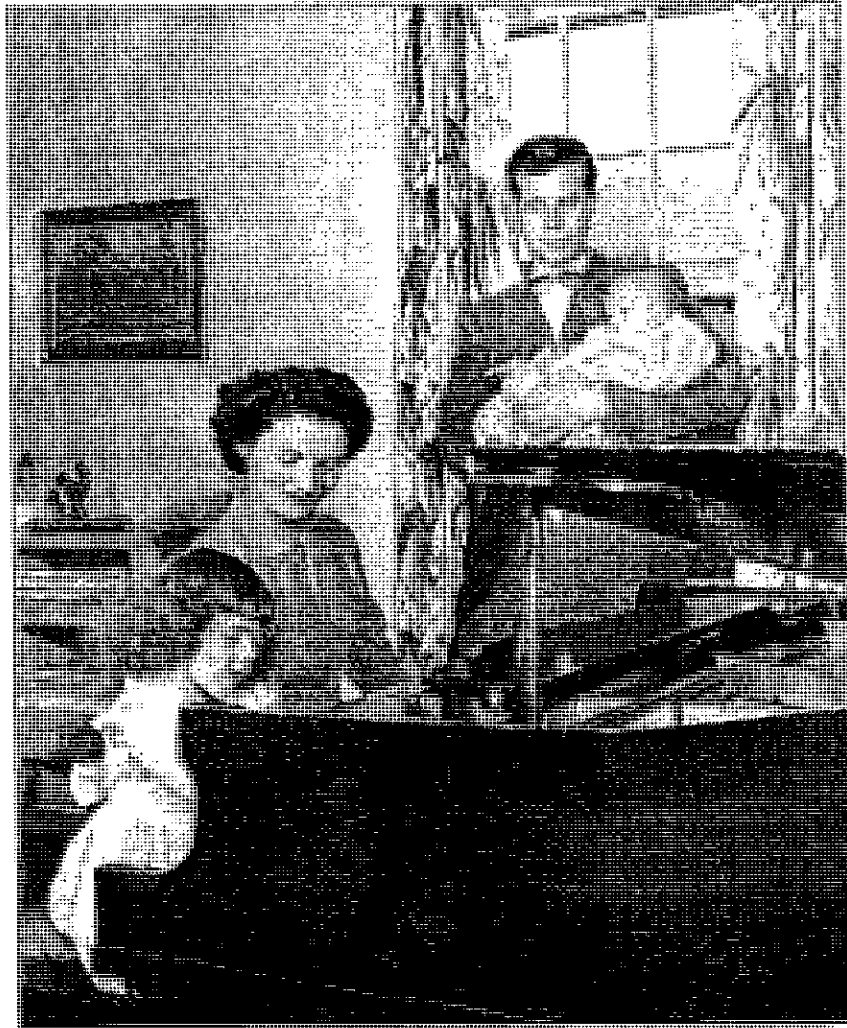
ADAMS, COLORADO
County and State



**Metzger Farm
1950**

METZGER FARM
Name of Property

ADAMS, COLORADO
County and State



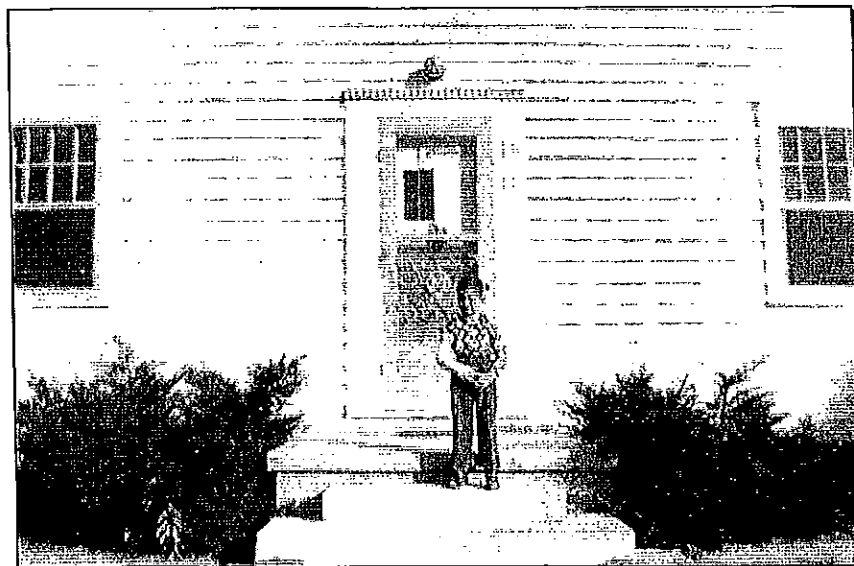
The Metzger Family at Home
Promotional Photograph for the New Colorado Attorney General
1949

METZGER FARM
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**Betty and Karen Metzger
Front Porch of the Farmhouse
1946**



**Bill Metzger
Front Porch of the Farmhouse
Circa 1954**

METZGER FARM
Name of Property

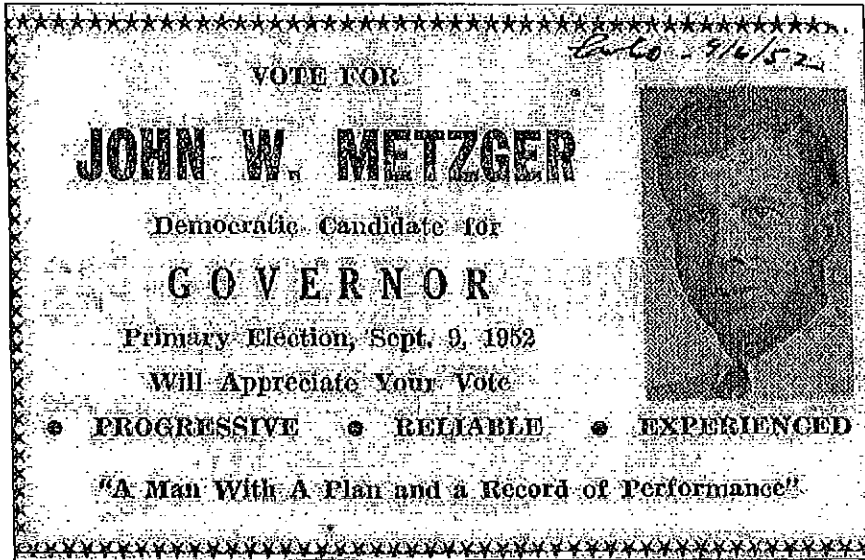
ADAMS, COLORADO
County and State



**John Metzger
Back Porch of the Farmhouse
Circa 1954**

METZGER FARM
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County and State



Advertisement Used in Newspapers Statewide
Candidacy for Governor
1952



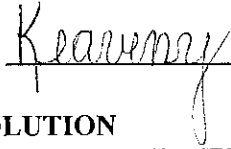
Advertisement Used in Candidacy for Governor
1952

RESOLUTION

RESOLUTION NO. 003

INTRODUCED BY BOARD MEMBER

SERIES OF 2012



A RESOLUTION
SUPPORTING THE NOMINATION OF THE METZGER FARM
TO THE NATIONAL REGISTER OF HISTORIC PLACES

WHEREAS, the Metzger Farm property, located at 12080 Lowell Boulevard, Westminster, Colorado, owned by the Broomfield-Westminster Open Space Foundation since 2006; and

WHEREAS, in October and November of 2005, the City of Westminster and the City and County of Broomfield approved an Intergovernmental Agreement (IGA) to create a foundation for the acquisition, financing, management and maintenance of the Metzger Farm; and

WHEREAS, an application for nomination of the Metzger Farm to the National Register of Historic Places has been made; and

WHEREAS, the Colorado Historic Preservation Review Board will consider the application at an upcoming meeting; and

WHEREAS, the City's Historic Landmark Board considers the Metzger Farm to be a good example of period architecture and a working hobby farm, and the property is associated with a notable person who was prominent in the community and the history of the area.

NOW, THEREFORE, BE IT RESOLVED BY THE HISTORIC LANDMARK BOARD OF THE CITY OF WESTMINSTER:

1. The Historic Landmark Board supports the nomination of the Metzger Farm to the National Register of Historic Places.




PASSED AND ADOPTED this 4th day of September, 2012.



Kaaren Hardy, Co-Chair



Legend

-  Enclave
-  City Limit
-  Assessor Parcels





Agenda Memorandum

City Council Meeting
September 10, 2012



SUBJECT: Resolution No. 26 re Refunding of the 2009 Loan Issued for the South Sheridan Urban Renewal Area

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

Recommended City Council Action

Adopt Resolution No. 26 approving documents in essentially the same form as attached related to the Westminster Economic Development Authority 2012 Loan Refunding to refund the Westminster Economic Development Authority 2009 Loan, to which the City is a party, including the Replenishment Resolution and the City Cooperation Agreement with Westminster Economic Development Authority.

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 Westminster Economic Development Authority (WEDA) Reserve Fund falls below the required minimum amount of \$300,000, 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 is not subject to TABOR requirements.
- This resolution will assist the Authority in obtaining credit enhancement, thus serving to minimize interest costs. 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.

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 loan. It is a routine WEDA-City action when WEDA is issuing debt.

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 loan in the event it is drawn down to meet debt service requirements?
2. Does the City desire to participate in the WEDA Cooperation Agreement?

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.

Background Information

On June 16, 2009, WEDA entered into a loan agreement with Vectra Bank Colorado (Bank) for the South Sheridan URA Project. Prior to executing the loan, on June 8, 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 Loan Agreement; however, 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 South Sheridan URA to not only cover debt service but permit excess sales tax revenues to flow to the General Fund. In 2011, the URA generated \$372,635 in sales tax revenues retained by the City.

