

**CITY COUNCIL AGENDA**

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 7) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.

- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Consideration of Minutes of Preceding Meetings**
  - A. Regular Meeting 8/22/05
  - B. Special Meeting 8/29/05
- 4. Report of City Officials**
  - A. City Manager's Report
- 5. City Council Comments**
- 6. Presentations**
- 7. Citizen Communication (5 minutes or less)**
  - A. Tim Welker of Goodwill Industries

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 citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.

- 8. Consent Agenda**
  - A. Biosolids Composting
  - B. Dell Computer Purchase Authorization
  - C. Street Lights and Undergrounding of Utilities re 144<sup>th</sup> Avenue and I-25 Interchange Project
  - D. Long Range Fiscal Model and Comprehensive Rate and Fee Study for the Water/Wastewater Enterprise
  - E. Project Applications re DRCOG's 2007-2012 Transportation Improvement Program
  - F. Second Reading CB No. 13 re Country Club Village BAP
- 9. Appointments and Resignations**
- 10. Public Hearings and Other New Business**
  - A. Public Hearing re Proposed Country Club Village Metropolitan District
  - B. Public Meeting on 2006 Adopted City Budget
  - C. Councillor's Bill No. 45 re Wolff Street Extension (114<sup>th</sup> Ave. to 116<sup>th</sup> Ave.) Supplemental Appropriation
  - D. Construction Contracts re Wolff Street Extension (114<sup>th</sup> Ave. to 116<sup>th</sup> Ave.)
  - E. Councillor's Bill No. 46 re Cellular Tower Leases for Countryside Recreation Center and the Hydropillar
- 11. Old Business and Passage of Ordinances on Second Reading**
- 12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business**
  - A. City Council
  - B. Executive Session
    - Business Assistance Package
    - Personnel Matter, City Manager Performance Appraisal
- 13. Adjournment**

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING**

## **GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS**

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, SEPTEMBER 12, 2005 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Dixon, and Price were present at roll call. Councillor Davia was absent. Councillor Hicks was absent at roll call and joined the meeting in progress at 7:30 p.m. J. Brent McFall, City Manager, Marty McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Dittman moved, seconded by Dixon, to approve the minutes of the regular meeting of August 22, 2005. The motion passed unanimously.

Councillor Dittman moved, seconded by Dixon, to approve the minutes of the special meeting of August 29, 2005. The motion passed with all Council members voting in favor.

CITY MANAGER COMMENTS

Mr. McFall described activities that Westminster employees were undertaking to assist with Hurricane Katrina relief efforts in Gulfport States. Additionally, Mr. McFall reported that crews had responded quickly and efficiently to an alarm that sounded early Sunday morning at the Semper Water Treatment Plant to signal a lift station was out of operation. He was pleased to say that service had been restored fast enough to avoid damage and inconvenience to all but one customer.

CITY COUNCIL COMMENTS

Councillors Dittman reported on the success of the 9-11 Dinner and Ceremonies held to honor firemen, policemen, and citizens for acts of heroism that had saved lives. He was appreciative of those who had been recognized.

Councillor Dixon reported having attended the National League of Cities Community and Economic Development Steering Committee meeting in Macon, Georgia, as well as the 9-11 Dinner where those in attendance learned of remarkable actions of courage that individuals had performed throughout the year.

Councillor Price encouraged people to enjoy the artwork of the Denver Photographic Society that was on display in the lobby of City Hall.

Mayor McNally reported on Employee Appreciation Week activities, noting that she and other members of Council had attended the Employee Breakfast and given each employee the Story of the Starfish and a Starfish Pin as a token of Council's appreciation for the work they performed daily. Council was mindful of the impact that City employees had on residents and the quality of life that the citizenry enjoyed.

CITIZEN COMMUNICATION

Tim Welker of Goodwill Industries explained the programs and services that Goodwill Industries offered. He provided detail about growth in the School to Work Program, which would remain an important thrust of the organization's work.

Jane Fancher, 7260 Lamar Court, posed questions about Council members' reimbursements for certain expenditures, such as mileage, cell phones, and Internet access for computer usage in the course of conducting City business. Further, she asked about the City's use of the revenue generated by the voter-approved public safety tax. Council members and the City Manager answered Ms. Fancher's questions.

Clerk's Note: Councillor Hicks arrived. The time was approximately 7:30 p.m.

#### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authority to expend up to \$71,000 for disposal and composting of biosolids at the A-1 Organics facility; authority to purchase remaining 2005 computer equipment/supplies through Dell Computer Corporation in an amount not to exceed \$120,000; authority to spend an additional \$65,000 for utility relocations and \$175,000 for street lights associated with 144th Avenue/I-25 Interchange improvement project; authority to execute a contract with Financial Consulting Solutions Group at a cost not to exceed \$150,000 for a comprehensive Cost of Service Study and development of a long-range fiscal model for the Water/Wastewater Enterprise; authority to submit projects to the Denver Regional Council of Governments for the 2007-2012 Transportation Improvement Program; and final passage of Councillor's Bill No. 13 re Country Club Village Business Assistance Package.

Mayor McNally asked if any member of Council or the audience wished to remove an item from the consent agenda for discussion purposes or separate vote. Mayor Pro Tem Kauffman requested that final passage of Councillor's Bill No. 13 be removed and considered individually.

Upon a motion by Councillor Dixon, seconded by Councillor Price, the Council voted unanimously to approve the consent agenda excluding item 8F pertaining to final passage of Councillor's Bill No. 13.

#### FINAL PASSAGE OF COUNCILLOR'S BILL No. 13 RE COUNTRY CLUB VILLAGE BAP

Mayor Pro Tem Kauffman announced that he had a business relationship with one of the owners of the Country Club Village and would, therefore, abstain from voting on this matter.

Councillor Dittman moved, Price seconded, for final passage of Councillor's Bill No. 13 authorizing the City Manager to execute and implement the Country Club Village Enterprises LLC business assistance package totaling \$500,000 that included permit fee rebates, construction use tax rebates on up to 50,000 square feet of retail space, and sales tax rebates for the first 3 years of operation. The motion passed at roll call with 5 affirmative votes and Mayor Pro Tem Kauffman abstaining.

#### HEARING RE PROPOSED COUNTRY CLUB VILLAGE METROPOLITAN DISTRICT

At 7:35 p.m., Mayor McNally opened a public hearing to consider a request from the developers of the Country Club Village (retail) and Country Club Highlands (residential) projects to approve two metropolitan districts to fund infrastructure to serve the developments. The Mayor ordered the hearing continued to the September 26, 2005 Council meeting.

#### PUBLIC MEETING ON 2006 ADOPTED CITY BUDGET

Mr. McFall provided an overview of the 2006 Adopted Budget and a brief update on the City's finances. The Mayor invited citizen comment.

Citizens addressing Council were: Larry Dean Valente, 3755 West 81<sup>st</sup> Avenue; Jane Fancher, 7260 Lamar Court; and Jim Raley, 7271 Lamar Court. Council action was not necessary.

COUNCILLOR’S BILL NO. 45 RE WOLFF STREET EXTENSION FROM 114<sup>TH</sup> TO 116<sup>TH</sup> AVENUE

It was moved by Councillor Hicks, seconded by Price, to pass Councillor’s Bill No. 45 authorizing a \$19,574 supplemental appropriation in the General Capital Improvement Fund reflecting the City’s receipt of cash-in-lieu funds for offsite drainage improvements for the Wolff Street Extension Project. At roll call, the motion passed unanimously.

WOLFF STREET EXTENSION PROJECT CONTRACTS AWARDED

It was moved by Hicks, seconded by Dittman to authorize the City Manager to execute a \$887,985 contract with Asphalt Specialties Co. for construction of the Wolff Street Extension Project and a \$68,600 contract with Wilson & Company, Inc. for construction engineering services for the project; to authorize a \$56,311 expenditure to Xcel Energy for street lights associated with the project; to authorize a \$86,053 expenditure for acquisition of rights-of-way for the project; to authorize a \$124,394 project contingency; and to authorize a \$95,000 transfer from the Utility Fund Capital Water Project Reserve account to the 115<sup>th</sup>/Wolff Water and Reclaimed Water Lines account, bringing the account balance to \$188,300 to complete the necessary utility system improvements to be installed as part of the project. The motion passed unanimously.

COUNCILLOR’S BILL NO. 46 RE CELLULAR TOWER LEASES ON CITY-OWNED PROPERTY

It was moved by Councillor Price, seconded by Councillor Dixon, to adopt Councillor’s Bill No. 46 authorizing the City Manager to sign a lease agreement with VoiceStream to provide space at Countryside Recreation Center and the Hydropillar for cellular transmission antenna installation. The motion passed unanimously at roll call.

EXECUTIVE SESSION RE BUSINESS ASSISTANCE PACKAGE AND MANAGER’S APPRAISAL

Mr. McFall announced that Council would meet in executive session after this meeting was adjourned. Topics of discussion were a business assistance package and the City Manager’s performance appraisal.

ADJOURNMENT:

There was no further business to come before Council, and the meeting adjourned at 8:11 p.m.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Item 8 A**

**Agenda Memorandum**

City Council Meeting  
September 12, 2005



**SUBJECT:** Biosolids Composting

**Prepared By:** Tim Woodard, Wastewater Treatment Superintendent

**Recommended City Council Action**

Authorize expenditure up to \$71,000 for disposal and composting of biosolids at the A-1 Organics facility on an as needed basis for 2005.

**Summary Statement**

- Biosolids are land applied for fertilizer at the Strasburg Natural Resource Farm and other fields that are closer to Westminster when available; however, during wet weather and short staffing, the City delivers its biosolids to A-1 organics for composting in order to keep up with biosolids production at the Big Dry Creek Wastewater Treatment Facility.
- The City budgeted \$47,000 this year for disposal of biosolids using A-1 Organics composting facility. A-1 Organics is the only biosolids composting facility available along the Front Range that can be utilized for biosolids hauling and disposal.
- An additional \$40,000 (total \$87,000) was added for biosolids disposal by Council from 2004 carryover funds.
- The City has expended \$38,000 year to date on A-1 Organics for disposal of biosolids. Staff anticipates the potential of spending up to an additional amount of \$33,000 (total \$71,000) by the end of the year.
- As a result of the increase of funding in excess of \$50,000, Council approval is necessary.

**Expenditure Required:** \$ 71,000 total for 2005

**Source of Funds:** Utility Fund; Big Dry Creek Operating Account (Contract Services)

**Policy Issue**

Should the City continue to use A-1 Organics for the remainder of 2005 for disposal of biosolids in times of wet weather and Staff shortages?

**Alternative**

The City of Westminster could contract with a biosolids contractor to dewater and haul biosolids from the facility for land application at other sites. This alternative is more expensive than contracting disposal with A-1 Organics.

**Background Information**

In 2004, the City of Westminster began using A-1 Organics on an as needed basis to stay ahead of biosolids production at the Big Dry Creek Wastewater Treatment Facility. Prior to using A-1 Organics, the City applied biosolids on farm fields located closer to the treatment facility. The closer fields allowed operators to transport and dispose of larger volumes of biosolids than when hauling greater distances. The closer fields are used on an “as available” basis and there have been none available in 2005. Sale and residential development of farm properties relatively close to the treatment facility have impacted the disposal of biosolids. Currently, the City must transport and dispose of 96,000 gallons of thickened biosolids per week to keep pace with production. The 96,000 gallons equates to 20 tractor trailer loads per week of biosolids hauled for offsite disposal. In the event of staff shortages or wet farm fields, the production at the treatment facility exceeds application abilities, thus requiring the use of A-1 Organics for composting biosolids.

In 2005, utilization of A-1 Organics has allowed the facility to maintain disposal of biosolids during the extremely wet spring conditions and during times of limited staffing. Staff is requesting the authorization to continue using A-1 Organics on an as needed basis for the remainder of 2005.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 12, 2005



**SUBJECT:** Dell Computer Purchase Authorization

**Prepared By:** David Puntenney, Information Technology Director

**Recommended City Council Action**

City Council finds that the Western States Contracting Alliance (WSCA) pricing meets City Charter bidding requirements and authorizes staff to proceed with the remaining 2005 calendar year purchases of computer servers, disk storage, printers, software, and supplies through Dell Computer Corporation in an amount not to exceed \$120,000.

