

**CITY COUNCIL AGENDA**

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Business Appreciation Week – Week of October 1st Proclamation
 - B. Northwest Metro Business Women's Week Proclamation
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda

- A. Financial Report for August 2012
- B. 2013 Property and Liability Insurance Renewal
- C. Standley Lake Bypass Project
- D. Integrated Library System Maintenance Contract
- E. Employee Wellness Clinic Construction Remodel Contract
- F. Silo Pump Station Header Replacement Design-Build Contract
- G. First Amendment to the IGA to Establish the North Metro Task Force as a Legal Entity
- H. Second Reading of Councillor's Bill No. 35 re Site Agreement Extension re Use of the Fire Station 6 Cell Tower
- I. Second Reading of Councillor's Bill No. 36 re Housekeeping Amendments Titles V, VI, VIII and IX of the WMC
- J. Second Reading of Councillor's Bill No. 37 re WMC Section 10-1-12(B) re Parking in Public Rights-of-Way

9. Appointments and Resignations**10. Public Hearings and Other New Business**

- A. Public Hearing re Amended and Restated Service Plan re Orchard Park Place North Metropolitan District
- B. Resolution No. 27 re Amended and Restated Service Plan re Orchard Park Place North Metropolitan District
- C. Resolution No. 28 re IGA with CDOT re Federal Grant to Install a Traffic Signal on 112th Avenue at FRCC
- D. IGA with Front Range Community College re Traffic Signal on 112th Avenue at East Entrance of College
- E. Councillor's Bill No. 38 re Appropriation of CDOT Grant Monies re Traffic Signal on 112th Avenue at FRCC
- F. Councillor's Bill No. 39 re 2012 HUD Section 108 Loan Fund Appropriation
- G. Councillor's Bill No. 40 re Federal Boulevard Trail Project Supplemental Appropriation
- H. Federal Boulevard Trail Project Construction Contract

11. Old Business and Passage of Ordinances on Second Reading

- A. Second Reading of Councillor's Bill No. 26 re Update to Title XI of the W.M.C. re Accessory Buildings

12. Miscellaneous Business and Executive Session

- A. City Council
- B. Executive Session - Discussion of personnel matter (City Manager's performance evaluation) pursuant to WMC Section 1-11-3(C)(1) and CRS 24-6-402 (4)(f)

13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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



WESTMINSTER
Strategic Plan
2012-2017
Goals and Objectives

STRONG, BALANCED LOCAL ECONOMY

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



FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

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



SAFE AND SECURE COMMUNITY

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



VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

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



BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

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



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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, SEPTEMBER 10, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of August 27, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall noted that later in the meeting, a public hearing would be conducted to consider the 2013/2014 Budget. Anyone in attendance to address Council about the proposed budget should refrain from commenting until the public hearing was opened for public comment. If someone wanted to speak to any other item on the agenda, they should make their comments during Citizen Communication.

At the conclusion of this meeting, the Westminster Economic Development Authority (WEDA) Board of Directors would meet. After adjournment of that meeting, the Council would conduct a post-meeting in the Board Room to receive presentations from the Public Information Staff regarding Access Westminster and Westminster's Best. The public was welcome to attend. At the conclusion of the post-meeting the Council would convene in Executive Session to discuss strategy and progress on the sale, acquisition, trade or exchange of property or property rights for the Heritage Golf Course pursuant to Sections 1-11-3 (C)(2), (7) and (8), Westminster Municipal Code, and Sections 24-6-402 (4)(a) and (e), Colorado Revised Statutes.

CITY COUNCIL REPORTS

Mayor McNally reported that she had been unable to attend the Westminster Public Safety Recognition Foundation 911 Banquet the prior Friday evening, as she and her husband were in Nantucket visiting her daughter, a survivor of the September 11, 2001 terrorist attack at the World Trade Center twin towers. On the eve of the 11th anniversary of that tragedy, she urged everyone to hold the victims, survivors, and all their families close in thought. Many were healing, but none who were there that day would ever forget what had happened on the anniversary of the tragedy.

Councillor Major reported that he had attended the 911 Banquet last Friday evening. Dinner had been followed by moving recounts of emergencies to which Westminster Policemen, Firemen and citizens had responded to aid their fellow man. It was a pleasure to watch as everyday heroes were presented with medals, pins, and plaques from the Police and Fire Chiefs for their bravery and meritorious service. Public Safety Officers risked their lives to protect the community and its residents on a daily basis, and Councillor Major thanked them and their families for the sacrifices they made.

EMPLOYEE SERVICE AWARDS

Council presented service awards to employees with 20, 25, and 35 years of tenure with the City and thanked them and their families for the years and years of dedication to the organization. Mayor Pro Tem Winter presented a certificate and pin to Jackie Bowers for 20 years of service. Mayor McNally presented certificates, pins and stipends to Harrison David, III and J. C. Engdahl for 25-years of service. Councillor Major presented certificates and pins to Bill Morgan and Mike Normandin for 35 years of service to the City.

NATIONAL PREPAREDNESS MONTH PROCLAMATION

Councillor Atchison read a proclamation signed by the Mayor wherein September was declared to be National Preparedness Month in Westminster and citizens were urged to support the many public safety activities and efforts of the city, state and federal governments. The proclamation was presented to Mike Reddy, the City's Emergency Management Coordinator.

CITIZEN COMMUNICATIONS

Kaaren Hardy, 5133 West 73rd Avenue and Vice Chairman of the Historic Landmark Board, encouraged City Council to approve the nomination to designate the Metzger Farm to the National Register of Historic Places. She appreciated the time that Staff had taken to prepare and advance the nomination. The Metzger Farm, jointly owned and operated by the Cities of Broomfield and Westminster, was an urban treasure worthy of historic preservation locally and nationally.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the City Manager to enter into a contract with CareHere Management, LLC for the start up and operation of the Employee Wellness Clinic for a two-year period with the option for one, two-year renewal of the contract; authorize the City Manager to execute a contract with the low bidder, Goodland Construction, Inc., in the amount of \$118,922.50 for the construction of the Kings Mill Park Expansion and authorize a construction contingency in the amount of \$11,892.00 for a total project expenditure of \$130,814.50; authorize the City Manager to execute a \$151,956 contract with Felsburg, Holt & Ullevig, Inc. for the final design of the 120th Avenue Underpass Project and authorize a design contingency in the amount of \$15,000 for a total project budget of \$166,956; based on the City Manager's report and recommendation, determine that the public interest would be served by ratifying past purchases of hot tub filterization equipment and authorizing the City Manager to enter into a \$85,600 contract with Dr. Guenter Moldizo for design, fabrication, installation and commissioning of City Park Recreation Centers multimedia filterization system and ozone reactor vessel chamber; final passage on second reading of Councillor's Bill No. 9 approving the proposed modifications to the Westminster Municipal Code Title VIII relating to the Industrial Pretreatment Program; final passage on second reading of Councillor's Bill No. 31 providing for a supplemental appropriation of funds to the 2012 budget of the General, Medical/Dental Self Insurance, Parks Open Space and Trails, and General Capital Improvement Funds; final passage on second reading of Councillor's Bill No. 32 appropriating funds received from the Jefferson County Open Space Local Park and Recreation Grant Program in the amount of \$200,000 for the Bonnie Stewart open space acquisition grant; final passage on second reading of Councillor's Bill No. 33 appropriating funds received from Adams County in the amount of \$448,700 for the McKay Overlook open space acquisition grant; and final passage on second reading of Councillor's Bill No. 34 appropriating funds received from Adams County in the amount of \$408,564 for the Westminster Hills Elementary School site open space acquisition grant.

No items were removed from the consent agenda for individual consideration and it was moved by Councillor Major and seconded by Mayor Pro Tem Winter to approve the consent agenda, as presented. The motion carried.

PUBLIC HEARING ON THE 2013/2014 CITY BUDGET

At 7:20 p.m. the Mayor opened a public hearing on the 2013/2014 City Budget. Mr. McFall presented an overview of revenues and expenditures by fund, proposed staffing, and proposed projects in the City's robust Capital Improvement Programs. The strategy implemented in 2010 to ensure that projected revenues and expenditures could sustain core services into the future was successfully closing the structural budget gap forecasted at the time. Information provided included a listing of City property tax levies for Westminster and other metro Denver communities. This was the 21st consecutive year Westminster's property assessment would be 3.65 mills, the

lowest in the region. Westminster's 3.85% City sales tax rate ranked 4th when compared to the same communities used in the property tax analysis; however, the City's rate included voter-approved percentages totaling .85% dedicated to parks, open space and trails (.25%) and public safety (.6%). The next steps in finalizing the budget and submitting it for City Council's adoption included a September 17 City Council Budget Retreat, first reading consideration of the appropriation ordinance on October 8 and second reading on October 22. The City Charter deadline for adoption of the budget was October 22.

Mayor McNally opened the hearing for public comment.

Tim McAndrew, 13585 West 84th Avenue, was disappointed to learn that the installation of bike lanes on 100th Avenue between Alkire and Simms Streets was not included in the proposed budget and reiterated his request for the improvements. He provided the Final Bikeway Network map from the City's Bicycle Master Plan and a map from the Jefferson County Bicycle Plan to emphasize that both contained this segment of 100th Avenue in their on-road bike plans. Following the death of a bicyclist last year, recreational and commuter cyclists were aware of the need for safety improvements.

No others wished to speak and Mayor McNally closed the public hearing at 7:50 p.m. She reiterated that the City of Westminster's property tax assessment was 3.65 mills because constituents frequently had questions about how the City spent all the property taxes they collected. In reality the City's portion of property tax paid by property owners was a very small portion of the overall tax assessments levied. School districts and county governments were the primary beneficiaries of property taxes.

COUNCILLOR'S BILL NO. 35 CELL TOWER SITE AGREEMENT AT FIRE STATION 6

It was moved by Councillor Briggs and seconded by Councillor Kaiser to pass Councillor's Bill No. 35 on first reading approving the First Amendment to Site Agreement between the City and New Cingular Wireless PCS, LLC, for the continued short-term use of the Fire Station 6 cell tower at 999 West 124th Avenue. The motion passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 36 – HOUSEKEEPING AMENDMENTS TO TITLES V, VI, VIII AND IX, W.M.C.

It was moved by Councillor Major, seconded by Mayor Pro Tem Winter, to pass Councillor's Bill No. 36 on first reading, making housekeeping amendments to Titles V, VI, VIII and IX of the Westminster Municipal Code. The motion carried unanimously on roll call vote.

COUNCILLOR'S BILL NO. 37 AMENDING W.M.C., TITLE X, PARKING IN PUBLIC RIGHTS-OF-WAY

Councillor Atchison moved to pass Councillor's Bill No. 37 on first reading amending Section 10-1-12 (B) of the Westminster Municipal Code to prohibit parking on that portion of the public right-of-way located between the curb and the sidewalk. Councillor Kaiser seconded the motion, and it passed unanimously on roll call vote.

RESOLUTION NO. 25 NOMINATING METZGER FARM TO NAT'L REGISTER OF HISTORIC PLACES

Upon a motion by Councillor Briggs, seconded by Councillor Kaiser, the Council voted unanimously on roll call vote to adopt Resolution No. 25 in support of the nomination of the Metzger Farm to designation on the National Register of Historic Places.

RESOLUTION NO. 26 REFUNDING 2009 LOAN ISSUED FOR THE SOUTH SHERIDAN URA

It was moved by Mayor Pro Tem Winter, seconded by Councillor Major, to adopt Resolution No. 26 approving documents in essentially the same form as attached related to the Westminster Economic Development

Authority 2012 Loan Refunding to refund the Westminster Economic Development Authority 2009 Loan, to which the City is a party, including the Replenishment Resolution and the City Cooperation Agreement with Westminster Economic Development Authority. The motion carried unanimously on roll call vote.

MOTION TO TABLE SECOND READING OF COUNCILLOR’S BILL NO. 26 – ACCESSORY BUILDINGS

Councillor Atchison moved, seconded by Councillor Kaiser, to table second reading of Councillor’s Bill No. 26, updating Title XI, W.M.C. concerning accessory buildings. The motion failed by a 3:3 vote with Mayor McNally, Mayor Pro Tem Winter, and Councillor Winter voting no.

COUNCILLOR’S BILL NO. 26 UPDATING TITLE XI, W.M.C. – ACCESSORY BUILDINGS

It was moved by Councillor Kaiser and seconded by Mayor Pro Tem Winter to pass Councillor’s Bill No. 26 on second reading making revisions to Title XI of the Westminster Municipal Code regarding accessory buildings. At roll call, the motion failed by a 3:3 vote with Mayor McNally and Councillors Atchison and Major voting no.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Mayor Pro Tem Winter and seconded by Councillor Kaiser to adjourn. The motion passed and the Mayor adjourned the meeting at 7:55 p.m.

Mayor

ATTEST:

City Clerk



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Proclamation re Business Appreciation Week – Week of October 1st

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Councillor Kaiser to present a proclamation to Ryan Johnson, Economic Development Specialist, on behalf of the business community proclaiming the week of October 1st as “Business Appreciation Week” in the City of Westminster.

Summary Statement

- For the past several years, the City has hosted the Business Appreciation Event for local businesses to recognize their role as essential ingredients to the continued strength, well being, and high quality of life of Westminster. This year the event will be held on Friday, October 5th, at the Westin Westminster Hotel.
- The Mayor, on behalf of City Council, is requested to proclaim the week of October 1st as “Business Appreciation Week” in the City of Westminster.
- Ryan Johnson, Economic Development Specialist, will be present at Monday night’s meeting to accept this proclamation on behalf of all Westminster businesses.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

On Friday, October 5, 2012, the City of Westminster will host the 21st annual Business Appreciation Event. This event recognizes the vital role that local businesses play in the success of the City. Local businesses provide employment, shopping, entertainment and recreational opportunities for all citizens. Businesses contribute to the City's operating funds through revenue generated from sales and use tax, accommodations and admissions tax, as well as property tax collections. Businesses also enrich the quality of life in Westminster by supporting community organizations with financial and in-kind contributions. The high caliber mix of retail, service, and corporate office establishments found in Westminster is virtually unparalleled in northwest metro Denver.

Currently, roughly 3,000 businesses exist in the City of Westminster. It is appropriate that they be publicly recognized for their contributions to the community by proclaiming the week of October 1st as "Business Appreciation Week" and encouraging all citizens to support their local businesses. "Business Appreciation Week" meets the following City's strategic plan goals: Financially Sustainable City Government Providing Exceptional Services, and Building a Strong Balanced Local Economy.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Proclamation

WHEREAS, The City of Westminster benefits greatly from having a healthy and diverse business community; and

WHEREAS, Westminster businesses provide employment, shopping, entertainment and recreational opportunities to its citizens; and

WHEREAS, The success of local business in Westminster is critical to the City's financial stability; and

WHEREAS, The City of Westminster will be hosting the annual Business Appreciation Event on Friday, October 5, 2012, to honor the nearly 3,000 businesses within the City; and

WHEREAS, It is fitting that official recognition be given to the importance that Westminster businesses play in the continued strength and well being of our city.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim the week of October 1, 2012, as

BUSINESS APPRECIATION WEEK

in the City of Westminster, and encourage all citizens to support Westminster businesses.

Signed this 24th day of September, 2012.

Nancy McNally, Mayor



Agenda Item 6 B

Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Northwest Metro Business Women's Week Proclamation

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Councillor Lindsey to present a proclamation to Northwest Metro Business Women proclaiming the week of October 15th as Northwest Metro Business Women's Week in the City of Westminster.

Summary Statement

- Each year, during the month of October, the Northwest Metro Chapter of the Colorado Business and Professional Women's Organization celebrates the accomplishments of working women.
- Sara Gagliardi and Marilyn Young of the organization will be present to accept the proclamation on behalf of Northwest Metro Business and Professional Women.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The National Business Women's Week focuses on contributions that women are making within their community and within the State of Colorado.

The Northwest Metro Business and Professional Women's Organization (BPW) has been active in passing child labor laws, assisting government relief agencies and helping to create employment opportunities. Today, BPW continues to work to better the lives of working women through action on issues such as women's health, family and medical leave rights, pay equity, dependent care, and insurance reform. In addition to these political activities, BPW serves to elevate the standards for women and to promote the interest of business and professional women in all areas of their lives.

This year BPW/USA celebrates its 84th Anniversary of National Business Women's Week. The proclamation supports Council's strategic goal of a Strong, Balanced Local Economy by encouraging professional women who hold jobs within the community and the northwest metro area to continue their joint efforts to better the lives of working women.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Proclamation

WHEREAS, over 500,000 women are in the greater Denver metropolitan work force and working women comprise over 61 million of the nation's work force; and

WHEREAS, National Business Women's Week focuses on contributions that women are making within their community and within the State of Colorado; and

WHEREAS, the Business and Professional Women's Organization (BPW) has been active in passing child labor laws, assisting government relief agencies and helping to create employment opportunities; and

WHEREAS, today, BPW continues to work to better the lives of working women through action on issues such as women's health, family and medical leave rights, pay equity, dependent care, and insurance reform. In addition to these political activities, BPW serves to elevate the standards for women and to promote the interest of business and professional women in all areas of their lives; and

WHEREAS, each year during the month of October, the Northwest Metro Chapter of the Colorado Business and Professional Women's Organization celebrates the accomplishments of working women; and

WHEREAS, this year BPW/USA celebrates its 84th Anniversary of National Business Women's Week.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council do hereby proclaim October 15-19, 2012 as

NORTHWEST METRO BUSINESS WOMEN'S WEEK

Signed this 24th of September, 2012.

Nancy McNally, Mayor



Agenda Memorandum

City Council Meeting
September 24, 2012



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

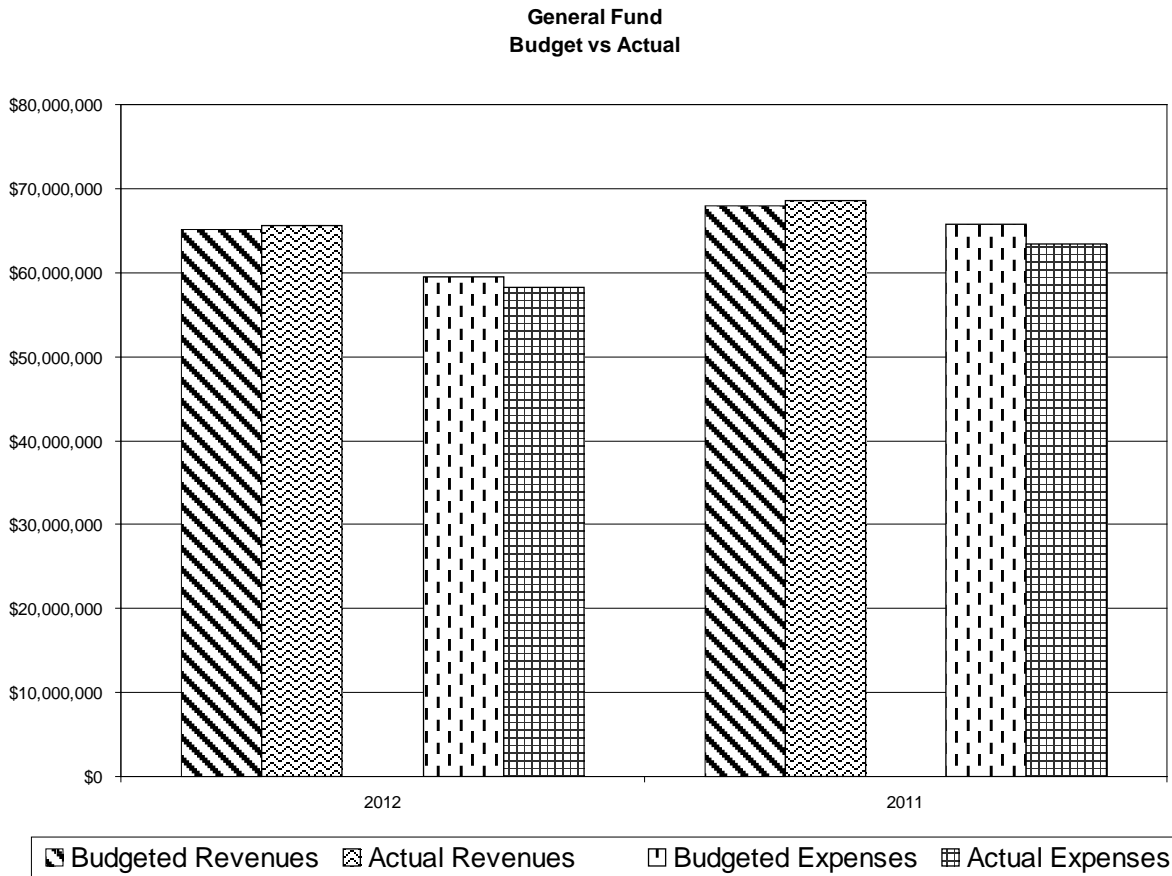
Recommended City Council Action

Accept the Financial Report for August as presented.

Summary Statement

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

The General Fund revenues and carryover exceed expenditures by \$7,486,222. The following graph represents Budget vs. Actual for 2011-2012.

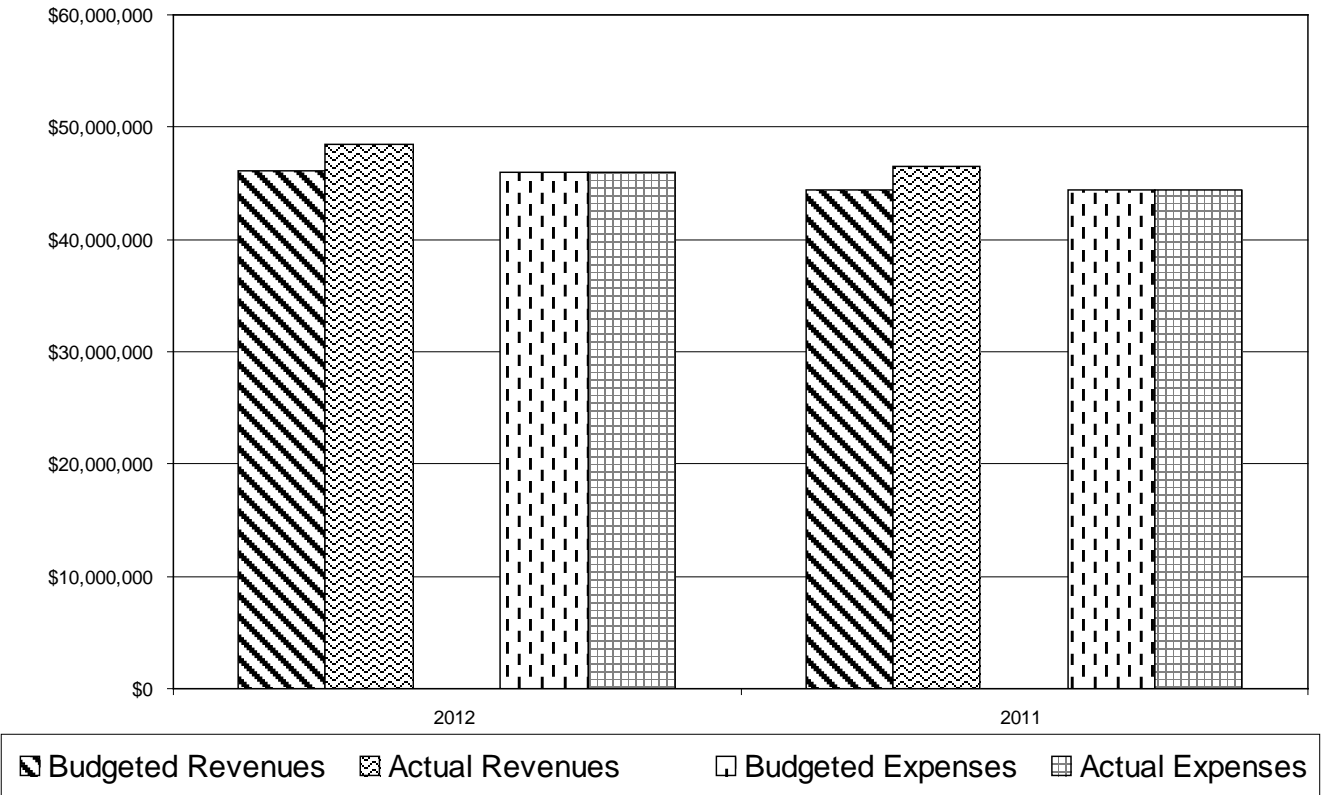


- 2012 includes \$1.9 million of carryover versus \$4.0 million for 2011.

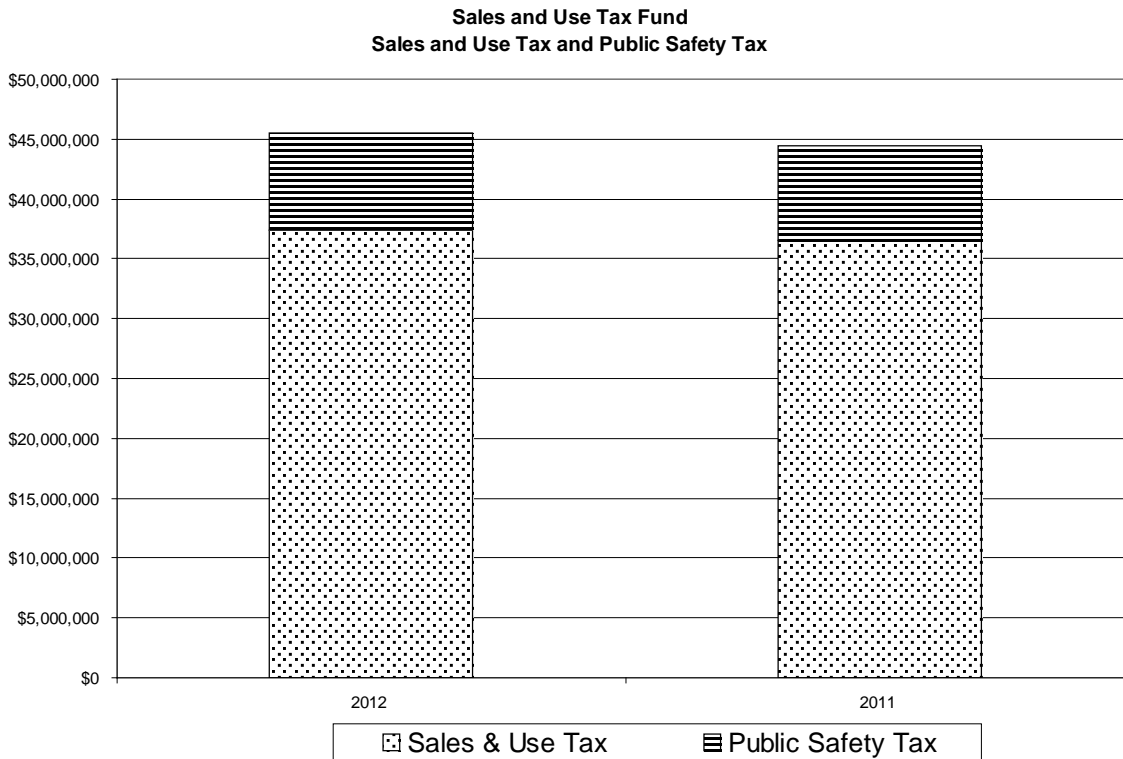
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$2,419,328. On a year-to-date cash basis, total sales and use tax is up 2.4% from 2011. Key components are listed below:

- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 2.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 61.2% of all collections, are up 3.1% for the month.
- Urban renewal areas make up 41.1% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 83.0% of this money is being retained for General Fund use.
- Auto Use tax is up 18.2% on a year-to-date basis.