On June 11, 2012 the WEDA Board approved a 90-day extension of the 2009 loan, which will expire on September 13, 2012. The extension of the existing loan allowed Staff to explore long-term financing options with the Bank and traditional underwritten structures. After analysis of refinancing options, Staff is recommending that the WEDA Board approve the new loan agreement with the Bank that secures financing through the end of the URA's increment period in 2028. If the loan is not refinanced prior to September 13, the outstanding \$7.420 million principal balance plus accrued interest would be immediately due and payable.

The current loan refinancing is recommended for the following reasons:

- Avoid the principal balloon payment of \$7.420 million
- Engage in a variable interest rate debt structure with manageable level of interest rate risk
- Avoid the cost of issuance expenses of a typical debt issuance
- Maintain 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 Loan Agreement

The refunding proposed for WEDA Board approval will secure financing with a variable rate interest rate indexed off of the 90-day, 180-day, 1-Year or 5-Year LIBOR, at the discretion of WEDA, with the initial period being based on the 5-year LIBOR. Although there would be multiple interest rate resets over the term of the loan, the financing would be secured through its term ending in 2028, which is the year the original bonds issued in 2007 matured.

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, which is \$300,000, 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 behind the loan provides WEDA the ability to secure the financing for the remaining term of the TIF period.

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 within the South Sheridan URA significantly exceed the anticipated annual debt service requirements.

A significant benefit of the refunding is the City's ability to retain excess sales and use tax increment revenues similar to the terms of the existing Loan Agreement. The ability for the City to retain potential excess sales tax increment revenues is particularly important during the current economic climate. The proposed Loan Agreement with the Bank is structured in a similar fashion to the other WEDA loan agreements, which permit excess increment sales tax dollars to flow back to the City. Based on current market conditions where 3-month LIBOR is 0.437% and the 5-year LIBOR is 1.026%, the range of interest rates offered through the proposed agreement are 2.56-2.97%. At these levels, the City will receive sales tax increment revenues in 2013 estimated to be \$1.954 million and in 2014, \$2.139 million.

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 will be available at the City Council meeting on September 10, 2012 to answer City Councillor questions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: 2012 Replenishment Resolution
2012 Cooperation Agreement

RESOLUTION

RESOLUTION NO. 26

INTRODUCED BY COUNCILLORS

SERIES OF 2012

A RESOLUTION CONCERNING THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND ITS LOAN AGREEMENT WITH VECTRA BANK COLORADO; 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; AND OTHER 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. 21, adopted on March 29, 2004 as amended by Resolution No. 13 adopted on February 28, 2005, and Resolution No. 31 adopted on June 8, 2009, the City approved the South Sheridan Urban Renewal Plan (as amended, the “Plan”) pursuant to the Colorado Urban Renewal Law; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Bonds (South Sheridan Urban Renewal Project) Series 2007 in the original aggregate principal amount of \$8,320,000 (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 loan agreement dated as of June 16, 2009 (the “2009 Loan”), between the Authority and Vectra Bank Colorado, National Association (“Vectra”) originally issued in the aggregate principal amount of \$8,075,000 and currently outstanding in the aggregate principal amount of \$7,420,000; and

WHEREAS, in order to refund the 2009 Loan to effect economies of the Authority, the Authority has determined to enter into a Loan Agreement (the “2012 Loan Agreement”) with Vectra to obtain a loan (the “2012 Loan”) in the principal amount of not to exceed \$7,420,000 in order to finance the costs of the refunding (the “Refunding 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 Refunding 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 2012 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, Vectra, as lender, 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 Vectra 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 Loan Agreement.

Section 3. Limitation to Loan and Other Obligations Originally Secured by 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 September 10, 2012.

CITY OF WESTMINSTER, COLORADO

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO)
) SS.
 CITY OF WESTMINSTER)

I, Linda Yeager, 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 special meeting held on September 10, 2012.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the regular meeting of September 10, 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 September 10, 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 September 10, 2012.

(SEAL)

 City Clerk

Exhibit A
(Form of Notice of Meeting)

2012 COOPERATION AGREEMENT
(SOUTH SHERIDAN URBAN RENEWAL PROJECT)
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS COOPERATION AGREEMENT (this "Agreement"), dated as of September 10, 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 South Sheridan Urban Renewal Plan (the "Plan") and the urban renewal project described therein (the "Urban Renewal Project"); and

WHEREAS, the Urban Renewal Project was 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 (South Sheridan Urban Renewal Project) Series 2007 in the original aggregate principal amount of \$8,320,000 (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 has previously entered into a Loan Agreement (the "2009 Loan Agreement") with Vectra Bank Colorado, National Association ("Vectra") to obtain a Loan in the total principal amount of \$8,075,000 (the "2009 Loan"); and

WHEREAS, the Authority has determined that it is in the best interest of the Authority to refund the 2009 Loan by entering into a 2012 Loan Agreement (the “2012 Loan Agreement”) with Vectra in the principal amount of not to exceed \$7,420,000 (the “2012 Loan”) in order to finance the costs of refunding the 2009 Loan (the “Refunding Project”); and

WHEREAS, the City Council of the City (the “Council”) has adopted its Resolution 12-26 (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 2012 Loan as defined in the 2012 Loan Agreement.

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 2012 Loan and the Refunding 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 2012 Loan and the Refunding 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 2012 Loan or the Refunding 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 “Permitted Subordinate Debt” for purposes of the 2012 Loan Agreement. The Authority shall cause such amounts to be paid from and to the extent of Pledged Revenue (as defined in the 2012 Loan Agreement) available for the payment of Permitted Subordinate Debt in accordance with Section 5.11(d) of the 2012 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 2012 Loan or the Refunding 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 Vectra in accordance with the 2012 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 2012 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 2012 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 Vectra.

(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 Vectra 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 Vectra.

(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 2012 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: _____
City Manager

ATTEST:

ATTEST:

Secretary

City Clerk

Executive Director

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

By: _____
Authority Attorney

By: _____
City Attorney



Agenda Item 11 A

Agenda Memorandum

City Council Meeting
September 10, 2012



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

Prepared By: Walter Patrick, Planner II

Recommended City Council Action

Pass Councillor's Bill No. 26 on second reading making revisions to Title XI of the Westminister Municipal Code regarding accessory buildings.

Summary Statement

- Each year, staff proposes updates to the Westminister 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.
- This amended Councillor's Bill was approved on first reading by City Council on August 27, 2012, by a vote of 4-3 (Atchison, McNally, Major).

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **26**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Winter - Kaiser

**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, September 10, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (August 27, 2012)
- 3. Purpose of Special WEDA Meeting is to consider**
 - A. Resolution No. 145 re Loan Approval for up to \$7.420 Million to Refinance an Existing Loan for the South Sheridan Urban Renewal Project
 - B. Orchard Parkway, 138th Avenue to 144th Avenue Project and 142nd Avenue from Huron Street to Orchard Parkway – Engineering Design Contract
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, AUGUST 27, 2012, AT 8:03 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 Kaiser, to approve the minutes of the meeting of August 13, 2012, as written. The motion carried unanimously.

RESOLUTION NO. 144 – LOAN TO REFINANCE EXISTING LOAN FOR NORTH HURON URA

It was moved by Board Member Atchison and seconded by Board Member Kaiser to 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. On roll call vote, the motion passed unanimously.

ADJOURNMENT

There was no further business for the Authority's consideration, and it was moved by Atchison, seconded by Major, to adjourn. The motion passed and the meeting adjourned at 8:04 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
September 10, 2012



SUBJECT: Resolution No. 145 re Loan Approval for up to \$7.420 Million to Refinance an Existing Loan for the South Sheridan Urban Renewal Project

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

Recommended Board Action

Adopt Resolution No.145 authorizing the Executive Director or his designee to enter into a Loan Agreement for up to \$7.420 million with Vectra Bank Colorado to refinance an existing Loan between the Westminster Economic Development Authority and the Bank for the South Sheridan Urban Renewal Project (URA), as well as approving loan documents, in essentially the same form as attached, including but not limited to the Loan Resolution; Loan Agreement; and Cooperation Agreement with the City.

Summary Statement

- The recommended action secures variable rate financing through the end of 2028. The rate is tied to a LIBOR index.
- 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 September 10, 2012 authorizing WEDA to enter into the agreement related to the urban renewal project.
 - b) Loan Agreement dated September 13, 2012 between WEDA and the Lender Bank, Vectra Bank Colorado (Bank), Colorado.
 - c) Cooperation Agreement dated September 10, 2012 between WEDA and the City.
- The WEDA Board reviewed this refinancing at their August 27th Post Meeting and directed Staff to bring this item forward for official action.

Expenditure Required: Up to \$7.420 million

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

Policy Issue

Should WEDA refund the 2009 South Sheridan Urban Renewal Project (URA) Loan?

Alternatives

Decline or delay approval of the resolution concerning refunding of the 2009 WEDA Loan - This is not recommended. If the WEDA Board were not to approve the new rate, the outstanding \$7.420 million balance of the 2009 Loan plus accrued interest would be immediately due and payable. Of the solutions investigated, the proposed action provides a financially prudent variable rate solution through the term of the original bonds issued in 2007. The interest rate would be indexed off of the 90-day, 180-day, 1-Year or 5-Year LIBOR, at the discretion of WEDA and reset based on the related interest period chosen. Due to the principal amount of the loan, the variable rate option will allow WEDA to take advantage of a manageable amount of interest rate risk, which is tied to a recognized index, and WEDA will not incur cost of issuance expenses of a typical debt issuance. 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 2007, WEDA issued \$8.320 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 below investment grade, 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.