**Summary Statement**

- The City of Westminster uses over 63 computer servers to support software applications and provide services for all departments.
- Servers are replaced on a four-year replacement schedule in order to provide a high level of reliability, availability and performance.
- Maintenance contracts for computer servers more than four years old are expensive.
- City Council authorized funds in the 2005 Utility Fund, Information Technology Department operating budget, to purchase replacement servers, software and other related hardware.
- Decommissioned servers are relocated to the City's computer disaster recovery facility to serve as short-term recovery computers in the event of a disaster at the primary computer facility located at City Hall.
- The City purchases hardware through Dell Computer at or below the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements.
- Through previous bidding processes, staff has determined that Dell also offers the best price on some non-Dell software products.
- Funds were budgeted and are available for these purchases.

**Expenditure Required:** \$120,000

**Source of Funds:** Utility Fund, Information Technology Department Operating Budget



**Policy Issue**

Should the City continue to purchase new Dell computer hardware, software, and printers as authorized in the 2005 budget, to ensure high availability, performance and capacity to support software applications and users?

**Alternative**

Forgo the remainder of 2005 computer hardware, software and server purchases. This alternative is not recommended for the following reasons:

- 1) Additional disk capacity is required now to store the growing wealth of electronic information generated through the City's document management system implemented in 2005.
- 2) Smaller projects, scheduled to be completed in 2005, will require the purchase of several computer servers to support new software applications.
- 3) New software is needed to provide effective and responsive remote system access for public safety staff.

**Background Information**

The City uses more than 63 computer servers to support applications such as Computer Aided Dispatch, Police Records Management, Enterprise Resource Management, Court, Electronic Document Management, Geographic Information Systems, Internet, Intranet, Utility Maintenance Management, Office tools and many other applications. These servers are critical to departments depending on technology to provide internal and external customer service and to conduct primary City operations. High reliability and performance of these systems is essential.

The City has established a replacement schedule in which computer servers are replaced after four years of use. The decommissioned servers are frequently relocated to the City's computer disaster recovery facility to provide short term, more limited use, in the event of a disaster at the City Hall computer room. New servers include a four-year maintenance agreement, so the City does not incur additional hardware maintenance expense during the full production life of the servers.

The City has standardized on Dell computer servers, which have some of the highest customer satisfaction and quality ratings in the industry. In addition to computer hardware, the City has found that Dell offers the best price for various software products.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 12, 2005



**SUBJECT:** 144<sup>th</sup> Avenue and I-25 Interchange Project  
Street Lights and Undergrounding of Utilities

**Prepared By:** David W. Loseman, Senior Projects Engineer

**Recommended City Council Action**

Authorize the expenditure of an additional \$65,000 for utility relocations and \$175,000 for street lights attendant to the improvement of the 144<sup>th</sup> Avenue and I-25 Interchange project.

**Summary Statement:**

- The 144<sup>th</sup> Avenue and I-25 Interchange project will necessitate the relocation of existing utility lines that are in conflict with the proposed improvements. These include facilities operated by Qwest, Comcast, Xcel Energy, United Power, Encana Gas, North Washington Users Group, Patina Oil and Gas and the City itself. Taking into account applicable credit under the franchise agreement with Xcel, the cost to underground overhead electric lines is \$199,738. United Power’s cost to remove their facilities within the project limits is \$49,531. An additional \$230,731 is necessary for various relocations of all other non-City utility facilities not covered by franchise agreements.
- On May 9, 2005, City Council authorized an amount not-to-exceed \$350,000 for the relocation of utility lines for this project which included Xcel Energy, Qwest, Comcast, North Washington Users Group, Encana Gas, Patina Gas (now Nobel Energy) and United Power. At that time staff estimated that \$100,731 would be needed to relocate lines other than Xcel Energy and United Power. It is now necessary to supplement this amount by \$130,000 (for the total mentioned above of \$230,731) for the relocation of private gas lines owned by Encana Gas and Nobel Energy because the cost of relocating these lines is more than what was anticipated when Council approved the utility relocation amount on May 9th. In addition, a not-to-exceed amount of \$350,000 is being requested to pay Xcel Energy for all street lighting for the project. Half of this cost will be paid with WEDA Bond Funds (T.I.F.) and half will be paid with Certificates of Participation Funds (C.O.P.). These amounts make up the \$480,000 that Council and WEDA are being requested to approve. In addition to this amount, WEDA will be requested to authorize the expenditure of half of the original amount authorized by Council at the May 9 meeting. This would then reduce the amount that Council originally authorized by this same amount.
- The funds being requested are well within the original budget that was established for utility relocation work within the overall interchange project.

**Expenditure Required:** \$ 240,000

**Source of Funds:** Certificate of Participation Funds

**Policy Issue**

Should the City proceed with utility relocations that are necessary in advance of the 144<sup>th</sup> Avenue and I-25 Interchange project to maintain the project schedule?

**Alternative**

Council could choose to have utilities relocated during the roadway construction instead of prior to roadway construction. This alternative is not recommended since the project schedule for opening the interchange in August 2006 is very aggressive and removing or relocating the utilities in advance of this work removes delays in the construction of the roadway.

**Background Information**

The first phase of the 144<sup>th</sup> Avenue and I-25 interchange project includes the widening of the north one third of the 144<sup>th</sup> Avenue bridge over I-25, the interchange ramps connecting to I-25 and approximately the north half of 144<sup>th</sup> Avenue between Huron Street and Washington Street. The construction of this phase is expected to begin in the fourth quarter of 2005 so completion of this phase can be realized by August 2006. The second phase will be the completion of the remainder of the project that will occur in the second quarter of 2007. Certain utility relocations must be done in advance of the street improvements to meet the first phase schedule.

Under the City's franchise agreement with Xcel Energy, overhead utilities must be moved by Xcel to a new overhead location at Xcel's cost if the City's project necessitates it. When the City desires that the overhead facilities be placed underground, the cost of doing so is absorbed by the project. In this case, Xcel has priced relocating the overhead facilities along 144<sup>th</sup> Avenue to an underground location at \$351,387. Credit of \$151,649 for an overhead relocation yields a net cost to the City of \$199,738. United Power has existing overhead lines along I-25 that conflict with the proposed interchange. The cost to remove these facilities is \$49,531. In addition to Xcel's and United Power's facilities, there are other facilities whose providers have no franchise agreement with the City. In addition to what was paid to Xcel and United Power, authorization of an additional \$130,000 to the \$100,731 already authorized by Council on May 9 is being requested to cover the cost to lower the lines owned by Encana Gas and Nobel Energy who also have facilities in the corridor. It is important that these additional funds be approved in advance of construction so that delays in the 144<sup>th</sup> Avenue and I-25 Interchange Project are not incurred due to utility relocations.

In addition to the utility relocation costs, staff is requesting authorization to pay Xcel Energy for the cost of installing street lights for the project in an amount not-to-exceed \$350,000. Authorizing this payment before construction starts allows Xcel to order the equipment immediately and will assure that this does not become an issue affecting the scheduled completion of the project.

Dependent on the location of the work, funding for the utility relocations and street light costs described above will be paid for from the Certificates of Participation and WEDA bond funds.

Respectfully submitted,

J. Brent McFall  
City Manager



**Agenda Memorandum**

City Council Meeting  
September 12, 2005



**SUBJECT:** Long Range Fiscal Model and Comprehensive Rate and Fee Study  
for the Water/Wastewater Enterprise

**Prepared By:** Robert Byerhof, Financial Analyst

**Recommended City Council Action**

Based on the report of the City Manager, City Council finds the public interest would be best served by accepting the bid for this work from Financial Consulting Solutions (FCS) Group. Authorize the City Manager to sign a contract with FCS Group, for a cost not to exceed \$150,000 which includes a \$10,675 contingency, for a comprehensive Cost of Service Study and the development of a long range model for the City's Water/Wastewater Enterprise.

**Summary Statement**

- Staff recently reviewed three Requests for Proposals (RFPs) for the purpose of hiring a consultant to complete a Cost of Service (COS) study and to develop a long range fiscal model for the Water/Wastewater Enterprise (Enterprise). The COS study will serve as a management tool to analyze the Enterprise's operating and capital costs relative to the current rate and tap fee structure and make recommendations for equitable rate and fee schedules. Management will be given an independent assessment of the cost to deliver water and collect wastewater to customer classes and how the City is positioned to make objective decisions relative to the charges placed on residential, commercial, and public customers.
- The City's current fiscal model, which has been used since the early 1990's and includes both in-house and consultant based modifications, has outlived its useful life. The long range fiscal model will complement the COS study as a means to model rate and fee proposals relative to projected expenses from both a short and long term perspective.
- Council's No. 1 priority is a Financially Sound City. This model will help ensure that water/wastewater Enterprise remains financially sound.
- Council has authorized \$138,000 for this study. The other \$12,000 will be taken from the Water Project Reserve if staff is unable to negotiate the cost of the study down to absorb this additional cost.

**Expenditure Required:** Not to exceed \$150,000

**Source of Funds:** Utility Fund Capital Project and the Water Project Reserve, if necessary

**Policy Issue**

Should the City complete a comprehensive Cost of Service study and a long range fiscal model for the City's Water/Wastewater Enterprise?

**Alternatives**

- 1) Do not develop the model. This is not recommended. Over the next several decades, as the City reaches build-out, the City must determine how to finance the on-going maintenance and replacement of the Water/Wastewater Enterprises facilities. As one-time "growth-related" tap fee revenues decline, the Enterprise must have a sound fiscal model to assist Staff monitor the revenue requirements required to maintain a viable service to its customers. The COS will further assist Staff to make recommendations relative to rate and tap fee charges if any significant disconnect exists between the current fee structure and the costs to serve customer classes identified by FCS Group during the study.
- 2) Delay the development of the model. This is also not recommended, as the cost of model development will continue to climb, and the delay will retard the City's ability to plan for the future.
- 3) Build the model in-house. This alternative is not recommended. Not only is staff committed to other initiatives over the next several years, but the expertise in actually building the model is more effectively outsourced. As experienced with the current model, which is partially an "in house" product, the model is cumbersome to operate and update.

**Background Information**

In the spring of 2004, Staff began researching consultant developed long-range fiscal models for the City's utility enterprise. The research led to a meeting with another front-range city's water utility to discuss their consultant developed model and application of this model as a tool in budget preparation and policy development. The result of the meeting led to the conclusion that a consultant based model could be utilized as an effective budget tool. Subsequent to this meeting, Staff invited two local consulting firms to present their services and model capabilities with the intent to issue an RFP based on information gathered throughout this research.

Team members of this initiative include representatives from the City's Manager Office, Public Works and Utilities, and Finance departments. Prior to the release of the RFP in June 2005, team members held meetings to formulate the scope of the project. During this process a decision was made to expand the scope of the project to include an analysis of the costs to provide specific services to customers that in turn could be used to help set rates in the future since the last comprehensive rate study was done in the early 1990's. The RFP was sent to six consultants of which only three responded. Each of the three respondents gave a presentation to the team outlining their respective proposals for the cost of service analysis and model capabilities.

After careful review of each candidate's RFP and presentation, the team concluded that FCS Group would best meet the requirements. During the selection process it was felt that the proposal and team members of the FCS Group were the most complementary fit with the goals of the RFP despite not being the lowest bid. The individual bids were as follows:

- Redoak Consulting \$134,933
- FCS Group \$139,325
- Integrated Utilities Group \$159,300

Although not the lowest bid, FCS Group's bid at \$139,325 was considered reasonable given the range of the bids, and they were clearly the most qualified of the three finalists. Reference checks were conducted on FCS Group with positive results. The not to exceed cost of \$150,000 includes a \$10,675 contingency.