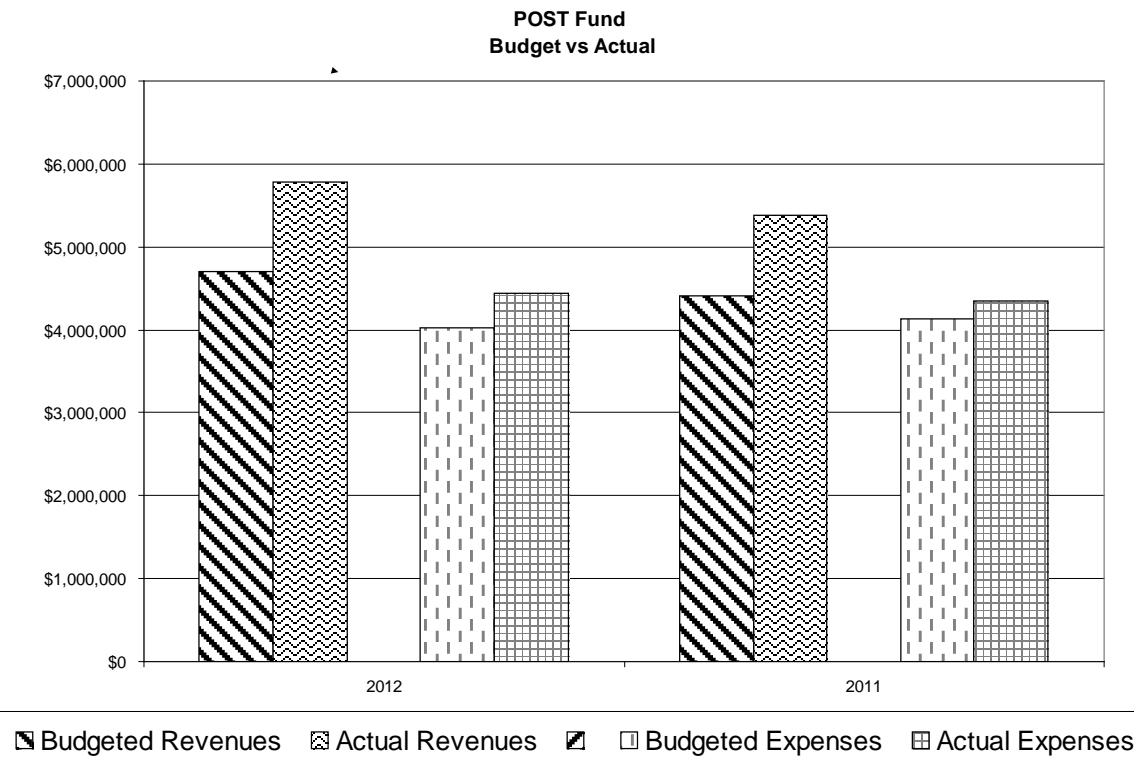
**Sales & Use Tax Fund
Budget vs Actual**



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



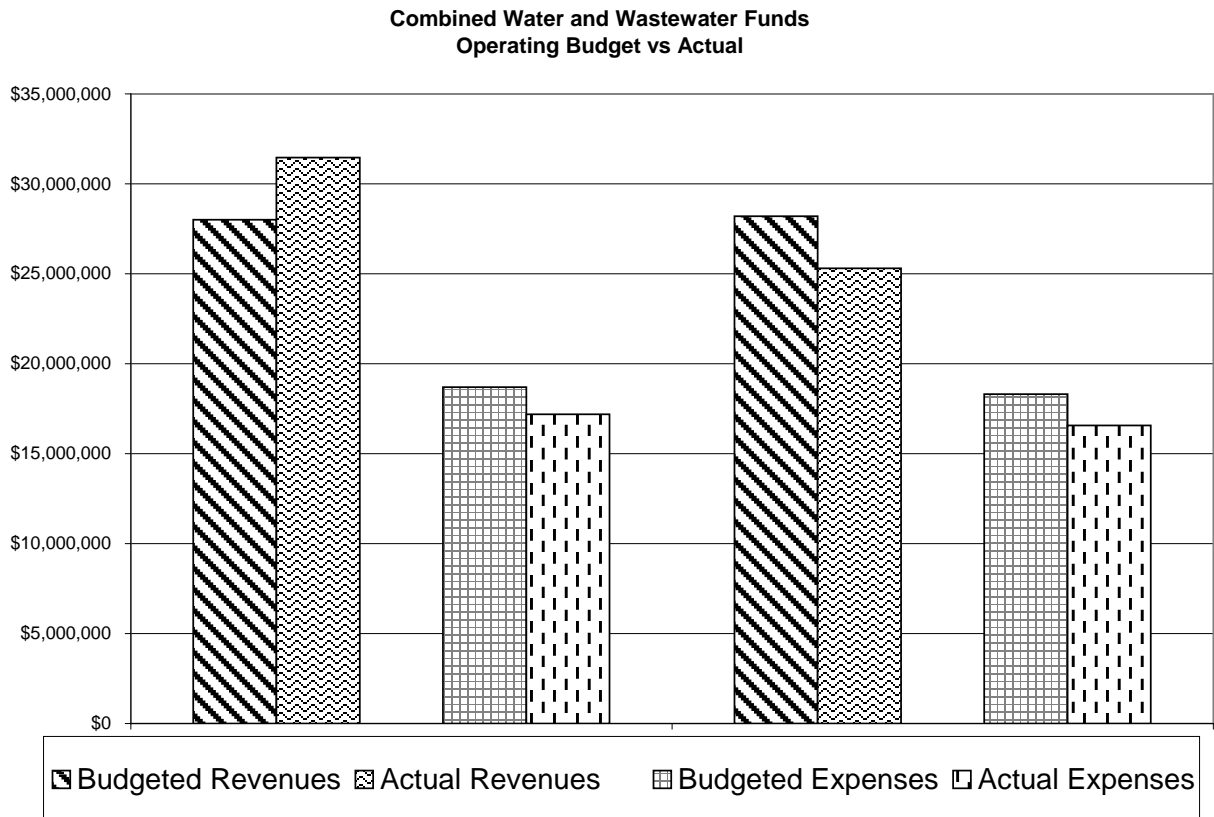
The Parks Open Space and Trails Fund revenues and carryover exceed expenditures by \$1,341,860.



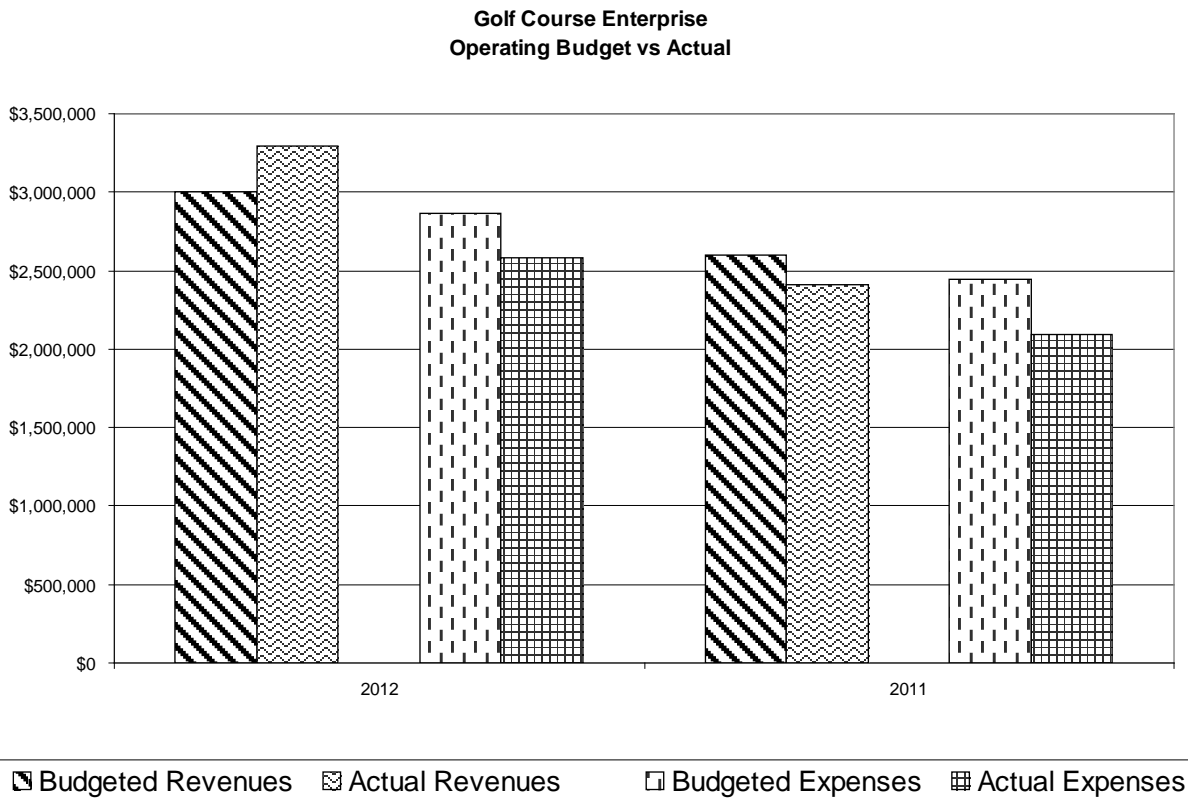
2012 budget to actual revenue and expenditure variances reflect a timing difference between operating transactions and the appropriation of two significant grants from Adams County. 2012 revenues includes \$1.4 million of carryover funds.

2011 revenues reflect the receipt of a significant grant that was appropriated in the prior year.

The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$19,210,593. Operating revenues exceed operating expenses by \$14,263,530. \$14,916,417 is budgeted for capital projects and reserves.



The combined Golf Course Fund revenues and carryover exceed expenditures by \$718,188.



On a combined basis, golf course revenues are up by \$292,276 over prorated budget. This is attributable to increased play and primarily corporate memberships.

Policy Issue

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

Alternative

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

Background Information

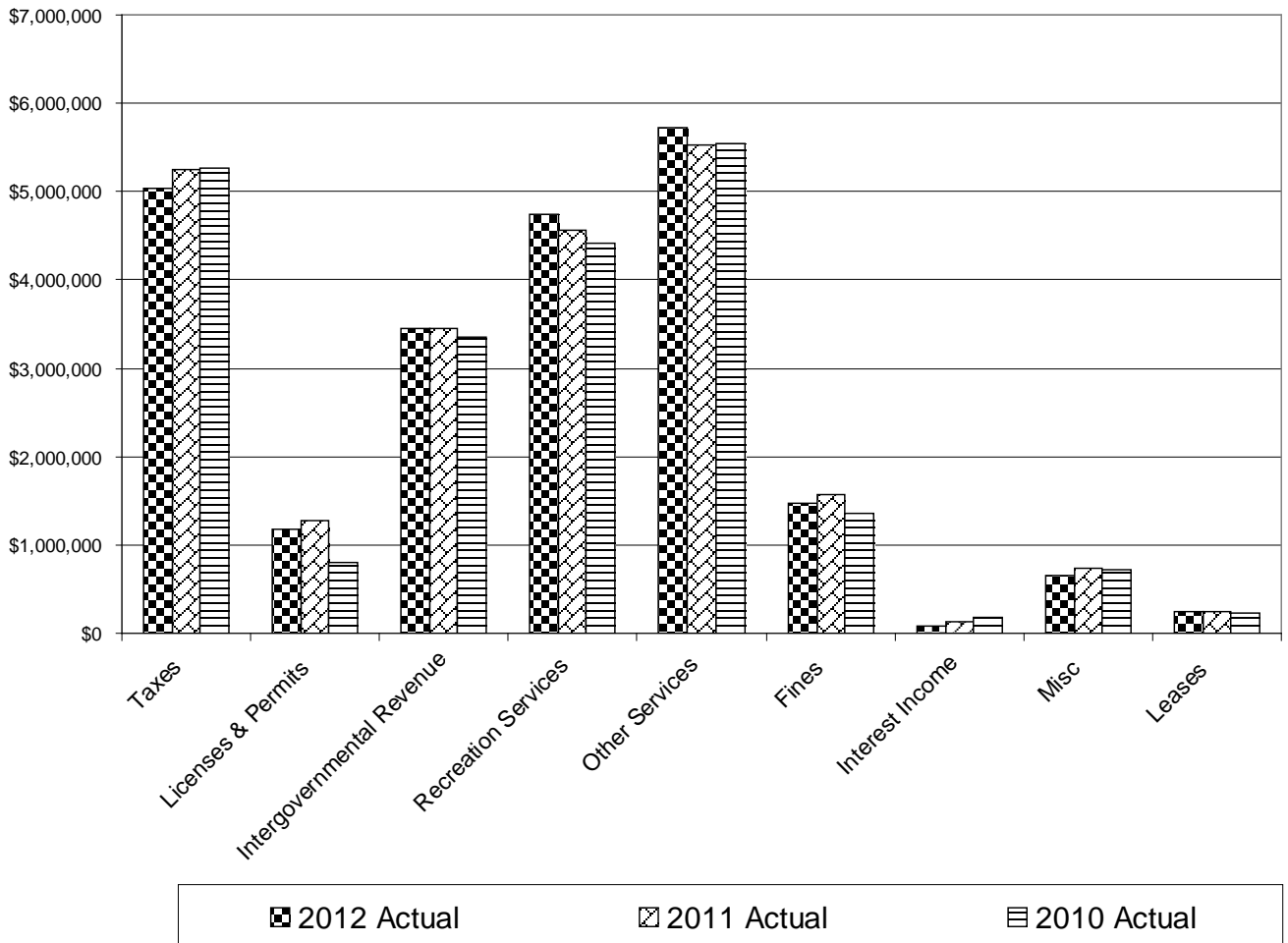
This section includes a discussion of highlights of each fund presented.

General Fund

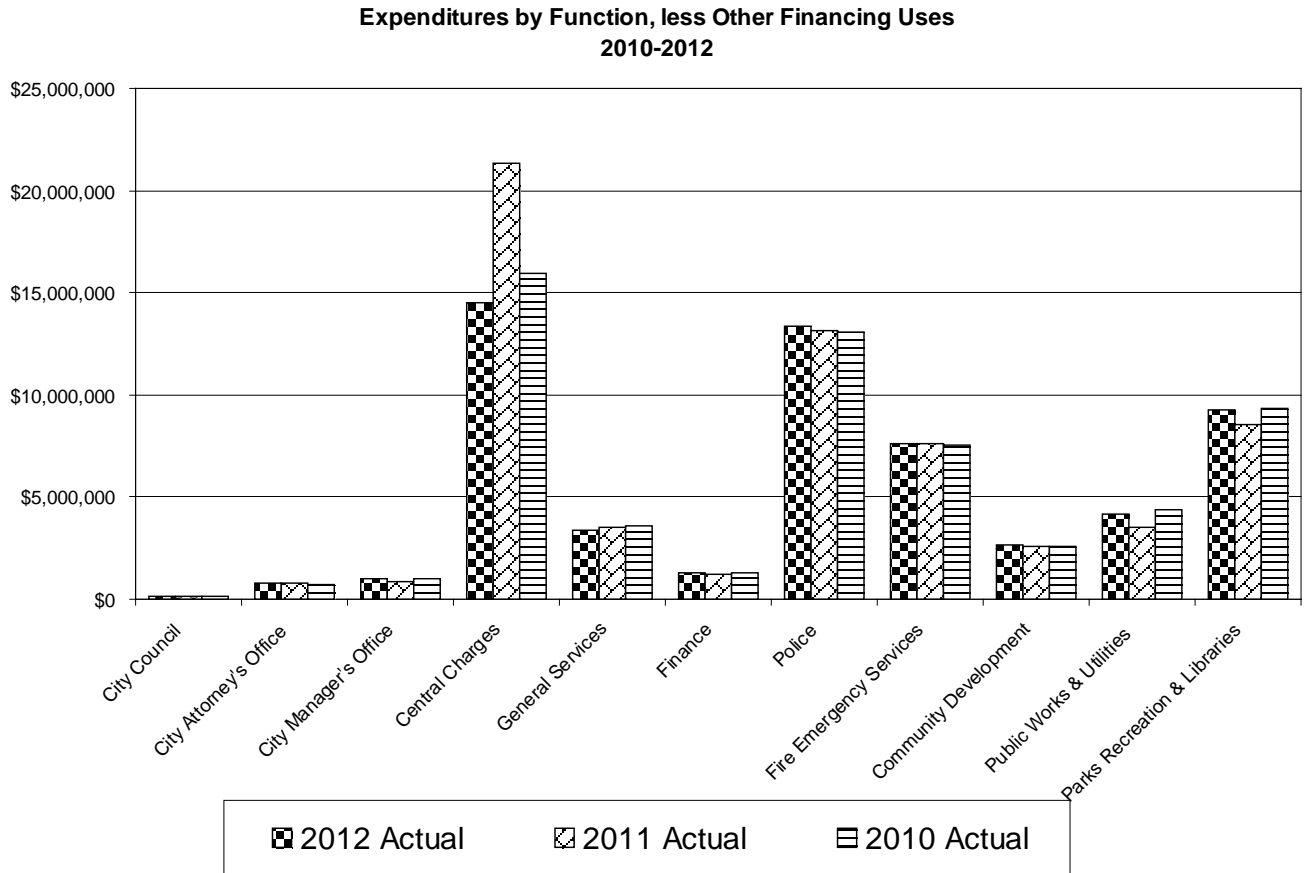
This fund reflects the result of the City’s operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

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

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



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



- The large increase in Central Charges in 2011 was due to a transfer to WEDA of \$4 million for WURP as well as a larger transfer budgeted for the General Capital Improvement Fund in 2011 when compared to 2012.
- 2010 Central Charges was adjusted to eliminate the skewing effect of the 2001 COP debt refinancing.

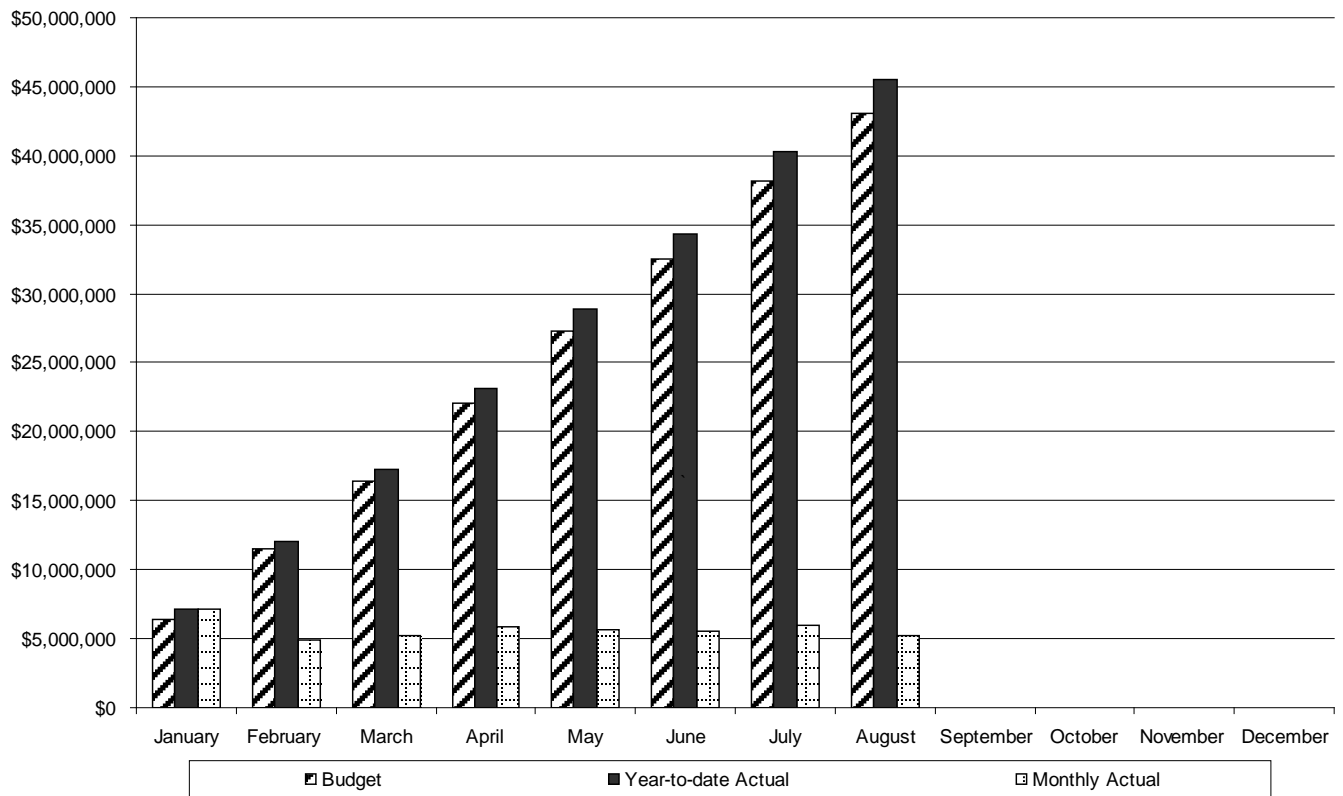
Sales and Use Tax Funds (Sales & Use Tax Fund and Parks, Open Space and Trails Sales & Use Tax Fund)

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

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

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

Budget = \$64,660,872

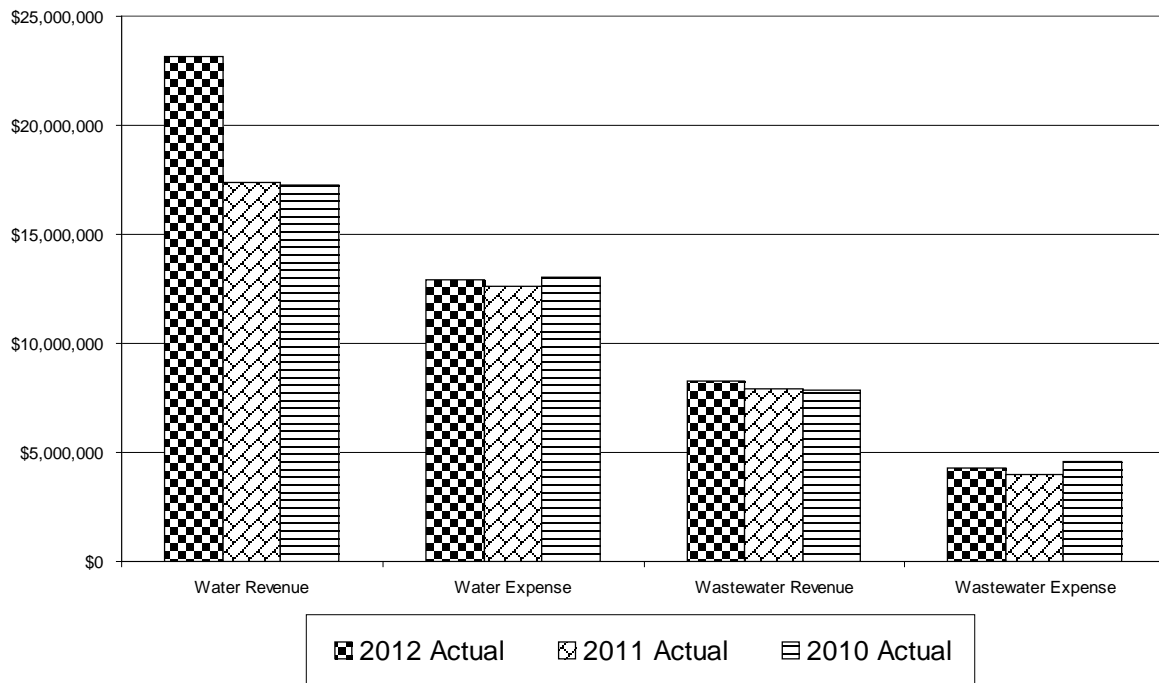


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

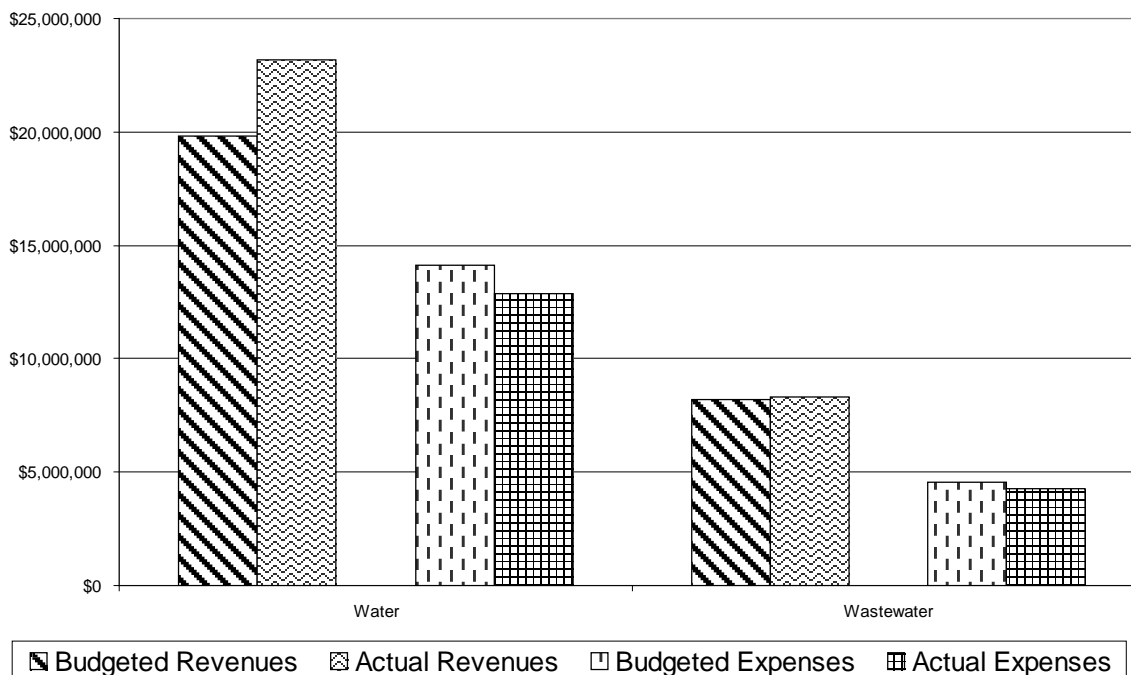
These graphs represent segment information for the Water and Wastewater funds.