In 2009, WEDA refinanced three outstanding Variable Rate Revenue Bonds that had been secured by letters of credit from DEPFA Bank. On June 16, 2009, WEDA entered into an \$8.075 million loan agreement with the Bank to refinance the WEDA 2007 Revenue Bonds (South Sheridan Project). Under the loan agreement the interest rate the Bank charged WEDA was set at 4.95% for a three year period ending June 15, 2012. On or before June 16, 2012 the Bank had the right to determine a new interest rate to take affect on June 16, 2012. The Loan Agreement, as approved, did not specify a specific interest rate reset methodology. Thus, the Bank and staff agreed to negotiate the terms needed to establish a mutually acceptable interest rate reset formula for a long-term borrowing solution.

On June 11, 2012, the Bank offered and the WEDA Board approved a 90 day extension of the original loan at an interest rate of 70% of 3 month Libor plus 2.25%. This rate was 2.58% starting on June 16, 2012 through and including September 13, 2012.

Under the terms of the new loan agreement, the Bank will offer interest rate reset options to consider prior to the expiration of the then existing reset modes described below. Depending on the current and projected direction of interest rates as the reset date approaches, Staff will manage interest rate risk with one of the following interest reset modes:

- 70% of the 1-month LIBOR plus 2.25%
- 70% of the 3-month LIBOR plus 2.25%
- 70% of the 1-year LIBOR plus 2.25%
- 70% of the 5-year LIBOR plus 2.25%

The initial rate will be set at the 70% of 5-year LIBOR plus 2.25%.

The London Interbank Offered Rate (LIBOR) is similar to the US Federal Reserve's Federal Funds rate, which is the rate US Banks charge to loan money between each other. LIBOR is the rate international banks will charge each other to lend US dollar deposits they hold and it sets the base rate from which lending rates are determined for banks and other entities based on their credit worthiness.

WEDA has employed variable interest rate reset options traditionally based on 1-week reset modes but has recently fixed two larger WEDA debt issues, Mandalay Gardens and North Huron URA projects, due significantly to the favorable capital market rates offered. Staff believes it prudent to keep the South Sheridan debt variable with the Bank for the following reasons:

- Since the principal amount is \$7.420 million, exposure to increases in interest payments when interest rates rise in comparison to the other larger issues mentioned isn't as significant.
- WEDA will not incur Cost of Issuance expenses typical in an underwritten debt issuance, which were projected to be \$105,000.
- The flexibility to manage interest rate risk under the terms of the Loan Agreement provides Staff the ability to respond to the dynamics of financial market environment relative to interest rates through the duration of the agreement in 2028. If Staff believes that interest rates are more likely to rise versus fall when a reset date approaches, Staff may reset the term with a longer interest rate reset period and conversely, when rates are more likely to decrease, a shorter reset period may be selected.
- Staff believes it is prudent to lock in the five year rate at this time. The rate will be finalized at or before closing.

The proposed Loan Agreement with the Bank is structured in a similar fashion to the other WEDA loan agreements, which permit excess sales tax increment dollars to flow back to the City. Based on current market conditions where 3-month LIBOR is 0.437% and the 5-year LIBOR is 1.026%, the range of interest rates offered through the proposed agreement are 2.56-2.97%. At these levels, the City will receive sales tax increment revenues in 2013 estimated to be \$1.954 million and in 2014 \$2.139 million.

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.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments: Loan Agreement
Cooperation Agreement
Loan Resolution

LOAN AGREEMENT

by and between

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
as Borrower

and

VECTRA BANK COLORADO, NATIONAL ASSOCIATION
as Lender

regarding

[\$7,420,000]
Westminster Economic Development Authority
Tax Increment Revenue Refunding Loan
(South Sheridan Urban Renewal Project)
Series 2012

Dated as of September 13, 2012

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into as of September 13, 2012 by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (the “Borrower”), a public body corporate and politic duly existing under the laws of the State of Colorado, and **VECTRA BANK COLORADO, NATIONAL ASSOCIATION**, a national banking association, 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 “South Sheridan Urban Renewal Plan” was originally approved on March 29, 2004, amended on February 28, 2005, and further amended on June 8, 2009 (as so amended, the “Urban Renewal Plan”) pursuant to resolutions duly and regularly adopted by the City Council of the City approving 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 previously issued, for the purpose of paying a portion of the costs of the Urban Renewal Project, its Tax Increment Adjustable Rate Revenue Bonds (South Sheridan Urban Renewal Project) Series 2007 (the “Series 2007 Bonds”); and

WHEREAS, for the purpose of refunding the Series 2007 Bonds, the Lender made a prior loan (the “Series 2009 Loan”) to the Borrower pursuant to the terms of a Loan Agreement dated as of June 16, 2009, as amended pursuant to a First Amendment to Loan Agreement dated as of June 11, 2012 (as so amended, the “2009 Loan Agreement”); and

WHEREAS, the Borrower and the Lender desire to refinance the Series 2009 Loan on terms and conditions different from those set forth in the 2009 Loan Agreement; and

WHEREAS, the Borrower has determined that it is in the best interests of the Borrower and the citizens and taxpayers of the City to refinance the Series 2009 Loan on such different terms and conditions; and

WHEREAS, for such purpose, the Borrower requested and the Lender has agreed to make a loan available to the Borrower in the original principal amount of \$[7,420,000] (the “Loan” or the “Series 2012 Loan”) on the terms and conditions set forth in this Agreement; 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

“*2009 Loan Agreement*” is defined in the recitals hereof.

“*2009 Loan Payment Fund*” means the Loan Payment Fund established and held under the 2009 Loan Agreement.

“*2009 Reserve Fund*” means the Reserve Fund established and held under the 2009 Loan Agreement.

“*2009 Revenue Fund*” means the Revenue Fund established and held under the 2009 Loan Agreement.

“*2009 Supplemental Reserve Fund*” means the Supplemental Reserve Fund established and held under the 2009 Loan Agreement.

“*2012 Loan Payment Fund*” means the Loan Payment Fund, as defined in this Article I.

“*2012 Reserve Fund*” means the Reserve Fund, as defined in this Article I.

“*2012 Reserve Requirement*” means the Reserve Requirement, as defined in this Article I.

“*2012 Revenue Fund*” means the Revenue Fund, as defined in this Article I.

“*2012 Supplemental Reserve Fund*” means the Supplemental Reserve Fund, as defined in this Article I.

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

“Additional Subordinate Debt” means Debt issued pursuant to the provisions of Section 5.11(d) hereof.

“Authorized Person” means (a) the Chairperson or Executive Director of the Borrower or any designee thereof; (b) the City Finance Director; and/or (c) any other individual authorized by the Board to act as an Authorized Person hereunder, provided that the Borrower has provided evidence of such authority to the Lender in a form acceptable to the Lender.

“Authorizing Resolution” means Resolution No. ____, Series of 2012 adopted by the Board on September 10, 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.

“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 any day other than a Saturday, a Sunday, or any holiday on which the Lender is closed for business.

“City” means the City of Westminster, Colorado.

“City Cooperation Agreement” means the 2012 Cooperation Agreement Between the City of Westminster and the Westminster Economic Development Authority dated as of September ____, 2012.

“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 September 13, 2012.

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

“Counties” means, collectively, Adams County, Colorado and Jefferson County, Colorado.

“*County Assessors*” means, collectively, the Adams County Assessor and the Jefferson County Assessor.

“*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 (other than the obligations represented by this Agreement and the Note) 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 Treasurer of each of the Counties 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.

“*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.

“*Developer*” means Shoenberg Venture, a Colorado Joint Venture.

“*Developer Debt*” means the obligations of the Borrower to the Developer pursuant to Sections 4.2 and 4.3 of the Shoenberg Redevelopment Agreement.

“*Developer Debt Payment Obligations*” means an annual amount equal to 50% of the Shoenberg Center Sales Taxes for the applicable Fiscal Year, payable quarterly on the first day of February, May, August, and November each year until such time as the total paid by WEDA in Developer Debt is equal to \$5,000,000. As of the date hereof, the total paid by WEDA in Developer Debt is \$4,335,285 and \$664,715 remains due and owing.

“*Event of Default*” has the meaning set forth in Section 8.01 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

Assessors 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 Twelve Month Period 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.

“*Five Year Interest Period*” means five consecutive Twelve Month Periods during which the Loan shall bear interest at the Five Year Rate.

“*Five Year Rate*” means a rate of interest per annum equal to the sum of (a) 70% of the Five Year Index plus (b) 2.25%.

“*Five Year Index*” means the [5-Year LIBOR]. [WILL EXPAND ON DEFINITION]

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

“*Interest Period*” means any one of the following, as then in effect with respect to the Loan pursuant to the provisions of Section 2.04(a) hereof: (a) the Ninety Day Interest Period; (b) the Six Month Interest Period; (c) the One Year Interest Period; and (d) the Five Year Interest Period.

“*Interest Period Selection Certificate*” means a certificate of the Borrower to the Lender evidencing the Borrower’s selection of the next succeeding Interest Period pursuant to the provisions of Section 2.04(a)(ii) hereof, in substantially the form of Exhibit E attached hereto.

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

“*Lender*” means Vectra Bank Colorado, National Association, a national banking association, 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 \$[7,420,000] as evidenced by the Note and made in accordance with the terms and provisions of this Agreement.

“*Loan Amount*” means [Seven Million Four Hundred Twenty Thousand] and 00/100 U.S. Dollars (\$[7,420,000]).

“*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.