Going forward Staff will further negotiate with FCS Group concerning both the price of the contract and the specific scope. In general;

The Cost of Service Study will evaluate the following:

- Cost to service major customer classes, including operating costs and capital improvements
- Cost to operate the Enterprise facilities relative to each customer class, for operating and capital replacement expenses
- The revenue requirement needed to meet respective costs
- Assist management in policy implementation and decision making
- Recommendations for additional revenues or service level adjustments as needed

The Long Range Fiscal Model will evaluate the following:

- Project immediate to long term operating and capital maintenance costs of the Water/Wastewater Enterprise
- Project revenue requirements via rate and fees by customer class needed to maintain financial viability of the Enterprise
- Design various cost and revenue scenarios to assist management in "what if" conditions
- Assist management in policy implementation and decision making

The project is expected to be completed by early Spring of 2006, in time to be used during the 2007/2008 Budget cycle. Staff intends to utilize the findings of the study and the output of the model as tools to assist with forecasting budget expenses and revenues beginning with biennial 2007-2008 cycle. The study will also utilize FCS Group's expertise to outline policy alternatives and when necessary, present such findings to Council and the public, such as adequate levels and use of reserves and equitable rate and fee structures.

Respectfully submitted,

J. Brent McFall  
City Manager



**Agenda Memorandum**

City Council Meeting  
September 12, 2005



**SUBJECT:** Project Applications – Denver Regional Council of Governments’  
2007-2012 Transportation Improvement Program

**Prepared By:** Michael Normandin, Transportation Engineer

**Recommended City Council Action**

Authorize City Staff to submit projects to the Denver Regional Council of Governments (DRCOG) for the 2007-2012 Transportation Improvement Program (TIP).

**Summary Statement**

- DRCOG is currently soliciting requests for projects for the 2007-2012 TIP. Project submittals are due on Tuesday, September 20, 2005.
- The projects selected for inclusion in the TIP will be funded in part with federal funding. The minimum local match for projects has been set at 20%.
- Staff recommends that project applications for funding of intersection improvements be submitted for 92<sup>nd</sup> Avenue and Federal Boulevard and 120<sup>th</sup> Avenue and Federal Boulevard.
- Funding for selected projects would be staged over the six-year time frame of the 2007-2012 TIP. This would provide adequate time to budget the local match should any of these projects be selected. The DRCOG Board is scheduled to approve the 2007-2012 TIP in March 2006. A table is included in the Background Information section of this Staff Report that outlines the proposed funding for the recommended project submittals.
- The City of Federal Heights’ City Manager has indicated that their city would be interested in participating in the local match for the 92<sup>nd</sup> Avenue and Federal Boulevard intersection improvement project. City Staff will solicit financial participation from the Colorado Department of Transportation (CDOT) for the 92<sup>nd</sup> Avenue and Federal Boulevard and the 120<sup>th</sup> Avenue and Federal Boulevard intersection improvement projects as both locations are on the state highway system.

**Expenditure Required:** Dependent upon allocation of funds to specific projects

**Source of Funds:** General Capital Improvement Fund

**Policy Issue**

Should the City of Westminster submit applications for intersection and trail improvements to DRCOG for 2007-2012 TIP funding?

**Alternatives**

1. Council could choose not to submit project applications to DRCOG for 2007-2012 TIP funding. The next opportunity will be in two years when DRCOG develops the 2009-2014 TIP.
2. Council could choose to submit just one of the projects that Staff has recommended. In the unlikely event that both of the City’s project applications qualify for funding under the TIP, the potential cost to the City over the next six years could approach \$3,157,142. However, the City could withdraw from any or both of these projects at a later date if local funding is not available during the years in which the projects are scheduled. The decision to withdraw would need to be made prior to entering into the agreement with CDOT, which occurs prior to the commencement of the project.

**Background Information**

The Denver Regional Council of Governments is currently soliciting project recommendations for the 2007-2012 TIP. City Staff has prepared a list of recommendations, which are as follows:

- **West 92<sup>nd</sup> Avenue and Federal Boulevard Intersection Improvements** – Construct double left-turn lanes for all directions, provide accommodations for six through lanes on Federal Boulevard, construct a mast-arm type traffic signal, install sidewalks and underground the overhead power lines. The City of Federal Heights has indicated that they will participate in the local match as the east half of the intersection is within their city limits. City Staff will approach CDOT staff to determine if they will participate as well.
- **West 120<sup>th</sup> Avenue and Federal Boulevard Intersection Improvements** – Construct additional through lanes on Federal Boulevard for north and southbound, construct right-turn lanes for westbound, eastbound and southbound. Widen the 120<sup>th</sup> Avenue bridge over Big Dry Creek to accommodate pedestrian facilities and the expanded laneage, install a mast-arm type traffic signal and expand the box culvert under 120<sup>th</sup> Avenue east of Federal Boulevard to accommodate pedestrians. Staff will approach CDOT to seek their participation in the local match.

The table below depicts the projected project costs, local match and the fiscal years in which funding will be requested. The actual years that funding would be needed for any local funds are dependent upon the ranking of the projects by DRCOG and the years that federal funds would be available.

Project	Total Cost	20% Minimum Match	Recommended Funding Scenarios
92 <sup>nd</sup> Avenue and Federal Blvd. Intersection Improvements	\$5,507,000	\$1,101,400	FY2008 \$241,000 FY2009 \$226,000 FY2010 \$634,400
120 <sup>th</sup> Avenue and Federal Blvd. Intersection Improvements	\$10,278,710	\$2,055,742	FY2010 \$285,200 FY2011 \$1,755,400
<b>TOTAL</b>	<b>\$15,785,710</b>	<b>\$3,157,142</b>	



The current DRCOG 2007-2012 TIP preparation schedule is as follows:

- TIP Project Submittals September 20, 2005
- Project Selection November 2005
- TIP and Air Conformity Hearing January 2006
- DRCOG and Air Quality Control Commission Public Hearings February 2006
- TIP and Conformity Adoption by DRCOG Board March 2006

Staff will apprise City Council of any substantial developments that occur during the development of the 2007-2012 TIP.

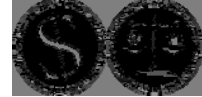
Respectfully submitted,

J. Brent McFall  
City Manager



**Agenda Memorandum**

City Council Meeting  
September 12, 2005



**SUBJECT:** Second Reading of Councillor's Bill No. 13 re Country Club Village Business Assistance Package

**Prepared By:** Susan Grafton, Economic Development Manager

**Recommended City Council Action**

Pass Councillor's Bill No. 13 on second reading authorizing the City Manager to execute and implement the business assistance package (BAP) with Country Club Village Enterprises LLC, a Colorado limited liability company. The BAP totals \$500,000 and includes permit fee rebates, construction use tax rebates on up to 50,000 square feet of retail space, and sales tax rebates for the first three years of operation.

**Summary Statement**

- City Council action is requested to pass the attached Councillor's Bill that authorizes the execution of the attached business assistance package with Country Club Village Enterprises LLC for the attraction of a high quality tenant.
- Country Club Village Enterprises LLC is constructing a 20 acre upscale retail development near the northeast corner 120<sup>th</sup> Avenue and Federal Boulevard.
- Assistance to the developer is contingent upon the attraction of quality, high end retail user(s) for up to 50,000 square feet of space in the Country Club Village development (see map attached).
- Assistance does not apply to any existing user in the City that closes another facility in Westminster and reopens at this location.
- This Councillor's Bill was passed on first reading on August 22, 2005

**Expenditure Required:** \$500,000 (Rebates)

**Source of Funds:** The business assistance package with Country Club Village Enterprises LLC will be funded through revenue received from permit fees, construction use tax, and sales tax directly generated from the construction and operation of up to 50,000 square feet in Country Club Village.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **13**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

**Dittman – Kauffman**

**A BILL  
FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE  
WITH COUNTRY CLUB VILLAGE ENTERPRISES LLC  
FOR THE CONSTRUCTION OF THE COUNTRY CLUB VILLAGE RETAIL PROJECT IN  
WESTMINSTER, COLORADO**

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

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

WHEREAS, Country Club Village Enterprises LLC plans to construct a 20 acre upscale retail center at the northeast corner of 120<sup>th</sup> Avenue and Federal Boulevard, and

WHEREAS, a proposed Business Assistance Package between the City and Country Club Village LLC is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into a Business Assistance Package with Country Club Village LLC in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 22<sup>nd</sup> day of August 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12<sup>th</sup> day of September 2005.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

## EXHIBIT A

### BUSINESS ASSISTANCE PACKAGE FOR COUNTRY CLUB VILLAGE ENTERPRISES LLC IN THE CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, between the CITY OF WESTMINSTER (the "City"), and Country Club Village Enterprises LLC, a Colorado limited liability company;

WHEREAS, the City wishes to provide certain assistance to Country Club Village Enterprises LLC contingent upon the attraction of quality, high end retail user(s) to the 50,000 square foot anchor space, and

WHEREAS, Country Club Village Enterprises LLC plans to construct a 20 acre high end retail development on the northeast corner of 120th Avenue and Federal Boulevard, consisting of approximately 98,600 square feet of speculative retail, plus a bank, a car care facility, and a drive through restaurant; and

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

In consideration of the mutual promises set forth below the City and Country Club Village Enterprises LLC agree as follows:

1. Limitations. The terms of this agreement are subject to the following limitations. There will be no obligation on the City to carry out the terms of this agreement outlined in paragraphs 2, 3, and 4 outside of the bounds of these limitations:

- City must approve the use for which rebates will be provided prior to application for a building permit for or by the user.
- Assistance will be provided for no more than 50,000 square feet but may be less, depending upon the flow of the rebate.
- The assistance is capped at a total of \$500,000. Once this amount is reached, no further assistance will be provided.
- Receipt of the rebates must occur within 3 years of the issuance of the first Certificate of Occupancy.

2. Building Permit Fee Rebates. The City shall rebate to Country Club Village Enterprises LLC 50% of the building related permit fees for the construction of up to 50,000 square feet in Country Club Village required under W.M.C. Section 11-10-3 (E), excluding water and sewer tap fees.

3. Use Tax Rebate- Construction. The City shall rebate to Country Club Village Enterprises LLC 50% of the Building Use Tax on the construction materials, resulting from the construction of up to 50,000 square feet in Country Club Village, required under W.M.C. sections 4-2-9 and 4-2-3.

4. Sales Tax Rebate. The City shall rebate to Country Club Village Enterprises LLC 50% of the amount of the sales tax collected for the first three years (36 months) of operation on the designated 50,000 square feet in Country Club Village, as determined per Paragraph 1. Such rebate shall be payable exclusively from sales tax revenue collected by the City attributable to the imposition of the City's 3.0% general sales tax (exclusive of the City's .25% Open Space Tax and the .6% Public Safety Tax). The total sales tax rebate shall not exceed \$500,000 less the amount previously rebated in permit fees (reference paragraph 2) and construction use tax (reference paragraph 3), and shall not exceed 3 years of duration.

The rebate shall be paid by the City in quarterly installments from the revenue actually collected and received by the City. The payment of each quarterly installment shall be made within 20 days following the close of each calendar quarter. Payments will be submitted electronically to a Country Club Village LLC designated financial institution.

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

6. Termination. This Business Assistance Package shall terminate and become void and of no force or effect upon the City if Country Club Village Enterprises LLC has not constructed and opened Building I on or before December 31, 2007; or, should Country Club Village Enterprises LLC fail to comply with any City code and/or approval process.

7. Business Termination. In the event that an approved user ceases business operations in the City within five years after the new operations commence, Country Club Village Enterprises LLC shall reimburse the City for any amounts rebated to or otherwise provided to Country Club Village Enterprises LLC pursuant to this Agreement, unless the City approves a successor to the initial approved user, which is substantially similar in quality and sales tax production as the approved user.