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



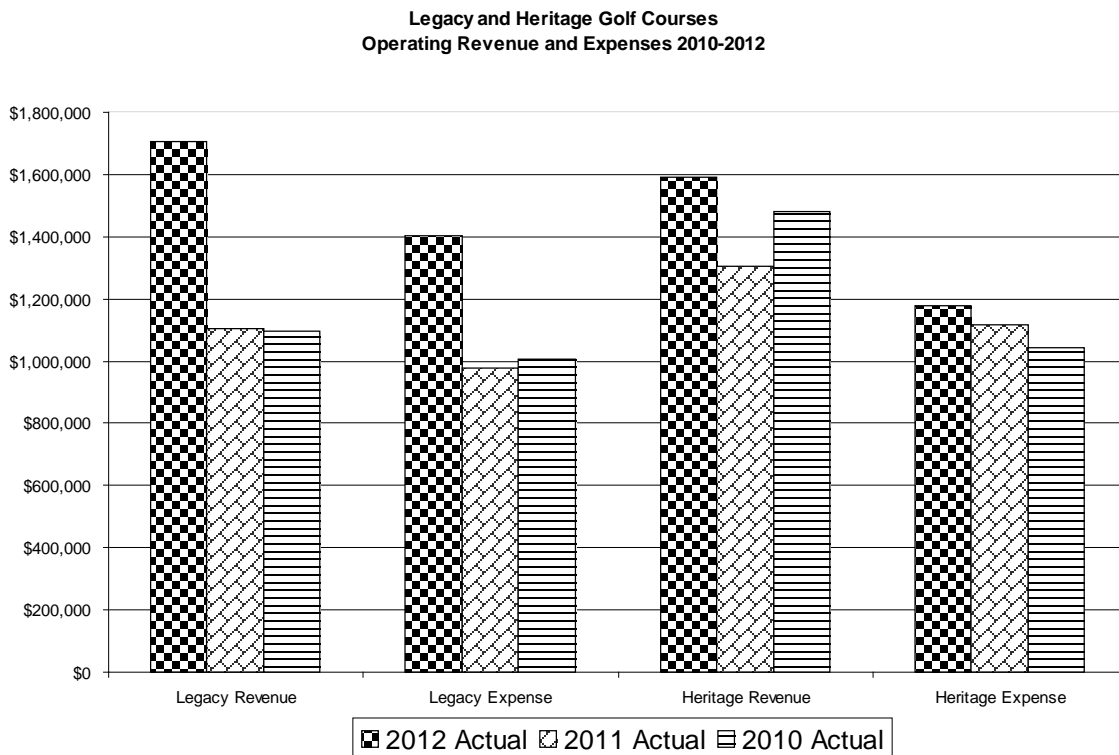
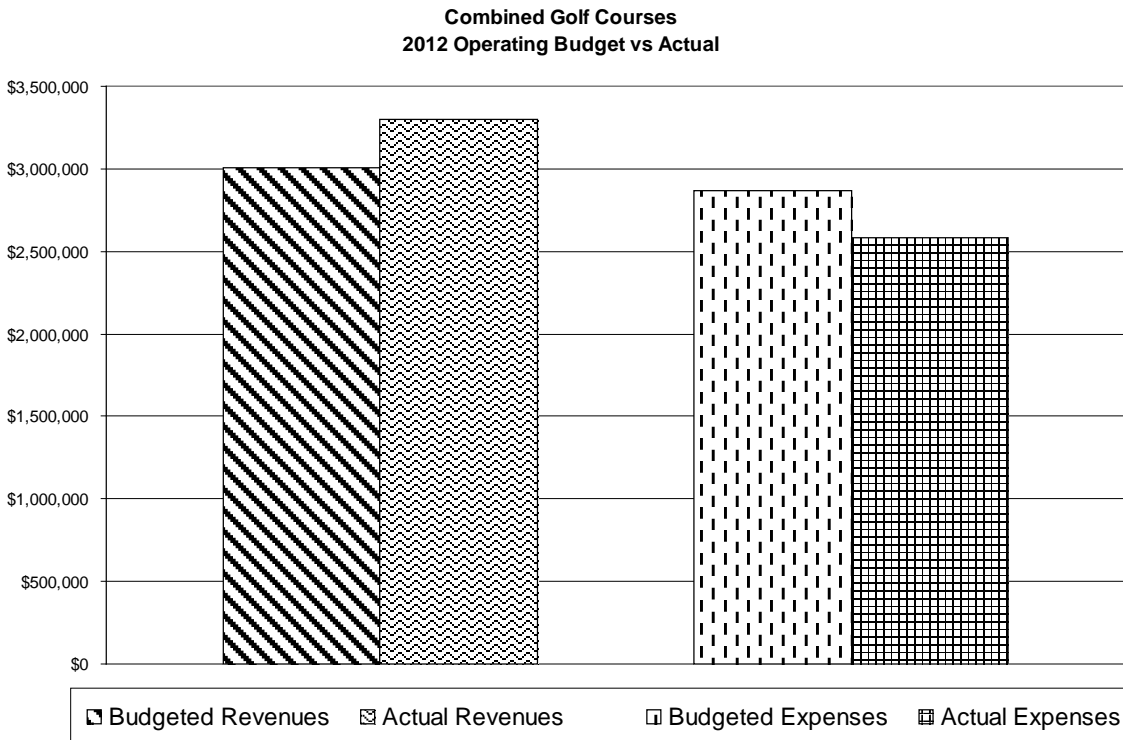
The water revenue variance is due to the effect of climatic variations on water consumption and 2012 changes to billing rates.

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



Golf Course Enterprise (Legacy and Heritage Golf Courses)

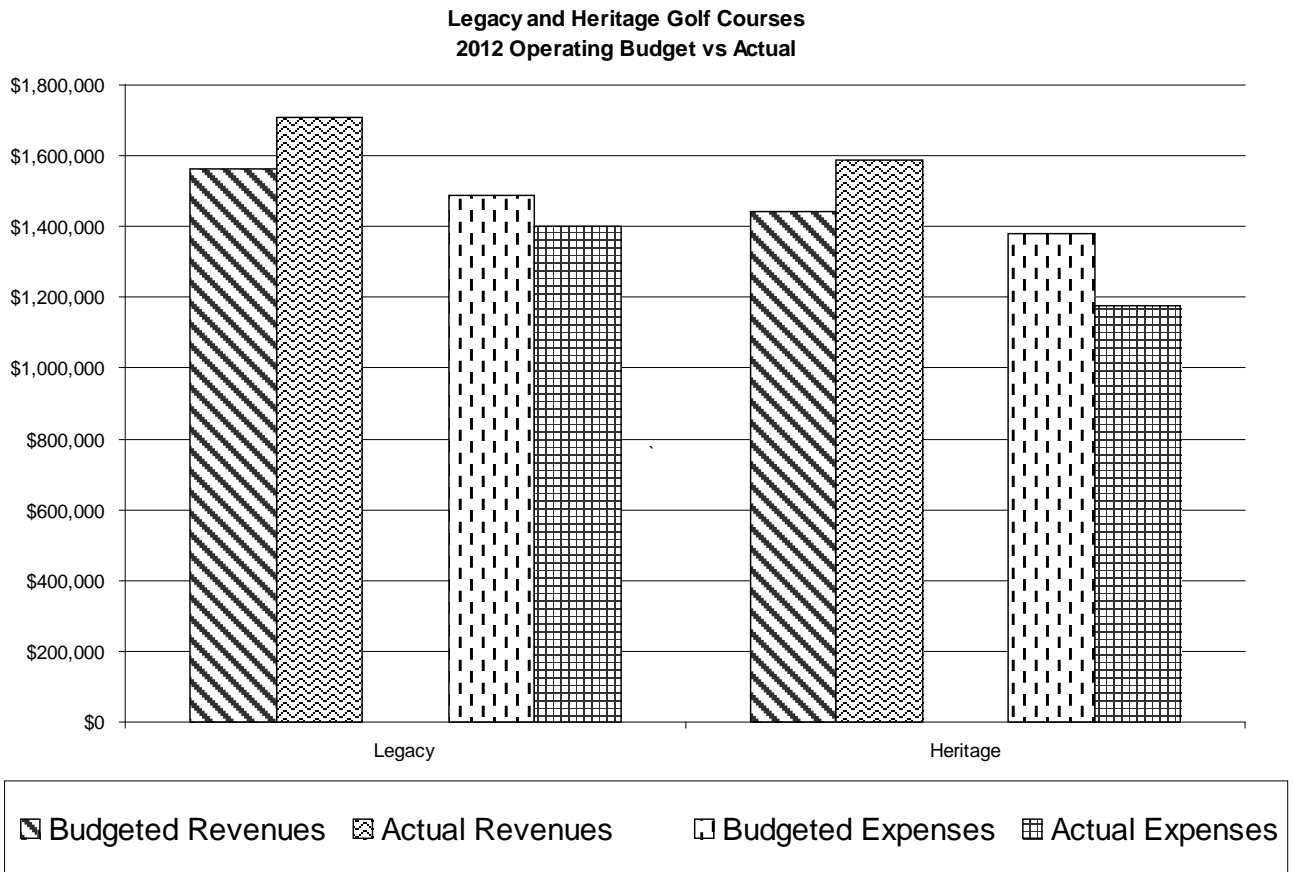
This enterprise reflects the operations of the City's two municipal golf courses.



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

A transfer of \$380,000 to the General Capital Improvement Fund for the Heritage Golf Course back nine land acquisition is reflected in 2012 Legacy Ridge expenses.

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



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

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- August Statements
- August Shopping Center Report

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Taxes	5,575,590	5,190,648		5,033,792	(156,856)	97.0%
Licenses & Permits	1,415,000	904,721		1,182,290	277,569	130.7%
Intergovernmental Revenue	5,042,991	3,166,208		3,451,064	284,856	109.0%
Charges for Services						
Recreation Services	6,418,338	4,412,424		4,745,011	332,587	107.5%
Other Services	9,530,695	5,814,195		5,729,587	(84,608)	98.5%
Fines	2,110,000	1,422,703		1,477,964	55,261	103.9%
Interest Income	180,000	102,218		81,627	(20,591)	79.9%
Miscellaneous	1,733,733	788,955		656,526	(132,429)	83.2%
Leases	386,208	247,240		247,240	0	100.0%
Interfund Transfers	61,684,647	41,123,098		41,123,098	0	100.0%
Sub-total Revenues	<u>94,077,202</u>	<u>63,172,410</u>		<u>63,728,199</u>	<u>555,789</u>	<u>100.9%</u>
Carryover	1,926,631	1,926,631		1,926,631	0	100.0%
Total Revenues	<u>96,003,833</u>	<u>65,099,041</u>		<u>65,654,830</u>	<u>555,789</u>	<u>100.9%</u>
Expenditures						
City Council	240,119	170,763		138,384	(32,379)	81.0%
City Attorney's Office	1,197,764	779,571		755,796	(23,775)	97.0%
City Manager's Office	1,520,610	988,509		972,823	(15,686)	98.4%
Central Charges	26,900,601	14,749,141		14,504,203	(244,938)	98.3%
General Services	5,825,352	3,740,332		3,387,465	(352,867)	90.6%
Finance	1,994,706	1,310,809		1,291,286	(19,523)	98.5%
Police	20,381,168	13,414,030		13,356,200	(57,830)	99.6%
Fire Emergency Services	11,792,644	7,677,623		7,650,571	(27,052)	99.6%
Community Development	4,125,271	2,668,169		2,684,348	16,179	100.6%
Public Works & Utilities	7,767,031	4,723,549		4,142,514	(581,035)	87.7%
Parks, Recreation & Libraries	14,258,567	9,220,869		9,285,018	64,149	100.7%
Total Expenditures	<u>96,003,833</u>	<u>59,443,365</u>		<u>58,168,608</u>	<u>(1,274,757)</u>	<u>97.9%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>5,655,676</u>		<u>7,486,222</u>	<u>1,830,546</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues						
Sales Tax						
Sales Tax Returns	44,669,579	30,197,310		31,289,964	1,092,654	103.6%
Sales Tx Audit Revenues	719,000	479,573		350,384	(129,189)	73.1%
S-T Rev. STX	<u>45,388,579</u>	<u>30,676,883</u>		<u>31,640,348</u>	<u>963,465</u>	103.1%
Use Tax						
Use Tax Returns	7,193,750	4,486,200		5,398,369	912,169	120.3%
Use Tax Audit Revenues	785,000	523,595		400,119	(123,476)	76.4%
S-T Rev. UTX	<u>7,978,750</u>	<u>5,009,795</u>		<u>5,798,488</u>	<u>788,693</u>	115.7%
Total STX and UTX	<u>53,367,329</u>	<u>35,686,678</u>		<u>37,438,836</u>	<u>1,752,158</u>	104.9%
Public Safety Tax						
PST Tax Returns	10,985,043	7,228,067		7,950,496	722,429	110.0%
PST Audit Revenues	308,500	205,770		150,043	(55,727)	72.9%
Total Rev. PST	<u>11,293,543</u>	<u>7,433,837</u>		<u>8,100,539</u>	<u>666,702</u>	109.0%
Interest Income	95,000	63,333		50,535	(12,798)	79.8%
Interfund Transfers	257,000	171,333		171,333	0	100.0%
Carryover	2,693,412	2,693,412		2,693,412	0	100.0%
Total Revenues and Carryover	<u>67,706,284</u>	<u>46,048,593</u>		<u>48,454,655</u>	<u>2,406,062</u>	105.2%
Expenditures						
Central Charges	<u>67,706,284</u>	<u>46,035,327</u>		<u>46,035,327</u>	<u>0</u>	100.0%
Revenues Over(Under) Expenditures	<u>0</u>	<u>13,266</u>		<u>2,419,328</u>	<u>2,406,062</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
POST Fund						
Revenues						
Sales & Use Tax	4,814,510	3,236,792		3,374,358	137,566	104.3%
Intergovernmental Revenue	81,229	0		849,564	849,564	
Interest Income	3,400	2,267		15,576	13,309	687.1%
Miscellaneous	85,030	56,687		122,720	66,033	216.5%
Interfund Transfers	19,000	12,667		12,667	0	100.0%
Sub-total Revenues	<u>5,003,169</u>	<u>3,308,413</u>		<u>4,374,885</u>	<u>1,066,472</u>	<u>132.2%</u>
Carryover	1,400,000	1,400,000		1,400,000	0	100.0%
Total Revenues	<u>6,403,169</u>	<u>4,708,413</u>		<u>5,774,885</u>	<u>1,066,472</u>	<u>122.7%</u>
Expenditures						
Central Charges	6,125,329	3,861,380		4,313,623	452,243	111.7%
Park Services	277,840	156,055		119,402	(36,653)	76.5%
	<u>6,403,169</u>	<u>4,017,435</u>		<u>4,433,025</u>	<u>415,590</u>	<u>110.3%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>690,978</u>		<u>1,341,860</u>	<u>650,882</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	50,000		69,420	19,420	138.8%
Intergovernmental Revenue	0	0		258,630	258,630	
Rates and Charges	43,153,638	27,637,370		30,885,046	3,247,676	111.8%
Miscellaneous	474,896	316,598		242,983	(73,615)	76.7%
Total Operating Revenues	<u>43,703,534</u>	<u>28,003,968</u>		<u>31,456,079</u>	<u>3,452,111</u>	112.3%
Operating Expenses						
Central Charges	5,893,555	3,929,037		3,921,122	(7,915)	99.8%
Finance	669,344	433,066		424,029	(9,037)	97.9%
Public Works & Utilities	20,919,246	12,468,560		11,124,685	(1,343,875)	89.2%
Parks, Recreation & Libraries	132,272	72,485		72,576	91	100.1%
Information Technology	2,784,438	1,798,747		1,650,137	(148,610)	91.7%
Total Operating Expenses	<u>30,398,855</u>	<u>18,701,895</u>		<u>17,192,549</u>	<u>(1,509,346)</u>	91.9%
Operating Income (Loss)	<u>13,304,679</u>	<u>9,302,073</u>		<u>14,263,530</u>	<u>4,961,457</u>	
Other Revenue and Expenses						
Tap Fees	3,700,000	2,600,800		4,453,201	1,852,401	171.2%
Interest Income	553,600	369,066		209,282	(159,784)	56.7%
Interfund Transfers	3,967,501	2,645,001		2,645,001	0	100.0%
Sale of Assets	0	0		98,788	98,788	
Carryover	4,591,155	4,591,155		4,591,155	0	100.0%
Debt Service	(7,219,424)	(3,069,270)		(3,069,270)	0	100.0%
Reserve Transfer	(3,981,094)	(3,981,094)		(3,981,094)	0	100.0%
Total Other Revenue (Expenses)	<u>1,611,738</u>	<u>3,155,658</u>		<u>4,947,063</u>	<u>1,791,405</u>	
Increase (Decrease) in Net Assets	<u>14,916,417</u>	<u>12,457,731</u>		<u>19,210,593</u>	<u>6,752,862</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	50,000		69,420	19,420	138.8%
Intergovernmental Revenue	0	0		258,630	258,630	
Rates and Charges	30,892,138	19,463,037		22,590,280	3,127,243	116.1%
Miscellaneous	464,896	309,931		236,164	(73,767)	76.2%
Total Operating Revenues	<u>31,432,034</u>	<u>19,822,968</u>		<u>23,154,494</u>	<u>3,331,526</u>	116.8%
Operating Expenses						
Central Charges	4,170,645	2,780,430		2,771,296	(9,134)	99.7%
Finance	669,344	433,066		424,029	(9,037)	97.9%
Public Works & Utilities	14,740,795	9,035,604		7,977,537	(1,058,067)	88.3%
PR&L Standley Lake	132,272	72,485		72,576	91	100.1%
Information Technology	2,784,438	1,798,747		1,650,137	(148,610)	91.7%
Total Operating Expenses	<u>22,497,494</u>	<u>14,120,332</u>		<u>12,895,575</u>	<u>(1,224,757)</u>	91.3%
Operating Income (Loss)	<u>8,934,540</u>	<u>5,702,636</u>		<u>10,258,919</u>	<u>4,556,283</u>	
Other Revenue and Expenses						
Tap Fees	3,000,000	2,104,000		3,273,549	1,169,549	155.6%
Interest Income	365,600	243,733		144,180	(99,553)	59.2%
Interfund Transfers	2,984,511	1,989,674		1,989,674	0	100.0%
Sale of Assets	0	0		98,788	98,788	
Carryover	3,746,765	3,746,765		3,746,765	0	100.0%
Debt Service	(5,715,075)	(2,483,506)		(2,483,506)	0	100.0%
Reserve Transfer	(3,211,924)	(3,211,924)		(3,211,924)	0	100.0%
Total Other Revenues (Expenses)	<u>1,169,877</u>	<u>2,388,742</u>		<u>3,557,526</u>	<u>1,168,784</u>	
Increase (Decrease) in Net Assets	<u>10,104,417</u>	<u>8,091,378</u>		<u>13,816,445</u>	<u>5,725,067</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	12,261,500	8,174,333		8,294,766	120,433	101.5%
Miscellaneous	10,000	6,667		6,819	152	102.3%
Total Operating Revenues	<u>12,271,500</u>	<u>8,181,000</u>		<u>8,301,585</u>	<u>120,585</u>	101.5%
Operating Expenses						
Central Charges	1,722,910	1,148,607		1,149,826	1,219	100.1%
Public Works & Utilities	6,178,451	3,432,956		3,147,148	(285,808)	91.7%
Total Operating Expenses	<u>7,901,361</u>	<u>4,581,563</u>		<u>4,296,974</u>	<u>(284,589)</u>	93.8%
Operating Income (Loss)	<u>4,370,139</u>	<u>3,599,437</u>		<u>4,004,611</u>	<u>405,174</u>	
Other Revenue and Expenses						
Tap Fees	700,000	496,800		1,179,652	682,852	237.5%
Interest Income	188,000	125,333		65,102	(60,231)	51.9%
Interfund Transfers	982,990	655,327		655,327	0	100.0%
Carryover	844,390	844,390		844,390	0	100.0%
Debt Service	(1,504,349)	(585,764)		(585,764)	0	100.0%
Reserve Transfer	(769,170)	(769,170)		(769,170)	0	100.0%
Total Other Revenues (Expenses)	<u>441,861</u>	<u>766,916</u>		<u>1,389,537</u>	<u>622,621</u>	
Increase (Decrease) in Net Assets	<u>4,812,000</u>	<u>4,366,353</u>		<u>5,394,148</u>	<u>1,027,795</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,050,000	1,366,667		1,327,918	(38,749)	97.2%
Interest Income	82,000	54,667		31,447	(23,220)	57.5%
Miscellaneous	0	0		31	31	
Carryover	418,574	418,574		418,574	0	100.0%
Total Revenues	<u>2,550,574</u>	<u>1,839,908</u>		<u>1,777,970</u>	<u>(61,938)</u>	96.6%
Expenses						
General Services	86,200	43,962		37,796	(6,166)	86.0%
Community Development	169,090	111,599		108,070	(3,529)	96.8%
PR&L Park Services	200,000	88,800		88,726	(74)	99.9%
Public Works & Utilities	359,710	201,797		111,135	(90,662)	55.1%
Total Expenses	<u>815,000</u>	<u>446,158</u>		<u>345,727</u>	<u>(100,431)</u>	77.5%
Increase (Decrease) in Net Assets	<u>1,735,574</u>	<u>1,393,750</u>		<u>1,432,243</u>	<u>38,493</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Course Funds - Combined						
Revenues						
Carryover	380,000	380,000		380,000	0	100.0%
Charges for Services	2,745,022	2,124,480		2,413,435	288,955	113.6%
Interest Income	0	0		3,321	3,321	
Interfund Transfers	751,143	500,762		500,762	0	100.0%
Total Revenues	<u>3,876,165</u>	<u>3,005,242</u>		<u>3,297,518</u>	<u>292,276</u>	<u>109.7%</u>
Expenses						
Central Charges	588,427	520,439		500,714	(19,725)	96.2%
Recreation Facilities	3,287,738	2,345,907		2,078,616	(267,291)	88.6%
Total Expenses	<u>3,876,165</u>	<u>2,866,346</u>		<u>2,579,330</u>	<u>(287,016)</u>	<u>90.0%</u>
 Increase (Decrease) in Net Assets	 <u>0</u>	 <u>138,896</u>		 <u>718,188</u>	 <u>579,292</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Revenues						
Carryover	380,000	380,000		380,000	0	100.0%
Charges for Services	1,456,167	1,125,617		1,267,782	142,165	112.6%
Interest Income	0	0		3,321	3,321	
Interfund Transfers	85,000	56,667		56,667	0	100.0%
Total Revenues	<u>1,921,167</u>	<u>1,562,284</u>		<u>1,707,770</u>	<u>145,486</u>	<u>109.3%</u>
Expenses						
Central Charges	489,383	453,287		441,162	(12,125)	97.3%
Recreation Facilities	1,431,784	1,033,748		961,030	(72,718)	93.0%
Total Expenses	<u>1,921,167</u>	<u>1,487,035</u>		<u>1,402,192</u>	<u>(84,843)</u>	<u>94.3%</u>
Increase (Decrease) in Net Assets	<u>0</u>	<u>75,249</u>		<u>305,578</u>	<u>230,329</u>	

**City of Westminster
Financial Report
For Eight Months Ending August 31, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues						
Charges for Services	1,288,855	998,863		1,145,653	146,790	114.7%
Interfund Transfers	666,143	444,095		444,095	0	100.0%
Total Revenues	<u>1,954,998</u>	<u>1,442,958</u>		<u>1,589,748</u>	<u>146,790</u>	110.2%
Expenses						
Central Charges	99,044	67,152		59,552	(7,600)	88.7%
Recreation Facilities	1,855,954	1,312,159		1,117,586	(194,573)	85.2%
Total Expenses	<u>1,954,998</u>	<u>1,379,311</u>		<u>1,177,138</u>	<u>(202,173)</u>	85.3%
Increase (Decrease) in Net Assets	<u>0</u>	<u>63,647</u>		<u>412,610</u>	<u>348,963</u>	

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF AUGUST 2012

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	346,104	13,587	359,691	338,395	13,990	352,385	2	-3	2
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	318,302	1,032	319,335	325,979	1,133	327,112	-2	-9	-2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	219,410	1,232	220,641	199,005	11,287	210,293	10	-89	5
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	205,710	1,539	207,249	188,951	1,015	189,966	9	52	9
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	201,797	269	202,066	184,701	425	185,127	9	-37	9
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	192,124	333	192,457	197,761	354	198,116	-3	-6	-3
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	166,984	423	167,407	164,622	5,231	169,854	1	-92	-1
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	152,316	2,131	154,448	143,674	263	143,937	6	711	7
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	129,212	22,842	152,054	132,366	23,878	156,244	-2	-4	-3
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	113,967	635	114,602	104,841	840	105,682	9	-24	8
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	108,747	224	108,971	102,049	454	102,502	7	-51	6
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	76,225	114	76,339	78,286	282	78,568	-3	-60	-3
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	69,378	187	69,565	71,204	308	71,511	-3	-39	-3
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	59,863	320	60,184	51,853	184	52,037	15	74	16
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	59,636	212	59,848	61,098	169	61,267	-2	26	-2

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH OF AUGUST 2012

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	57,642	131	57,773	61,960	94	62,054	-7	40	-7
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	50,681	2,848	53,529	83,040	812	83,852	-39	251	-36
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	45,472	5,544	51,015	41,129	498	41,628	11	1013	23
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	9,019	37,488	46,507	11,134	30,679	41,813	-19	22	11
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	42,622	294	42,917	43,270	123	43,393	-2	139	-1
WILLOW RUN 128TH & ZUNI SAFEWAY	33,083	169	33,252	31,259	169	31,428	6	0	6
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	30,747	859	31,606	22,379	257	22,636	37	235	40
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	28,251	360	28,611	28,500	283	28,783	-1	27	-1
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	28,304	23	28,327	30,615	40	30,655	-8	-44	-8
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	26,228	296	26,523	26,023	104	26,127	1	184	2
	2,771,825	93,091	2,864,916	2,724,098	92,872	2,816,970	2	0	2

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

Center Location Major Tenant	YTD 2012			YTD 2011			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	3,160,464	117,419	3,277,883	2,945,446	137,454	3,082,900	7	-15	6
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	2,773,646	18,813	2,792,459	2,696,466	18,577	2,715,043	3	1	3
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,905,390	14,438	1,919,827	1,820,761	38,490	1,859,251	5	-62	3
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	1,851,660	4,497	1,856,157	1,768,589	10,261	1,778,850	5	-56	4
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,567,229	4,129	1,571,358	1,540,760	4,267	1,545,028	2	-3	2
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,547,605	13,698	1,561,303	1,439,036	9,408	1,448,444	8	46	8
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,345,512	14,173	1,359,685	1,279,423	9,266	1,288,689	5	53	6
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,318,589	4,680	1,323,269	1,289,515	9,131	1,298,646	2	-49	2
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,034,565	148,974	1,183,539	985,397	217,367	1,202,764	5	-31	-2
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	976,154	6,704	982,858	891,984	37,617	929,601	9	-82	6
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	972,016	6,556	978,572	984,424	6,176	990,600	-1	6	-1
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	669,161	16,238	685,399	992,427	20,606	1,013,033	-33	-21	-32
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	654,989	1,723	656,713	679,710	7,124	686,834	-4	-76	-4
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	622,081	5,887	627,968	653,082	2,751	655,834	-5	114	-4
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	523,938	5,233	529,171	522,018	2,223	524,241	0	135	1

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

Center Location Major Tenant	YTD 2012			YTD 2011			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	491,642	1,770	493,412	507,453	1,675	509,127	-3	6	-3
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	434,147	6,734	440,881	415,710	2,469	418,179	4	173	5
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	348,720	6,853	355,573	365,052	1,443	366,494	-4	375	-3
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	345,395	20,290	365,686	320,752	6,496	327,248	8	212	12
WILLOW RUN 128TH & ZUNI SAFEWAY	267,475	2,680	270,154	255,221	2,260	257,481	5	19	5
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	241,991	5,027	247,018	210,153	3,728	213,882	15	35	15
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	228,232	2,088	230,320	210,765	2,972	213,737	8	-30	8
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	226,088	864	226,953	217,465	12,685	230,151	4	-93	-1
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	202,090	4,358	206,448	204,235	1,632	205,867	-1	167	0
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	193,847	8,082	201,929	193,639	6,040	199,680	0	34	1
	23,902,628	441,907	24,344,535	23,389,487	572,117	23,961,604	2	-23	2



Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: 2013 Property and Liability Insurance Renewal

Prepared By: Martee Erichson, Risk Manager

Recommended City Council Action

Authorize the City Manager to enter into an agreement with the Colorado Intergovernmental Risk Sharing Agency for the purchase of high deductible stop loss insurance, and for claims management and other administrative services, in the amount of \$468,433 along with a 10% contingency amount (\$46,843) in the event the final quote comes in higher.

Summary Statement

- City Council action is requested to authorize the annual expenditure for the 2013 contribution to the Colorado Intergovernmental Risk Sharing Agency (CIRSA) for property and liability insurance coverage and related services.
- The City annually purchases insurance to cover assets (buildings, vehicles, equipment, and parks) and to protect itself from liability exposure resulting from claims brought against the City and its employees. This insurance is purchased through CIRSA. The preliminary quote from CIRSA for 2013 for property and liability coverage is \$468,433, which represents a contribution of \$485,304 minus a Loss Control Standards Audit credit of \$5,591 and a Member Equity Account Adjustment of \$11,280.
- The final cost of coverage in 2012, before credits, was \$461,753. The preliminary quote for next year of \$485,304 represents an increase in contribution of \$23,551 or 5.1%. The increase is due to several factors affecting the CIRSA insurance pool as a whole including an increase in the average cost of claims, inflation on the costs of construction and a need to maintain actuarial levels on pool reserves.
- As has been past practice, City Council is being asked to authorize this preliminary quote from CIRSA and continuation in the pool so that CIRSA can determine final contributions based on membership response in time for the start of the 2013 policy period.
- Funds for the requested increase are available and proposed in the recommended 2013-2014 Property and Liability Fund budget and in Fund reserves.