“*Loan Requirements*” means, with respect to any Payment Date or any other specified period, an amount equal to the sum of the following with respect to any such date or period: (a) the principal due on the Loan and (b) the interest due on the Loan, computed by the Lender based on the actual rate of interest borne or to be borne by the Loan for the applicable period.

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

“*Maximum Sales Tax Rate*” means 3.00%.

“*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.

“*Ninety Day Interest Period*” means a period of ninety (90) consecutive days during which the Loan shall bear interest at the Ninety Day Rate.

“*Ninety Day Rate*” means a rate of interest per annum equal to the sum of (a) 70% of the Ninety Day Index plus (b) 2.25%.

“*Ninety Day Index*” means the [90-Day LIBOR]. [WILL EXPAND ON DEFINITION]

“*Note*” means the Promissory Note evidencing the Loan issued in the original principal amount of \$[7,420,000] from the Borrower, as maker, to the Lender, as payee, and dated as of September 13, 2012.

“*One Year Interest Period*” means one Twelve Month Period during which the Loan shall bear interest at the One Year Rate.

“*One Year Rate*” means a rate of interest per annum equal to the sum of (a) 70% of the One Year Index plus (b) 2.25%.

“*One Year Index*” means the [1-Year LIBOR]. [WILL EXPAND ON DEFINITION]

“*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 an Interest Payment Date, as the context requires, and the Maturity Date.

“*Permitted Investments*” means (a) certificates of deposit in 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 the Lender which bears interest at the published money market rate of 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 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.

“*Permitted Subordinate Debt*” means the following Debt, if any, secured by a lien on all or any portion of the Pledged Revenue subordinate to the lien thereon of the Loan: (a) the payment obligations of the Borrower under the City Cooperation Agreement; (b) 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 Treasurer of each of the Counties as contemplated by Section 31-25-107(9)(a)(III), Colorado Revised Statutes; (c) Developer Debt; and (d) any Additional Subordinate Debt issued pursuant to the provisions of Section 5.11(d) hereof.

“*Pledged Property Tax Revenues*” means, for the relevant 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 any mill levy imposed by any special district formed after the Closing Date 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 the Closing Date, 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 for each of the Counties; provided, however, that such amount shall be reduced by any lawful collection fee charged by the Counties.

“*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 the applicable Sales Tax Rate Certificate with respect to such

Sales Tax Rate Period and, subject to the provisions of Section 2.09 hereof, approved (or deemed approved) by the Lender, provided, however, that:

(a) for any Sales Tax Rate Period with respect to which a Sales Tax Rate Certificate has not been provided by the Borrower or, if provided, has not (subject to the provisions of Section 2.09 hereof), been approved (or deemed approved) by the Lender on or before the last Business Day of February of the year in which such certificate was submitted, the Pledged Sales Tax Rate for such period shall mean 3.00%;

(b) for any Sales Tax Rate Period immediately succeeding a Sales Tax Rate Period in which (i) an Event of Default occurred which has not been cured to the satisfaction of the Lender or (ii) there was a draw on the Reserve Fund which has not yet been replenished, the Pledged Sales Tax Rate shall mean 3.00%; 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 that portion of the Sales Tax revenue equal to the product of the Pledged Sales Tax Rate *times* the amount of the taxable transactions subject to the Sales Tax in the Urban Renewal Project Area, less the Sales Tax Base Amount, and less 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.

“Prime Rate” means the variable rate of interest per annum, as adjusted from time to time, established by the Lender as the Lender’s prime rate. The Prime Rate is a reference rate that serves as the basis upon which effective rates of interest are calculated for loans making reference to the Prime Rate. The Prime Rate is only one of the Lender’s reference rates (some of which other reference rates may determine prime on another basis) and may not be the lowest or best of the Lender’s reference rates or other rates of interest.

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

“Prior Year Gross Sales Tax” means, with respect to the immediately preceding Fiscal Year, an amount equal to the total Sales Tax revenue of the City (expressed in dollars) attributable to transactions occurring in the Urban Renewal Project Area during such Fiscal Year (as reported by the City). For purposes of clarification, “Prior Year Gross Sales Tax” includes Sales Tax revenue attributable to transactions occurring through December 31 of such Fiscal Year which are reported and with respect to which Sales Tax is collected on or before January 31 of the immediately following Fiscal Year.

“Prior Year Sales Tax Increment” means, with respect to the immediately preceding Fiscal Year, an amount equal to the Prior Year Gross Sales Tax for the same Fiscal Year *minus* the Sales Tax Base Amount.

“Projected Available Revenue” means, for the applicable Fiscal Year, an amount equal to the Projected Pledged Property Tax Revenues for such Fiscal Year *minus* the Reserve Fund

Deficit *plus* the Supplemental Reserve Fund Balance *plus* the Subordinate Obligation Fund Balance.

“*Projected Debt Service*” means, with respect to the Fiscal Year for which it is calculated, the sum of Senior Debt Service Requirements and Subordinate Debt Service Requirements for such Fiscal Year.

“*Projected Incremental Taxable Sales*” means, for the relevant Fiscal Year, the quotient of the Prior Year Sales Tax Increment divided by the Maximum Sales Tax Rate.

“*Projected Pledged Property Tax Revenues*” means, for the relevant Fiscal Year, the amount of Pledged Property Tax Revenues projected to be generated in such Fiscal Year calculated as (a) the most recent Final Assessed Valuation of the Urban Renewal Project Area *minus* (b) the sum of the most recent certified Property Tax Base Amount for each of the Counties, *multiplied by* (c) (i) the sum of the most recent ad valorem property tax mill levies certified by all taxing jurisdictions within the Urban Renewal Project Area *less* (ii) the sum of all mill levies (if any) certified by a special district formed after the Closing Date pursuant to Title 32, Article 1, Colorado Revised Statutes, which mill levies are in addition to, and not a replacement for, property taxes levied by taxing entities in existence as of the Closing Date.

“*Property Tax Base Amount*” means the amount certified by each of the County Assessors as the valuation for assessment of all taxable property within the Urban Renewal Project Area last certified by the County Assessors prior to the adoption of the Urban Renewal Plan; 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 2011 (collection year 2012) certified by the Adams County Assessor was \$1,941,560 and the Property Tax Base Amount for calendar year 2011 (collection year 2012) established by the Jefferson County Assessor was \$3,740,763.

“*Proposed Pledged Sales Tax Rate*” means, for the relevant Sales Tax Rate Period, the quotient of the Required Sales Tax Revenue *divided by* the Projected Incremental Taxable Sales, as set forth in the applicable Sales Tax Rate Certificate, which shall not exceed 3.00%.

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

“*Replenishment Resolution*” means Resolution No. ____, Series of 2012 adopted by the City Council on September 10, 2012, expressing the City Council’s present intent to lend additional moneys to the Borrower to maintain the Reserve Fund at the Reserve Requirement.

“*Required Sales Tax Revenue*” means, with respect to the applicable Fiscal Year, an amount equal to Projected Debt Service *minus* Projected Available Revenue.

“*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 Fund Deficit*” means, as of February 1 of the relevant year, the amount by which (if any) the Reserve Fund balance is less than the Reserve Fund Requirement, stated as a positive number.

“*Reserve Requirement*” means an amount equal to \$300,000.

“*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 general sales tax at the rate of 3.00%, 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. For purposes of clarification, the City’s open space sales tax (at the rate of 0.25%) and the City’s public safety sales tax (at the rate of 0.60%) are not part of the City’s general sales tax of 3.00% and do not constitute “Sales Tax” or “Sales Taxes.”

“*Sales Tax Base Amount*” means \$567,400 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 ending on the last day of the month immediately prior to the effective date (as originally approved) of the Urban Renewal Plan.

“*Sales Tax Rate 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 2.09 hereof).

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

“*Senior Debt Service Requirements*” means, with respect to any applicable Fiscal Year, an amount equal to the sum of the following with respect to such Fiscal Year: (a) the principal due on the Loan and (b) the interest due on the Loan, computed by the Lender as follows:

(i) if the Loan is in an Interest Period where the actual rate of interest to be borne by the Loan during the entire applicable Fiscal Year is known at the time of the relevant calculation, then the interest shall be calculated based on the actual rate of interest in effect for such Fiscal Year; or

(ii) if the Loan is in an Interest Period where the actual rate of interest to be borne by the Loan for the entire applicable Fiscal Year is not known at the time of the relevant calculation, then the interest shall be calculated by assuming that the Interest Period currently in effect shall be and remain in effect for the entire applicable Fiscal Year.

“*Shoenberg Center*” means the real property described in Section 1.11 (under the definition of “Property”) of the Shoenberg Redevelopment Agreement.

“*Shoenberg Center Obligation*” means 50% of the Shoenberg Center Sales Taxes up to but not exceeding \$5,000,000.

“*Shoenberg Center Sales Taxes*” means, with respect to the relevant Fiscal Year, the incremental Sales Tax revenue in excess of the base amount of \$87,645 which is actually collected from transactions occurring in the Shoenberg Center during such Fiscal Year (as reported by the City), expressed in dollars. For purposes of clarification, such amount includes sales occurring through December 31 of the applicable Fiscal Year which are reported and with respect to which sales tax is collected on or before January 31 of the following Fiscal Year.

“*Shoenberg Redevelopment Agreement*” means the Shoenberg Shopping Center Redevelopment Agreement dated February 17, 2006 between the Borrower and the Developer.

“*Six Month Interest Period*” means a period of one hundred and eighty (180) consecutive days during which the Loan shall bear interest at the Six Month Rate.

“*Six Month Rate*” means a rate of interest per annum equal to the sum of (a) 70% of the Six Month Index *plus* (b) 2.25%.