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

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

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

COUNTRY CLUB VILLAGE ENTERPRISES CITY OF WESTMINSTER  
A Colorado Limited Liability Company

\_\_\_\_\_  
Michael Byrne, Manager Member

\_\_\_\_\_  
J. Brent McFall  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Linda Yeager  
City Clerk

\_\_\_\_\_  
*Adopted by Ordinance No.*



## Agenda Item 10 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
September 12, 2005



**SUBJECT:** Proposed Country Club Village Metropolitan District

**Prepared By:** John Carpenter, Director of Community Development

### Recommended City Council Action

Open the public hearing and continue it to the September 26<sup>th</sup> City Council Meeting.

### Summary Statement

The developers of the Country Club Village (retail) and Country Club Highlands (residential) projects are requesting City Council approval of two metropolitan districts to fund infrastructure to serve these developments. These projects are located on sites bounded by 120<sup>th</sup> Avenue, Federal Parkway, Zuni Street (extended).

The attorneys for the developers prepared and distributed notices for a City Council public hearing regarding the proposed formation of the two metropolitan special districts to be held on September 12, 2005. The service plan associated with the proposed metropolitan special districts is not ready for approval. Therefore, Staff recommends continuing the public hearing until September 26<sup>th</sup>, 2005.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

No policy issue identified at this point in time.

**Alternative**

No alternative identified at this point in time.

**Background Information**

Mike Byrne is developing a retail project (Country Club Village) and residential project (Country Club Highlands). Mr. Byrne is requesting that Council support the creation of separate metropolitan special districts to fund infrastructure improvements for the retail and residential projects. John Laing Homes is the residential homebuilder.

As a part of the process to create a metro district, the City Council must approve a Service Plan which outlines the intended use of the metro district revenues. The bond attorney for the proposed district put a legal notice in the newspaper for a hearing to be held on September 12<sup>th</sup> assuming that the Service Plan would be finalized by the hearing date. The plan is not finalized and therefore the hearing needs to be continued until the September 26<sup>th</sup> Council meeting.

Respectfully submitted,

J. Brent McFall  
City Manager





## Agenda Item 10 B

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
September 12, 2005



**SUBJECT:** Public Meeting on 2006 Adopted City Budget

**Prepared By:** Barbara Opie, Assistant to the City Manager

#### **Recommended City Council Action**

Hold a public meeting on the 2006 Adopted City Budget and receive citizen comments.

#### **Summary Statement**

The 2006 Budget was adopted in October 2004 with the official adoption of the two-year budget by City Council. As part of the two-year budget process, City Council requested that the public still be provided an opportunity to receive a financial update and make requests prior to moving into the second year of a two-year adopted budget. At Monday night's meeting, Staff will present a brief update on the City's finances and an overview of the 2006 Adopted Budget to be followed by any citizen comments and/or requests.

Public meetings regarding the 2005 and 2006 Budget were held on June 14 and July 12, 2004. A public hearing on the 2005 and 2006 Budget was held on September 13, 2004.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Listen to citizen requests, comments and suggestions on the 2006 Adopted Budget. Staff will return with follow up and recommendations on any requests at the City Council Budget Review on September 19.

**Alternative**

No alternatives identified for this item.

**Background Information**

The City Council is required by the City Charter to adopt the annual budget no later than the fourth Monday in October. However, this requirement does not apply for the 2006 Adopted Budget since City Council officially adopted both the 2005 and 2006 Budgets in October 2004. Per City Council direction, a financial update/budget review is to be conducted in September 2005 to review any recommended modifications to the 2006 Adopted Budget, review any new citizen requests, and address any miscellaneous financial issues that Staff or Council wishes to raise.

City Council is scheduled to hold a public meeting to receive input on the 2006 Adopted Budget at the Monday, September 12, City Council meeting. Staff will make a brief presentation at Monday night's City Council meeting on the 2006 Adopted Budget and the City's current financial status. This public meeting is intended to receive citizen requests, comments and suggestions for 2006.

In April 2004, City Council identified the goals for 2005 and 2006; these goals were revisited and re-confirmed by City Council in April 2005. The City Council Goals are listed below:

- Financially Sound City Government
- Safe and Secure Community
- Balanced, Sustainable Local Economy
- Revitalized Aging Neighborhoods and Commercial Areas
- Beautiful City

The direction provided by City Council through these goals assisted City Staff when they prepared the 2005 and 2006 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.

In November of 2000, Westminster voters approved a City Charter amendment allows the City Council to adopt a formal two-year budget. Staff prepared a two-year budget for several years prior to this Charter amendment; however, previously City Council could only officially adopt the first year of the two-year budget. With the adoption of the 2003/2004 Budget, City Council officially adopted the City's first two-year budget. The 2005/2006 Adopted Budget represents the City's second officially adopted two-year budget.

The 2005/2006 Adopted Budget document has been available to the public in the City Clerk's Office since January 1, 2005. Monday's public meeting was advertised in the *Westminster Window*, *Westsider*, *City Edition*, and *Weekly Edition*; on cable Channel 8 and the City's website; and at various public meetings. Public meetings regarding the 2005 and 2006 Budget were held on June 14 and July 12, 2004. A public hearing was held on September 13, 2004.

Any requests submitted at Monday's public meeting on the 2006 Adopted Budget will be reviewed and researched by Staff. Staff will return with follow up and recommendations at the City Council Budget Review on September 19. Any proposed amendments that result from City Council's Budget Review on September 19 will be presented to City Council for final consideration at the October 10 City Council meeting.

Staff will make a brief presentation at Monday night's City Council meeting on the 2006 Adopted Budget and provide an update on the City's current financial status.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 12, 2005



**SUBJECT:** Councillor’s Bill No. 45 and Other Actions re Construction and Construction Related Contracts for Wolff Street Extension (114<sup>th</sup> Avenue to 116<sup>th</sup> Avenue)  
**Prepared By:** Dick Kellogg, Senior Projects Engineer

**Recommended City Council Action**

- Pass Councillor’s Bill No. 45 on first reading authorizing a supplemental appropriation in the General Capital Improvement Fund in the amount of \$19,574 reflecting the City’s receipt of cash-in-lieu funds for offsite drainage improvements for the Wolff Street Extension Project (“the Project”).
- Authorize the City Manager to execute a contract with Asphalt Specialties, Co. in the amount of \$887,985 for the construction of the Wolff Street Extension Project; authorize the City Manager to execute a contract with Wilson & Company, Inc. in the amount of \$68,600 for construction engineering services for the Project; authorize the expenditure of \$56,311 to be paid to Xcel Energy for street lights associated with the Project; authorize the expenditure of \$86,053 for the acquisition of rights-of-way for the Project; authorize a project contingency in the amount of \$124,394; and, authorize the transfer of \$95,000 from the Utility Fund Capital Water Project Reserve account to the 115<sup>th</sup>/Wolff Water and Reclaimed Water Lines Account, bringing this account balance to \$188,300, in order to complete the necessary utility system improvements being installed as part of the Project.

**Summary Statement**

- The Wolff Street Extension Project is designed to provide access to the Park site that is currently being constructed jointly by the City and the Hyland Hills Park and Recreation District on City-owned land located to the east of Sheridan Boulevard at the 115<sup>th</sup> Avenue alignment (see attached map). The road will also interconnect at the Westfield and West 117<sup>th</sup> Avenue neighborhoods and provide convenient access to the future Bradburn Elementary School from the south.
- City Council at the regular City Council Meeting on February 23, 2004 approved an expanded scope from a “bare bones” street connection (e.g., two lanes of asphalt; no curb and gutter) for the Wolff Street Extension project to include both Wolff Street and an eastward extension of 115<sup>th</sup> Avenue to Wolff Street with curb, gutter and sidewalk. At the same time Council approved postponement of the 98<sup>th</sup> Avenue, Sheridan Boulevard to Westminster Boulevard project with the understanding that the 98<sup>th</sup> Avenue project would be completed by developers when development adjacent to the 98<sup>th</sup> Avenue alignment occurs.
- Staff has conducted a construction bid process, and it is recommended that a construction contract for the enhanced Wolff Street Extension Project be awarded to Asphalt Specialties, Co. Staff additionally has conducted a request for proposal for construction engineering and material testing services and recommends a construction services contract be awarded to Wilson & Company, Inc.

**Expenditure Required:** \$1,223,343

**Source of Funds:** **Wolff Street Project** in the General Capital Improvement Fund (\$411,578) + supplemental appropriation of cash-in-lieu payments (\$19,574) = \$431,152.  
**98<sup>th</sup> Avenue Project** transfer of funds in the General Capital Improvement Fund to the Wolff Street Project (\$447,402)  
**Utility Fund 115<sup>th</sup>/Wolff Water and Reclaimed project account** (\$188,300)  
**Storm Water Utility Fund** (\$156,489)

**Policy Issue**

Does City Council agree with the selection of Asphalt Specialties, Co. to construct the Wolff Street improvements, the selection of Wilson & Co. to provide construction engineering and material testing services, the payment to Xcel Energy to install street lighting, and purchase of the necessary rights-of-way for construction?

**Alternative**

Council may conclude that the Wolff Street Project should not be constructed at this time. This alternative is not recommended due to the need for access to the park and for potable and reclaimed water services to the park and adjacent service users.

**Background Information**

The Wolff Street Project, which was funded in the 2003 and 2004 City budgets, was originally proposed as a "bare bones" installation of two lanes of asphalt with no curb, gutter or sidewalks. There is currently no access to the Park site that is being installed by the City at this time through a cooperative effort between the City and the Hyland Hills Park and Recreation District. The Wolff Street Project is intended to serve that purpose as well as improving circulation and connecting neighborhoods. After further consideration, Staff believed that it was more appropriate to provide a completed appearance for the entrance to this new City facility. The design of the roadway scope included curb and gutter on both sides of both Wolff Street and West 115<sup>th</sup> Avenue, and sidewalk on the south side of West 115<sup>th</sup> Avenue and on the west side of Wolff Street. The extension of 115<sup>th</sup> Avenue allows visitors to the soccer fields to gain access without the need to drive through residential developments.

The design development for both the new park and the Wolff Street projects concluded that a water line extension was necessary to provide a looped system for a second source of water supply. This main will provide water to both the park and to the L.I.F.E. Fellowship facilities. The park also required reclaimed water for park irrigation. An existing reclaimed water line will be extended in Wolff Street south to the northwest corner of the park. The reclaimed water line extended in Wolff Street could also provide service to the L.I.F.E. Fellowship Church, if requested. Normally, water lines, reclaimed water lines and sanitary sewers are located under streets, allowing for ease of access for maintenance as well as being located within existing street right of way. Thus, these utilities have been included in the Wolff Street construction project.

At the preliminary design stage of the Wolff Street project, Staff determined that a storm sewer outfall system would be required to properly drain 115<sup>th</sup> Avenue and Wolff Street. In addition, development occurred to the southwest of the 115<sup>th</sup> Avenue extension, which also required a storm sewer discharge system. The developers of these properties previously paid cash-in-lieu of their share of the storm sewer outfall system to be installed as part of the Wolff Street Project. This money will be used for the project.

The majority of rights-of-way for all of these proposed street extensions are already under City ownership. Some additional right-of-way is necessary to allow sidewalks to be constructed.

During the month of July 2005, Staff conducted a consultant selection process for construction engineering services for the Wolff Street Extension Project. Staff requested construction engineering proposals from four engineering firms. Review of the proposals was based first on qualifications to perform the required work and secondly upon review of proposed fees. The results of this process are listed below:

<b>Consultant</b>	<b>Proposed Fee</b>
Wilson & Company, Inc.	\$ 92,549.96
Short Elliot Hendrickson, Inc. (SEH)	\$ 99,423.33
TranSystems Corporation	\$ 99,740.00
J.F. Sato and Associates	\$108,204.45

After it was determined that Wilson & Company, Inc. would be the recommended construction engineering firm, Staff negotiated with representatives of that company on the proposed fee for the Wolff Street Extension Project. As a result of that negotiation, the fee for a refined scope of work was reduced to \$68,600. Wilson & Company, Inc. is a regional firm that is very capable of providing the required services to the City. Staff is extremely comfortable in recommending to Council that Wilson & Company, Inc. be awarded the construction engineering contract for this work.