Expenditure Required: Not to exceed \$515,276

Source of Funds: Property and Liability Self Insurance Fund

Policy Issue

Should the City continue to use a municipal insurance pool for placement of its property and liability coverage?

Alternative

City Council could reject Staff's recommendations to utilize CIRSA for this insurance coverage and direct Staff to seek proposals on the open insurance market. Staff does not recommend this action at this time based on the results of the study of the City's current insurance program conducted by a risk management consultant in late 2008 and the fact there have not been any significant changes to the municipal insurance market since that time that continue to make membership in CIRSA advantageous to the City.

Background Information

The City of Westminster has been a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) since its inception in 1982. Since that time, this governmental risk sharing pool has grown from its original 18 cities to 245 members in 2012. CIRSA provides property and liability coverage that is tailored to meet municipal exposures. On January 1, 1988, the City implemented a high deductible program, electing to pay the first \$100,000 of each property claim and the first \$150,000 of each liability claim. This self insured retention was increased to \$200,000 per line of coverage in 2004 and to \$250,000 in 2007 to save on contribution costs. A reserve fund insures that funds are available to cover expenses under the deductible level in the event of a catastrophic year or a year in which multiple, large claims occur that fall within the deductible. The City's audited Property and Liability Fund balance at the end of 2011 was \$3,642,959.

The City has continued to purchase its excess property and liability coverage from CIRSA for several reasons:

- CIRSA has provided competitive quotes for its insurance;
- CIRSA was established as a member-owned non-profit organization by municipalities specifically to provide insurance that meets the unique needs of Colorado cities and towns; and
- Unlike all brokers and private insurance companies, CIRSA does not charge commissions, pay income tax or have to worry about shareholder profit margins.

The services provided by CIRSA include all claims handling, loss control, administrative services and the following excess coverage:

- Property coverage in excess of \$250,000 to \$500,500,000 (limits shared with all pool members)
- \$1,000,000 per occurrence/aggregate business interruption coverage
- Public Officials Liability coverage from \$250,000 to \$5,000,000 per occurrence and \$10,000,000 aggregate
- Police Professional Liability insurance from \$250,000 to \$5,000,000 per occurrence/aggregate
- Motor vehicle physical damage from \$250,000 to \$1,000,000 per occurrence
- Motor vehicle liability coverage from \$250,000 to \$1,500,000 per claim/occurrence
- General Liability Insurance coverage from \$250,000 to \$5,000,000 per claim/occurrence

Currently, through on-going employee safety training and other loss control practices initiated by the individual departments and the Risk Management Staff, the efforts of the Citywide Safety Committee and the City's effective working relationship with CIRSA claims adjusting staff, Staff continues to improve on the success of the loss control program. These efforts have been recognized by the more than 25% increase in the loss experience credit the City received on the 2013 quote.

The City's loss control activities include, but are not limited to:

- Safety inspections of facilities
- Annual Defensive Driving, Risk Management 101, Risk Management for Supervisors and Safety 101 training classes
- Citywide Safety Committee review and analysis of all Workers' Compensation injuries and automobile accidents involving City vehicles
- Quarterly review of loss reports with the Department Head team
- Various other safety trainings such as the annual snowplow rodeo and training sponsored by the Public Works and Utilities Department
- Safety SPIRIT Awards incentive program

In addition, CIRSA recognizes the financial hardships many of its members are going through and has therefore, once again approved the use of a portion of each member's Equity Account to buy down the contribution for 2013, although the amount of credit has decreased from last year. CIRSA Member Equity Accounts consist of what remains of a member's annual contribution to CIRSA after payment of claims and expenses each year and include interest earned. These funds are held by CIRSA to cover catastrophic claims and/or increases in each member's insured exposures that each member may not be able to fund in any given year. Acceptable Equity Account levels for each member are determined through an actuarial study. Westminster has been approved to use \$11,280 of the City's Member Equity Account toward the 2013 contribution to CIRSA.

The quote for the 2013 property and liability insurance contribution is preliminary at this time. CIRSA members are being asked to approve the preliminary contribution and continuation of membership so that CIRSA can calculate final contribution quotes based on all members responses. It is anticipated that final contribution quotes will be distributed in December. To avoid having to return to City Council in the event the final contributions come in higher than this preliminary quote, Staff's recommended action includes a 10% contingency factor of \$46,843 with the total final contribution not to exceed \$515,276. Adequate funds are proposed in the 2013-2014 Property and Liability Self Insurance Fund budget if the expense is at or less than the preliminary quote of \$468,433 for the City's contribution to the CIRSA pooled insurance. Additional funds are available in the Property and Liability Fund reserves if the final quote exceeds the preliminary estimate.

The Risk Management program addresses Council's Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services by working to minimize the cost of insurance to the City by maintaining a comprehensive loss control program and monitoring the insurance marketplace to ensure the most cost effective placement of insurance coverage.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Standley Lake Bypass Project

Prepared By: Stephanie Bleiker, Senior Engineer
Steve Grooters, Senior Projects Engineer

Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest will best be served by authorizing the City Manager to execute a professional services agreement with Hatch, Mott & MacDonald, Inc., for the Standley Lake Bypass Design in the amount of \$536,923 and authorize a 10% contingency of \$53,692 for a total project budget of \$590,615.

Summary Statement

- The City’s water supply system is set up to divert raw water from various sources and deliver that water through several conveyance systems to Standley Lake and then via multiple pipelines to the City’s water treatment facilities.
- Because all water must go through Standley Lake and its outlet works, additional system redundancy is desired to maintain reliable service should facilities be taken offline for emergencies, maintenance, or other reasons.
- The City contracted with Hatch, Mott & McDonald, Inc. (HMM) in 2011 to determine the most efficient way to maintain water delivery without the use of Standley Lake or its outlet works. HMM and their team of sub-consultants successfully completed the Standley Lake Bypass Study, delivering a preliminary design.
- The main recommendation from this study is the construction of a new 48-inch pipeline that connects the Farmers’ High Line Canal to the raw water pipelines supplying the City’s water treatment plants.
- The recommended pipeline will position the City to convey full build-out water demand flow rates in the event that Standley Lake is taken offline.
- HMM was selected for the preliminary design of the pipeline project in a competitive process with the intent of having them complete the final design as was noted in City Council’s August 22, 2011 approval of HMM’s contract. Staff received three proposals for the preliminary design. HMM was selected based on the content of their proposal and the experience of their team to complete the preliminary design and to be considered for the final design work.
- HMM performed well on the preliminary design, and their rates remain competitive in the market; therefore, Staff recommends awarding the design contract to HMM based on their successful completion of the preliminary design, competitive pricing, proposed scope of work, familiarity with the City’s infrastructure and the successful experience of their proposed project team.
- HMM’s design fees are reasonable for construction projects of this size. HMM and their team are a full services design/construction engineering firm, fully qualified to design the pipeline and provide engineering construction phase services.
- Contingent on the success of the design, Staff intends to bring back a recommendation to amend the contract with HMM for the subsequent engineering construction services.
- Adequate funds are available to fund the design of the Standley Lake Bypass Pipeline.

Expenditure Required: \$590,615

Source of Funds: Utility Fund – Standley Lake Bypass Pipeline

Policy Issue

Should the City execute a contract with HMM for the design of the Standley Lake Bypass Project?

Alternative

The City could decide not to contract with HMM for the project's design and have a Request for Proposals (RFP) sent out for the design of the 48-inch pipeline. This is not recommended because HMM is very familiar with the requirements of the project and the City's infrastructure involved with the project. Sending the project out as a Request For Proposals would add time to the process and other firms lack HMM's knowledge of the City's infrastructure and the details of the project information.

Background Information

During development of the 2009 Comprehensive Water Supply Plan, Council gave Staff direction to proceed with a project that would add redundancy to the City's raw water supply system. The need for redundancy in the City's raw water supply system is focused on Standley Lake, and the Standley Lake outlet works because all of the City's raw water is routed through these two parts of the City's raw water infrastructure. At the time of the 2009 Comprehensive Water Supply Plan, a conceptual project was formulated for a pipeline to collect water from raw water sources, bypass Standley Lake and its outlet works, and tie into the Standley Lake outlet pipelines. As the preliminary design was evaluated, it became apparent that this conceptual pipeline would be very expensive and complicated to operate. In 2011, Council authorized contracting with HMM to perform the Standley Lake Bypass Study to identify other potential ways to add necessary reliability to the City's raw water supply, using a broader range of potential options.

Overall, the preliminary design identified a cost-effective way to improve the reliability of the City's water delivery system. The study's recommendation is the construction of a new 48-inch, 3,000 foot (+/-) pipeline from the Farmers' High Line Canal to the City's water treatment plant raw water pipelines that would be capable of supplying full build-out water demand flow rates without the use of Standley Lake or its outlet works. The project would maximize use of currently-owned infrastructure and water rights. This recommendation includes collecting raw water flows from the City's various raw water sources and diverting them into Farmers' High Line Canal through existing waterways. At a point downstream of Standley Lake, water from the canal would be diverted into the proposed raw water pipeline and conveyed north through City of Westminster Open Space and Parks property into the existing raw water pipelines that then feed the Semper and Northwest water treatment facilities (see attached map). This proposed pipeline offers economical benefits because it maximizes the use of the existing infrastructure raw water from the City's other raw water ditches; and pipelines can be routed to Farmers' Highline Canals through existing and future trades, exchanges, and agreements.

Staff recommends that Council authorize a contract with the HMM team for the design of this project based on the following criteria:

- HMM was selected for the preliminary design of the pipeline project in a competitive process with the intent of having them complete the final design as was noted in the August 22, 2011 Council Memorandum for the approval of HMM's contract. Of the three proposing firms, HMM's approach best met the City's project objectives.
- Their team offers the best experience, with an extensive design history on the City's canals, ditches, pipeline raw water delivery systems and Standley Lake. Their team has construction experience on the Standley Lake dam and outlet works as well as extensive experience with municipal water rights and the City's water rights history.
- HMM performed well, providing the City with a flexible and financially sound preliminary design that would significantly enhance the reliability of the City's water supply.
- HMM's rates were lower than those of their competitors for the preliminary design, and they have remained in the same low range for the final design.

- HMM's design fees are reasonable for construction projects of this size. HMM and their team are a full service design/construction engineering firm, fully qualified to design hydraulic structures, the pipeline and provide engineering construction phase services.
- The HMM team has recent and relevant project experience in the Colorado region for work of similar size, scope and complexity.
- The overall quality of the preliminary design, study deliverables and final report met with Staff satisfaction. In the process the HMM team acquired a detailed understanding of the project requirements, as well as City Standards and Specifications. Staff believes that the knowledge HMM acquired during the study provides an economy of effort and time that will benefit the City.
- Local office location of team members with a project schedule and task breakdown that demonstrates their clear understanding of the project.

Funding for the design portion of the project has been approved, and design is anticipated to be completed in July 2013. The project's construction component has been included in the 2014 Capital Improvement Program at an estimated cost of \$5,500,000, with construction completion anticipated by the middle of 2014. Staff intends to bring back a recommendation to amend the contract with HMM for subsequent engineering construction services upon successful completion of the project design.

The timely progress on the Standley Lake Bypass Study will assist the City in meeting the City Council's Strategic Plan goals of providing "Financially Sustainable City Government Providing Exceptional Services," "Safe and Secure Community" and ensuring "Vibrant Neighborhoods In One Livable Community." With a water supply system that has reliable water delivery in place, the City can deliver water to its customers when interruptions would otherwise interfere.

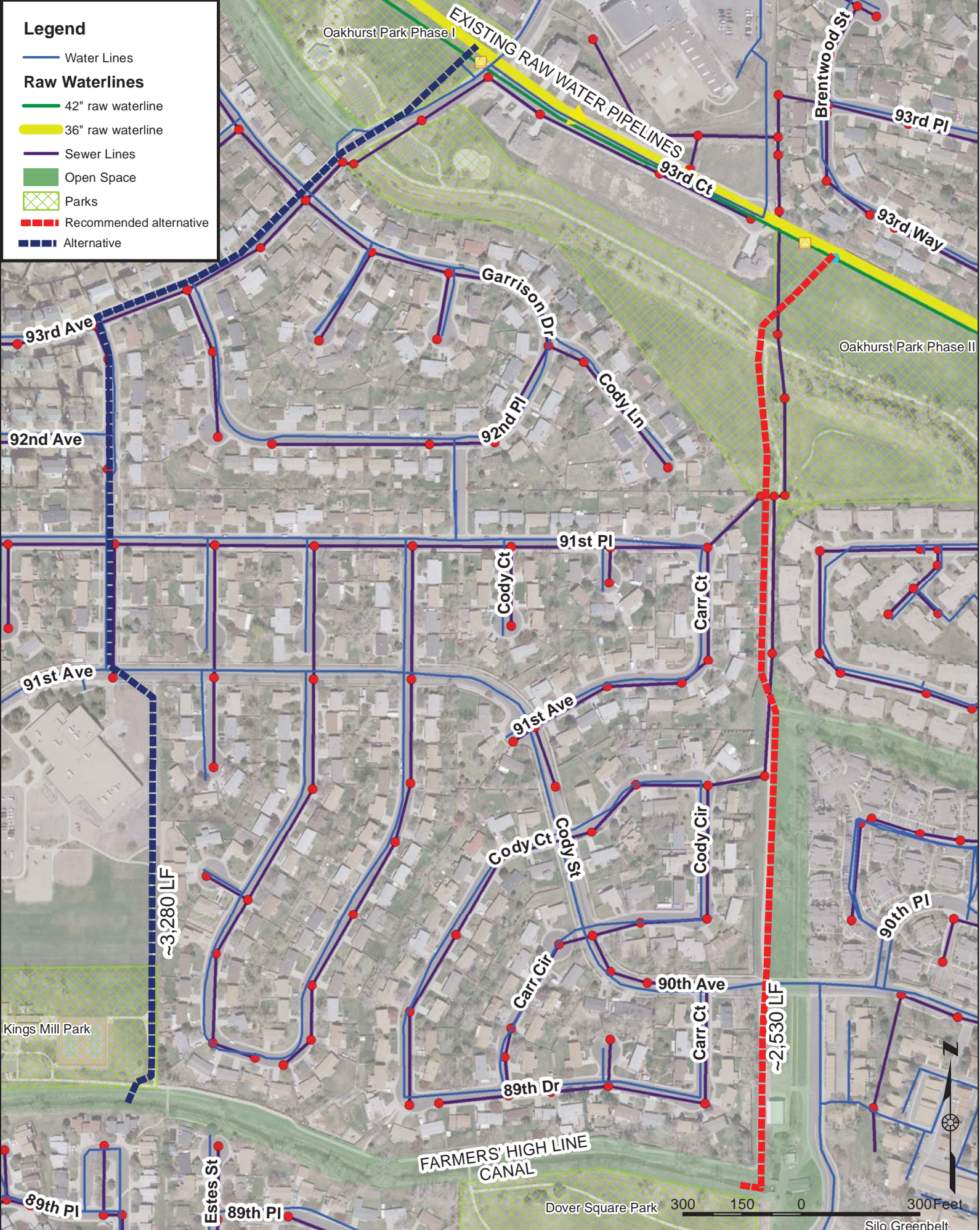
Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Map

Legend

- Water Lines
- Raw Waterlines**
 - 42" raw waterline
 - 36" raw waterline
- Sewer Lines
- Open Space
- Parks
- Recommended alternative
- Alternative



STANDLEY LAKE BYPASS STUDY - ALTERNATIVE RAW WATER INTERCONNECT ALIGNMENTS



Agenda Item 8 D

Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Integrated Library System Maintenance Contract

Prepared By: Veronica Smith, Library Automation Coordinator
Kate Skarbek, Library Services Manager

Recommended City Council Action

Upon recommendation of the City Manager, City Council finds that the public interest will best be served by authorizing the City Manager to sign a five-year maintenance agreement with the sole source provider, SirsiDynix, for the integrated library system, which includes the library patron database and catalog, and all associated software modules and servers.

Summary Statement

- The City has been a long-time customer of SirsiDynix, an integrated library system vendor. In 2002, the library migrated to the current Horizon library system and a major upgrade to that system was performed in 2011. The City pays annual maintenance to SirsiDynix for the Horizon system, which includes many peripheral and associated software modules installed on several onsite servers. This system is used for cataloging and circulating library materials, maintaining patron records, notifying patrons of holds and overdues, providing remote access to electronic resources, and much more. In essence, the system was designed to integrate all applications and components together to allow for a seamless transmission of data and information between patrons and the library.
- Staff is proposing to enter into a long-term (five-year) contract for that annual maintenance. This long-term contract provides several advantages:
 - Maintenance costs for the first year would not increase. This would be an estimated \$2,600 savings in 2012 based on the price quotes provided by SirsiDynix.
 - Maintenance costs for the next two to five years would be held to a 4.5% increase each year versus the company’s publically stated intention to otherwise charge a 6.9% increase each year.
 - The library would be able to implement new Social Library software and a library interface to Facebook with no cost for the software for five years and a one-time \$800 implementation fee. The first year cost for the software is normally \$3,830 not including the implementation fee. The total cost for the software for five years is currently estimated at \$22,034.
 - Library staff and patrons can be assured that the City will continue to provide the same software that they are familiar with for the next five years, providing stability in library services.
 - Library staff will be able to implement additional new services available in the existing software, such as online registration and a child-friendly interface.
- Adequate funds have been appropriated in the Library Services’ 2012 operating budget to cover this annual maintenance. While the contract for maintenance is made between the City and SirsiDynix, Front Range Community College is billed by the City for a portion of the maintenance each year.

Expenditure Required: \$169,086.71 (estimated for the five years)
\$ 38,622 for 2012

Source of Funds: Library Services Division Operating Budget

Policy Issue

Should the City enter into a five-year contract with SirsiDynix for the annual software maintenance and support of the integrated library system?

Alternative

Do not approve the five-year contract for software maintenance and support. Staff does not recommend this option as there would otherwise be higher increases in software maintenance and support costs. In addition, the library would not be able to purchase the Social Library software module that enables the library catalog to be searchable from within the Facebook page.

Background Information

In 2002, the library migrated to a new integrated library system called Horizon, which includes many peripheral and associated software modules. There are currently eight servers that house all of the components of the integrated library system. This software package is the basis under which the library operates. It is used for cataloging and circulating library materials, maintaining patron records, notifying patrons of holds and overdues, providing remote access to library databases and the ebook collection, and much more.

The library pays an annual fee for maintenance and support of the entire integrated library system to SirsiDynix, the system vendor. Maintenance and support are an integral part of keeping the software and modules up-to-date. The library's Horizon integrated library system was upgraded in the fall of 2011. This major upgrade not only kept the system current but allowed the library to expand services to include the Spanish and mobile versions of the catalog. Other features now available for library staff to implement include online registration and a children's version of the catalog.

Costs for maintenance and support typically increase each year by 6 to 7%. With a long-term contract, the City has the opportunity to hold down cost increases to 0% the first year and 4.5% in years two through five. In addition to annual savings, the vendor is offering a new software module called Social Library. There would be no charge to the City except for the installation, which is \$800. The first year cost for this software is normally \$3,830. Over the course of five years, the total estimated savings is \$22,034. Without the long-term contract, the City could not afford this new software module.

Since SirsiDynix created and developed the Horizon software, no other company can provide comprehensive maintenance or system upgrades, effectively making the company a sole source provider. SirsiDynix has provided a stable operating platform used by thousands of libraries throughout the world, indirectly serving millions of people. Library staff find the vendor responds in a timely and professional manner to questions or work requests.

While the library could go out to bid for an entirely different integrated library system (ILS), it would require the migration of all library data and content. The cost to migrate to another SirsiDynix-owned ILS would likely come in at \$200,000 or more, based on cost estimates from the 2002 migration. To migrate to another software vendor's integrated library system would likely run even higher than \$200,000, based on what other library systems experience. While open source software is available for less money it does not currently include all of the components the library uses so would be a reduction in service to the public. Any migration to a new system would also include hidden soft costs such as software implementation, testing, staff training, and library closures.

These recommendations support the City's Strategic Plan Goal of "Financially Sustainable City Government Providing Exceptional Services."

Respectfully submitted,

J. Brent McFall, City Manager

Attachment - Agreement



AMENDMENT TO AGREEMENT(S)
with
WESTMINSTER PUBLIC LIBRARY

This amendment ("Amendment") is made by and between Westminster Public Library, Global Customer number 300653 ("Customer"), and Sirsi Corporation dba SirsiDynix ("SirsiDynix") (fka epixtech).

Whereas the parties have entered a(n) Purchase and Licensing Agreement with an effective date of August 30, 2002, as may have been subsequently amended from time to time (hereinafter referred to as the "Agreement");

Whereas the parties hereto wish to amend certain terms of the Agreement, now therefore, for good and valuable consideration the receipt of which is hereby acknowledged, SirsiDynix and Customer agree as follows:

1. Definitions.

For purposes of this Amendment and attached Quote, the following terms shall have the meaning set forth herein:

"Content" means any information, data, text, software, music, sound, photographs, graphics, video messages or other material to which Customer is provided on-line access to through SirsiDynix on a subscription basis.

"License Metrics" means the limitation on the usage of each of the Software or SaaS Services as designated and/or defined in the applicable Quote by a term such as the number of titles, circulation, users, students, seats, reports, and the like.

"Maintenance" means the technical support and provision of Updates for the level of support services ordered, all of which are provided under SirsiDynix's Support Policies in effect at the time the Services are provided. A current version of such Support Policies can be found at:

http://clientcare.sirsidynix.com/index.php?goto=Knowledge&docs&pid=1&kcat_id=59&hlite=946.

"Quote" means the document executed by the parties specifically referencing this Amendment and/or the Agreement, which contains Customer's order specific information, including description of Software and Maintenance ordered, License Metrics and associated fees and payment terms.

"SaaS Services" means the provision of (i) Software as a service (SaaS) hosted by SirsiDynix from a server farm that is comprised of application, data and remote access servers used to store and run the Software and Customer Data, and/or (ii) web access to Content and (iii) associated Maintenance.

"Software" means the SirsiDynix Software and Third Party Software.

"System" means the total complement of hardware and Software furnished and maintained by SirsiDynix.

"Third Party Software and Products" means content and software including Documentation and Updates, owned by an entity other than SirsiDynix which are to be provided to Customer by SirsiDynix on a pass-through or OEM basis pursuant to the terms of the EULA.

All other capitalized terms used herein have the meaning set forth in the Agreement, unless expressly stated otherwise in this Amendment.

2. Amendments.

The parties agree to amend the Agreement as follows:

All Clauses in the Agreement referencing a set Term and/or Termination date are hereby superseded by the following:

Term and Renewal. Maintenance and/or SaaS services (collectively "Services") starts on 05/01/2012 and continues, subject to state statutes, through the expiration of the initial term set forth in the attached Quote ("Initial Term"). Following the end of the Initial Term, Services shall automatically renew for the same length as the Initial Term ("Renewal Term"), unless Customer gives written notice 60 days prior to the end of the Initial Term or any Renewal Term, of its intention to terminate Services. Written notice shall be given to legal@sirsidynix.com or by registered mail to SirsiDynix Technology Centre - Legal Dept., 3300 N. Ashton Blvd. - Ste 500, Lehi, UT 84043.

Subject to timely payment of the applicable fees, Maintenance is provided for all Software, unless otherwise noted in the Quote, provided however that with respect to Third Party Software, SirsiDynix's obligation is limited to using commercially reasonable efforts to obtain Maintenance from the third party owner of such software.

SirsiDynix Onsite to SaaS Services Migration. If Customer is currently running an onsite SirsiDynix System, Customer may have its System migrated to SaaS Services at any time during the Initial Term or any Renewal Term. Customer shall be responsible for the mutually agreed upon fees for such migration, which shall be quoted at the time of request. The initial term for the SaaS Services shall be at least the remainder of the then-current Term of this Agreement.

In the event Customer chooses to migrate to a SaaS environment, SirsiDynix shall continue to invoice the full annual Maintenance for Customer's existing onsite system. As of the date of initial live use of the SaaS Services, SirsiDynix shall invoice the full one-time migration and first year's recurring fees for the SaaS System while at the same time issuing a pro-rated credit for any unused onsite Maintenance fees.

Third Party Software and Products. SirsiDynix may add and/or substitute functionally equivalent products for any Third Party Products in the event of product unavailability, end-of-life, or changes to software requirements. Use of the Third Party Software and Products subject to all terms and conditions of the applicable Third Party EULA and SirsiDynix makes no warranty with respect to such. Customer's sole remedy with respect to such shall be pursuant to the original licensor's warranty, if any, to SirsiDynix, to the extent permitted by the original

Customer Initial and Date: _____

Confidential



licensor. Third Party Software and Products are made available by SirsiDynix on an "AS IS, AS AVAILABLE" BASIS.

Use. Software and/or Services purchased may be accessed by or used to manage no more than the number of License Metrics specified in the Quote, or the License Metrics specified in the current Agreement between the parties if no License Metrics are specified in the Quote. Additional License Metrics may be purchased under an additional Quote at the pricing as defined in the Quote in effect at the time the additional License Metrics are added, prorated for the remainder of the then-current Term. The Services for added License Metrics shall terminate on the same date as the pre-existing Services. Fees are based on Software and/or Services and License Metrics purchased and not actual usage.

Non-Appropriation of Funds. If funds are not available in a fiscal year to continue under this Agreement, the Agreement will be suspended at no penalty to Customer, upon SirsiDynix' receipt of written notice ninety (90) days prior to the renewal period. Such notice will not relieve Customer of payments then owing. Customer shall not purchase similar materials, supplies, services, or items of equipment during the anticipated life of the terminated Agreement without notification to SirsiDynix and reinstatement of the terminated Agreement.

Early Termination. Customer acknowledges that, based on Customer's willingness to enter into this Amendment for the term specified in the Quote, SirsiDynix has provided Customer with Services at rates that represent a substantial discount from the rates that SirsiDynix would otherwise charge, along with certain other free or substantially discounted products or services, as identified in the Quote for the Initial Term or Renewal Term(s) of the Services (each referred to individually as a "Term"), based on the length of the Term. Customer therefore agrees that it is reasonable for Customer to pay a fee to SirsiDynix in the event of early termination of a recurring Service ("Terminated Service") by Customer, other than due to breach by SirsiDynix and other than due to non-appropriation by Customer, which becomes effective upon any date prior to the end of the last year of the then-current Term. Such fee shall be equal to the remaining value of the then-current Term of the Services. Customer agrees that damages suffered by SirsiDynix in the event of early termination are difficult or impossible to determine and that the above amount is intended to be a reasonable approximation of such damages and not a penalty. Customer agrees that it will pay such amounts within thirty (30) days of any early termination of the Services. Customer shall notify SirsiDynix in writing of its intent to terminate such Services not less than ninety (90) days prior to the date of termination and Customer shall not be eligible for any pro-rata credit or refund for unused partial year Services fees paid.

Unless expressly amended in this Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

If the foregoing correctly sets forth your understanding of your agreement with respect to the matters treated above, please indicate your acceptance and approval below and return either a PDF or a fax of the signed document to legal@sirsidyndix.com or 801-223-5561; with original to follow to SirsiDynix Technology Centre – Legal Dept., 3300 N. Ashton Blvd. – Ste 500, Lehi, UT 84043.

This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of such counterparts shall constitute one and the same instrument. PDF documents and facsimile transactions shall be considered and have the same effect as originals.

The Effective Date of this Amendment shall be the date of the last signature below ("Effective Date").

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as identified below.

Westminster Public Library 3705 W. 112th Ave Westminster, Colorado 80031	SirsiDynix SirsiDynix Technology Centre 3300 N. Ashton Blvd. – Ste 500 Lehi, UT 84043
Sign: _____	Sign: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO LEGAL FORM:

Abraham, Asst City Attorney

Date: 8/27/12

File no.: 20104





SirsiDynix[®]

Proposal for:

Westminster Public Library (CO)

SirsiDynix Social Media

Prepared by:

**Steve Orton
Senior Sales Consultant
SirsiDynix**

Statement of Work

General

This quote is only valid with a five-year agreement.