“*Six Month Index*” means the [180-Day LIBOR]. [WILL EXPAND ON DEFINITION]

“*Subordinate Debt Service Requirements*” means, with respect to the relevant Fiscal Year, the sum of the regularly scheduled principal and interest payments on all Permitted Subordinate Debt of the Borrower coming due in such Fiscal Year. With respect to the Developer Debt, “regularly scheduled principal and interest payments” shall mean the sum of (a) an amount equal to the Developer Debt Payment Obligations (as defined in this Article I) for the immediately preceding Fiscal Year *plus* (b) any amounts representing Developer Debt Payment Obligations due and owing in the immediately preceding Fiscal Year which remain unpaid by Borrower.

“*Subordinate Obligations 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 4.07 hereof.

“*Subordinate Obligations Fund Balance*” means, as of February 1 of the relevant year, the amount then on deposit in the Subordinate Obligations Fund.

“*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.

“*Supplemental Reserve Fund Balance*” means, as of February 1 of the relevant year, the then current amount on deposit in the Supplemental Reserve Fund.

“*Supplemental Reserve Fund Maximum*” means \$650,000.

“*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.

“*Twelve Month Period*” means any relevant period of twelve (12) consecutive calendar months.

“*Urban Renewal Project Area*” means the area 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 \$[7,420,000] (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. Series 2009 Fund Balances. On the Closing Date, from the funds and accounts held by the Lender under the 2009 Loan Agreement, the Lender shall cause the following transfers and credits to be made:

- (a) from the 2009 Revenue Fund, the amount of \$[52.00], representing the balance therein, shall be credited to the 2012 Revenue Fund;
- (b) from the 2009 Reserve Fund, having a balance of [\$662,023.00]:
 - (i) the amount of \$300,000.00, being the 2012 Reserve Requirement, shall be credited to the 2012 Reserve Fund; and
 - (ii) the amount of \$[362,023.00], representing the balance therein, shall be credited to the 2012 Supplemental Reserve Fund;
- (c) from 2009 Loan Payment Fund, having a balance of \$[458,591.00]:
 - (i) the amount of \$_____ shall be applied to the payment of the interest due on the Series 2009 Loan from June 1, 2012 to the Closing Date; and
 - (ii) the balance of \$_____ shall be credited to the 2012 Loan Payment Fund; and

(d) from the 2009 Supplemental Reserve Fund, having a balance of \$[1,079,487.00]:

(i) the amount of \$_____ shall be credited to the 2012 Transaction Costs Fund for application to the payment of the costs of issuance in connection with the Loan;

(ii) the amount of \$_____ shall be credited to the 2012 Loan Payment Fund so that, when combined with the amount set forth in Section 2.02(c)(ii) above, the amount therein shall be equal to the Loan Requirements for the Fiscal Year in which the Closing Date occurs;

(iii) the amount of \$_____ shall be credited to the 2012 Subordinate Obligations Fund, being the amount necessary to pay the Subordinate Obligations for the Fiscal Year in which the Closing Date occurs; and

(iv) the amount of \$_____, representing the balance therein, shall be credited to the 2012 Supplemental Reserve Fund.

Section 2.03. Application of Loan Proceeds. On the Closing Date, the Lender shall disburse the gross Loan proceeds in the amount of \$[7,420,000] and shall apply such amount to the payment of the entire principal amount of the Series 2009 Loan outstanding which, when combined with the amount set forth in Section 2.02(c)(i) above, shall cause the Series 2009 Loan to be paid in full.

Section 2.04. Interest Period; Interest Rate; Default Rate; Interest Payments; Principal Payments.

(a) ***Interest Period.*** The Borrower shall select each Interest Period for the Loan as follows:

(i) ***Initial Interest Period.*** The Borrower has selected the Five Year Interest Period as the initial Interest Period on the Loan and such Five Year Interest Period shall commence on the Closing Date.

(ii) ***Subsequent Interest Periods.*** Thereafter, on the Business Day which is not less than ten Business Days prior to the last day of the Interest Period then applicable to the Loan, the Borrower shall notify the Lender in writing of the Interest Period selected by the Borrower for the next succeeding Interest Period and such selection shall dictate the rate of interest to be borne by the Loan for such succeeding Interest Period (provided that if Event of Default shall occur during such Interest Period, the provisions of Section 2.04(c) shall apply). Such written notice shall be given by submitting to the Lender an Interest Period Selection Certificate in substantially the form of Exhibit E attached hereto, signed by an Authorized Person, and the Lender shall be entitled to rely upon such certificate with respect to the Interest Period so selected. If the Lender is not in receipt of an Interest Period Selection Certificate by the date which is ten Business Days prior to the last day of the Interest Period then applicable to the

Loan, the Interest Period then in effect shall be deemed selected by the Borrower for the next succeeding Interest Period.

(iii) *Interest Rate Resets.* For the initial Interest Period selected by the Borrower pursuant to Section 2.04(a)(i) above, the rate of interest applicable to the Loan shall take effect on the Closing Date and shall remain in effect through and including the last day of such Interest Period. For each subsequent Interest Period selected by the Borrower pursuant to Section 2.04(a)(ii) above, the rate of interest applicable to the Loan shall take effect on the first day of the Interest Period so chosen and shall remain in effect through and including the last day of that Interest Period.

(b) *Interest Rates.* Subject to the provisions of Section 2.04(c) below, the outstanding principal of the Loan shall bear interest at the applicable rate per annum as set forth below:

(i) at the Ninety Day Rate during each Ninety Day Interest Period selected as the applicable Interest Period by the Borrower;

(ii) at the Six Month Rate during each Six Month Interest Period selected as the applicable Interest Period by the Borrower;

(iii) at the One Year Rate during each One Year Interest Period selected as the applicable Interest Period by the Borrower; and

(iv) at the Five Year Rate during each Five Year Interest Period selected as the applicable Interest Period by the Borrower.

(c) *Default Rate.* If, following the occurrence of an Event of Default hereunder, such default has not been cured to the satisfaction of the Lender within 30 days from the occurrence thereof, interest on the outstanding principal of the Loan shall accrue (commencing on the 31st date after the occurrence of such Event of Default) at a rate per annum equal to the greater of (i) the interest rate then borne by the Loan pursuant to Section 2.04(a) above or (ii) the sum of Prime Rate plus four percent (4.00%) (the "Default Rate"). The Default Rate shall remain in effect until such time as the applicable Event of Default is cured to the satisfaction of the Lender.

(d) *Maximum Rate.* Notwithstanding the foregoing provisions, the Loan shall not bear interest at a rate in excess of any limitation specifically required by law. However, in computing amounts due from the Borrower hereunder, the provisions of Section 2.05 hereof shall apply.

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

(f) *Principal Payments.* Repayment of Loan principal shall be due and payable on the 1st day of December each year, commencing December 1, 2012, in the

amounts corresponding to the Principal Payment Dates set forth in Exhibit B attached hereto.

(g) **Interest Calculation.** All interest and fees due and owing hereunder shall be calculated on the basis of a 360-day year and actual number of days elapsed in any applicable period.

Section 2.05. Maximum Interest Rate. If the interest due and payable on any obligation hereunder computed at the applicable rate as provided in Sections 2.04(a), (b) and (c) hereof is in excess of the amount actually paid by the Borrower as a result of the provisions of Section 2.04(d) hereof, the difference between what would have been the interest payable on such obligation had it accrued interest at the rate provided in Sections 2.04(a), (b) and (c) hereof and the actual interest paid by the Borrower on such obligation (the “Interest Differential”) shall remain an obligation of the Borrower. Notwithstanding anything herein or in the other Financing Documents to the contrary, if at any time the amount of interest required to be paid hereunder exceeds the sum of interest on all obligations due hereunder at the rate computed as provided in Sections 2.04(a), (b) and (c) hereof plus the then applicable Interest Differential and the Lender shall not receive payment at such interest rate, any subsequent scheduled reduction in such interest rate shall not reduce the rate of interest utilized for the calculation of amounts payable to the Lender hereunder until the total amount due has been paid to the Lender as if the applicable rate computed as provided in Sections 2.04(a), (b) and (c) hereof had at all times been utilized.

Section 2.06. Loan Prepayment.

(a) **Prepayment With Termination Fee.** At all times that the Loan is in a Five Year Interest Period, the Loan may be prepaid, in whole or in part, on any date prior to the second anniversary of the first day of the Five Year Interest Period then in effect upon payment of a prepayment price equal to the sum of (i) the principal amount of the Loan so prepaid; (ii) accrued interest thereon to the date of prepayment; and (iii) a termination fee equal to 1.0% of the principal amount of the Loan then outstanding.

(b) **Prepayment With No Termination Fee.** At such time as (i) the Loan is in a Five Year Interest Period and the second anniversary of the first day of such Five Year Interest Period has occurred and/or (ii) the Loan is in any Interest Period other than a Five Year Interest Period, the Loan may be prepaid, in whole or in part, on any date, at a prepayment price equal to the principal amount of the Loan so prepaid plus accrued interest thereon to the date of prepayment, without termination fee, premium, or penalty.

Section 2.07. Statements of Fund Activity. The Lender agrees to send monthly statements in electronic format itemizing all transactions in the funds maintained by the Lender hereunder to the Borrower at the e-mail address set forth in Section 9.05 hereof or at such other address as the Borrower shall specify to the Lender in writing.