Also during the months of July and August 2005, Staff conducted the necessary pre-bid and acceptance of bids from construction contractors for the Wolff Street Extension Project. Three construction companies responded with construction bids of which two were opened and read publicly. The third bid was rejected based on not meeting the pre-qualification requirements of the bid documents. The results of the bid opening are as follows:

<b>Contractor</b>	<b>Submitted Bid</b>
Asphalt Specialties	\$ 978,479.37
Kiewit Western Co.	\$1,195,091.05
Scott Construction Co.	Bid Rejected

Since the date of the bid opening, Staff has negotiated with Asphalt Specialties on certain bid items. The results of those negotiations have yielded a contract price of \$887,985.

Various sources provide funding for the overall Wolff Street project. A total amount (including the proposed supplemental appropriation of storm sewer outfall system cash-in-lieu payments from developers) of \$22,824 will be available in the Wolff Street project of the General Capital Improvement Fund (GCIP). Based on City Council action on February 23, 2004, the 98<sup>th</sup> Avenue project funding will be used to enhance the Wolff Street funding. Westminster Boulevard Project funds are also being transferred to fund the additional project costs for the roadway elements. The Storm Water Utility Fund appropriation will pay for a double box culvert structure under Wolff Street carrying the Cozy Corner channel drainage. And lastly, the new potable water lines and a reclaimed water line are funded through the Utility Fund.

With Council’s approval, both the contractor and the construction engineer are prepared to execute contracts with the City and commence with construction and engineering services.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **45**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

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**A BILL**

**FOR AN ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUNDS.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby increased by \$19,574 which, when added to the fund balance as of the City Council action on September 12, 2005 will equal \$32,356,518. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This is an appropriation of cash-in-lieu funds received for the offsite drainage improvements for the Wolff Street extension.

Section 2. The \$19,574 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Cash-in-lieu	7500.40210.0455	\$0	<u>\$19,574</u>	\$19,574
Total Change to Revenues			<u>\$19,574</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Wolff Street Ext	80375030301.80400.8888	\$490,000	<u>\$19,574</u>	\$509,574
Total Change to Expenses			<u>\$19,574</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.

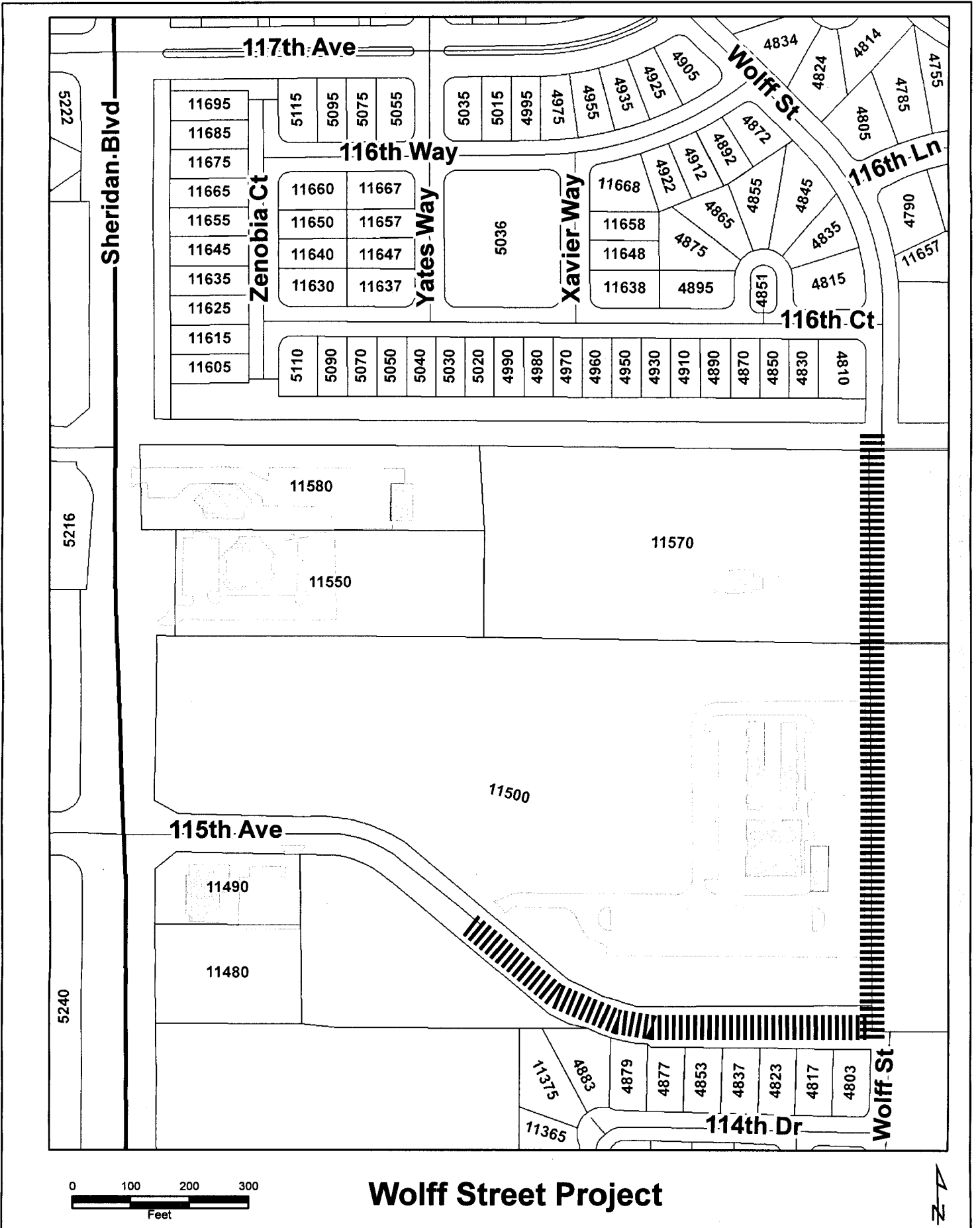
Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12th day of September, 2005. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of September, 2005.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
September 12, 2005



**SUBJECT:** Councillor's Bill No. 46 re Approval of Cellular Tower Leases  
for Countryside Recreation Center and the Hydropillar

**Prepared By:** Gary Casner, Senior Telecommunications Administrator

**Recommended City Council Action:**

Approve Councillor's Bill No. 46 which authorizes the City Manager to sign a lease agreement with VoiceStream to provide space at Countryside Recreation Center and the Hydropillar for cellular transmission antenna installation.

**Summary Statement:**

- Additional cellular sites within the City are needed by cellular phone companies to enhance and expand cellular services for customers.
- VoiceStream has evaluated locations and determined that the Countryside Recreation Center and the Hydropillar sites are ideal for the placement of cellular antennas.
- The proposed lease requirements provide for a site that will be constructed of materials that are consistent with those used in current structures at each location.
- Execution of these agreements will generate \$2,000 per month in revenue for the City of Westminster.
- The site plan has been reviewed by the Planning Division, the Parks, Recreation and Libraries Department and the Public Works Department to ensure that the tower, antenna and associated structures meet code requirements and will fit in visually at each location.
- The City Charter requires that leases of City land be ratified by ordinance.

**Expenditure Required:** \$0

**Source of Funds:** N/A



**Policy Issue**

Shall the City continue its policy of encouraging appropriate cellular telephone towers needed to improve services within the City?

**Alternative**

Deny approval of the leases, which is not desirable, as more cellular telephone towers and antennas are needed to provide telecommunication services in the City.

**Background Information**

In past years, City Council has authorized staff to lease space on City property for the construction of cellular towers and antenna in order to generate revenue and provide for enhanced cell service in the Westminster area.

Due to the technical requirements of a regional cellular telephone network, VoiceStream needs a transmission tower located near Countryside Recreation Center and one near the Hydropillar. Several months ago, Voice Stream contacted the City to determine regulatory and land use requirements. While evaluating appropriate sites that would meet the system requirements, it became apparent that the Countryside Recreation Center site would be the ideal location for the tower. The use of a collocated antenna on the Hydropillar, in addition to working best for VoiceStream, means one less additional free standing tower in the City.

The proposed lease at the Countryside Recreation Center includes 240 square feet of land and would allow for the installation of a 40-foot high monopole mast designed to appear as a flag pole. The lease at the Hydropillar would include 240 square feet of land and the installation of antenna on the side of the Hydropillar painted the same color as the building.

The City will receive \$2,000 a month in rent for the use of both sites. Westminster citizens, businesses and others using services provided by VoiceStream should experience better coverage and service with these additional antennas. Staff anticipates that installation of antennas will be completed within 60 days.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **46**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

---

**A BILL**

**FOR AN ORDINANCE APPROVING CELLULAR TOWER LEASE AGREEMENTS WITH VOICESTREAM FOR THE LEASE OF A PORTION OF THE COUNTRYSIDE RECREATION CENTER AND THE HYDROPILLAR FOR THE CONSTRUCTION OF CELLULAR TOWERS AND ANTENNAS**

WHEREAS, additional cellular sites within the City are needed by cellular phone companies to enhance and expand cellular services for customers; and

WHEREAS, VoiceStream has evaluated locations and determined that the Countryside Recreation Center and the Hydropillar sites are ideal for the placement of cellular antennas; and

WHEREAS, execution of these agreements will generate \$2,000 per month in revenue for the City; and

WHEREAS, the City Charter requires such leases to be approved by ordinance.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease Agreements between the City and VoiceStream for the lease of a portion of the Countryside Recreation Center and the Hydropillar for the construction of cellular towers and antennas are approved in substantially the same form as attached as Attachment "A."

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 12<sup>th</sup> day of September, 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26<sup>th</sup> day of September, 2005.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

## SITE LEASE WITH OPTION

THIS SITE LEASE WITH OPTION (this "Lease") is by and between The City of Westminster, a municipal corporation ("Landlord") and VoiceStream PCS II Corporation, a Delaware corporation ("Tenant").

### 1. Option to Lease.

(a) In consideration of the payment of one thousand and no/100 dollars (\$1,000.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease the use of a portion of the real property described in the attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the Effective Date (as defined below) (the "Option Period"). The Option Period may be extended by Tenant for an additional twelve (12) months upon written notice to Landlord and payment of the sum of one thousand and no/100 dollars (\$1,000.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to assist Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as defined below) from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communication Commission ("FCC") ("Governmental Approvals"). Landlord agrees to assist and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits, and Landlord expressly grants to Tenant a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. Notwithstanding the foregoing, Landlord's assistance pertaining to Governmental Approvals shall in no way be construed to require Landlord to breach its duty as a regulatory entity. Notwithstanding the foregoing, Tenant may not change the zoning classification of the Property without first obtaining Landlord's written consent. During the Option Period and any extension thereof, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

(c) If Tenant exercises the Option, then, subject to the following terms and conditions, Landlord hereby leases to Tenant the use of that portion of the Property sufficient for placement of the Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at 3333 W. 97<sup>th</sup> Avenue, Westminster, Colorado, 80031, comprises approximately 240 square feet.

2. Term. The initial term of this Lease shall be five (5) years commencing on the date of the exercise of the Option (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").

3. Permitted Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

4. Rent. Tenant shall pay Landlord, as rent, one thousand and no/100 dollars (\$1,000.00) per month ("Rent"). Rent shall be payable within twenty (20) days following the Commencement Date prorated for the remainder of the month in which the Commencement Date falls and thereafter Rent will be payable monthly in advance by the fifth day of each month to City of Westminster at Landlord's address specified in Section 12 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason (other than a default by Tenant) and all prepaid Rent shall be immediately refunded to Tenant.