Summary of Pricing

All prices are in U.S. dollars (\$) and are exclusive of taxes unless otherwise noted.

Component	Price	2nd Year Amount
Horizon software	3,830	0
Implementation Services	800	-
Discount	(3,830)	-
QUOTE TOTAL	800	0

Quote date: March 13, 2012

Quote valid until: September 30, 2012

Prices and products presented here are valid until September 30, 2012. The information contained herein is proprietary and intended only for the individual named above. To place an order for the above products and/or services, please sign and FAX this document to:

North America: (801) 765-6550

UK: +44 (0) 1923 431847

Australia: +61 3 9678 9163

This quote is hereby fully incorporated into the Master Agreement and Schedules

The above information is a trade secret, proprietary and confidential and is only for use by the library named above and not to be released.
 SirsiDynix Copyright 2012 – All Rights Reserved.

Total Cost of Ownership

All prices are in U.S. dollars (\$) and are exclusive of taxes unless otherwise noted.

Component	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Horizon software	3,830	0	0	0	0	3,830
Implementation Services	800	-	-	-	-	800
Discount	(3,830)	-	-	-	-	(3,830)
TCO	800	0	0	0	0	800

Initial Term of SaaS Services: Five (5) Years

Initial Term Annual Price Increase Cap for SirsiDynix Products/Services: 0% cap in 2012, then the greater of 4.5% or CPI annual price increase cap until Term renewal

Fees for the Initial Term are due annually in advance on the anniversary of Go Live Date.

The above price increase cap covers all Customer's active assets on Maintenance, however, the above quoted Initial Term price is guaranteed only for SirsiDynix products or services. Third Party/integrated product/service fees may, at the discretion of the Third Party, increase more than the above noted Initial Term pricing and shall be increased accordingly by SirsiDynix. SirsiDynix reserves the right to adjust Initial Term pricing in regards to vendor increases of Third Party/integrated products/services.

All other capitalized terms used herein have the meaning set forth in the Agreement, unless expressly stated otherwise in this quote.

The above information is a trade secret, proprietary and confidential and is only for use by the library named above and not to be released.
SirsiDynix Copyright 2012 – All Rights Reserved.

Component Descriptions

Horizon software

SirsiDynix Social Library

SirsiDynix Social Library A native Facebook application that provides the features and functionality of Facebook: Like, Share, and invites into the Library experience from the Library's home Facebook page. Patrons will be able to perform multiple OPAC actions: access the catalogue search, login, place holds, view My Account data, pay fines and fees.

Implementation Services

Installation:

Product Delivery

SirsiDynix Social Library Installation

Includes Web Services configuration, Library Directory configuration, and enablement of SirsiDynix Social Library installation

Project Management

Project Management - SirsiDynix Social Library

Project Management Services for the implementation of SirsiDynix Social Library

Contact Information

Quote Information

Client name	Westminster Public Library (CO)
Quote reference number	49788
Quote date	March 13, 2012
Quote valid until	September 30, 2012
License agreement number	

Client Information

Contact

Name	Veronica Smith
Address	3705 W. 112th Ave Westminster Colorado 80031 United States
Email	vsmith@cityofwestminster.us
Phone	(303) 658-2645
Fax	303 404-5135

Billing

Name	Veronica Smith
Address	3705 West 112 Ave Westminster Colorado 80031 United States
Email	vsmith@cityofwestminster.us
Phone	(303) 658-2645
Fax	303 404-5135

Shipping

Name	Veronica Smith
Address	3705 W. 112th Ave Westminster Colorado 80031 United States
Email	vsmith@cityofwestminster.us
Phone	(303) 658-2645
Fax	303 404-5135

SirsiDynix Information

Sales Rep	Steve Orton Senior Sales Consultant
Email	steven.orton@sirsidyndix.com
Address	3300 N. Ashton Blvd. Suite 500 Lehi UT 84043 USA
Phone	(800) 288-8020
Fax	(801) 765-6550

The above information is a trade secret, proprietary and confidential and is only for use by the library named above and not to be released.
SirsiDynix Copyright 2012 – All Rights Reserved.

Terms and Conditions

Other Terms

SirsiDynix software is licensed based upon annual circulation. You are licensed for up to 1,310,000 annually circulated items; an increase in circulation beyond the number noted requires additional license fees.

"Go Live Date" means, with respect to the SirsiDynix Software license orders, the date on which the SirsiDynix Software is available for operational use for normal daily business, including searching the public access catalog and circulating materials.

Maintenance must be ordered for all copies of the Software and for all elements of the Software which are used conjunctively by Customer. Customer's System shall remain within two (2) previously released software versions of the most recent version of the software at all times or an additional maintenance surcharge service charge will be added to the maintenance renewal.

Fees and Payment Terms

The term of any quoted subscriptions is for no less than five (5) years from the date of initial use of the subscription. Subscriptions shall be paid in advance and early termination of any quoted subscription for any reason will incur a reassessment fee of the full amount of the discount on the Quote of the subscription received by the customer plus interest. Reassessment amount will be due within thirty (30) days of the date of early termination. All subscriptions auto-renew annually after the initial five (5) year term unless sixty (60) days prior to termination notice is received in writing to legal@sirsidynix.com or to Legal Dept. SirsiDynix Technology Center 3300 North Ashton Boulevard, Suite 500, Lehi, UT 84043.

The Initial Term of maintenance and support is no less than five (5) years, and shall commence on the Go Live Date, to be paid in 12-month installments in advance and shall automatically renew for the length of the Initial Term. Subsequent years' Support, Subscription and SaaS Services fees are to be paid annually in advance.

Any discounts that may be listed on this quote will be applied to the final invoice.

Services/Training

- 50% due upon completion of first data test load, where a test load is part of the services
- 100% of the remainder due upon completion of services/training

**Fees and Payment Terms which do not reflect the services and/or products purchased by the Customer are non-applicable.

Unless otherwise specifically stated in writing, products and/or services purchased at promotional prices or with promotional discounts do not qualify for such discounts or limitations on price increases for subsequent years.

Terms and Conditions

Signatures

Westminster Public Library (CO)

By:

(Authorized Signature)

Printed Name:

Title:

Date:

APPROVED AS TO LEGAL FORM:

Amrahan
Title: Asst. City Attorney
Date: 8/27/12
File no.: 80104

Any reference to license metrics and/or licensed amounts included in this quote shall be applicable only to the products and/or services mentioned in this quote. The above document and any software or professional services associated with this document are hereby fully incorporated into the current Agreement executed between SirsiDynix and Customer. If there is no current agreement between the parties, the terms and conditions of the current SirsiDynix Master Software License and Services Agreement shall be deemed the controlling Agreement between the parties, a copy of which shall be furnished upon Customer's request. Any and all pre-printed terms and conditions on Customer's Purchase Order(s) submitted to SirsiDynix are hereby rejected and shall be superseded by the current Agreement, unless such additional terms are statutorily required of the Customer. In the event of a conflict, the terms, payment terms, discounts, product lists and/or statement of work contained within this document shall take precedence over the current Agreement between the parties. In the event Customer desires or requires updated terms and conditions for the continuing business relationship with SirsiDynix, please contact your regional Sales Representative.

The above information is a trade secret, proprietary and confidential and is only for use by the library named above and not to be released.
SirsiDynix Copyright 2012 - All Rights Reserved.



Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Employee Wellness Clinic Construction Remodel Contract

Prepared By: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will be served by waiving the City's formal bid process and awarding a negotiated sole source contract with Sand Construction of Colorado, LLC, for the build out of the new Employee Wellness Clinic within the City Park Fitness Center in the amount of \$116,906 and authorize a 10% contingency amount of \$11,690 for a total project cost of \$128,596.

Summary Statement

- In June 2012, staff began the process of identifying a location to build out space for the proposed Employee Wellness Clinic. After looking at a number of locations, the decision was made to make use of the existing Mind and Body Studio and the space previously occupied by the Colorado Rapids on the lower level, northwest corner of the City Park Fitness Center.
- Building out this space requires the relocation of the Information Technology Disaster Recovery Server Room and finding space within the Recreation Center to build space for the staff offices, massage rooms and storage space that were presently being used by the Recreation division.
- In July, working with staff from Information Technology, Parks, Recreation and Libraries, Public Works & Utilities, and Sand Construction, Building Operations & Maintenance staff began looking and proposing designs for a number of other facility locations that could potentially support the operational needs and infrastructure for each department that would be displaced.
- On September 11, City staff met with CareHere representatives, the proposed healthcare provider, to review the proposed space build out plans that Sand Construction had provided. Although they were extremely pleased with the space design documents, they have requested a number of minor changes to accommodate operational needs specific to the medical/wellness facility. Final recommendations for changes by CareHere are expected to be submitted to City staff sometime during the week of September 17th. These changes will stay within the project budget being recommended for approval.
- Based on the amount of technical assistance Sand Construction has provided at no cost to the City since the search for space began, their intimate knowledge of the space being remodeled from a previous remodel they performed to build out space for the Mind and Body Studio, the stellar work product experience the City has with the firm, the quick turnaround time needed to complete all the construction activities by December 15th and Sand Construction's willingness to negotiate a competitive reduced price from their original price estimate, Staff is recommending awarding Sand Construction the remodel contract for the Employee Wellness Clinic build out.

Expenditure Required: \$128,596

Source of Funds: Employee Wellness Clinic, Capital Improvement Funds

Policy Issue

Should City Council award a sole source construction contract to Sand Construction for the build out of the Employee Wellness Clinic at the City Park Fitness Center?

Alternative

City Council could direct staff to go back out for competitive bids to provide design and construction services to build out the proposed space for the new Wellness Clinic. Staff does not recommend this approach based on the amount of design work already accomplished by staff and Sand Construction to get to this point, the amount of time it would require to go through the formal bid process and finding a company that would commit to a completion date of December 15, and Sand Construction's commitment to start construction immediately following Council's approval to accommodate the deadline of December 15 as a completion date.

Background Information

On February 13, 2012, Staff presented a proposal to City Council to pursue the development of an Employee Wellness Clinic. In June 2012, Staff worked with Sand Construction and began a two month process looking at different buildings for space planning, design and specific construction budget numbers. The final site decision was to use the City Park Fitness Center, lower level, northwest side of the facility. Staff was able to obtain this prime location through a cooperative effort between Parks, Recreation and Libraries, Information Technology, General Services and Public Works and Utilities. Several components of each of their operations are being relocated to other space either within City Park Fitness Center or moved to other facility locations to make the space available for the Clinic.

Staff decided to use Sand Construction on design and pricing of the Wellness Clinic because of their successful history with remodeling the majority of the same space for the Parks and Recreation Mind and Body Studio eight years ago. On September 11, with preliminary space design of the Wellness Clinic completed, staff met with representatives of CareHere for their review and approval of the floor plan and design. CareHere requested a number of minor changes but agreed to get back with City Staff by the week of September 17 with final approval.

Staff's recommendation to award a sole source contract to Sand Construction is based on a number of benefits to the City. Sand Construction has worked with staff at no cost on space planning and construction pricing for each location the City was considering to build out space for the Clinic and subsequent moves for displacing other department operations. Sand Construction has completed over a dozen successful remodel projects for the City over the past twenty years without submitting a single change order. Sand Construction has intimate knowledge of the space and mechanical systems being proposed for build out at the City Park Fitness Center and Sand Construction has been willing to negotiate a reduced cost over their original pricing estimate.

Staff believes awarding a construction contract to Sand Construction for build out of the Employee Wellness Clinic at City Park Fitness Center achieves City Council's goal of being a Financially Sustainable City Government Providing Exceptional Services by entering into a timely, cost-effective project with a proven service provider.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Silo Pump Station Header Replacement Design-Build Contract

Prepared By: Stephanie Bleiker, Senior Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder, Aslan Construction, Inc., in the amount of \$251,759 to provide engineering design and construction services for the Silo Pump Station Header Design-Build Replacement Project; authorize a 10% contingency in the amount of \$25,176 for a total project expenditure of \$276,935; and authorizing the transfer of \$175,000 from project savings in the Countryside Pump Station account and savings of \$101,935 from the England Water Treatment Facility Decommissioning project, respectively, to the Silo Pump Station Header Project account .

Summary Statement

- The Silo pump station was constructed in 1974 and currently services 580-acres of residential and commercial property in the City of Westminster that make up Pressure Zone 4.
- The pump station was taken off line in early 2011 to repair a leak that had developed where the header pipe became thin from its continuous operations over the past 37 years.
- The integrity of the suction and discharged header piping is essential to maintaining reliable pressures in zone 4.
- The customers in Pressure Zone 4 have no back-up potable water storage tank or alternate pump station to maintain their water pressure when Silo pump station is out of service for maintenance and repair.
- Staff identified the header piping to be vulnerable to future failures, warranting its replacement.
- Of the three proposals received, Staff believes the Aslan team's proposal provides the best value to the City. Their proposed approach to the project includes an improved system that allows for continued operations during future maintenance operations. Their plan will return the pump station to full operations in a short period of time and keep a portion of the pump station in operation during construction.
- The project is anticipated to be completed in February 2013.
- Project savings from the England Water Treatment Facility Decommissioning project and the Countryside Pump Station project accounts are available to fund this project.

Expenditure Required: \$276,935

Source of Funds: Utility Fund – England Water Treatment Facility Decommissioning account
Utility Fund – Countryside Pump Station account

Policy Issues

1. Should Council proceed with awarding the engineering contract to Aslan Construction, Inc.?
2. Should Council authorize the transfer of monies to fund the project?

Alternatives

1. City Council could decline to approve the contract and place the project on hold. This is not recommended since it would result in delaying replacement of the header pipes and could result in increased maintenance and repair expenses and the risk of services losses to Westminster customers.
2. City Council could choose to award the contract to one of the other consultants that submitted proposals; however, this is not recommended as Staff believes that Aslan Construction, Inc. (Aslan) provides the best value for this project. Their engineering team has also gained a familiarity with the City's infrastructure, standards and specifications and presented a comprehensive, cost competitive approach to final design.
3. City Council could choose not to authorize the transfer of funding to complete the project. Staff does not recommend this alternative. Without transfer project savings from the England Water Treatment Facility Decommissioning and the Countryside Pump Station project, Staff will be unable to complete necessary repairs to the Silo Pump Station.

Background Information

Pressure Zone 4 services approximately 580-acres of residential and commercial properties. Residents and businesses in Pressure Zone 4 are located in the Kings Mill, Standley Lake and Trailside subdivisions. In 2011, the Silo Pump Station was taken off line to repair a leak that had developed in the main feed line to the booster pumps. The leak had developed in a pipe that has been under continuous operations since the pump station was constructed in 1974. Sustaining reliable uninterrupted pump station operations is important because Pressure Zone 4 has no potable water storage, secondary booster pump station, or adjoining pressure zones that could sustain serviceable water pressures to its customers.

In preparation for replacing the header piping system, Staff sent out a Request for Proposals (RFP) to solicit proposals for the project. Due to the specialized nature of this project and the corresponding engineering expertise required, Staff sent RFPs to three engineering firms who specialized in pump station design. Staff determined that a design-build team between a contractor and an engineer would best suit the needs of the project. Eight construction contractors were identified as experienced in the type of construction required at Silo pump station.

Essential aspects of the design-build project include providing a reliable temporary bypass booster pump system, developing a design that offers more flexibility for sustaining pump station operations when a portion of the pump station is out of service and having a construction plan that minimizes pump station down time as the header piping system is being replaced. Consulting firms and contractors reviewed City drawings and conducted field site visits at Silo pump station. Their proposals included design layouts of bypass pumping systems, back-up power supplies and header pipe replacement alternatives that would enhance the operations and maintenance of Silo pump station.

Three proposals were received on July 30, 2012. The Aslan team was selected for this work based on their response to the following criteria as outlined in the Request for Proposals:

- Approach that clearly indicates understanding of the project scope and City's goals and expectations.
- Firm's specialized experience in projects of similar size, scope and complexity.
- Recent project experience in the Colorado region for work of similar size, scope and complexity.
- Experience and availability of qualified team members with positive reference feedback.

Three contractor/consultant teams submitted proposed fees as follows:

Aslan Construction, Inc. / Hatch Mott MacDonald, Inc.

Garney Construction, Inc. / Burns & McDonnell Engineering Co., Inc.

Fischer Construction, Inc. / JVA Consulting Engineers

A range of ideas and costs were presented in the proposals Staff received from the three contractor/consultant teams. The fee proposals Staff received ranged in cost from \$250,501 to \$377,525. The ideas that best fit the City's infrastructure needs came from the Aslan Construction team. In addition to Aslan team's favorable response to the criteria outlined in the City's RFP, they demonstrated a unique design for bypass pumping that offered more flexibility in meeting varying levels of water demands in pressure zone. Aslan's design-build fee was \$250,501. Their design approach for the header pipe system minimizes reliance on the temporary bypass pumping and offers design improvements from the operational and maintenance perspective. The construction and design team have expertise and a positive track record in pump station retrofitting pipe-work replacement projects. Furthermore, the Aslan team presented efficiencies in the design for an overall construction cost savings.

As part of the proposal review process, Staff identified an additional design feature that would further minimize future pump station down-time. This improvement was included in the Aslan team's scope of work, bringing their fee to \$251,759. Among the proposing contractor/consultant teams, the Aslan team approach and experience were the best and most qualified for the project.

Savings in two projects have been identified to fund this project. The Countryside Pump Station project has \$175,000 available, and project savings of \$101,935 in the England Water Treatment Facility Decommissioning project are currently available for use towards the Silo Pump Station Header Design-Build Replacement project.

The Silo Pump Station Header Replacement Design-Build Project helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods In One Livable Community" by contributing to the objectives of well-maintained City infrastructure and facilities. With the new header piping system in place, residents will receive more reliable water services with reduced risk of system failures.

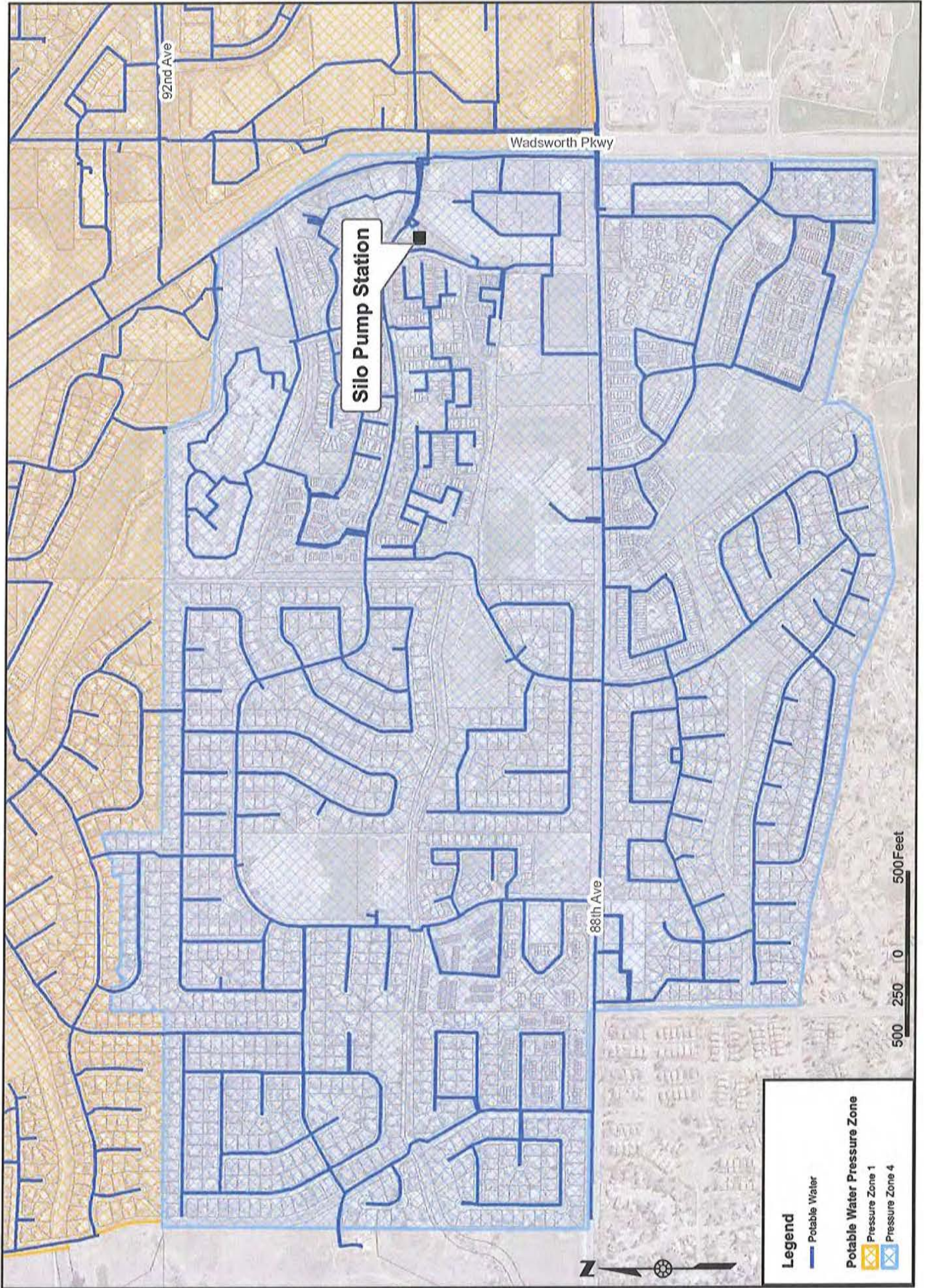
Respectfully submitted,

J. Brent McFall

City Manager

Attachment - Silo Pump Station Site Map

Silo Pump Station Header Replacement Design - Build Project





Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: First Amendment to the Intergovernmental Agreement to Establish the North Metro Task Force as a Legal Entity

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

Recommended City Council Action

Authorize the City Manager to sign a First Amendment to the Intergovernmental Agreement with Adams County, City and County of Broomfield, and the municipalities of Brighton, Commerce City, Federal Heights, Northglenn, Thornton and Westminster to establish the North Metro Task Force as a legal entity.

Summary Statement

- In 2007, the Parties entered into an Intergovernmental Agreement (IGA) forming the North Metro Task Force (NMTF) as a separate legal entity and establishing a governing board (Board) comprised of the Chiefs of Police of the municipalities (the Parties) and the Adams County Sheriff.
- The Board of the North Metro Task Force was required to establish bylaws, policy, approve procedures and oversee operational and administrative matters of concern to the NMTF.
- The IGA directed the Board to appoint one of the Parties to serve as “Host Agency” and that this Host Agency be reappointed every three years.
- The Board now desires to amend Section 4.0 of the IGA to extend the period of the Host Agency from three to five years and passed a resolution recommending the change.
- All other terms and conditions of the IGA shall remain in full force and effect.
- The City Attorney’s Office has reviewed and approved the IGA as to form.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City of Westminster enter into a First Amendment to the Intergovernmental Agreement between Adams County, the City and County of Broomfield, Brighton, Commerce City, Federal Heights, Northglenn, Thornton and Westminster to extend the term of the Host Agency from three years to five years?

Alternative

Do not authorize the City Manager to sign the First Amendment to the IGA concerning the Host Agency term from three to five years. Staff is not recommending this action as the factors involved in more frequent conversion from one Host Agency to another is complex time consuming and not in the best interest of the NMTF operations.

Background Information

On November 25, 1991, the Cities of Brighton, Commerce City, Federal Heights and Thornton entered into an Intergovernmental Agreement with Adams County to form a Drug Enforcement Task Force to address the varying levels of illegal drug activity in their communities. This agreement was amended several times to provide for changes required to receive U.S. Department of Justice grants and to add/remove Parties to the Task Force. In October 1996, the City of Westminster joined the Task Force.

In 2007, the Parties, through the current IGA, established the North Metro Task Force as a legal entity and this agreement superseded and replaced the previous Intergovernmental Agreement whereby all amendments no longer had any force or effect. In 2009, the governing board of the NMTF selected the City of Thornton to serve as the Host Agency for the three year term ending in 2012.

It became evident to the Parties that a three year rotation of the Host Agency presented numerous logistical issues. The City of Thornton agreed to continue as the Host Agency for an additional two years and will be vacating the Host Agency position on September 30, 2014. In February 2012, the NMTF passed a Resolution to amend the IGA to provide for the increase in the rotational term of the Host Agency from three to five years.

This IGA reflects the City's strategic goals of a Safe and Secure Community as well as the goal of Financial Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – First Amendment to the IGA

FIRST AMENDMENT TO THE AGREEMENT
AMONG ADAMS COUNTY, CITY AND COUNTY OF BROOMFIELD, AND THE
MUNICIPALITIES OF BRIGHTON, COMMERCE CITY, FEDERAL HEIGHTS,
NORTHGLENN, THORNTON, AND WESTMINSTER TO ESTABLISH THE NORTH
METRO TASK FORCE AS A LEGAL ENTITY.

THIS FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT (“First Amendment”) creating the North Metro Task Force, is made and entered into among ADAMS COUNTY, CITY AND COUNTY OF BROOMFIELD, AND THE MUNICIPALITIES OF BRIGHTON, COMMERCE CITY, FEDERAL HEIGHTS, NORTHGLENN, THORNTON, AND WESTMINSTER, hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, by intergovernmental agreement by and among the Parties entered into in 2007 (“IGA”), formed the North Metro Task Force (“NMTF”) as a separate legal entity and a Governing Board (“Board”) was established, comprised of the various Chiefs of Police of the municipalities and the Adams County Sheriff; and

WHEREAS, the purpose of the IGA was to was to create a task force for the administration and operation of the combined personnel, resources, and equipment of the Parties in connection with the identification, investigation, and prosecution of individuals and groups involved in the trafficking of illegal drugs and other criminal enterprises; and

WHEREAS, the Board of the North Metro Task Force was required to establish bylaws and policy, and to approve procedures and oversee operational and administrative matters of concern to the Task Force; and

WHEREAS, said IGA directed the Board to appoint one of the Parties to serve as “Host Agency” of the Task Force, with the Host Agency to be reappointed by the Board every three (3) years. The Board now desires to amend Section 4.0 of the IGA to extend the period of the Host Agency from three years to five years; and

WHEREAS, pursuant to the attached resolution, the Board has recommended to each of the Parties to the IGA that the First Amendment extending the period of the Host Agency from three years to five years be approved.

NOW THEREFORE, it is mutually agreed by and among each of the Parties as follows:

1. Section 4.0 of the IGA is hereby amended to read as follows:

4.0 HOST AGENCY. The Governing Board shall select one of the Parties to be the Host Agency for the Task Force for a period of five (5) years, referred to as the “Host Agency.” The Task Force Commander will be from the Host Agency. The Host Agency Commander shall be responsible for the administration of the Task Force program and supply support for the Task Force in all areas, including, but not limited to, Finance,

Budget Administration, Information Technology and Facility Management. The Host Agency Finance Director or equivalent shall be the Treasurer for the Task Force. The Host Agency shall manage all assets that may be owned by the Task Force as per the Host Agency's inventory management procedures and the Task Force monies as set forth in the bylaws, policies and procedures.

2. All other terms and conditions of the IGA shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused their names to be affixed as set forth below and this First Amendment is effective as of the last date written below.