Section 2.08. Expenses and Attorneys’ Fees. In the event that a claim by the Lender is brought against the Borrower 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 enforcing the collection of ad valorem property taxes or Sales Taxes in the amounts required hereunder or 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 2.09. Provisions Regarding Sales Tax Rate Certificate. Each Sales Tax Rate 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 a Sales Tax Rate 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 and the Proposed Pledged Sales Tax Rate set forth therein. The Lender shall be entitled to object to a Sales Tax Rate Certificate and the Proposed Pledged Sales Tax Rate set forth therein 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. If making an objection, the Lender shall use commercially reasonable efforts to provide notice of such objection to the Borrower as promptly as possible after receipt of the Sales Tax Rate Certificate, but in no event later than the applicable February 15. If, following any such objection by the Lender, no resolution has been reached by the Borrower and the Lender by the last Business Day in February of that year, the Proposed Pledged Sales Tax Rate shall *not* be deemed approved by the Lender and the provisions of clause (a) of the definition of "Pledged Sales Tax Rate" set forth in Article I hereof shall apply.

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 hereof 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 a letter from Bond Counsel to the effect that the Lender may rely upon an opinion of Bond Counsel addressed to the Borrower as if such opinion were addressed to the Lender; such opinion being dated the Closing Date and stating 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; and which opinion shall address the tax exemption of the interest on the Loan for state and federal purposes and include a statement to the effect that the Loan is deemed designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3)(B) of the Code. The opinion addressed to the Borrower and the reliance letter addressed to the Lender shall be 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 Replenishment Resolution and the Urban Renewal Plan have been duly and properly adopted by the City Council of the City, have not been rescinded, revoked, or amended since such adoption and each remain in full force and effect; that the City Cooperation Agreement has been duly authorized and delivered by the City and constitutes a valid and binding obligation of the City enforceable in accordance with its terms; 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.

(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 Developer Debt and the contingent liability set forth in the City Cooperation Agreement.

ARTICLE IV

FUNDS

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

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

Section 4.02. Flow of Funds. On the Closing Date, the Borrower shall cause to be transferred to the Lender any Net Pledged Revenue then held by the Borrower. 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. For purposes of the following, when payment of more than one purpose is required at any single priority level, such credits shall rank *pari passu* with each other.

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; and

THIRD: to the Supplemental Reserve Fund, all Net Pledged Revenue received in the then current Fiscal Year (after the payments and accumulations set forth in clauses FIRST and SECOND above)

until such time as (if at all) the amount therein is equal to the Supplemental Reserve Fund Maximum; and

FOURTH: all Net Pledged Revenue received for the remainder of the Fiscal Year after the payments and accumulations set forth in clauses FIRST, SECOND, and THIRD above with respect to such Fiscal Year shall be credited to the Subordinate Obligations Fund.

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 Loan Payment Fund.** 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 Loan 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 annual Loan 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 as provided in Section 4.02 clauses SECOND and THIRD hereof), moneys which, in the aggregate, when combined with other legally available moneys in the Loan Payment Fund from time to time equals the Loan 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 Loan 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 Loan Requirements coming due on such Payment Date based on an invoice provided by the Lender, then 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 Loan 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 Loan Requirements in the following order of priority. For purposes of the following, when payment of more than one purpose is required at any single priority level, such credits shall rank *pari passu* with each other.

(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 (including amounts which were transferred thereto from the Supplemental Reserve Fund) is an amount which is less than the Loan Requirements owing on such Payment Date, 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 (including amounts which were transferred thereto from the Supplemental Reserve Fund), will be sufficient to pay such Loan 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 which were transferred thereto 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. Moneys shall be transferred to the Loan Payment Fund *first*, from the Supplemental Reserve Fund, prior to any transfers thereto from the Reserve Fund.

(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 90 days following the notice from the Lender to the City Manager pursuant to Section 4.04(h) below.

(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 in the order of priority determined by the Lender.

(f) **Application to Prepayment of Loan.** If Borrower elects to prepay the Loan in full prior to the Maturity Date, it may utilize amounts on deposit in the Reserve Fund for such purpose if the application thereof, together with all other available amounts on deposit in the funds and account held hereunder (and other moneys of the Borrower legally available and reserved for such purpose), are sufficient to pay all principal and

accrued interest on the Loan together with any termination fee due in accordance with Section 2.06 hereof.

(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 Permitted Subordinate Debt in accordance with the City Cooperation Agreement.

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 Loan 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 Loan 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 to the Loan Payment Fund *first*, from the Supplemental Reserve Fund, prior to any transfers thereto from the Reserve Fund.

(c) ***Transfers to Subordinate Obligations Fund.***

(i) Any amounts in the Supplemental Reserve Fund in excess of the Supplemental Reserve Fund Maximum shall be automatically transferred by the Lender to the Subordinate Obligations Fund.

(ii) With respect the transfer of moneys from the Supplemental Reserve Fund to the Subordinate Obligations Fund while the balance in the Supplemental Reserve Fund is less than the Supplemental Reserve Fund Maximum, Borrower may, subject to the provisions of Section 4.05(c)(iii) below, request such a transfer from the Lender not more than [once per month] provided that such request is in writing and is not later than 10 days prior to the requested disbursement date, which date shall be a Business Day. At the sole election of

Lender, it may approve or deny such request for transfer to the Subordinate Obligations Fund and the provisions of this Section 4.05(c)(ii) shall not obligate the Lender in any way to approve any such request nor shall it obligate the Lender to provide any explanation for its denial of any such request. Lender shall notify the Borrower in writing as promptly as possible of its approval or denial of such request, but in no event shall such notification be later than the Business Day immediately prior to the requested disbursement date. Borrower covenants that it shall not present a request to the Lender pursuant to this Section 4.05(c)(ii) for a transfer of moneys from the Supplemental Reserve Fund to the Subordinate Obligations Fund unless it has Permitted Subordinate Debt outstanding at the time of such request.

(iii) In the event there has occurred and is continuing an Event of Default hereunder, the Borrower shall not be entitled to request that any amounts be transferred from the Supplemental Reserve Fund to the Subordinate Obligations Fund until such time as the Event of Default is cured to the satisfaction of the Lender.

(d) **Earnings.** All interest income on moneys on deposit in the Supplemental Reserve Fund shall remain in the Supplemental Reserve Fund until such time as the amount therein is equal to the Supplement Reserve Fund Maximum. Moneys in the Supplemental Reserve Fund in excess of the Supplemental Reserve Fund Maximum shall be transferred by the Lender to the Subordinate Obligations Fund.

(e) **Application to Prepayment of Loan.** Subject to the provisions of Section 2.06 hereof, if Borrower elects to prepay the Loan in full prior to the Maturity Date, it may utilize amounts on deposit in the Supplemental Reserve Fund for such purpose if the application thereof, together with all other available amounts on deposit in the funds and account held hereunder (and other moneys of the Borrower legally available and reserved for such purpose), are sufficient to pay all principal and accrued interest on the Loan together with any termination fee due in accordance with Section 2.06 hereof.

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

(g) **Maturity Date.** Any amounts on deposit in the Supplemental Reserve Fund on the Maturity Date not required to pay Loan 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, including investment earnings thereon, 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. Subordinate Obligations Fund. Funds on deposit in the Subordinate Obligations Fund shall be administered by the Lender in accordance with the terms of this Agreement. Moneys in the Subordinate Obligations Fund shall be disbursed to the Borrower for application to the payment of Permitted Subordinate Debt pursuant to written requests of Borrower provided to Lender.

(a) ***Developer Debt.*** Quarterly, on or before the last Business Day of January, April, July, and October and pursuant to a statement provided by the Borrower, the Lender shall disburse to the Borrower funds up to the amount necessary to pay the Developer Debt Payment Obligations when due but only from and to the extent of moneys then on deposit in the Subordinate Obligations Fund.

(b) ***Other Permitted Subordinate Debt.*** Following receipt of any other statement from Borrower requesting disbursement by Lender of amounts from the Subordinate Obligations Fund for the payment of Permitted Subordinate Debt, the Lender shall disburse the sum so requested, but only from and to the extent of moneys then on deposit in the Subordinate Obligations Fund.

(c) ***Statements from Borrower.*** With respect to all amounts requested by Borrower for disbursement from the Subordinate Obligations Fund, Borrower agrees to provide a statement to Lender concurrently with its written request to Lender to transfer funds from the Supplemental Reserve Fund to the Subordinate Obligations Fund pursuant to Section 4.05(c)(ii) hereof. Borrower covenants that all moneys requested from the Subordinate Obligation Fund shall be applied solely to the payment of Permitted Subordinate Debt. If disbursement requests from the Borrower exceed the amount then on deposit in the Subordinate Obligations Fund, the Lender shall so notify the Borrower and the Borrower shall redirect the Lender as to the disbursement of such available funds. Following such notice from Lender to the Borrower of any shortfall, the Lender shall not be obligated to disburse any moneys until such time as a revised statement is provided by Borrower.

(d) ***Termination of Subordinate Obligations Fund; Transfer of Moneys.*** If, on any date, no Permitted Subordinate Debt remains outstanding and the Borrower does not reasonably anticipate the incurrence of any additional Permitted Subordinate Debt, upon the Lender's receipt of a writing from the Borrower to such effect, the Subordinate Obligations Fund shall terminate.

Section 4.08. 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, 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, 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 outstanding or any other 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 or (b) would cause interest on the Loan to lose its exclusion from Colorado 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. For the purpose of Section 265(b)(3)(B) of the Code, the Loan is deemed designated as a qualified tax-exempt obligation.