5. Renewal. Tenant shall have the right to extend this Lease for five (5) additional, five-year terms (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, except that Rent shall be increased by ten percent (10%) of the Rent paid over the preceding term. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

6. Interference. Subject to paragraphs 18(k) and 18(l), Tenant shall not use the Premises in any way which substantially interferes with the use of the Property by Landlord, or lessees or licensees of Landlord with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, subsequent to Tenant's installation, or its employees,

invitees or agents to use, any portion of the Property in any way which substantially interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters and/or cabinets and related cables and utility lines and a location based system, including, without limitation, antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna Facilities"), as such location based system may be required by any county, state or federal agency/department, and permitted by Landlord through its government approval process. Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall not interfere with any aspects of construction, including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below) ("Construction Interference"). The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence, subject to Landlord's prior written approval which shall not be unreasonably withheld or delayed.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Premises in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to, the installation of emergency power generators). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall install separate meters for utilities used on the Property by Tenant. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant an easement in, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises ("Access") at all times during the Initial Term of this Lease and any Renewal Term. In the event Landlord, its employees or agents impede or deny Access to Tenant, its employees or agents, Tenant shall, without waiving any other rights that it may have at law or in equity, deduct from Rent amounts due under this Lease an amount equal to five hundred and no/100 dollars (\$500.00) per day for each day that Access is impeded or denied.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;

(b) immediately if Tenant notifies Landlord of unacceptable results of any title report, environmental or soil tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(c) upon ninety (90) days' written notice by Tenant if the Property or the Antenna Facilities are, or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(d) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or

(e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure or (ii) commits a material breach of this Lease and fails to diligently pursue such cure to its completion after sixty (60) days' written notice to the defaulting party.

10. Taxes. Landlord shall pay when due all real property taxes for the Property, excluding the Premises. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, real property tax or any other tax or fee which are directly attributable to this Lease, or the presence or installation of the Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment; such notice must comply with Section 12 below. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

11. Insurance and Subrogation and Indemnification.

(a) Tenant shall provide Commercial General Liability Insurance in an aggregate amount of One Million and no/100 dollars (\$1,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other. To the extent loss or damage is not covered by their first party property insurance policies, Landlord and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees, to the extent caused by or arising out of (a) the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this Lease. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The indemnifying party's obligations under this section are contingent upon (i) its receiving prompt written notice of any event giving rise to an obligation to indemnifying the other party and (ii) the indemnified party's granting it the right to control the defense and settlement of the same. Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease. Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property, including the Premises.

12. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:  
VoiceStream GSM I Operating Company, LLC  
c/o T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attn: PCS Lease Administrator  
With a copy to: Attn: Legal Dept.

With a copy to:  
VoiceStream GSM I Operating Company, LLC  
c/o T-Mobile USA, Inc.  
8550 W. Bryn Mawr Avenue  
Chicago, Illinois, 60631  
Attn: Market Director

If to Landlord, to:

City Manager  
City of Westminster  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80031

With a copy to:

Senior Telecommunications Administrator  
City of Westminster  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80031

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord represents, without actual investigation of the Property, that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord and Tenant shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance that have occurred or which may occur on the Premises. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

15. Assignment and Subleasing. Tenant shall have the right to assign or otherwise transfer this Lease and the Easement to any person or business entity which is authorized pursuant to an FCC license to operate a wireless communications business, is a parent, subsidiary or affiliate of Tenant, controls or is controlled by or under common control with Tenant, is merged or consolidated with Tenant or purchases more than fifty percent (50%) of either an ownership interest in Tenant or the assets of Tenant in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the Property is located. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord. Tenant may otherwise assign this Lease upon written approval of Landlord, which approval shall not be unreasonably delayed, withheld, conditioned or denied.

16. Successors and Assigns. This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached hereto as Exhibit C) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(e) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(f) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(g) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(h) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. (j) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.

(k) Landlord will notify Tenant at least forty-five (45) days in advance of the date when the water tower is scheduled to be painted. Tenant and Landlord will cooperate to determine and mutually agree upon which of the following two options will be used to address the impact of the Antenna Facility on the cost of painting the water tower: 1) Prior to painting, Tenant shall place a temporary antenna array or cell on wheels on the Premises. Tenant will remove its Antenna Facility from the water tower. Upon completion of painting, Tenant will reattach and paint the Antenna Facility to resemble the color of the Water Tower or 2) The painting contractor will provide 2 bids; the cost of painting the water tower with Tenant's Antenna Facility left in place (Bid #1) and the cost to paint the water tower without Tenant's Antenna Facility ("Bid #2). Upon completion of painting, without removal of Tenant's Antenna Facility, Tenant shall reimburse Landlord for its proportionate share among other carriers collocating on the water tower for the difference between Bid #1 and Bid #2.

(l) Landlord may, after thirty (30) days written notice to Tenant, perform repair or maintenance work to the water tower (the "Work"), at its sole cost and expense, provided that (i) Landlord specifies in its notice the nature of the Work, and (ii) such Work does not unreasonably interfere with Tenant's use of the Premises. Tenant will use reasonable efforts to cooperate with Landlord to prevent any potential interference with Tenant's use of the Premises related to such Work. Notwithstanding anything to the contrary contained herein, the foregoing notice requirements shall not be applicable in the event of an emergency repair or maintenance. In which case, Landlord shall provide Tenant with notice as soon as is reasonably practical under the circumstances. Moreover, if the Work is of the nature that will not effect Tenant's use of the Premises, no notice to Tenant shall be required.

The effective date of this Lease is the date of execution by the last party to sign (the "Effective Date").

LANDLORD: City of Westminster

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

TENANT: VoiceStream PCS II Corporation

By: *Darcy R. Estes*  
Printed Name: Darcy R. Estes  
Its: Area Site Development Manager – Mountain West  
Date: 5/16/05

\_\_\_\_\_  
Approved as to form



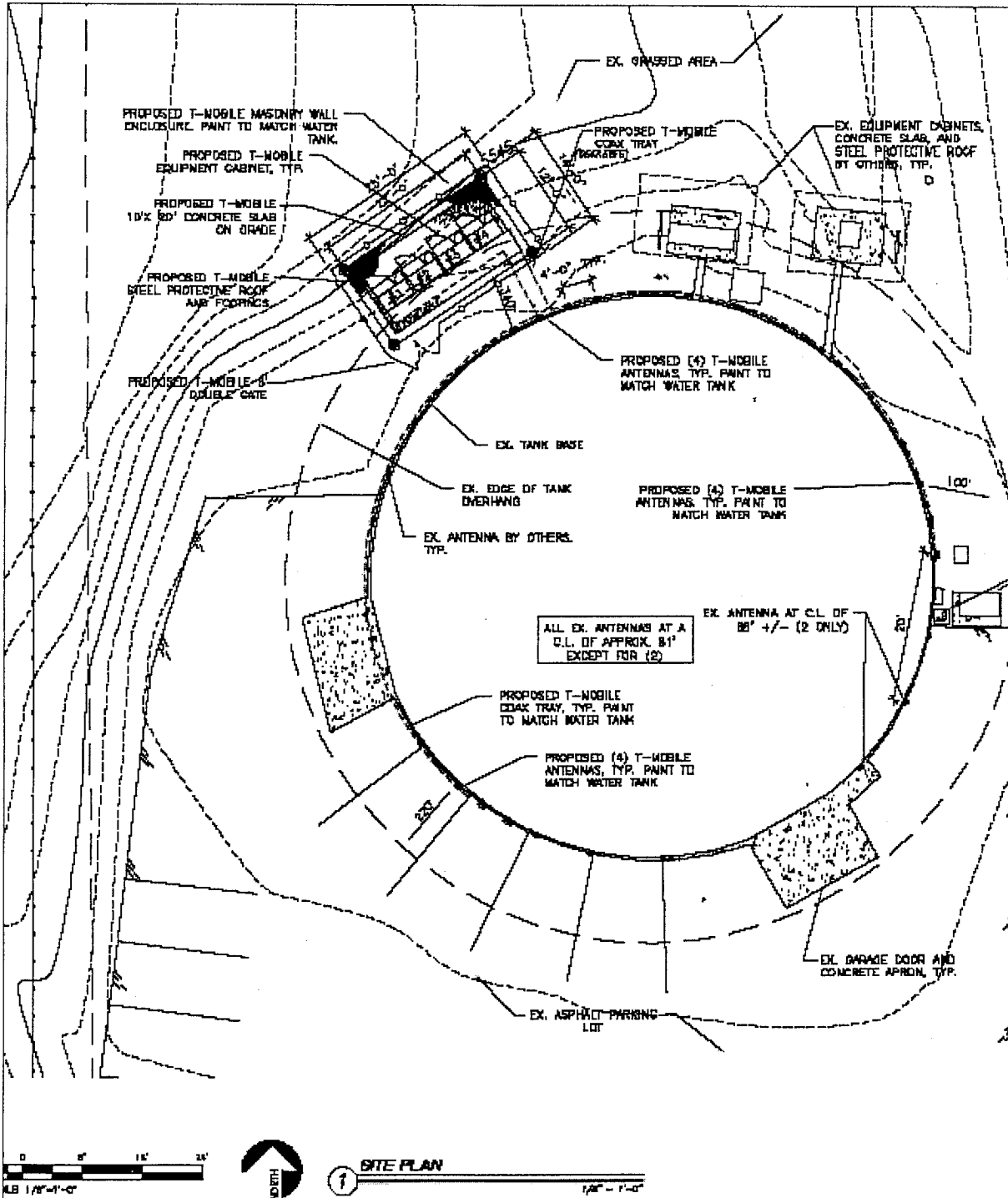
**EXHIBIT A**  
**Legal Description**

**The Property is legally described as follows:**

**LOTS 51 AND 52,  
HOLLYHURST,  
A SUBDIVISION ON THE CITY OF WESTMINSTER  
COUNTY OF ADAMS,  
STATE OF COLORADO**

**EXHIBIT B**

The location of the Premises within the Property (together with access and utilities)  
is more particularly described and depicted as follows:



**EXHIBIT B (cont.)**  
**The location of the Premises within the Property (together with access and utilities)**  
**is more particularly described and depicted as follows:**

IN THE CITY OF WESTMINSTER  
 COUNTY OF JEFFERSON, STATE OF COLORADO  
 SHEET 5 of 5

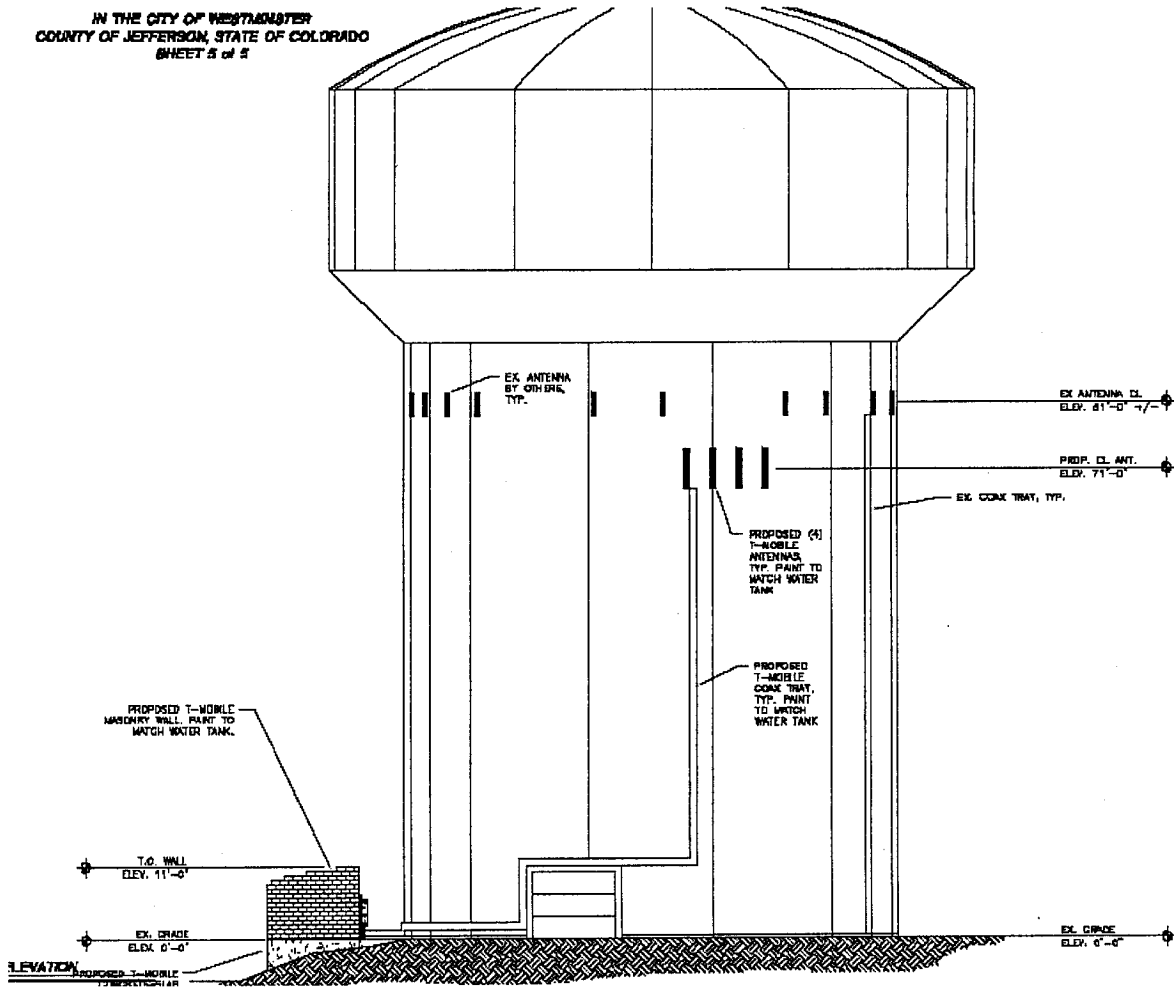


EXHIBIT B (cont.)