[SIGNATURE PAGES TO FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF WESTMINSTER, COLORADO

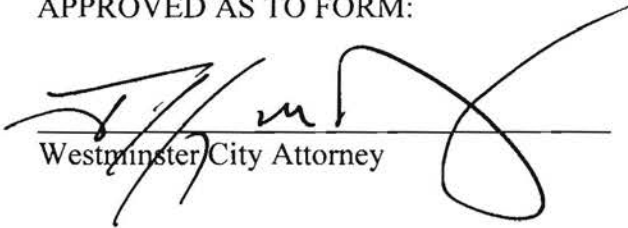
City Manager

Date

ATTEST:

City Clerk

APPROVED AS TO FORM:



Westminster City Attorney

ADAMS COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

Chair

Date

ATTEST:

Deputy Clerk

APPROVED AS TO FORM:

Adams County Attorney's Office

CITY OF BRIGHTON, COLORADO

Mayor

Date

ATTEST:

City Clerk

APPROVED AS TO FORM:

Brighton City Attorney

CITY AND COUNTY OF BROOMFIELD

Mayor

Date

ATTEST:

City Clerk

APPROVED AS TO FORM:

City & County of Broomfield Attorney

CITY OF COMMERCE CITY, COLORADO

Mayor

Date

ATTEST:

City Clerk

APPROVED AS TO FORM:

Commerce City City Attorney

CITY OF FEDERAL HEIGHTS, COLORADO

Mayor

Date

ATTEST:

City Clerk

APPROVED AS TO FORM:

Federal Heights City Attorney

CITY OF NORTHGLENN, COLORADO

Mayor

Date

ATTEST:

City Clerk

APPROVED AS TO FORM:

Northglenn City Attorney

CITY OF THORNTON, COLORADO

Mayor

Date

ATTEST:

City Clerk

APPROVED AS TO FORM:

Thornton City Attorney



Agenda Item 8 H

Agenda Memorandum

City Council Meeting
September 24, 2012



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

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

Recommended City Council Action

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

Summary Statement

- Approval of the First Amendment to Site Agreement by ordinance will allow New Cingular Wireless PCS, LLC., (New Cingular), formerly AT&T Wireless, to continue use of the 100-foot monopole located at Fire Station 6 for an additional six months, until April 30, 2013, at which time the Agreement will terminate and the equipment and tower will need to be removed.
- New Cingular is requesting an extension of the Site Agreement for to allow additional time to finalize site alternatives for its operations while maintaining service to its customers.
- City Council review and approval of the First Amendment to Site Agreement is being sought to comply with Charter Section 13.4 and W.M.C. § 11-4-11(J).
- This Councillor's Bill was passed on first reading on September 10, 2012.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **35**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
BRIGGS - KAISER

A BILL

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

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

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Item 8 I

Agenda Memorandum

City Council Meeting
September 24, 2012



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

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

Recommended City Council Action

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

Summary Statement

- As City Council is aware, the Westminster Municipal Code (W.M.C. or Code) is a codification of general ordinances of the City and serves as a major resource to Staff and citizens, both in print and electronically.
- Staff attempts to keep the Code current by regularly seeking Council approval of necessary amendments. Council has requested Staff review and update the Code on a regular basis to maintain accuracy and ensure it is as free of errors as possible. In general, state, federal and city codes benefit from regular housekeeping measures such as those being proposed at this time for Westminster.
- Staff considers these proposed amendments to be primarily housekeeping in nature, but beyond the scope of authority granted to the City Clerk in Section 1-1-5, W.M.C., to correct errors of punctuation, capitalization, formatting, grammar and spelling, and internal references.
- Staff believes these amendments will improve the overall quality of the Code.
- This Councillor’s Bill was passed on first reading at the September 10 City Council meeting.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **36**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Major - Winter

A BILL

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 22

MINI WAREHOUSE SPACE LEASE OR RENTAL

5-22-1: DEFINITIONS

5-22-2: LICENSE REQUIRED

5-22-3: EXEMPTIONS

5-22-4: REGULATIONS

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

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

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

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

[The following definitions to be added alphabetically]

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

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

managerial capacity of subordinate employees.

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

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

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

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

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

~~(C) DEFINITIONS:~~

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

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

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

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

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

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

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

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

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

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

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

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

[The following definitions to be added alphabetically]

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

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

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

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

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

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

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

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

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

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

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

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

~~(B) PROHIBITED ACTS:~~

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

CHAPTER 10

TRAINS;~~LITTER~~

6-10-1: RULES GOVERNING TRAINS OR LOCOMOTIVES

~~6-10-2: LITTERING~~

CHAPTER 18

LITTER

6-18-1: LITTERING

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

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

(B) It shall be an affirmative defense that:

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

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

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

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

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

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

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

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

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

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

[The following definitions to be added alphabetically]

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

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

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

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

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

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

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

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

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

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

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

(c) Carburetion tubes and devices;

(d) Smoking and c/carburetion masks;

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

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs; or

(m) Ice pipes or chillers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 6

DISPOSAL OF INFLAMMABLES

9-6-1: TRASH

9-6-2: ASHES

9-6-3: OILY WASTE OR RAGS

9-6-4: VIOLATIONS

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

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

Section 16. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

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

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

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Memorandum

City Council Meeting
September 24, 2012



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

Prepared By: Mike Normandin, Transportation Engineer

Recommended City Council Action

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

Summary Statement

- Some street sections located within residential neighborhoods in the City contain a relatively narrow buffer between the sidewalk and the curb. The intended uses of this buffer are to supply an area for the potential placement of landscaping and to provide a separation between the sidewalk and the traveled roadway for the enhanced safety of pedestrians.
- The current City Code does not have provisions for the enforcement of parking restrictions within these buffered areas, and Staff has noticed that some residents park their vehicles behind the curb rather than within the paved portion of the street adjacent to the curb. Therefore, Staff is proposing a revision to the Municipal Code to prohibit parking within these narrow buffers.
- This Councillor's Bill was passed on first reading on September 10, 2012.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **37**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Atchison - Kaiser

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

THE CITY OF WESTMINSTER ORDAINS:

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

10-1-12: PARKING RESTRICTIONS:

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

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

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

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

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

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

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Item 10 A&B

Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Public Hearing and Resolution No. 27 re Amended and Restated Service Plan for the Orchard Park Place North Metropolitan District

Prepared By: John Carpenter, Director of Community Development
Tammy Hitchens, Director of Finance
Marty McCullough, City Attorney

Recommended City Council Action

1. Hold a public hearing.
2. Adopt Resolution No. 27 approving the Amended and Restated Service Plan for the Orchard Park Place North Metropolitan District.

Summary Statement

- In February of 2008 City Council approved a preliminary service plan for the Orchard Park Place North Metropolitan District. The District is intended to serve as a financing vehicle to fund public improvements needed to serve the Orchard Park Place commercial development. The District consists of approximately 56.2 acres of commercial development and includes the St. Anthony Centura Medical project. The development is located at the northeast corner of 144th Avenue and Huron Street. The developer is AZG Westminster, LLC.
- A “skeletal service plan” was approved previously by Council to allow the developer to proceed with the formation of the District at the May 2008 election. However, this preliminary service plan specifically provided that the District would not be allowed to levy any tax or incur any debt until a final Amended and Restated Service Plan was approved by Council containing specific limits and conditions on the District’s financial powers and other constraints on the District’s authority consistent with the City’s Metropolitan District Approval Policy (the “Policy”).
- The District is an independent unit of local government, separate and distinct from the City. The primary purpose of the District will be to finance the construction of public improvements for the use and benefit of the taxpayers of the District.
- An electronic copy of the proposed Amended and Restated Service Plan has been provided to Council and filed with the City Clerk (the “Plan”). Staff has carefully reviewed the Plan and has concluded that it is consistent with established Policy. The Plan includes a maximum mill levy of 50 mills of which a maximum of 10 mills may be used for operations and maintenance, a maximum mill levy term of 30 years. The Plan includes a total debt issuance limitation of \$7,000,000 and a requirement that prior to issuing any debt the proposed issuance must be reviewed and deemed financially feasible by an independent financial advisor.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City Council approve the proposed service plan for the Orchard Park Place North Metropolitan District?

Alternative

Do not approve the Plan. Staff does not recommend this because the proposed Plan is consistent with the City's Metropolitan District Approval Policy and is considered necessary by City Staff to facilitate the development of the Orchard Park Place Project.

Background Information

In February of 2008 City Council approved a preliminary service plan for the Orchard Park Place North Metropolitan Special District. The District is intended to serve as a financing vehicle to fund public improvements needed to serve the Orchard Park Place commercial development. The District consists of approximately 56.2 acres of commercial development and includes the St. Anthony/Centura Medical project. The proposed development is located at the northeast corner of 144th Avenue and Huron Street. The developer is AZG Westminster, LLC (AZG).

Metropolitan Special Districts are governmental entities created by property owners of the district and are legally distinct from the City. The so-called "skeletal service plan" that Council approved previously allowed the developer to proceed with the formation of the District at the May 2008 election. However, this preliminary service plan specifically provided that the District would not be allowed to levy any tax, impose any fee, construct any improvements or incur any debt until a final Amended and Restated Service Plan was approved by Council at a later date containing specific limits and conditions on the District's financial powers and other constraints on the District's authority consistent with the City's Metropolitan District Approval Policy (the "Policy").

An electronic copy of the proposed Amended and Restated Service Plan has been provided to Council and filed with the City Clerk (the "Plan"). Staff has carefully reviewed the Plan and has concluded that it is consistent with the Policy. The Plan includes a maximum mill levy of 50 mills of which a maximum of 10 mills may be used for operations and maintenance, a maximum mill levy term of 30 years. The Plan includes a total debt issuance limitation of \$7,000,000 and a requirement that prior to issuing any debt the proposed issuance must be reviewed and deemed financially feasible by the City's independent financial advisor. All costs and expenses associated with this review will be paid for by the developer.

The action requested of Council is the approval of a final service plan. Service plans must be approved by City Council for any metropolitan special district within the City. This action supports Council's goals of Financially Sustainable City Government Providing Exceptional Services and Strong, Balanced Local Economy by providing tools for attracting new targeted businesses, focusing on primary employers and higher paying jobs.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- Amended and Restated Service Plan

RESOLUTION

RESOLUTION NO. 27

INTRODUCED BY COUNCILLORS

SERIES 2012

**A RESOLUTION
APPROVING THE AMENDED AND RESTATED SERVICE PLAN
FOR THE ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT**

WHEREAS, the Colorado Special District Act provides requires City Council to approve the service plan of any special district located wholly within the boundaries of the City; and

WHEREAS, the Orchard Park Place Metropolitan District is wholly located within the boundaries of the City; and

WHEREAS, a preliminary service plan for the Orchard Park Place Metropolitan District was approved by the City Council on February 25, 2008; and

WHEREAS, the preliminary service plan specifically provided that the District would not be allowed to levy any tax or incur any debt until an amended plan was approved by Council containing specific limits and conditions on the District's financial powers and other constraints on the District's authority consistent with the City's Metropolitan District Approval Policy (the "Policy"); and

WHEREAS, AZG Westminster, LLC, the developer of the proposed Orchard Park Place commercial project, has submitted for City Council approval a proposed final Amended and Restated Service Plan for the District dated September 2012 (the "Final Plan"); and

WHEREAS, the Final Plan includes a maximum mill levy of 50 mills of which a maximum of 10 mills may be used for operations and maintenance, a maximum mill levy term of 30 years, a total debt issuance limitation of \$7,000,000 and a requirement that prior to issuing any debt the proposed issuance must be reviewed and deemed financially feasible by the City's independent financial advisor; and

WHEREAS, City Staff has carefully reviewed the Plan and has concluded that it is consistent with the Policy; and

WHEREAS, adequate notice has been published and sent to property owners and interested parties of a public hearing of the City Council of the City of Westminster to review the Final Plan; and

WHEREAS, the City Council of the City of Westminster has conducted a public hearing on the Final Plan.

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

Section 1. That notice of the hearing was properly given and the City Council has jurisdiction to hear this matter.

Section 2. The City Council makes the following findings:

- a. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.
- b. The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.
- c. The proposed special district is capable of providing economical and sufficient service to the areas within their proposed boundaries.
- d. The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Section 3. The Final Plan for the Orchard Park Place North Metropolitan District dated September 2012 is hereby approved. Nothing herein limits the City's powers with respect to the District, the property within the District, or the improvements to be constructed by the District. The City's findings are based solely upon the evidence in the Final Plan and such other evidence presented at the public hearing, and the City has not conducted any independent investigation of the evidence. The City makes no guarantee as to the financial viability of the Districts or the achievability of the results.

PASSED AND ADOPTED this 24th day of September, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Clerk

City Attorney

**AMENDED AND RESTATED
SERVICE PLAN
FOR
ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT**

Prepared

by

**Collins Cockrel & Cole, P.C.
390 Union Blvd., Ste. 400
Denver, Colorado 80228**

with assistance from

**Blue Sky Engineering, LLC
529 Crestmore Place
Fort Collins, Colorado 80521**

and

**D.A. Davidson and Co.
1600 Broadway, Suite 1100
Denver, Colorado
30202**

Submitted: September 2012

TABLE OF CONTENTS

I. INTRODUCTION 1

 A. Purpose and Intent..... 1

 1. District Purpose..... 1

 2. Amended and Restated Service Plan 1

 B. Need for the District..... 2

 C. Objective of the City Regarding District Amended and Restated Service Plan 2

 D. Organizers and Consultants 3

 E. Board of Directors..... 4

II. DEFINITIONS..... 4

III. BOUNDARIES..... 7

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION. 7

V. DESCRIPTION OF POWERS, IMPROVEMENTS AND SERVICES 8

 A. Powers of the District and Service Plan Amendment..... 8

 1. Operations and Maintenance Limitation..... 8

 2. Use of Bond Proceeds and Other Revenues Limitation..... 9

 3. Recovery Agreement Limitation..... 10

 4. Construction Standards Limitation 10

 5. Privately Placed Debt Limitation..... 11

 6. Boundary Change Limitation..... 11

 7. Total Debt Issuance Limitation..... 11

 8. No Fees, Charges or Assessments 11

 9. Monies from Other Governmental Sources 12

 10. Consolidation Limitation 12

 11. Bankruptcy Limitation 12

 12. Eminent Domain Powers Limitation 13

 13. Notice of Meetings..... 13

 14. Subdistricts..... 13

 15. Service Plan Amendment..... 13

 B. Preliminary Engineering Survey..... 14

VI. FINANCIAL PLAN..... 15

 A. General 15

 B. Maximum Voted Interest Rate and Maximum Underwriting Discount 16

 C. No-Default Provisions 16

 D. Eligible Bondholders 17

 E. Maximum Mill Levy..... 17

 F. Maximum Mill Levy Imposition Term..... 18

 G. Debt Repayment Sources..... 18

 H. Security for Debt..... 18

 I. Maximum Operating Mill Levy..... 19

J.	Debt Issuance	19
K.	City's Financial Advisor Recommendation	18
L.	Termination of Amended and Restated Service Plan	19
VII.	ANNUAL REPORT	20
A.	General.....	20
B.	Reporting of Significant Events.....	20
VIII.	DISSOLUTION	21
IX.	DISCLOSURE TO PURCHASERS.....	21
X.	CONCLUSION.....	22
XI.	EXHIBITS	22

LIST OF EXHIBITS

EXHIBIT A	Legal Description
EXHIBIT B	Initial District Boundary Map
EXHIBIT C	Project Vicinity Map
EXHIBIT D	Description of Public Improvements
EXHIBIT E	Matrix of Ownership, Operation and Maintenance
EXHIBIT E-1	Operations and Maintenance Location Map
EXHIBIT F	Financing Plan
EXHIBIT G	District Election Questions
EXHIBIT H	Form of Disclosure

I. INTRODUCTION

A. Purpose and Intent

1. District Purpose. The District is an independent unit of local government, separate and distinct from the City. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated constituents and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. All capitalized terms used herein shall have the meanings set forth in Section II or as otherwise defined in this Amended and Restated Service Plan.

2. Amended and Restated Service Plan. Following the City Council's approval of the Original Service Plan on February 25, 2008, the proponents of the District proceeded with the organization of the District, conducted a public election in accordance with the Special District Act on November 4, 2008, and obtained an order from the District Court on December 3, 2008 establishing the District pursuant to Section 32-1-305, C.R.S. Since the entry of the District Court order, the District has undertaken only minimal administrative and ministerial activities (i) as required by State law to maintain the District as a lawfully existing political subdivision of the State and (ii) as necessary to prepare and submit this Amended and Restated Service Plan. Without limiting the generality of the foregoing, the District currently is levying no tax, is imposing no fee, has constructed no Public Improvements, and has incurred no Debt. Upon approval of this Amended and Restated Service Plan, the District will conduct its operations and undertake all activities and actions in accordance with the terms and limitations set forth herein. The approval of this Amended and Restated Service Plan does not obligate the City to approve any zoning, subdivision, planning, building permit, or other land use matter for the owners of any real property located within the District which may be served by the Public

Improvements. The District was not created to provide ongoing operations and maintenance services other than as specifically set forth herein. The Original Service Plan is amended and superseded in its entirety by this Amended and Restated Service Plan.

B. Need for the District

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. The organization and operation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible as required in the Economic Development Agreement.

C. Objective of the City Regarding District Amended and Restated Service Plan

The City's objective in approving this Amended and Restated Service Plan for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Mill Levy Imposition Term, the proposed fees set forth in Exhibit E – Financing Plan, and other legally available revenue of the District, including certain fees, to the extent authorized by this Amended and Restated Service Plan. The District's Debt mill levy shall be no higher than the Maximum Mill Levy.

This Amended and Restated Service Plan is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. Except as limited hereunder, the District shall have and may exercise all powers

and authorities set forth in the Special District Act and by State law. The primary purpose of the District is to provide for the Public Improvements associated with the development of the Project and certain regional needs. Operational activities are allowed, but only as specified in this Amended and Restated Service Plan.

Unless the District has operational responsibilities for any of the Public Improvements as set forth in the Matrix, it is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, or upon the occurrence of an event specified in Section 32-1-701(2) or (3), C.R.S.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from tax revenues collected from a Debt service mill levy, which shall not exceed the Maximum Mill Levy and which shall not exceed the Maximum Mill Levy Imposition Term. It is the intent of this Amended and Restated Service Plan to assure to the extent possible that no property bear an economic burden that is greater than that associated with the Maximum Mill Levy in amount and that no property bear an economic burden that is greater than that associated with the Maximum Mill Levy Imposition Term. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

D. Organizers and Consultants

This Amended and Restated Service Plan has been prepared by the following:

Organizers

AZG Westminster, LLC
1129 South Oakland, Suite 101
Mesa, Arizona 85206

District Counsel

Collins Cockrel & Cole, P.C.
390 Union Blvd., Suite 400
Denver, CO 80228

Financial Advisor
D.A. Davidson & Co.
1600 Broadway, Suite 1100
Denver, Colorado 80202

Engineers
Blue Sky Engineering, LLC
529 Crestmore Place
Fort Collins, Colorado 80521

E. Board of Directors

The members of the current Board are:

Fred Cooke
Robert Quinette
David Treadwell
Jeff Reed
Judith Mancilla

II. DEFINITIONS

In this Amended and Restated Service Plan, the following terms shall have the meanings set forth below, unless the context clearly requires otherwise. All terms shall include both the singular and plural, unless the context clearly indicates otherwise.

Amended and Restated Service Plan or Service Plan: means this Amended and Restated Service Plan, amending and superseding in its entirety the Original Service Plan approved by the City Council, and which may be further amended from time to time by the City Council's approval of a Service Plan Amendment.

Board: means the board of directors of the District.

Bonds or Debt: means any multiple year financial obligation of the District and any financial obligation under any lease purchase or certificates of purchase financing, including but not limited to any bonds, notes, debentures, certificates, capital leases, or contracts, except for developer reimbursement contracts that are (i) subject to annual appropriation in the discretion of the Board and (ii) have a term not greater than the Maximum Mill Levy Imposition Term.

City: means the City of Westminster, Colorado.

City Code: means the City Code of the City of Westminster, Colorado.

City Council: means the City Council of the City of Westminster, Colorado.

City Manager: means the manager of the City appointed by the City Council.

District: means the Orchard Park Place North Metropolitan District.

Economic Development Agreement: means the Amended and Restated Economic Development Agreement dated November 24, 2009 between and among Centura Health Corporation, AZG Westminster, LLC, the City and the Westminster Economic Development Authority, as amended from time to time.

Financial Advisor: means a consultant that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) is an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place (also known as the Redbook); (iii) is not an officer of the District; and (iv) is not engaged or to be engaged by the District to provide financial advisory or underwriting service for the issue for which the Financial Advisor is engaged.

Financial Plan: means the Financial Plan generally set forth in Section VI, which describes (i) how the Public Improvements are expected to be financed; (ii) how Debt is expected to be incurred; and (iii) the estimated revenue and expenses of the District.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as Exhibit B describing the District's initial boundaries.

Market Issued Debt: means Debt which is underwritten by an underwriter or investment banker listed in the Bond Buyer's Municipal Market Place(also known as the Redbook).

Matrix: means the matrix of ownership, operation and maintenance of the Public Improvements attached hereto as Exhibit E.

Maximum Mill Levy: means the maximum mill levy that the District is permitted to impose for payment of Debt and operations and maintenance as set forth in Section VI.E below.

Maximum Mill Levy Imposition Term: means thirty (30) years commencing on January 1 of the year first following the year of the initial imposition of any Debt Service mill levy by the District, but not earlier than the year first following the date of approval of this Amended and Restated Service Plan.

Official Development Plan: means the Master Official Development Plan for the Project and any public improvement agreement associated therewith, as approved by the City Council pursuant to the City Code and as amended from time to time with City approval.

Original Service Plan: means the service plan of the District approved by the City Council on February 25, 2008.

Privately Placed Debt: means Debt which is sold or placed directly with an investor, entity or institution, without being underwritten by an underwriter or investment banker, including without limitation any Debt issued to any developer of the Project (or an affiliated entity).

Project: means the development or property commonly referred to as Orchard Park Place North and described in Exhibit A.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed by the District as

generally described in Exhibit D, except as specifically limited in Section V below, to serve the future taxpayers and inhabitants of the District as determined by the Board.

Service Plan Amendment: means an amendment to the Amended and Restated Service Plan approved by the City Council in accordance with the City Code and applicable State law. Any material modifications to this Amended and Restated Service Plan as determined by the City in its sole discretion need to be approved by the City Council. Other modifications of this Amended and Restated Service Plan or approvals required hereunder of the City shall be submitted to and acted upon by the City Manager.

Special District Act: means Section 32-1-101, et seq., C.R.S., as amended from time to time.

State: means the State of Colorado.

III. BOUNDARIES

A legal description of the Initial District Boundaries is attached hereto as Exhibit A. A map of the Initial District Boundaries is attached hereto as Exhibit B. A vicinity map of the Project is attached hereto as Exhibit C.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The Initial District Boundaries consists of approximately 56.28 acres of commercial zoned land. The current assessed valuation of the property within the Initial District Boundaries is approximately \$210,000 and, at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. No resident population of the District is expected; there is no residential zoned property in the District.

An Official Development Plan for the property included in the Initial District Boundaries shall be approved by the City Council prior to the District exercising any of its authority or powers relating to the financing, construction, operation or maintenance of the Public Improvements, except for (i) any reimbursements to the developer of the Project (or its affiliates or assigns) of any amounts paid to the City pursuant to the Economic Development Agreement, including the incurrence of Debt or other obligations to effectuate such reimbursement, or (ii) any intergovernmental agreements with the City relating to the funding and construction of Orchard Parkway and West 142nd Avenue and related infrastructure improvements.

V. DESCRIPTION OF POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Service Plan Amendment

The District shall have all of the powers and authorities set forth in the Special District Act in order to provide the Public Improvements and certain related operation and maintenance services as set forth in the Matrix, within and without the boundaries of the District, as such powers and authorities are provided in the Special District Act and other applicable statutes, common law and the State Constitution, subject to the limitations set forth below. The following limitations are in addition to and not exclusive of other limitations of the District's authority and powers set forth in this Amended and Restated Service Plan.

1. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements listed in Exhibit D to the City or other appropriate governmental agency in a manner consistent with the Official Development Plan, other rules and regulations of the City and applicable provisions of the City Code. The District shall not be authorized to operate and maintain any of the Public

Improvements, except as set forth in the Official Development Plan, the Matrix attached as Exhibit E and the operations and maintenance location map attached as Exhibit E-1, an intergovernmental agreement with the City, or other provisions of this Amended and Restated Service Plan.

2. Use of Bond Proceeds and Other Revenues Limitation. Proceeds from the sale of Debt instruments and other revenues of the District may not be used to pay landowners within the District for any obligations required by annexation or development agreements, except to the extent allowed by this Amended and Restated Service Plan, the Economic Development Agreement or an intergovernmental agreement with the City. Examples of ineligible reimbursements generally include: the acquisition and value of rights of way, easements, water rights, and land for public drainage, parkland or open space. Any costs incurred in connection with the development or improvement of the McKay Channel or offsite streets, regional detention facilities and trails as generally described in the Official Development Plan may be reimbursed to the extent such costs are not related to the acquisition or value of such land; provided, however, that the cost of acquiring any right-of-way for Public Improvements outside of the boundaries of the Official Development Plan and the District may be reimbursed, including the right-of-way for the South half of 142nd Avenue, the right-of-way for that portion of Orchard Parkway south of 142nd Avenue and the right-of-way for Lexington Avenue between Huron Street and Orchard Parkway. Additionally, if the landowner/developer constructs the public infrastructure and conveys it to the District or makes an eligible land transfer contingent upon a pledge or agreement from the District that it will issue bonds to pay the landowner/developer, prior to reimbursing the landowner/developer for such amounts, the District must provide to the City for its review and approval the report of an independent

appraiser, engineer or accountant confirming that the amount of the reimbursement is reasonable, and is limited to either (i) the actual cost of construction without any mark-up or developer overhead or (ii) the fair market value of such property. Such approval shall not be unreasonably withheld by the City.

3. Recovery Agreement Limitation. Should the District construct any infrastructure or improvement subject to a recovery agreement with the City, public utility or other entity, the City acknowledges that the District shall retain all benefits under the recovery agreement. Any subsequent reimbursement for such infrastructure or improvements installed or financed by the District will remain the property of the District and be applied toward repayment of Debt issued for such Public Improvements. Any reimbursement revenue not necessary to repay Debt may be utilized to construct additional Public Improvements permitted under this Amended and Restated Service Plan.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. In all instances, the District will comply with applicable City ordinances, regulations and standards, including without limitation and to the extent necessary, execution of public improvement agreements and provision of improvements and dedication of any of the Public Improvements to the City. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. The District and its contractors shall pay all applicable fees, taxes (including use taxes), and charges owed to the City. Nothing herein requires the City to accept the transfer of any Public Improvement.

5. Privately Placed Debt Limitation. Prior to the issuance of any Privately Placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Amended and Restated Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

6. Boundary Change Limitation. The District shall not include within or exclude from its boundaries any property without the prior written approval of the City.

7. Total Debt Issuance Limitation. Subject to the provisions of Section VI – Financial Plan below, the District shall not issue Debt that exceeds the sum of \$7,000,000 in the aggregate. Refundings, remarketings or refinancings of Debt which would do any of the following, are not permitted without the approval of the City:

(a) Those which allow the reimbursement of significant fees to consultants and/or the developer; and

(b) Those in which the savings (present value or nominal) are not passed on to property owners within the District.

8. No Fees, Charges or Assessments. The District shall not impose any fee, charge or assessment, other than (i) service charges to properties within the District as may be needed to pay the costs of operating and maintaining the Public Improvements at the locations more specifically illustrated in the operations and maintenance location map attached as Exhibit E-1 and(ii) fees in lieu of taxes paid on tax-exempt property, pursuant to a written agreement,

between the property owner and the District, and shall not utilize any other fee, charge or assessment imposed by any public or private entity without the written approval of the City. Prior to imposing any service charges, the Board shall conduct a public hearing regarding the proposed service charges for which actual written notice shall be given to each property owner within the District, and a notice of hearing shall be published in accordance with the Special District Act. Prior to imposing any fee in lieu of taxes, the District shall provide the City a copy of such agreement or agreements evidencing the property owner's consent to said fees.

9. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for, except pursuant to an intergovernmental agreement with the City.