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 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 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 unit of the City and which may be submitted to the Lender via an internet link;

(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;

(iii) promptly upon receipt thereof, a certification of values issued by each of the County Assessors containing the certified preliminary assessed

valuation of the Urban Renewal Project Area and the Property Tax Base Amount for that year;

(iv) promptly upon receipt thereof, a certification of values issued by each of the County Assessors containing the Final Assessed Valuation of the Urban Renewal Project Area and the Property Tax Base Amount for that year;

(v) within 60 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 Revenues and Pledged Sales Tax Revenues received, together with a copy of any material amendments made or proposed to be made to the Borrower's annual budget;

(vi) not later than February 1 of each year, a Sales Tax Rate Certificate;

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

(viii) promptly after obtaining the actual knowledge thereof, notice to the Lender of any closure or impending closure of any business located within the Urban Renewal Project Area;

(ix) 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

(x) 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 Restrictions.

(a) *No Senior Debt.* The Borrower shall not incur Debt payable from or constituting a lien upon the Pledged Revenue senior to the lien thereon of the Loan.

(b) *No Parity Debt Without Lender Consent.* The Borrower shall not, without the prior written consent of the Lender, incur additional Debt payable from or constituting a lien upon the Pledged Revenue on parity to the lien thereon of the Loan.

(c) *Existing Permitted Subordinate Debt.* As of the Closing Date, the Borrower has no Debt outstanding with a lien on the Pledged Revenue subordinate to the lien thereon of the Loan other than (i) the Developer Debt, (ii) Borrower's contingent obligations to the City under the Cooperation Agreement, and (iii) 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 Treasurer of each of the Counties as contemplated by Section 31-25-107(9)(a)(III), Colorado Revised Statutes. The Borrower's payment of the Developer Debt from Net Pledged Revenue shall be limited to that portion thereof which constitutes the Shoenberg Center Obligation. The Borrower shall not alter the terms applicable to the foregoing Permitted Subordinate Debt in effect as of the Closing Date without the prior written consent of the Lender; provided, however, that the Lender acknowledges and agrees that the statutory terms governing the Permitted Subordinate Debt described in clause (iii) above in effect as of the Closing Date may be altered without obtaining the prior written consent of the Lender.

(d) *Additional Subordinate Debt.* The Borrower may incur additional Debt secured by a lien on the Net Pledged Revenue fully subordinate to the lien thereon of the Loan ("Additional Subordinate Debt"), provided that:

(i) the proceeds thereof (other than those used to pay costs of issuance or fund required reserves) shall be used to finance the development or redevelopment of projects within the Urban Renewal Project Area;

(ii) such obligations shall not be subject to acceleration;

(iii) at the time of issuing or incurring such obligations, no Event of Default shall have occurred and be continuing under this Agreement; and

(iv) prior to the issuance or incurrence of the Additional Subordinate Debt then proposed, the Borrower shall provide Lender with notice of the proposed issuance thereof, which notice shall include a statement to the effect that such obligations will be incurred in accordance with the provisions of this Section 5.11(d).

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, termination fee, 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 unit 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 without the prior written consent of 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.

Section 5.18. Enforcement of City Cooperation Agreement. The Borrower shall do all things reasonably necessary and appropriate to enforce the City Cooperation Agreement against the City.

Section 5.19. Proper Allocation of New Construction. The Borrower shall cooperate with the Lender in making a good faith effort to determine that the Jefferson County Assessor and the Adams County Assessor have correctly allocated new construction to the reassessment of property within the Urban Renewal Project Area.

ARTICLE VI

RESERVED

ARTICLE VII

DEPOSITS; INVESTMENTS

Section 7.01. Deposits Held Under This Agreement. Subject to Section 7.02 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 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 the Lender, as applicable, with respect to depository accounts for public funds.

Section 7.02. 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 7.03. 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 VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. 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 8.01.

(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 termination fee 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(d) 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) the City fails to appropriate moneys to pay when due any obligation subject to annual appropriation; or

(l) 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 8.02. 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) ***Acceleration.*** Acceleration of the Loan shall not be an available remedy for an Event of Default. The foregoing sentence shall not be interpreted to alter the provisions of Section 2.04(a)(ii) hereof.

Section 8.03. 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 8.04. Termination of Disbursements; Additional Lender Rights. Upon the occurrence of an Event of Default, the Lender may at any time (a) Setoff (as defined below); and/or (b) take such other steps to protect or preserve the Lender's interest in the Pledged Revenue.

Section 8.05. 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 8.06. 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 8.07. Other Remedies. Nothing in this Article VIII 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 IX

MISCELLANEOUS

Section 9.01. 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 9.02. Successors; Assignment. 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 an affiliate of the Lender) 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 9.03. 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 Borrower's obligations to the Lender.

Section 9.04. 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 agrees 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 Borrower's 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 9.05. 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 by electronic mail 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
E-mail: RSmith@CityofWestminster.us

with copies to: Westminster Economic Development Authority
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Marty McCullough, City Attorney
Telephone: 303.658.2234

and:

Sherman & Howard
633 17th Street, Suite 3000
Denver, Colorado 80202
Attention: Dee Wisor
Telephone: (303) 299-8228

If to the Lender: Vectra Bank Colorado, National Association
2000 S. Colorado Blvd., Suite 1200
Denver, Colorado 80222
Attention: Conrad Freeman
Telephone: (720) 947-8802

with a copy to: Kutak Rock LLP
1801 California Street, Suite 3100
Denver, CO 80202
Attn: Kristine Lay
Telephone: (303) 297-2400

Section 9.06. 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 9.07. 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 9.08. 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 9.09. 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 9.10. Attachments. All documents attached hereto, including any appendices, schedules, riders, and exhibits to this Agreement, are hereby expressly incorporated by reference.

Section 9.11. 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 transfer, the Lender and any person purchasing or accepting the transfer of the obligations representing the Loan specifically waives any such recourse.

Section 9.12. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, the Note and this Agreement 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 this Agreement after delivery for value.

Section 9.13. 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 9.14. Pledge of Revenues. 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 Loan 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.

Section 9.15. 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 9.16. 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

VECTRA BANK COLORADO, NATIONAL ASSOCIATION, a national banking association

By _____
Conrad Freeman, Senior Vice President

BORROWER

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By _____
Chairperson, Board of Commissioners

[SEAL]

Attest:

By _____
Secretary, Board of Commissioners

By _____
Executive Director, Board of Commissioners

[Signature Page to Loan Agreement]

EXHIBIT A
FORM OF NOTE

PROMISSORY NOTE

US \$[7,420,000]

September ____, 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 VECTRA BANK COLORADO, NATIONAL ASSOCIATION, a national banking association, 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 [SEVEN MILLION FOUR HUNDRED TWENTY THOUSAND] AND 00/100 DOLLARS (US \$[7,420,000].00) 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 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

By _____
Executive Director, Board of Commissioners

[Signature Page to Promissory Note]

EXHIBIT B

PRINCIPAL REPAYMENT SCHEDULE

Year	Principal Payment Due
12/01/2012	290,000
12/01/2013	305,000
12/01/2014	320,000
12/01/2015	335,000
12/01/2016	350,000
12/01/2017	365,000
12/01/2018	385,000
12/01/2019	405,000
12/01/2020	425,000
12/01/2021	445,000
12/01/2022	465,000
12/01/2023	490,000
12/01/2024	515,000
12/01/2025	540,000
12/01/2026	565,000
12/01/2027	595,000
12/01/2028	625,000

EXHIBIT C
URBAN RENEWAL AREA

EXHIBIT D

FORM OF SALES TAX RATE CERTIFICATE

SALES TAX RATE CERTIFICATE

1		Senior Debt Service Requirements		_____
2	+	Subordinate Debt Service Requirements	+	_____
3	=	Projected Debt Service	=	=====
4		Projected Pledged Property Tax Revenues		_____
5	-	Reserve Fund Deficit	-	_____
6	+	Supplemental Reserve Fund Balance	+	_____
7	+	Subordinate Obligations Fund Balance	+	_____
8	=	Projected Available Revenue	=	=====
9		Projected Debt Service <i>(Line 3)</i>		_____
10	-	Projected Available Revenue <i>(Line 8)</i>	-	_____
11	=	Required Sales Tax Revenue	=	=====
12		Prior Year Gross Sales Tax		_____
13	-	Sales Tax Base Amount	-	_____
14	=	Prior Year Sales Tax Increment	=	=====
15		Prior Year Sales Tax Increment <i>(Line 14)</i>		_____
16	/	Maximum Sales Tax Rate (3%)	/	_____
17	=	Projected Incremental Taxable Sales	=	=====
18		Required Sales Tax Revenue <i>(Line 11)</i>		_____
19	/	Projected Incremental Taxable Sales <i>(Line 17)</i>	/	_____
20	=	Proposed Pledged Sales Tax Rate	=	===== %

EXHIBIT E

FORM OF INTEREST RATE PERIOD SELECTION CERTIFICATE

INTEREST RATE PERIOD SELECTION CERTIFICATE

Pursuant to Section 2.04(a)(ii) of that certain Loan Agreement, dated as of September 13, 2012 (the "Loan Agreement"), by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (the "Borrower"), a public body corporate and politic duly existing under the laws of the State of Colorado, and **VECTRA BANK COLORADO, NATIONAL ASSOCIATION**, a national banking association, in its capacity as lender (the "Lender"), the Borrower hereby selects the Interest Period set forth below, effective as of the Effective Date (defined below). Capitalized terms used and not otherwise defined herein shall have the respective meanings assigned to such terms in the Loan Agreement.

1. The last day of the Interest Period currently in effect is _____, ____, 20__.

2. The first day of the Interest Period selected by the Borrower pursuant to this Interest Rate Period Selection Certificate (this "Certificate") is _____, ____, 20__ (the "Effective Date").