The location of the Premises within the Property (together with access and utilities) is more particularly described and depicted as follows:

VT TO THE OFFICIAL DEVELOPMENT PLAN FOR  
 WESTMINSTER WATER TANK  
 PLANNED UNIT DEVELOPMENT  
 IN THE CITY OF WESTMINSTER  
 OF JEFFERSON, STATE OF COLORADO  
 SHEET 4 of 5

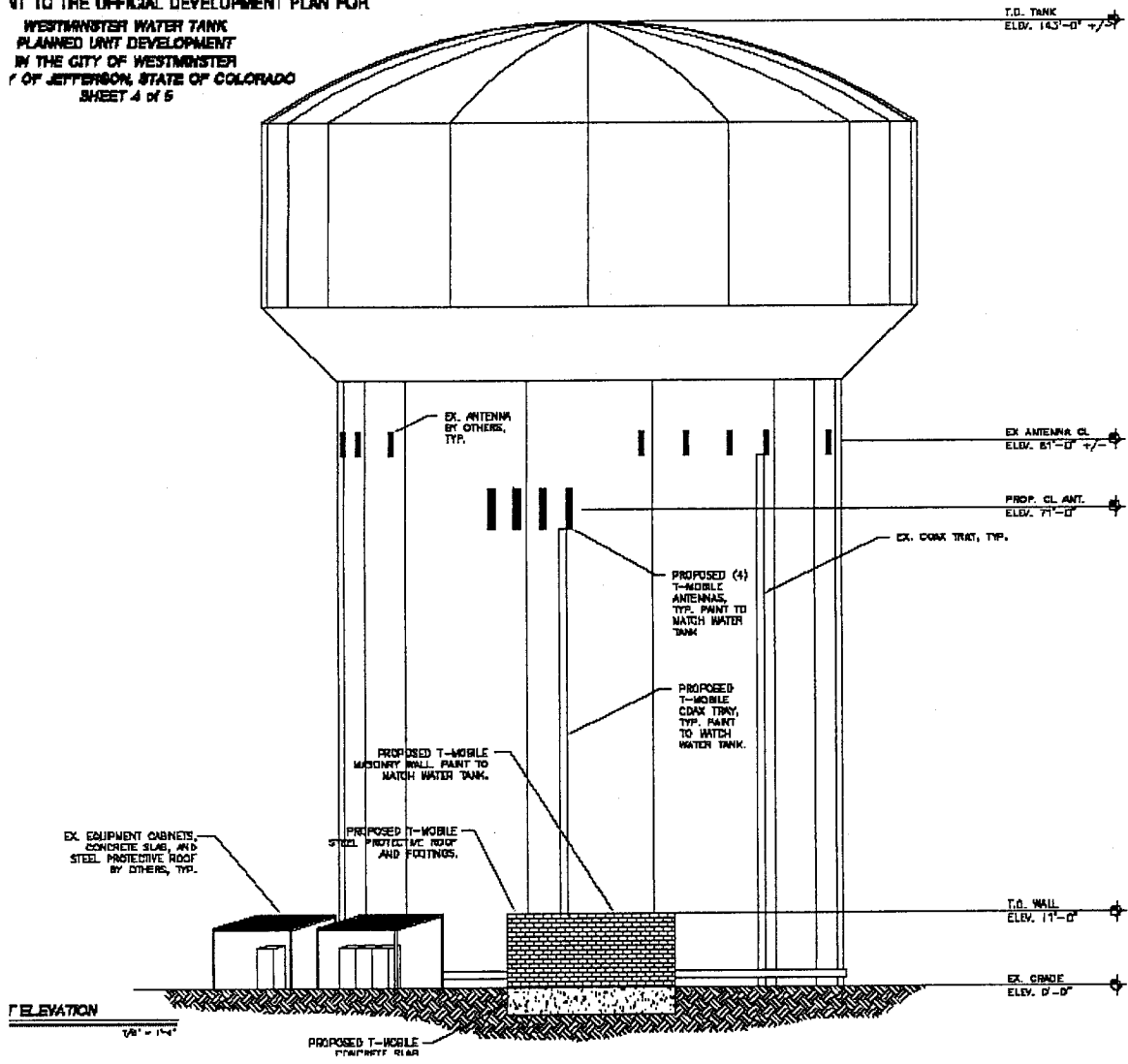


EXHIBIT C

**Memorandum  
of  
Lease**

Site Number: DN3516  
Site Name: Westminster Water Tank  
Market: Denver

Version 10-2-01

**Memorandum of Lease**

Assessor's Parcel Number: 0171917317001  
Between City of Westminster ("Landlord")  
and VoiceStream PCS II Corporation ("Tenant")

A Site Lease with Option (the "Lease") by and between <Landlord Name><and><2nd Landlord, if any> ("Landlord") and <Market Entity Name>, a <Corporation Or Limited Liability Co> ("Tenant") was made regarding a portion of following the property:

See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of twelve (12) months after the Effective Date of the Lease (as defined under the Lease), with up to one additional twelve (12) month renewal ("Optional Period").

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for five (5) additional five-year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LANDLORD: City of Westminster

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

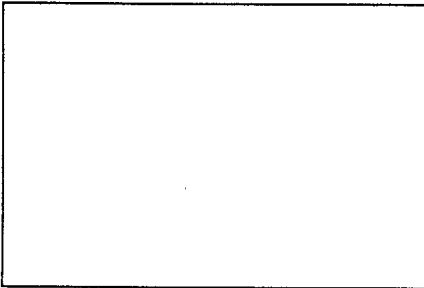
TENANT: VoiceStream PCS II Corporation

By: *Darcey R. Estes*  
Printed Name: Darcey R. Estes  
Its: Area Site Development Manager – Mountain West  
Date: 5/16/05

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ADAMS )

This instrument was acknowledged before me on \_\_\_\_\_ by J. Brent McFall, City Manager of the City of Westminster, a Colorado home-rule municipality, on behalf of said City of Westminster.

Dated: \_\_\_\_\_



Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

(Use this space for notary stamp/seal)

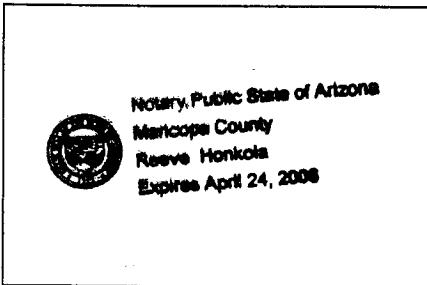
Approved by City Council Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2005.

*[Notary block for Tenant]*

STATE OF AZ )  
 ) ss.  
COUNTY OF MARICOPA )

I certify that I know or have satisfactory evidence that Darcey R. Estes is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Area Site Development Manager – Mountain West of VoiceStream PCS II, a Delaware corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/16/05



[Signature]  
Notary Public  
Print Name REEVE HONKOLA  
My commission expires 4/24/08

(Use this space for notary stamp/seal)

**Memorandum of Lease EXHIBIT A  
Legal Description**

**The Property is legally described as follows:**

**LOTS 51 AND 52,  
HOLLYHURST,  
A SUBDIVISION ON THE CITY OF WESTMINSTER  
COUNTY OF ADAMS,  
STATE OF COLORADO**



## SITE LEASE WITH OPTION

THIS SITE LEASE WITH OPTION (this "Lease") is by and between The City of Westminster, a municipal corporation ("Landlord") and VoiceStream PCS II Corporation, a Delaware corporation ("Tenant").

### 1. Option to Lease.

(a) In consideration of the payment of one thousand and no/100 dollars (\$1,000.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease the use of a portion of the real property described in the attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the Effective Date (as defined below) (the "Option Period"). The Option Period may be extended by Tenant for an additional twelve (12) months upon written notice to Landlord and payment of the sum of one thousand and no/100 dollars (\$1,000.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to assist Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as defined below) from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communication Commission ("FCC") ("Governmental Approvals"). Landlord agrees to assist and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits, and Landlord expressly grants to Tenant a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. Notwithstanding the foregoing, Landlord's assistance pertaining to Governmental Approvals shall in no way be construed to require Landlord to breach its duty as a regulatory entity. Notwithstanding the foregoing, Tenant may not change the zoning classification of the Property without first obtaining Landlord's written consent. During the Option Period and any extension thereof, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

(c) If Tenant exercises the Option, then, subject to the following terms and conditions, Landlord hereby leases to Tenant the use of that portion of the Property sufficient for placement of the Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at 10470 Oak Street, Westminster, CO, 80020, comprises approximately 240 square feet.

2. Term. The initial term of this Lease shall be five (5) years commencing on the date of the exercise of the Option (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").

3. Permitted Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

4. Rent. Tenant shall pay Landlord, as rent, one thousand and no/100 dollars (\$1,000.00) per month ("Rent"). Rent shall be payable within twenty (20) days following the Commencement Date prorated for the remainder of the month in which the Commencement Date falls and thereafter Rent will be payable monthly in advance by the fifth day of each month to City of Westminster at Landlord's address specified in Section 12 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason (other than a default by Tenant) and all prepaid Rent shall be immediately refunded to Tenant.

5. Renewal. Tenant shall have the right to extend this Lease for five (5) additional, five-year terms (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, except that Rent shall be increased by ten percent (10%) of the Rent paid over the preceding term. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

6. Interference. Tenant shall not use the Premises in any way which substantially interferes with the use of the Property by Landlord, or lessees or licensees of Landlord with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, subsequent to Tenant's installation, or its employees, invitees or agents to use, any portion of the

Property in any way which substantially interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters and/or cabinets and related cables and utility lines and a location based system, including, without limitation, antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna Facilities"), as such location based system may be required by any county, state or federal agency/department, and permitted by Landlord through its government approval process. Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall not interfere with any aspects of construction, including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below) ("Construction Interference"). The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence, subject to Landlord's prior written approval which shall not be unreasonably withheld or delayed.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Premises in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to, the installation of emergency power generators). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall install separate meters for utilities used on the Property by Tenant. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant an easement in, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises ("Access") at all times during the Initial Term of this Lease and any Renewal Term. In the event Landlord, its employees or agents impede or deny Access to Tenant, its employees or agents, Tenant shall, without waiving any other rights that it may have at law or in equity, deduct from Rent amounts due under this Lease an amount equal to five hundred and no/100 dollars (\$500.00) per day for each day that Access is impeded or denied.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;

(b) immediately if Tenant notifies Landlord of unacceptable results of any title report, environmental or soil tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(c) upon ninety (90) days' written notice by Tenant if the Property or the Antenna Facilities are, or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(d) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or

(e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure or (ii) commits a material breach of this Lease and fails to diligently pursue such cure to its completion after sixty (60) days' written notice to the defaulting party.