10. Consolidation Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written approval of the City.

11. Bankruptcy Limitation. All of the limitations contained in this Amended and Restated Service Plan, including without limitation those pertaining to the Maximum Mill Levy and the Maximum Mill Levy Imposition Term, have been established under the authority of the City to approve a service plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) Are, together with all other requirements of State law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary

under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt issued with a pledge or which results in a pledge that exceeds the Maximum Mill Levy or the Maximum Mill Levy Imposition Term shall be deemed a material departure from this Amended and Restated Service Plan pursuant to Section 32-1-207, C.R.S., and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

12. Eminent Domain Powers Limitation. The District shall not exercise the power of eminent domain, except following prior written notice to and the approval of the City.

13. Notice of Meetings. The District shall deliver to the City Finance Director a copy of written notice of every regular or special meeting of the District at least ten (10) days prior to such meeting; provided, however, that the City may waive the notice requirement upon request from the District.

14. Subdistricts. No subdistricts shall be created by the District pursuant to Section 32-1-1101(1.5), C.R.S., except as approved by a Service Plan Amendment. The District shall not create any corporation to issue Bonds on the District’s behalf.

15. Service Plan Amendment. Any material modification of this Amended and Restated Service Plan, as determined by the City in its sole discretion, shall first be approved by the City Council in the form of a Service Plan Amendment. Actions of the District which violate any limitation under this Amended and Restated Service Plan shall be deemed to be material departures from this Amended and Restated Service Plan, and the City shall be entitled to all remedies available under the Special District Act and State law to enjoin such actions of the District.

B. Preliminary Engineering Survey

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District to the extent such Public Improvements are set forth in Exhibit D or otherwise approved by the City. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed has been prepared as the preliminary engineering survey, and such costs are described in more detail in Exhibit D. The estimated costs (as of January 2012) of the Public Improvements are \$6,500,000, including (i) certain improvements that the District is authorized, pursuant to paragraph 4.d of the Economic Development Agreement, to reimburse the developer (or its affiliates or assigns) by contract or issuance of Debt for cost recoveries as assessed by and paid to the City for McKay Lake dam renovations, McKay drainage way and Huron Street improvements in the approximate amount of \$2,107,798 and (ii) other street improvements within the Project, including Orchard Parkway and West 142nd Avenue, which may be completed by the District or in cooperation with the City.

All of the Public Improvements to be completed by the District will be designed in such a way as to assure that the Public Improvements standards will be in conformance with those of the City and shall be in accordance with the requirements of the Official Development Plan. All descriptions of the Public Improvements to be constructed and their related costs are estimates only and are subject to such changes as final engineering, development plans, public improvement agreements, the City's requirements, and current construction contracting may reasonably require. Following approval of this Amended and Restated Service Plan, the District will continue to develop and refine cost estimates contained herein and prepare for issuance of

Debt. All cost estimates will be adjusted to then-current dollars at the time of the issuance of Debt and construction. All construction cost estimates assume construction in compliance with applicable local, State or federal requirements.

VI. FINANCIAL PLAN

A. General

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. The intent of the Financial Plan for the District is to authorize the District to issue such Debt as the District can reasonably pay within the Maximum Mill Levy Imposition Term from revenues derived from the Maximum Mill Levy and other legally available revenues to the extent authorized by this Amended and Restated Service Plan. The total Debt that the District shall be permitted to issue shall not exceed the total Debt issuance limitation set forth in Section V.A.7 hereof, shall be issued on a schedule and in such year or years as the Board may determine, shall conform with the general purposes of this Financial Plan, and shall be phased as necessary to serve development as it occurs or is expected to occur. All Debt issued by the District may be payable from any and all legally available revenues of the District. Such revenues used for Debt shall, however, be limited to Bond proceeds, property taxes, fees in lieu of taxes, specific ownership taxes, investment earnings or other revenue authorized herein. . The Financing Plan is set forth in Exhibit F and is illustrative of, but not a limitation upon, the type of Debt financing that may be implemented by the District to carry out the Financing Plan. The Financing Plan contemplates the issuance of Bonds to the developer with proceeds used to fund the initial costs of acquiring, reimbursing or constructing the Public Improvements, which Bonds are expected to

be subsequently remarketed or refunded through the issuance of refunding Debt with maturities not to exceed the Maximum Mill Levy Imposition Term when the District's property tax base is sufficient to effect such refinancing. No remarketing, refunding or other refinancing by the District shall extend the Maximum Mill Levy Imposition Term. Subordinate Debt may also be issued to the developer. Pending the issuance of Debt, the District may enter into contracts to reimburse the Developer for the Developer's actual cost, without markup, of the construction, installation or completion of the Public Improvements. Any material modifications of the Financing Plan, and all Debt issued by the District must be in compliance with the provisions of the Amended and Restated Service Plan and the requirements of Section 32-1-1101, C.R.S., and all other requirements of State law.

B. Maximum Voted Interest Rate and Maximum Underwriting Discount

The interest rate on any Debt is expected to be the market rate for such type of Debt at the time that the Debt is issued. The maximum interest rate on any Debt shall not exceed 12%. The maximum underwriting discount shall not exceed 2%. Debt, when issued, shall comply with all relevant requirements of this Amended and Restated Service Plan, State law and federal law as then applicable to the issuance of public securities. The forms of the ballot questions which the District electors approved at the organizational election are attached hereto as Exhibit G.

C. No-Default Provisions

Debt issued by the District shall be structured so that failure to pay debt service when due shall not of itself constitute an event of default or result in the exercise of remedies. The foregoing provision shall not be construed to prohibit events of default and bond holder remedies for other occurrences including without limitation (i) failure to impose or collect the

Maximum Mill Levy or such portion thereof as may be pledged thereto, or to apply the same in accordance with the terms of the Debt, (ii) failure to abide by other covenants made in connection with such Debt, or (iii) filing by the District as a debtor under any bankruptcy or other applicable insolvency laws. Notwithstanding the foregoing, Debt shall not be structured with a remedy which requires the District to increase the Maximum Mill Levy or the Maximum Mill Levy Imposition Term.

D. Eligible Bondholders

All Bonds or other Debt instruments, if not rated in one of its four highest rating categories by one or more nationally recognized organizations which regularly rate such obligations, must be issued in minimum denominations of \$500,000. The foregoing shall not prohibit the redemption by the District of such Debt instruments in denominations smaller than \$500,000.

E. Maximum Mill Levy

The "Maximum Mill Levy" shall be the maximum mill levy that the District is permitted to impose upon taxable property within the District for payment of Debt and operations and maintenance. Maximum Mill Levy shall be fifty (50) mills (exclusive of any mill levy of any general improvement district that may be located within the District's boundaries); provided that if, on or after December 31, 2012, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the mill levy limitation rate applicable to any Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after December 31, 2012, are neither diminished nor

enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

F. Maximum Mill Levy Imposition Term

The District shall not impose a Debt service mill levy for more than 30 years after the year of the initial imposition of any Debt service mill levy (but not earlier than the year first following the date of approval of this Amended and Restated Service Plan).

G. Debt Repayment Sources

The District may impose a Debt service mill levy on taxable property within its boundaries as a primary source of revenue for repayment of Debt and developer advances for operations and maintenance. The Debt service mill levy shall only be used for Debt service on Market Issued Debt or for Privately Placed Debt. It shall not be used to pay debt service on any other obligation, except to repay developer advances for operations and maintenance. Specifically, developer advances for capital outlays must be structured as Privately Placed Debt if there is a reasonable expectation that the advance will not be repaid in its entirety within one (1) year. In no event shall the Debt service mill levy exceed the Maximum Mill Levy or the Maximum Mill Levy Imposition Term.

H. Security for Debt

No Debt or other financial obligation of the District will constitute a debt or obligation of the City in any manner. The faith and credit of the City will not be pledged for the repayment of any Debt or other financial obligation of the District. This will be clearly stated on all offering circulars, prospectuses, or disclosure statements associated with any securities issued by the District. The District shall not utilize "Westminster" in the name of the District.

I. Maximum Operating Mill Levy

In addition to the capital costs of the Public Improvements, the District will require operating funds. The first year's operating budget is estimated to be \$30,000 which is anticipated to be derived from developer advances and property taxes. The maximum mill levy for operations and maintenance shall not exceed ten (10) mills and shall be used to support costs of District administration and operations that are the responsibility of the District as set forth in the Matrix attached as Exhibit E and the operations and maintenance location map attached as Exhibit E-1.

J. Debt Issuance

No less than ten (10) days prior to the issuance of any Market Issued Debt, the District shall file near final bond offering documents with the City Finance Director. No less than ten (10) days prior to the issuance of Privately Placed Debt, the District shall file a summary of the material terms of such issuance with the City Finance Director.

K. City's Financial Advisor Recommendation

No Debt shall be incurred or issued by the District without a recommendation by the City's Financial Advisor that the proposed financing is feasible in light of existing and projected District revenues. The District shall reimburse the City the cost of such analysis within thirty (30) days of invoice.

L. Termination of Amended and Restated Service Plan

This Amended and Restated Service Plan shall terminate in the event the District fails to commence the construction of the Public Improvements and impose the Debt Service Mill Levy on or before January 1, 2019.

VII. ANNUAL REPORT

A. General

The District shall be responsible for submitting an annual report to the City Finance Director no later than August 1 of each year following the year in which this Amended and Restated Service Plan is approved by the City.

B. Reporting of Significant Events

The annual report shall include information as to any of the following:

1. Intergovernmental agreements with other governmental entities, either entered into or approved as of December 31 of the prior year.
2. Copies of the District's rules and regulations, if any, as of December 31 of the prior year.
3. A summary of any litigation that involves the District's Public Improvements or any mill levy as of December 31 of the prior year.
4. Status of the District's construction of the Public Improvements as of December 31 of the prior year.
5. A list of all Public Improvements constructed by the District that have been dedicated to and accepted by the City or another public entity as of December 31 of the prior year.
6. The most recent County certified assessed valuation of the District.
7. The current fiscal year budget, including a description of the Public Improvements to be constructed in such year.

8. Audit of the District financial statements for the year ending December 31 of the prior fiscal year prepared in accordance with generally accepted accounting principles, or an audit exemption, if applicable.

9. If not previously filed with the City, final bond offering documents for any Market Issued Debt and final debt instruments for any Privately Placed Debt.

10. Any inability of the District to pay their obligations as they come due in accordance with the terms of such obligations, which continue beyond a ninety (90) day period; provided, however, that any inability of the District to pay any Market Issued Debt or Privately Placed Debt shall be reported to the City immediately.

VIII. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District were created have been accomplished and all statutory conditions have been met, the District agrees to file a petition in the appropriate District Court for dissolution pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of its outstanding Debt and other financial obligations as required pursuant to State statutes.

IX. DISCLOSURE TO PURCHASERS

The District will use reasonable efforts to assure that all developers of the property located within the District provide written notice to all of the developer's purchasers or lessees of property in the District regarding the Maximum Mill Levy. Among other methods, the recordation of a notice in the public land records of the County shall satisfy this disclosure requirement. The form of notice shall be substantially in the form of Exhibit H hereto; provided

that such form may be modified by the District so long as a new form is filed with the City prior to modification.

X. CONCLUSION

The Original Service Plan and this Amended and Restated Service Plan for the District, as required by Section 32-1-203(2) and Section 32-1-204.5, C.R.S., establish that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the District;
2. The existing service in the area to be served by the District is inadequate for present and projected needs;
3. The District is capable of providing economical and sufficient service to the area within its proposed boundaries; and
4. The area to be included in the District does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

EXHIBIT A

Legal Description of District

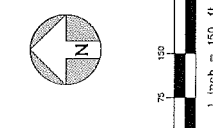
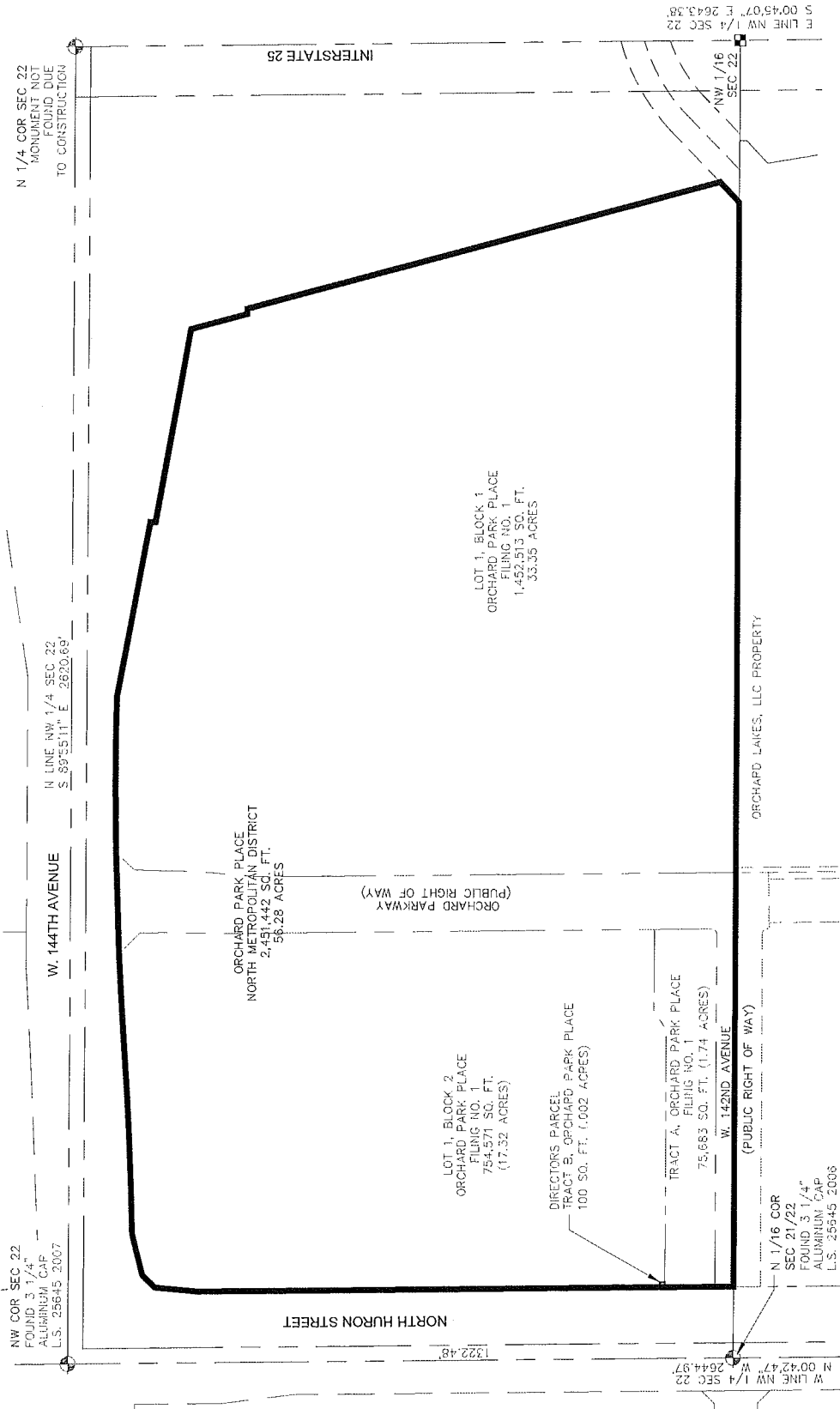
A PARCEL OF LAND LOCATED IN THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE 6TH P.M., EXCEPT THAT PORTION CONVEYED TO THE FARMERS RESERVOIR AND IRRIGATION COMPANY IN DEED RECORDED MAY 16, 1910 IN BOOK 47 AT PAGE 72, AND THAT PORTION CONVEYED TO THE DEPARTMENT OF HIGHWAYS IN DEED RECORDED AUGUST 24, 1953 IN BOOK 473 AT PAGE 187 AND DEED RECORDED MARCH 1, 1956 IN BOOK 597 AT PAGE 367, AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEEDS RECORDED FEBRUARY 21, 2006 AT RECEPTION NO. 20060221000169780 AND RECEPTION NO. 20060221000169800, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SOUTHWEST CORNER OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 22; THENCE SOUTH 89°56'14" EAST ALONG SAID SOUTH LINE, A DISTANCE OF 141.51 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°42'47" WEST, ALONG SAID EAST LINE, A DISTANCE OF 1,065.06 FEET; THENCE NORTH 05°06'35" EAST, A DISTANCE OF 85.51 FEET; THENCE NORTH 44°07'32" EAST, A DISTANCE OF 34.92 FEET; THENCE NORTH 75°29'12" EAST, A DISTANCE OF 84.38 FEET TO THE BEGINNING OF A NON-TANGENT CURVE; THENCE 375.85 FEET ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 7,726.94 FEET, A CENTRAL ANGLE OF 02°47'13", AND BEING SUB-TENDED BY A CHORD WHICH BEARS NORTH 87°17'47" EAST, 375.81 FEET TO THE BEGINNING OF A REVERSE CURVE; THENCE 550.58 FEET ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 7,551.94 FEET, A CENTRAL ANGLE OF 04°10'38", AND BEING SUB-TENDED BY A CHORD WHICH BEARS NORTH 87°59'30" EAST, 550.46 FEET; THENCE SOUTH 89°55'11" EAST, A DISTANCE OF 41.76 FEET; THENCE SOUTH 88°55'49" EAST, A DISTANCE OF 102.08 FEET; THENCE SOUTH 79°21'01" EAST, A DISTANCE OF 354.25 FEET; THENCE SOUTH 00°04'49" WEST, A DISTANCE OF 10.15 FEET; THENCE SOUTH 79°56'39" EAST, A DISTANCE OF 390.17 FEET; THENCE SOUTH 15°12'03" EAST, A DISTANCE OF 116.12 FEET; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 10.36 FEET; THENCE SOUTH 15°12'03" EAST, A DISTANCE OF 972.82 FEET; THENCE SOUTH 45°48'46" WEST, A DISTANCE OF 56.23 FEET; THENCE NORTH 89°56'14" WEST, A DISTANCE OF 2,157.57 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,451,442 SQUARE FEET OR 56.277 ACRES, MORE OR LESS.

Initial



LEGEND
 ——— DISTRICT BOUNDARY

ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT
 DEVELOPABLE LAND AREA = 50,670 ACRES

SHEET
1
 OF 1 SHEETS
 PROJECT NUMBER
B10004

**ORCHARD PARK PLACE
 NORTH METROPOLITAN DISTRICT
 INITIAL DISTRICT BOUNDARY MAP**

PREPARED FOR:
 ASB Westminster, LLC

SCALE
 VERTICAL: N/A
 HORIZONTAL: 1"=50'

DESIGNER: SME
 PROJ. MGR: SME

SUBMITAL DATE:
 June 26, 2012

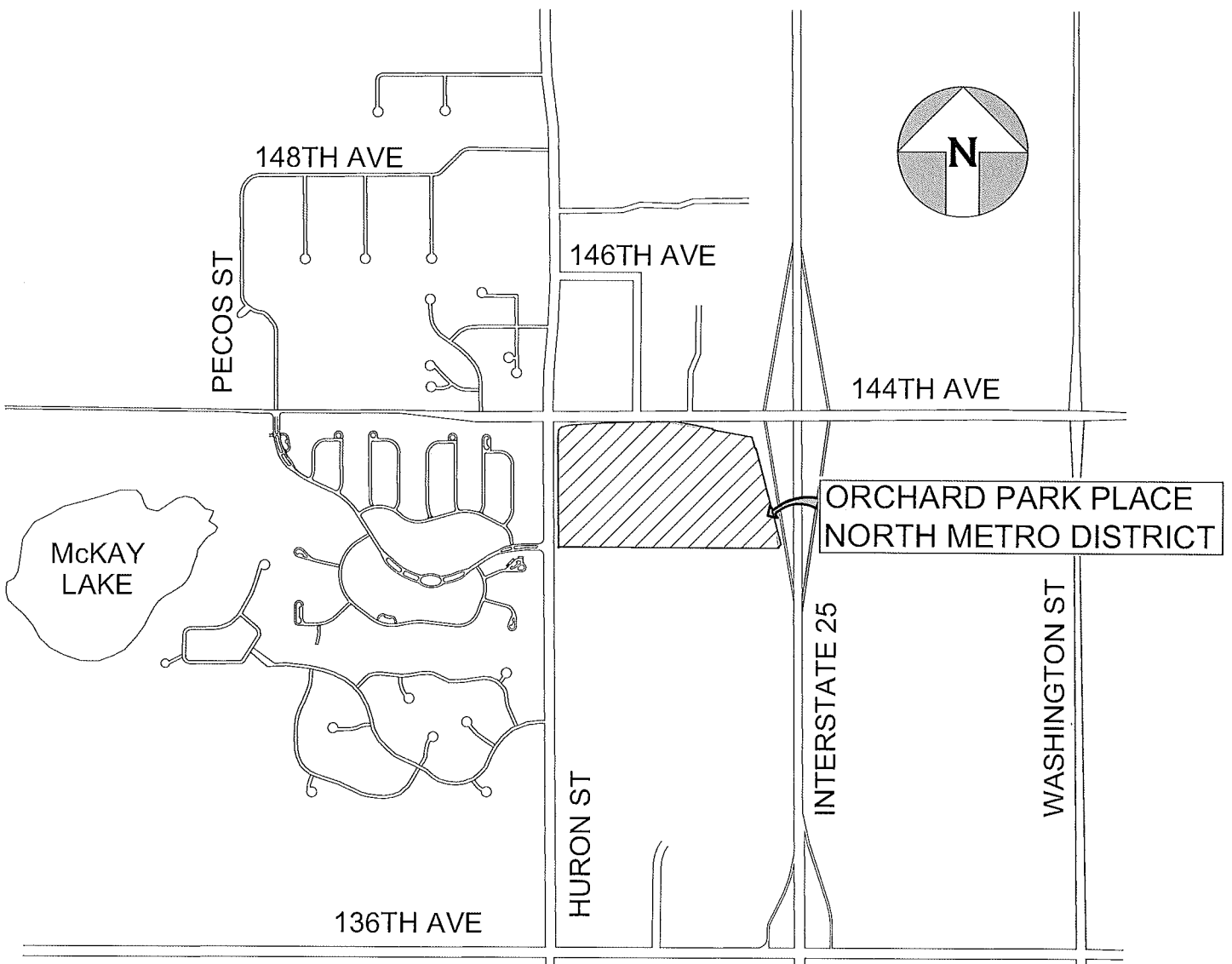
Civil Engineering & Consulting
 529 Crestmore Place
 Ft. Collins, CO 80526
 (970) 217-7420
 www.blueskyeng.com

BLUE SKY
 Engineering

NO.	DATE	DESCRIPTION

Exhibit C

Project Vicinity Map



Civil Engineering & Consulting

529 Crestmore Place
(970) 217-7420
Fort Collins, CO 80521
www.bluesky-engineer.com

ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT PROJECT VICINITY MAP

DATE: June 26, 2012

PROJECT NUMBER: B11004

PREPARED FOR: AZG WESTMINSTER, LLC

DESCRIPTION OF PUBLIC IMPROVEMENTS



PRE-CONSTRUCTION	McKAY BOX CULVERT (4)	FILING 1 (7)	TOTAL
Pre-Construction Costs			
Pre-Construction Fees	\$ 546,830		\$ 546,830
City Recovery - McKay Drainage	\$ 1,769,809		\$ 1,769,809
City Recovery - McKay Dam Removal	\$ 268,857		\$ 268,857
City Recovery - Huron 3/4 Turn	\$ 69,132		\$ 69,132
144th Widening for Centura	\$ 209,954		\$ 209,954
SUBTOTAL Pre-Construction Costs	\$ 2,864,582	\$ -	\$ 2,864,582
Construction Costs (1)			
Existing Site Conditions		\$ 68,858	\$ 68,858
Erosion Control		\$ 24,022	\$ 24,022
Earthwork		\$ 54,702	\$ 54,702
Waterline	\$ 13,630	\$ 173,947	\$ 187,577
Storm Sewer	\$ 332,163	\$ 203,260	\$ 535,423
Roadway		\$ 1,463,491	\$ 1,463,491
Landscaping		\$ 432,668	\$ 432,668
Miscellaneous Fees		\$ 102,890	\$ 102,890
Professional Fees	\$ 24,829	\$ 201,907	\$ 226,736
Sanitary Sewer - City Recovery (5)		\$ 58,590	\$ 58,590
Reclaimed Waterline - City Recovery (6)		\$ 144,531	\$ 144,531
Contingency (10%)	\$ -	\$ 37,062	\$ 37,062
SUBTOTAL Construction Costs (1)	\$ 407,684	\$ 3,221,753	\$ 3,629,436
TOTAL	\$ 2,864,582	\$ 407,684	\$ 6,494,018

Notes:

- Scope of work includes construction of Orchard Parkway from 144th to 142nd, 142nd Avenue from Huron to Orchard Parkway, landscaping and utilities in roadways
- These numbers represent an estimate of the construction costs. A 10% contingency has been added.
- McKay costs are based on estimate provided by WH Pacific on 3/5/2009 and evaluation of costs by a contractor on 5/19/2009. Costs should be re-evaluated with final plans
- Box Culvert and utilities to be constructed by City during McKay Drainage construction; These costs represent 50% of the box culvert costs shared with Orchard Lakes, LLC and 100% of the utility costs for the North Metro District.
- Assumed City of Westminster will construct Sanitary Sewer in Orchard Parkway and charge developer based on pro rata share of platted land, less dedicated public rights-of-way. Still waiting on exact cost recovery amount from City, but assuming \$3000/acre based on \$600,000 total cost over 200 acres. The costs shown are based on AZG Westminster, LLC land (21.27 ac) less land used for McKay drainageway (1.74 ac) resulting in 19.53 acres.
- Assumed City of Westminster will construct Reclaimed Water Main in Orchard Parkway and charge developer based on pro rata share of platted land, less dedicated public rights-of-way. Still waiting on exact cost recovery amount from City, but assuming \$2650/acre based on \$530,000 total cost over 200 acres. Costs are based on AZG Westminster, LLC land (21.27 ac) plus Catholic Health Initiatives Colorado land (35.01 ac) less land used for McKay drainageway (1.74 ac) resulting in 54.54 acres.
- Filing 1 costs include construction of 142nd Avenue, of which Orchard Lakes, LLC (South Metro District) will be responsible for 50% (approx. \$540,760 + 10% contingency)
- Assumed City of Westminster will contribute half of the costs for the signal at 142nd & Huron Street based on costs recovered from Huntington Trails developer, at such time as the City Council appropriates the fund necessary for this purpose."

EXHIBIT E

Matrix of Ownership, Operation and Maintenance

Other than the provision for costs incurred in the administration of the District, debt management and continuing statutory compliance, the District will not provide any operation or maintenance function, unless it is provided in connection with the Public Improvements as shown in the following Matrix, the operations and maintenance location map attached as Exhibit E-1 or an agreement with the City.