3. The Interest Period selected by the Borrower, effective as of the Effective Date set forth in paragraph 2 above, is the [check one box below]:

- Ninety Day Interest Period
- Six Month Interest Period
- One Year Interest Period
- Five Year Interest Period

4. The undersigned certifies that [he] [she] is an Authorized Person under the Loan Agreement.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By _____
as Authorized Person

2012 COOPERATION AGREEMENT
(SOUTH SHERIDAN URBAN RENEWAL PROJECT)
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS COOPERATION AGREEMENT (this "Agreement"), dated as of September 10, 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 South Sheridan Urban Renewal Plan (the "Plan") and the urban renewal project described therein (the "Urban Renewal Project"); and

WHEREAS, the Urban Renewal Project was 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 (South Sheridan Urban Renewal Project) Series 2007 in the original aggregate principal amount of \$8,320,000 (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 has previously entered into a Loan Agreement (the "2009 Loan Agreement") with Vectra Bank Colorado, National Association ("Vectra") to obtain a Loan in the total principal amount of \$8,075,000 (the "2009 Loan"); and

WHEREAS, the Authority has determined that it is in the best interest of the Authority to refund the 2009 Loan by entering into a 2012 Loan Agreement (the “2012 Loan Agreement”) with Vectra in the principal amount of not to exceed \$7,420,000 (the “2012 Loan”) in order to finance the costs of refunding the 2009 Loan (the “Refunding Project”); and

WHEREAS, the City Council of the City (the “Council”) has adopted its Resolution 12-26 (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 2012 Loan as defined in the 2012 Loan Agreement.

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 2012 Loan and the Refunding 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 2012 Loan and the Refunding 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 2012 Loan or the Refunding 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 “Permitted Subordinate Debt” for purposes of the 2012 Loan Agreement. The Authority shall cause such amounts to be paid from and to the extent of Pledged Revenue (as defined in the 2012 Loan Agreement) available for the payment of Permitted Subordinate Debt in accordance with Section 5.11(d) of the 2012 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 2012 Loan or the Refunding 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 Vectra in accordance with the 2012 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 2012 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 2012 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 Vectra.

(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 Vectra 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 Vectra.

(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 2012 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: _____
City Manager

ATTEST:

ATTEST:

Secretary

City Clerk

Executive Director

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

By: _____
Authority Attorney

By: _____
City Attorney

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **145**

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
LOAN AGREEMENT FOR A LOAN IN THE ORIGINAL
PRINCIPAL AMOUNT OF NOT TO EXCEED \$7,420,000,
AND CERTAIN OTHER DOCUMENTS IN CONNECTION
THEREWITH, FOR THE PURPOSE OF 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 “South Sheridan Urban Renewal Plan” was duly and regularly approved by the City Council of the City pursuant to Resolution No. 21, adopted on March 29, 2004, as amended by Resolution No. 13 adopted on February 28, 2005 and Resolution No. 31 adopted on June 8, 2009 (as amended, the “Urban Renewal Plan”), pursuant to the Colorado Urban Renewal Law 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 to issue refunding or other bonds (defined by the Act to mean any bonds, notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures or other obligations) from time to time in its discretion 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 Westminster Economic Development Authority, Tax Increment Adjustable Rate Revenue Bonds (South Sheridan Urban Renewal Project) Series 2007 in the original aggregate principal amount of \$8,320,000, for the purpose of providing improvements contemplated by the Urban Renewal Plan (the “Prior Bonds”); and

WHEREAS, in order to refund the Prior Bonds, the Authority entered into a Loan Agreement (the “2009 Loan Agreement”) with Vectra Bank Colorado, National Association (“Vectra”) in the principal amount of \$8,075,000 (the “2009 Loan”); and

WHEREAS, the Authority has determined that it is in the best interests of the Authority and the citizens and taxpayers of the City that the 2009 Loan be refunded to effect certain economies of the Authority (the “Refunding Project”); and

WHEREAS, the Authority intends to enter into a Loan Agreement with Vectra (the “2012 Loan Agreement”) to obtain a loan in the principal amount of not to exceed \$7,420,000 (the “2012 Loan”) in order to finance the costs of the Refunding 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, 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 Chairman of the Board of Commissioners and 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 “2012 Note”), to be executed by the Authority and delivered to Vectra 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 “2012 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 Refunding Project and the entering into of the 2012 Loan Agreement, the 2012 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 2012 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 2009 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 2009 Loan.

Section 4. Pursuant to Section 11-57-205, C.R.S., the Board hereby delegates to the Chairperson of the Board of Commissioners, the Vice Chairperson or Executive Director of the Authority the independent 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 and/or the interest rate period 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 \$7,420,000;
- (3) the initial interest rate on the 2012 Loan shall not exceed 3.50% per annum for the first interest rate period commencing on the Closing Date of the 2012 Loan; and

(4) the 2012 Loan may be prepaid as provided in the 2012 Loan Agreement.

Section 5. The 2012 Loan and the 2012 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 2012 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 2012 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 2012 Note shall be liable personally on the 2012 Loan Agreement or the 2012 Note.

Section 6. After the 2012 Loan Agreement and the 2012 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 2012 Note shall have been fully paid, canceled and discharged in accordance therewith.

Section 7. The 2009 Loan and 2009 Note 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. 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, 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.

Section 9. 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 Vectra.

Section 10. The Chair, the Executive Director, and the City's Finance 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 Vectra.

Section 11. 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 12. 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 13. 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 14. This Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED, ADOPTED AND APPROVED this September 10, 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 meeting held on September 10, 2012.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of September 10, 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 September 10, 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 September 10, 2012.

(SEAL)

 Secretary

EXHIBIT A

(Form of Notice of Meeting)

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
September 10, 2012



SUBJECT: Orchard Parkway, 138th Avenue to 144th Avenue and 142nd Avenue Project -
Engineering Design Contract

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended Board Action:

Based upon the recommendation of the Executive Director make a finding that the public interest will best be served by authorizing the Executive Director to execute a sole source contract with Blue Sky Engineering, LLC in the amount of \$150,017.50 and authorize a design contingency in the amount of \$10,000 for the final design of the Orchard Parkway, 138th Avenue to 144th Avenue Project and 142nd Avenue from Huron Street to Orchard Parkway.

Summary Statement:

- Orchard Parkway, a proposed north-south roadway, will become the key means of access to the properties bounded by I-25 on the east, Huron Street on the west, 144th Avenue of the north and 138th Avenue on the south. In addition to Orchard Parkway, 142nd Avenue from Huron Street to Orchard Parkway is included in the project design and construction.
- The Saint Anthony's North Medical Pavilion project, located at the southwest corner of the intersection of 144th Avenue and I-25, is open for business. This exciting new development will likely attract much interest to the area from other developers. The construction of Orchard Parkway should help accelerate development along this corridor. For this reason, staff proposes that final design drawings be prepared for this minor arterial street with the intent that the actual construction of this road could follow in the near future.
- A cost proposal for this design work submitted by Blue Sky Engineering, LLC is less than any other consultant could realistically propose because this firm has already completed the preliminary engineering for the project through its role as the design consultant for certain private developers in this area. These preliminary design drawings are owned by Blue Sky, and the selection of a different consultant would require the preparation of a new preliminary design. Blue Sky's fee is approximately 2.5% of the expected cost of construction, and past experience has shown that a different consultant would likely charge in the 6% to 10% range for the complete design effort.
- Funds for the design work are available from Westminster Economic Development Authority bond proceeds.

Expenditure Required: \$160,017.50

Source of Funds: North Huron URA Bond Proceeds

Policy Issues

Should the Westminster Economic Development Authority (WEDA) proceed with the design work on the Orchard Parkway, 138th Avenue to 144th Avenue, and 142nd Avenue project and hire Blue Sky Engineering, LLC as the sole source consultant for this work?

Alternatives

Alternatives include postponing or abandoning the final design of this project. Given the strong desire of WEDA to accelerate development in this area and the availability of remaining North Huron URA bond proceeds to pay for this design effort, this alternative is not recommended.

A second alternative would be to solicit proposals from other design firms. Since Blue Sky Engineering has already completed the preliminary design and owns these documents as a consultant to private developers along the corridor, City staff is confident that no other design firm could complete this project for less than the fee proposal submitted by Blue Sky Engineering.

Background Information

Orchard Parkway will run in a north-south direction and bisect the property bounded by Huron Street, I-25, 144th Avenue and 138th Avenue. All of this property is located within the I-25 District Center, which is envisioned to be an upscale, urban mixed-use development providing a diversity of retail, commercial, entertainment, hospitality, restaurant, hospital, medical and office uses. The first phase of the Saint Anthony's Medical Pavilion is open with the full build out of this facility proposed in the near future.

This current and planned construction within the north I-25 corridor make it desirable to design and construct Orchard Parkway at this time. In addition, the construction of all of Orchard Parkway as one City-managed project will eliminate the less desirable, piecemeal approach of having each adjacent developer build Orchard Parkway in segments. Blue Sky Engineering is the consultant that worked for some of the private developers of property along this corridor. The company has completed the preliminary design and owns the rights to these drawings, so only the final design and bid package is needed in order for the City to proceed with construction. The fee proposed by Blue Sky Engineering is approximately 2.5% of the estimated cost of construction, which is very reasonable.

The design and construction of the Orchard Parkway, 138th Avenue to 144th Avenue, and 142nd Avenue Project fulfills WEDA's and the City of Westminster's goals of providing a Strong, Balanced Local Economy and Vibrant Neighborhoods In One Livable Community by furnishing good access to developable parcels at a reasonable cost.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment - Orchard Parkway Exhibit