10. Taxes. Landlord shall pay when due all real property taxes for the Property, excluding the Premises. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, real property tax or any other tax or fee which are directly attributable to this Lease, or the presence or installation of the Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment; such notice must comply with Section 12 below. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

11. Insurance and Subrogation and Indemnification.

(a) Tenant shall provide Commercial General Liability Insurance in an aggregate amount of One Million and no/100 dollars (\$1,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other. To the extent loss or damage is not covered by their first party property insurance policies, Landlord and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees, to the extent caused by or arising out of (a) the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this Lease. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The indemnifying party's obligations under this section are contingent upon (i) its receiving prompt written notice of any event giving rise to an obligation to indemnifying the other party and (ii) the indemnified party's granting it the right to control the defense and settlement of the same. Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease. Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property, including the Premises.

12. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:  
VoiceStream GSM I Operating Company, LLC  
c/o T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attn: PCS Lease Administrator  
With a copy to: Attn: Legal Dept.

With a copy to:  
VoiceStream GSM I Operating Company, LLC  
c/o T-Mobile USA, Inc.  
8550 W. Bryn Mawr Avenue  
Chicago, Illinois, 60631  
Attn: Market Director

If to Landlord, to:

City Manager  
City of Westminster  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80031

With a copy to:

Senior Telecommunications Administrator  
City of Westminster  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80031

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord represents, without actual investigation of the Property, that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord and Tenant shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance that have occurred or which may occur on the Premises. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

15. Assignment and Subleasing. Tenant shall have the right to assign or otherwise transfer this Lease and the Easement to any person or business entity which is authorized pursuant to an FCC license to operate a wireless communications business, is a parent, subsidiary or affiliate of Tenant, controls or is controlled by or under common control with Tenant, is merged or consolidated with Tenant or purchases more than fifty percent (50%) of either an ownership interest in Tenant or the assets of Tenant in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the Property is located. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord. Tenant may otherwise assign this Lease upon written approval of Landlord, which approval shall not be unreasonably delayed, withheld, conditioned or denied.

16. Successors and Assigns. This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached hereto as Exhibit C) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(e) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(f) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(g) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(h) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. (j) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.

The effective date of this Lease is the date of execution by the last party to sign (the "Effective Date").

LANDLORD: City of Westminster

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

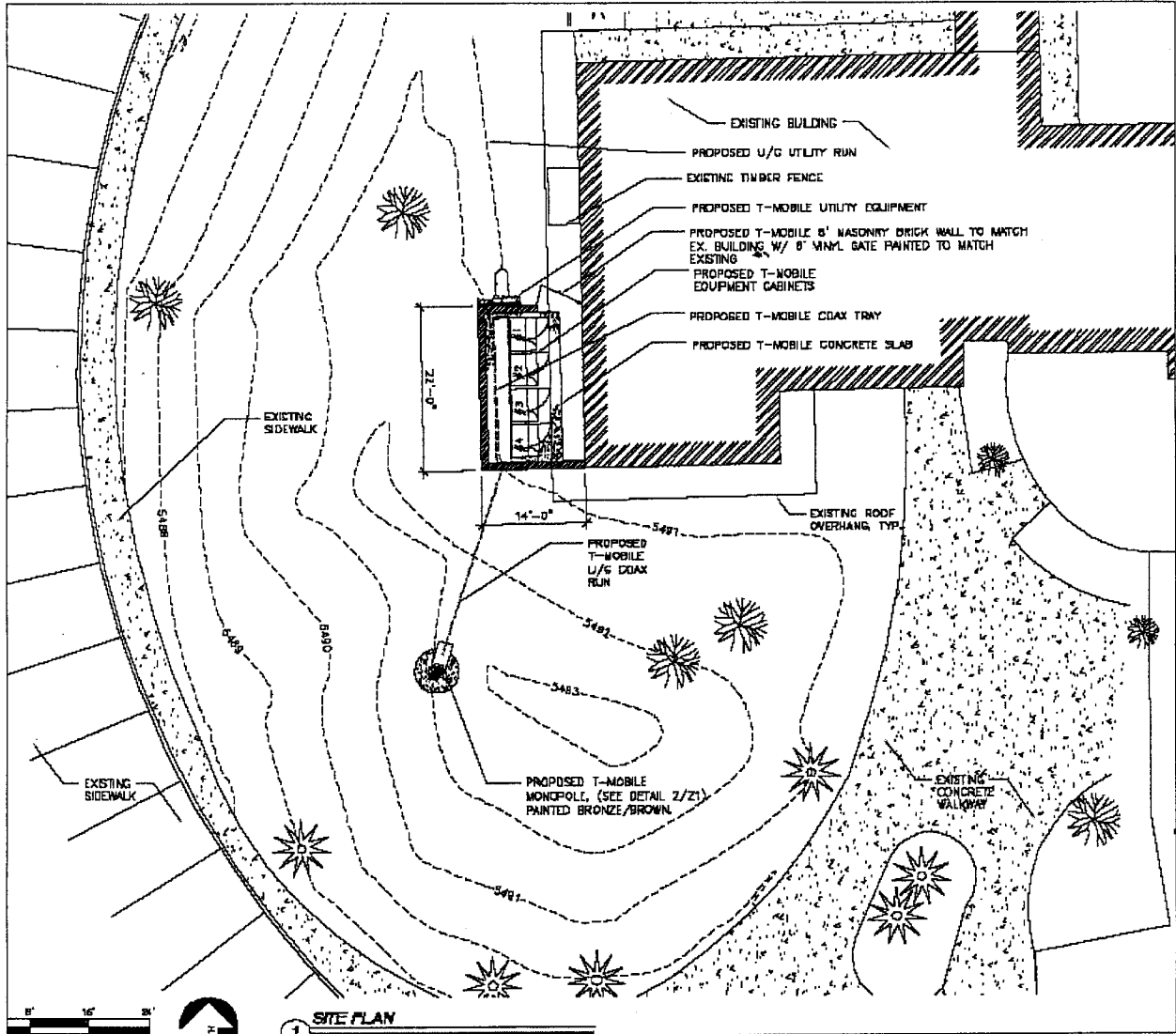
TENANT: VoiceStream PCS II Corporation

By: *Darcey R. Estes*  
Printed Name: Darcey R. Estes  
Its: Area Site Development Manager – Mountain West  
Date: 5/16/05

\_\_\_\_\_  
Approved as to form

**EXHIBIT B**

The location of the Premises within the Property (together with access and utilities)  
is more particularly described and depicted as follows:



**EXHIBIT C**

**Memorandum  
of  
Lease**

Site Number: DN3512  
Site Name: Country Side Pool  
Market: Denver

Version 10-2-01



**Memorandum of Lease**

Assessor's Parcel Number: 29-094-18-001  
Between City of Westminster ("Landlord")  
and VoiceStream PCS II Corporation ("Tenant")

A Site Lease with Option (the "Lease") by and between the City of Westminster ("Landlord") and VoiceStream PCS II Corporation was made regarding a portion of following the property:

See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of twelve (12) months after the Effective Date of the Lease (as defined under the Lease), with up to one additional twelve (12) month renewal ("Optional Period").

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for five (5) additional five-year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LANDLORD: City of Westminster

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

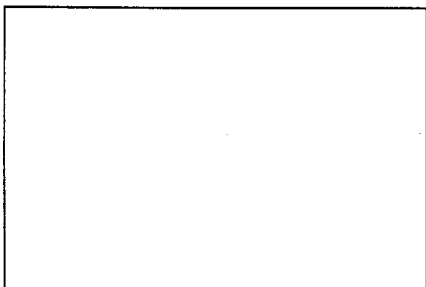
TENANT: VoiceStream PCS II Corporation

By: *Darcey R. Estes*  
Printed Name: Darcey R. Estes  
Its: Area Site Development Manager – Mountain West  
Date: 5/10/05

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ADAMS )

This instrument was acknowledged before me on \_\_\_\_\_ by J. Brent McFall, City Manager of the City of Westminster, a Colorado home-rule municipality, on behalf of said City of Westminster.

Dated: \_\_\_\_\_



\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

(Use this space for notary stamp/seal)

Approved by City Council Ordinance No. \_\_\_\_\_, on \_\_\_\_\_, 2005.

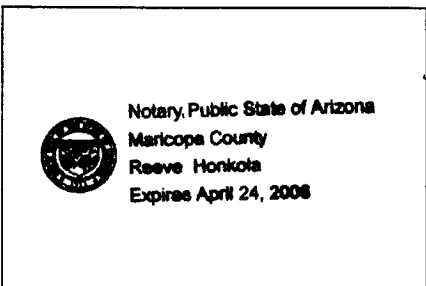
*[Notary block for Tenant]*

STATE OF AZ )  
 ) ss.  
COUNTY OF MARICOPA )

I certify that I know or have satisfactory evidence that Darcey R. Estes is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Area Site Development Manager of VoiceStream PCS II, a Delaware corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/16/05

  
\_\_\_\_\_  
Notary Public  
Print Name REEVE HONKOLA  
My commission expires 4/24/08



(Use this space for notary stamp/seal)

**Memorandum of Lease EXHIBIT A  
Legal Description**

**The Property is legally described as follows:**

**LOT 1,  
BLOCK 1,  
COUNTRYSIDE SUBDIVISION, FILING NO. 1,  
JEFFERSON COUNTY  
STATE OF COLORADO**

## Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, September 12, 2005. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Dixon, and Price were present at roll call. Councillor Davia was absent. Councillor Hicks was absent at roll call, but joined the meeting in progress at about 7:30 p.m.

The minutes of the August 22, 2005 regular meeting and the August 29, 2005 special meeting were approved.

Council approved the following: biosolids composting expenditure; Dell computer purchase authorization; expenditure for street lights and under grounding of utilities re 144<sup>th</sup> Avenue and I-25 Interchange Project; long-range fiscal model and comprehensive rate and fee study for the Water/Wastewater Enterprise; project applications re DRCOG's 2007-2012 Transportation Improvement Program; construction contracts re Wolff Street extension (114<sup>th</sup> to 116<sup>th</sup> Ave.); and final passage of Councillor's Bill No. 13 re Country Club Village BAP.

The following Councillors' Bills were passed on first reading:

**A BILL FOR AN ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUNDS. Purpose:** authorize a supplemental appropriation for Wolff Street Extension Project offsite drainage improvements.

**A BILL FOR AN ORDINANCE APPROVING CELLULAR TOWER LEASE AGREEMENTS WITH VOICESTREAM FOR THE LEASE OF A PORTION OF THE COUNTRYSIDE RECREATION CENTER AND THE HYDROPILLAR FOR THE CONSTRUCTION OF CELLULAR TOWERS AND ANTENNAS. Purpose:** authorize lease agreement with VoiceStream at Countryside Recreation Center and the Hydropillar for cellular transmission antenna installation.

Council opened a public hearing concerning the proposed Country Club Village Metropolitan District and continued the hearing to the September 26, 2005 meeting.

Council accepted public comment re the 2006 adopted City budget.

At 8:13 p.m., the meeting was adjourned.

By order of the Westminster City Council  
Linda Yeager, MMC, City Clerk  
Published in the Westminster Window on September 22, 2005

**A BILL FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE WITH COUNTRY CLUB VILLAGE ENTERPRISES LLC FOR THE CONSTRUCTION OF THE COUNTRY CLUB VILLAGE RETAIL PROJECT IN WESTMINSTER, COLORADO**

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

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

WHEREAS, Country Club Village Enterprises LLC plans to construct a 20 acre upscale retail center at the northeast corner of 120<sup>th</sup> Avenue and Federal Boulevard, and

WHEREAS, a proposed Business Assistance Package between the City and Country Club Village LLC is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

**THE CITY OF WESTMINSTER ORDAINS:**

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into a Business Assistance Package with Country Club Village LLC in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 22<sup>nd</sup> day of August 2005. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12<sup>th</sup> day of September 2005.