EXHIBIT E

MATRIX OF OWNERSHIP, OPERATION AND MAINTENANCE

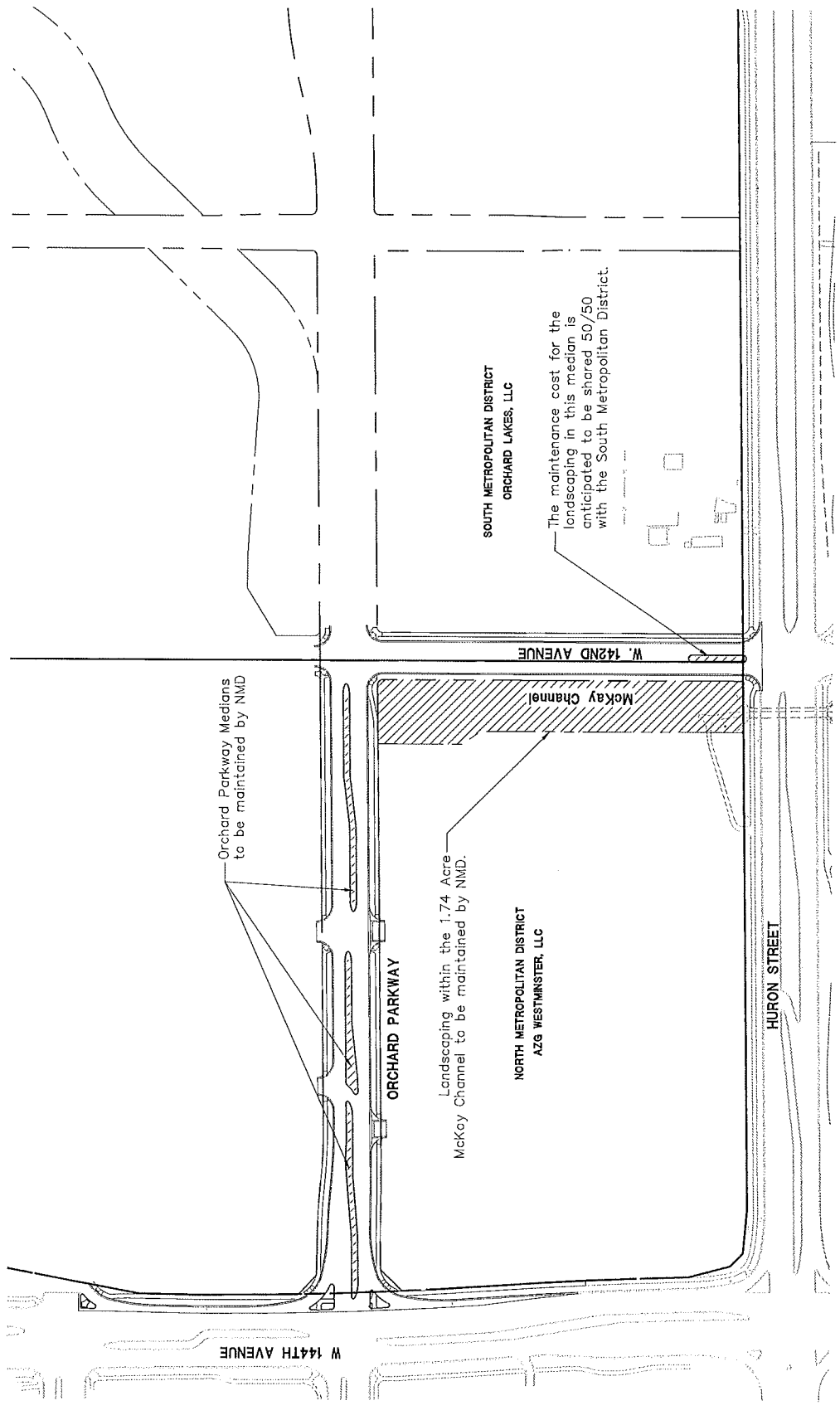
Public Improvement ⁽¹⁾	Funded by ⁽²⁾	Constructed/Funded by	Operated and Maintained by ⁽³⁾	Dedicated to/Owned by
Storm Drainage Facilities ⁽⁴⁾	District	District	District	City
Landscaping	District	District	District	District
Signage / Monuments	District	District	District	District
Recreation Facilities	District	District	District	District
Open Space, Parks and Trails	District	District	District	District
Interior Streets ⁽⁵⁾	District	District	City	City
Offsite Streets ⁽⁶⁾	District	District	City	City
Sanitary Sewer Mains	District	District	City	City
Water Mains	District	District	City	City
Mass Grading ⁽⁷⁾	District	District	N/A	N/A
Gas Mains	Developer	Xcel	Xcel	Xcel
Electric Lines	Developer	Xcel	Xcel	Xcel
Telecommunications	Developer	TBD	TBD	TBD
Engineering, construction management and related services	District	District	N/A	N/A

1. Each general category of Public Improvement includes all improvements, facilities and equipment related thereto.
2. To the extent that Bond proceeds are sufficient to pay Public Improvement costs.
3. Maintenance includes without limitation any repair, replacement, inspection, cleaning, mowing, seeding, painting and general upkeep of the improvement, facility or equipment and appurtenant property, together with management and other consultant services.
4. Onsite storm drainage facilities will be owned by the City, but operated and maintained by the District. McKay Channel will be constructed by the City and partially funded by the District in accordance with the Economic Development Agreement.

5. All platted streets within the District will be dedicated to, owned and maintained by the City for public use, including access to adjacent platted lots by lot owners, fire, police and other emergency service providers, utility companies and the public generally.
6. Offsite streets will be dedicated to, owned and maintained by the City, unless any such street is under the jurisdiction of the Colorado Department of Transportation.
7. To the extent required for the Public Improvements as determined by the District.

LEGEND

Landscape areas to be maintained by the North Metro District (NMD)



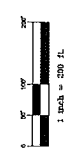
SOUTH METROPOLITAN DISTRICT
ORCHARD LAKES, LLC

The maintenance cost for the landscaping in this median is anticipated to be shared 50/50 with the South Metropolitan District.

Orchard Parkway Medians to be maintained by NMD

Landscaping within the 1.74 Acre McKay Channel to be maintained by NMD.

NORTH METROPOLITAN DISTRICT
AZG WESTMINSTER, LLC



SHEET	1
OF 1 SHEETS	
PROJECT NUMBER	B10004

NORTH METROPOLITAN DISTRICT

EXHIBIT E-1

LANDSCAPING TO BE MAINTAINED BY METRO DISTRICT

BLUE SKY
Engineering

Civil Engineering & Consulting
529 Cremonese Place
Fort Collins, CO 80521
www.bluesky-engineer.com

PREPARED FOR: AZG Westminster, LLC

SCALE	VERTICAL: 1" = N/A HORIZONTAL: 1" = 200'
DESIGNER:	SCM
PROJ. MGR:	SWE

DATE	REVISION DESCRIPTION

SUBMITTAL DATE: June 22, 2012

Exhibit F - Financing Plan

ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT

Development Projection at 0.00 (target) Debt Service Mills

Series 2012 Non-Rated Developer Bonds, Convertible CABs, 30-year maturity

YEAR	Cumulative Market Value	As'ed Value @ 29.00% (2-yr lag)	Total Comm'l Sq. Ft.	Mkt Value Biennial Reasses'mt @ 2.0%	Cumulative Market Value	As'ed Value @ 29.00% of Market (2-yr lag)	Total Collected Assessed Value	Debt Svc Mill Levy [45.00 Target] [50.00 Cap]	Total Collections @ 98.0%	S.O. Taxes Collected @ 6%	Total Available Revenue
2012	954,560	0	0	0	0	0	\$0	0.000	\$0	\$0	0
2013	1,444,425	276,822	47,728	190,912	9,545,600	0	\$0	0.000	\$0	0	0
2014	800,000	418,883	139,294	190,912	24,278,735	0	276,822	0.000	0	0	0
2015	1,710,000	418,883	40,000	652,039	32,601,935	2,768,224	3,187,107	45,000	140,551	8,433	148,985
2016	750,000	232,000	106,000	652,039	51,400,631	7,040,833	7,272,833	45,000	320,732	19,244	339,976
2017	0	495,900	60,000	652,039	59,518,872	9,454,561	9,950,461	45,000	438,815	26,329	465,144
2018	750,000	217,500	0	1,190,377	60,709,249	14,906,183	15,123,683	45,000	666,954	40,017	706,972
2019	0	0	60,000	1,383,109	69,155,467	17,260,473	17,260,473	45,000	761,187	45,671	806,858
2020	0	217,500	0	1,383,109	70,538,577	17,605,682	17,823,182	45,000	786,002	47,160	833,162
2021	0	0	0	1,410,772	70,538,577	20,055,086	20,055,086	45,000	884,429	53,066	937,495
2022	0	0	0	1,410,772	71,949,348	20,456,187	20,456,187	45,000	902,118	54,127	956,245
2023	0	0	0	1,438,987	71,949,348	20,456,187	20,456,187	45,000	902,118	54,127	956,245
2024	0	0	0	1,438,987	73,388,335	20,865,311	20,865,311	45,000	920,160	55,210	975,370
2025	0	0	0	1,467,767	73,388,335	20,865,311	20,865,311	45,000	920,160	55,210	975,370
2026	0	0	0	1,467,767	74,856,102	21,282,617	21,282,617	45,000	938,563	56,314	994,877
2027	0	0	0	1,497,122	74,856,102	21,282,617	21,282,617	45,000	938,563	56,314	994,877
2028	0	0	0	1,497,122	76,353,224	21,708,270	21,708,270	45,000	957,335	57,440	1,014,775
2029	0	0	0	1,527,064	76,353,224	21,708,270	21,708,270	45,000	957,335	57,440	1,014,775
2030	0	0	0	1,527,064	77,880,288	22,142,435	22,142,435	45,000	976,481	58,589	1,035,070
2031	0	0	0	1,557,606	77,880,288	22,142,435	22,142,435	45,000	976,481	58,589	1,035,070
2032	0	0	0	1,557,606	79,437,894	22,585,284	22,585,284	45,000	996,011	59,761	1,055,772
2033	0	0	0	1,588,758	79,437,894	22,585,284	22,585,284	45,000	996,011	59,761	1,055,772
2034	0	0	0	1,588,758	81,026,652	23,036,989	23,036,989	45,000	1,015,931	60,956	1,076,887
2035	0	0	0	1,620,533	81,026,652	23,036,989	23,036,989	45,000	1,015,931	60,956	1,076,887
2036	0	0	0	1,620,533	82,647,185	23,497,729	23,497,729	45,000	1,036,250	62,175	1,098,425
2037	0	0	0	1,652,944	82,647,185	23,497,729	23,497,729	45,000	1,036,250	62,175	1,098,425
2038	0	0	0	1,652,944	84,300,129	23,967,684	23,967,684	45,000	1,056,975	63,418	1,120,393
2039	0	0	0	1,686,003	84,300,129	23,967,684	23,967,684	45,000	1,056,975	63,418	1,120,393
2040	0	0	0	1,686,003	85,986,131	24,447,037	24,447,037	45,000	1,078,114	64,687	1,142,801
2041	0	0	0	1,686,003	85,986,131	24,447,037	24,447,037	45,000	1,078,114	64,687	1,142,801
			453,022	18,863,992					39,150,022	2,349,001	41,499,023

ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT

Development Projection at 0.00 (target) Debt Service Mills

Series 2012 Non-Rated Developer Bonds, Convertible CABs, 30-year maturity

YEAR	Net Available for Debt Svc	Ser. 2012 \$6,635,668 Par [Net \$6,500 MM] Net Debt Service	Annual Surplus	Bond Fund Surplus Balance \$500,000 Target	Senior Debt/ Assessed Ratio	Senior Debt/ Act'l Value Ratio	NDS Coverage @ Cap
2012	0	0	0	0	n/a	63%	n/a
2013	0	\$0	0	0	2699%	30%	n/a
2014	0	0	0	0	254%	24%	n/a
2015	148,985	0	148,985	148,985	120%	17%	n/a
2016	339,976	0	339,976	488,960	95%	16%	68.4%
2017	465,144	755,600	(290,456)	198,505	63%	15%	104.0%
2018	706,972	755,600	(48,628)	149,876	55%	14%	118.6%
2019	806,858	755,600	51,258	201,134	53%	13%	119.4%
2020	833,162	775,600	57,562	258,697	47%	13%	119.9%
2021	937,495	869,000	68,495	327,192	46%	13%	119.4%
2022	956,245	889,800	66,445	393,637	45%	13%	119.6%
2023	956,245	888,200	68,045	461,682	43%	12%	119.6%
2024	975,370	905,800	69,570	531,252	42%	12%	119.6%
2025	975,370	906,000	69,370	600,621	41%	12%	119.5%
2026	994,877	925,000	69,877	670,499	39%	11%	120.0%
2027	994,877	921,200	73,677	744,176	38%	11%	119.8%
2028	1,014,775	941,200	73,575	817,751	36%	10%	119.6%
2029	1,014,775	943,000	71,775	889,525	34%	10%	120.1%
2030	1,035,070	957,800	77,270	966,796	32%	9%	119.9%
2031	1,035,070	959,400	75,670	1,042,466	28%	8%	119.8%
2032	1,055,772	978,600	77,172	1,119,638	26%	7%	119.5%
2033	1,055,772	978,800	76,972	1,196,609	23%	6%	119.8%
2034	1,076,887	1,001,200	75,687	1,272,296	20%	6%	119.9%
2035	1,076,887	998,800	78,087	1,350,383	18%	5%	120.0%
2036	1,098,425	1,018,200	80,225	1,430,608	14%	4%	120.0%
2037	1,098,425	1,017,400	81,025	1,511,633	11%	3%	120.1%
2038	1,120,393	1,037,600	82,793	1,594,426	8%	2%	119.7%
2039	1,120,393	1,036,800	83,593	1,678,020	4%	1%	120.0%
2040	1,142,801	1,061,200	81,601	1,759,621	0	0	120.0%
2041	1,142,801	1,058,400	84,401	0	4%	1%	120.0%
	41,499,023	23,335,800	18,163,223				

[D:\dec15\11 12ccb0]

ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT

Operations Revenue and Expense Projection

YEAR	Total Assessed Value	Oper'n's Mill Levy	Total Collections @ 98%	S.O. Taxes Collected @ 6%	Total Available For O&M	Less District Operations @ of \$30,000 Inf. @ 1% or max 5.0 mills	Developer Advances for Operations	Developer Repayment for Operations	Annual Surplus
2012	0	50.000	0	0	0	30,000	30,000	0	0
2013	276,822	50.000	13,564	814	14,378	30,300	28,862	0	12,940
2014	3,187,107	5.000	15,617	937	16,554	30,603	14,049	0	0
2015	7,272,833	5.000	35,637	2,138	37,775	30,909	0	6,866	0
2016	9,950,461	5.000	48,757	2,925	51,683	31,218	0	20,465	0
2017	15,123,683	5.000	74,106	4,446	78,552	31,530	0	45,581	1,441
2018	17,260,473	1.776	30,043	1,803	31,846	31,846	0	0	0
2019	17,823,182	1.737	30,343	1,821	32,164	32,164	0	0	0
2020	20,055,086	1.559	30,647	1,839	32,486	32,486	0	0	0
2021	20,456,187	1.544	30,953	1,857	32,811	32,811	0	0	0
2022	20,456,187	1.559	31,263	1,876	33,139	33,139	0	0	0
2023	20,865,311	1.544	31,576	1,895	33,470	33,470	0	0	0
2024	20,865,311	1.560	31,891	1,913	33,805	33,805	0	0	0
2025	21,282,617	1.544	32,210	1,933	34,143	34,143	0	0	0
2026	21,282,617	1.560	32,532	1,952	34,484	34,484	0	0	0
2027	21,708,270	1.544	32,858	1,971	34,829	34,829	0	0	0
2028	21,708,270	1.560	33,186	1,991	35,177	35,177	0	0	0
2029	22,142,435	1.545	33,518	2,011	35,529	35,529	0	0	0
2030	22,142,435	1.560	33,853	2,031	35,884	35,884	0	0	0
2031	22,585,284	1.545	34,192	2,052	36,243	36,243	0	0	0
2032	22,585,284	1.560	34,534	2,072	36,606	36,606	0	0	0
2033	23,036,989	1.545	34,879	2,093	36,972	36,972	0	0	0
2034	23,036,989	1.560	35,228	2,114	37,341	37,341	0	0	0
2035	23,497,729	1.545	35,580	2,135	37,715	37,715	0	0	0
2036	23,497,729	1.561	35,936	2,156	38,092	38,092	0	0	0
2037	23,967,684	1.545	36,295	2,178	38,473	38,473	0	0	0
2038	23,967,684	1.561	36,658	2,199	38,858	38,858	0	0	0
2039	24,447,037	1.545	37,025	2,221	39,246	39,246	0	0	0
2040	24,447,037	1.561	37,395	2,244	39,639	39,639	0	0	0
2041									
			960,277	57,617	1,017,893	1,003,512	72,911	72,911	14,382

SOURCES AND USES OF FUNDS

ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEVELOPER BONDS, SERIES 2012 Non-Rated, Convertible CABs, \$6.500M Project, 30-yr maturity [Preliminary -- for discussion only]

Dated Date	06/01/2012
Delivery Date	06/01/2012

Sources:

<hr/>	
Bond Proceeds:	
Par Amount	6,635,868.10
<hr/>	
	6,635,868.10
<hr/>	

Uses:

<hr/>	
Project Fund Deposits:	
Project Fund	6,500,000.00
Delivery Date Expenses:	
Structuring Agent	66,358.68
Bond Counsel	35,000.00
District Counsel	15,000.00
Trustee Fee	3,000.00
Contingency	16,509.42
	<hr/>
	135,868.10
<hr/>	
	6,635,868.10
<hr/>	

CONVERTIBLE CAB DEBT SERVICE

ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEVELOPER BONDS, SERIES 2012 Non-Rated, Convertible CABs, \$6.500M Project, 30-yr maturity [Preliminary -- for discussion only]

Date	Amount at Issue	Accreted Amount	Total Value At Maturity	Yield to Conversion/ Interest Rate from Conversion Date	Current Interest after Conversion Date	Debt Service	Annual Debt Service
06/01/2017					377,800.00	377,800.00	
12/01/2017					377,800.00	377,800.00	755,600.00
06/01/2018					377,800.00	377,800.00	
12/01/2018					377,800.00	377,800.00	755,600.00
06/01/2019					377,800.00	377,800.00	
12/01/2019					377,800.00	377,800.00	755,600.00
06/01/2020					377,800.00	377,800.00	
12/01/2020	14,051.60	5,948.40	20,000.00	8.000%	377,800.00	397,800.00	775,600.00
06/01/2021					377,000.00	377,000.00	
12/01/2021	80,796.70	34,203.30	115,000.00	8.000%	377,000.00	492,000.00	869,000.00
06/01/2022					372,400.00	372,400.00	
12/01/2022	101,874.10	43,125.90	145,000.00	8.000%	372,400.00	517,400.00	889,800.00
06/01/2023					366,600.00	366,600.00	
12/01/2023	108,899.90	46,100.10	155,000.00	8.000%	366,600.00	521,600.00	888,200.00
06/01/2024					360,400.00	360,400.00	
12/01/2024	129,977.30	55,022.70	185,000.00	8.000%	360,400.00	545,400.00	905,800.00
06/01/2025					353,000.00	353,000.00	
12/01/2025	140,516.00	59,484.00	200,000.00	8.000%	353,000.00	553,000.00	906,000.00
06/01/2026					345,000.00	345,000.00	
12/01/2026	165,106.30	69,893.70	235,000.00	8.000%	345,000.00	580,000.00	925,000.00
06/01/2027					335,600.00	335,600.00	
12/01/2027	175,645.00	74,355.00	250,000.00	8.000%	335,600.00	585,600.00	921,200.00
06/01/2028					325,600.00	325,600.00	
12/01/2028	203,748.20	86,251.80	290,000.00	8.000%	325,600.00	615,600.00	941,200.00
06/01/2029					314,000.00	314,000.00	
12/01/2029	221,312.70	93,687.30	315,000.00	8.000%	314,000.00	629,000.00	943,000.00
06/01/2030					301,400.00	301,400.00	
12/01/2030	249,415.90	105,584.10	355,000.00	8.000%	301,400.00	656,400.00	957,800.00
06/01/2031					287,200.00	287,200.00	
12/01/2031	270,493.30	114,506.70	385,000.00	8.000%	287,200.00	672,200.00	959,400.00
06/01/2032					271,800.00	271,800.00	
12/01/2032	305,622.30	129,377.70	435,000.00	8.000%	271,800.00	706,800.00	978,600.00
06/01/2033					254,400.00	254,400.00	
12/01/2033	330,212.60	139,787.40	470,000.00	8.000%	254,400.00	724,400.00	978,800.00
06/01/2034					235,600.00	235,600.00	
12/01/2034	372,367.40	157,632.60	530,000.00	8.000%	235,600.00	765,600.00	1,001,200.00
06/01/2035					214,400.00	214,400.00	
12/01/2035	400,470.60	169,529.40	570,000.00	8.000%	214,400.00	784,400.00	998,800.00
06/01/2036					191,600.00	191,600.00	
12/01/2036	446,138.30	188,861.70	635,000.00	8.000%	191,600.00	826,600.00	1,018,200.00
06/01/2037					166,200.00	166,200.00	
12/01/2037	481,267.30	203,732.70	685,000.00	8.000%	166,200.00	851,200.00	1,017,400.00
06/01/2038					138,800.00	138,800.00	
12/01/2038	533,960.80	226,039.20	760,000.00	8.000%	138,800.00	898,800.00	1,037,600.00
06/01/2039					108,400.00	108,400.00	
12/01/2039	576,115.60	243,884.40	820,000.00	8.000%	108,400.00	928,400.00	1,036,800.00
06/01/2040					75,600.00	75,600.00	
12/01/2040	639,347.80	270,652.20	910,000.00	8.000%	75,600.00	985,600.00	1,061,200.00
06/01/2041					39,200.00	39,200.00	
12/01/2041	688,528.40	291,471.60	980,000.00	8.000%	39,200.00	1,019,200.00	1,058,400.00
	6,635,868.10	2,809,131.90	9,445,000.00		13,890,800.00	23,335,800.00	23,335,800.00

BOND ACCRETED VALUE TABLE

ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT
DEVELOPER BONDS, SERIES 2012
Non-Rated, Convertible CABs, \$6.500M Project, 30-yr maturity
[Preliminary -- for discussion only]

Date	30-yr Term Bond 8%
06/01/2012	3,512.90
12/01/2012	3,653.45
06/01/2013	3,799.55
12/01/2013	3,951.55
06/01/2014	4,109.60
12/01/2014	4,274.00
06/01/2015	4,444.95
12/01/2015	4,622.75
06/01/2016	4,807.65
12/01/2016	5,000.00

EXHIBIT G

District Election Questions

Operations tax increase:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT TAXES BE INCREASED \$100,000 ANNUALLY COMMENCING IN TAX COLLECTION YEAR 2009, OR BY SUCH ADDITIONAL ANNUAL AMOUNT AS MAY BE GENERATED BY A MILL LEVY OF NOT MORE THAN 10 MILLS TO PAY THE DISTRICT'S OPERATIONS, MAINTENANCE, AND OTHER EXPENSES: AND SHALL THE PROCEEDS OF SUCH TAXES AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE IN 2009 AND IN EACH YEAR THEREAFTER, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR SECTION 29-1-301, COLORADO REVISED STATUTES, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

TABOR exemption for revenues:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT BE AUTHORIZED TO COLLECT, RETAIN, AND SPEND ANY AND ALL AMOUNTS ANNUALLY FROM ANY REVENUE SOURCES WHATSOEVER, AND SHALL SUCH REVENUES BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

Debt for water purposes:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEBT BE INCREASED \$22,000,000, WITH A REPAYMENT COST OF \$88,000,000; AND SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT TAXES BE INCREASED \$22,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, A COMPLETE POTABLE AND NON-POTABLE WATER SUPPLY, STORAGE, TREATMENT, TRANSMISSION, AND DISTRIBUTION SYSTEM, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS,

AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18%, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM IN AN AMOUNT NOT IN EXCESS OF 3% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

Debt for sanitation and storm sewer purposes:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEBT BE INCREASED \$22,000,000, WITH A REPAYMENT COST OF \$88,000,000; AND SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT TAXES BE INCREASED \$22,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, A COMPLETE SANITARY SEWAGE COLLECTION, TRANSMISSION AND TREATMENT SYSTEM, INCLUDING STORM SEWER, FLOOD, AND SURFACE DRAINAGE FACILITIES AND SYSTEMS, AND DETENTION AND RETENTION PONDS, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE

INTEREST RATE NOT IN EXCESS OF 18%, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM IN AN AMOUNT NOT IN EXCESS OF 3% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

Debt for street purposes:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEBT BE INCREASED \$22,000,000, WITH A REPAYMENT COST OF \$88,000,000; AND SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT TAXES BE INCREASED \$22,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, STREET IMPROVEMENTS INCLUDING CURBS, GUTTERS, CULVERTS, OTHER DRAINAGE FACILITIES, SIDEWALKS, BRIDGES, PARKING FACILITIES, PAVING, LIGHTING, GRADING, LANDSCAPING, AND OTHER STREET IMPROVEMENTS, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18%, SUCH INTEREST TO BE

PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM IN AN AMOUNT NOT IN EXCESS OF 3% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

Debt for safety protection purposes:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEBT BE INCREASED \$22,000,000, WITH A REPAYMENT COST OF \$88,000,000; AND SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT TAXES BE INCREASED \$22,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, A SYSTEM OF TRAFFIC AND SAFETY CONTROLS AND DEVICES ON STREETS AND HIGHWAYS AND AT RAILROAD CROSSINGS, INCLUDING TRAFFIC SIGNALS, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18%, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO

BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM IN AN AMOUNT NOT IN EXCESS OF 3% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

Debt for park and recreation purposes:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEBT BE INCREASED \$22,000,000, WITH A REPAYMENT COST OF \$88,000,000; AND SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT TAXES BE INCREASED \$22,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, PARKS AND RECREATIONAL FACILITIES, IMPROVEMENTS, AND PROGRAMS, INCLUDING PARKS, BIKE PATHS AND PEDESTRIAN WAYS, OPEN SPACE, LANDSCAPING, CULTURAL ACTIVITIES, COMMUNITY RECREATION CENTERS, WATER BODIES, IRRIGATION FACILITIES, AND OTHER ACTIVE AND PASSIVE RECREATION FACILITIES AND PROGRAMS, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18%, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO

BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM IN AN AMOUNT NOT IN EXCESS OF 3% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

Debt for operations purposes:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEBT BE INCREASED \$5,000,000, WITH A REPAYMENT COST OF \$20,000,000; AND SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT TAXES BE INCREASED \$5,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED TO PAY THE COSTS OF OPERATING, MAINTAINING, OR OTHERWISE PROVIDING SYSTEMS, OPERATIONS, AND ADMINISTRATION TO CARRY OUT THE OBJECTS AND PURPOSES FOR WHICH THE DISTRICT WAS ORGANIZED, TOGETHER WITH ALL NECESSARY, INCIDENTAL AND APPURTENANT PROPERTIES, FACILITIES, EQUIPMENT, PERSONNEL, CONTRACTORS, CONSULTANTS, AND COSTS AND ALL LAND, EASEMENTS, AND APPURTENANCES NECESSARY OR APPROPRIATE IN CONNECTION THEREWITH, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18%, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT

PAYMENT OF A PREMIUM IN AN AMOUNT NOT IN EXCESS OF 3% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

Debt for refunding purposes:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT DEBT BE INCREASED \$22,000,000, WITH A REPAYMENT COST OF \$88,000,000; AND SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT TAXES BE INCREASED \$22,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS ISSUED FOR THE PURPOSE OF REFUNDING, PAYING, OR DEFEASING, IN WHOLE OR IN PART, BONDS, NOTES, OR OTHER FINANCIAL OBLIGATIONS OF THE DISTRICT; SUCH DEBT TO BEAR INTEREST AT A RATE TO BE DETERMINED BY THE DISTRICT BOARD, WHICH INTEREST RATE MAY BE HIGHER THAN THE INTEREST RATE BORNE BY THE OBLIGATIONS BEING REFUNDED BUT IN NO EVENT SHALL THE NET EFFECTIVE INTEREST RATE EXCEED 18%; SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM IN AN AMOUNT NOT IN EXCESS OF 3% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE

DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

Debt for Intergovernmental Agreements:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT BE AUTHORIZED TO ENTER INTO ONE OR MORE INTERGOVERNMENTAL AGREEMENTS WITH THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE FOR THE PURPOSE OF JOINTLY FINANCING THE COSTS OF ANY PUBLIC IMPROVEMENTS, FACILITIES, SYSTEMS, PROGRAMS, OR PROJECTS WHICH THE DISTRICT MAY LAWFULLY PROVIDE, OR FOR THE PURPOSE OF PROVIDING FOR THE OPERATIONS AND MAINTENANCE OF THE DISTRICT AND ITS FACILITIES AND PROPERTIES, WHICH AGREEMENT MAY CONSTITUTE A DEBT OR INDEBTEDNESS AND A MULTIPLE-FISCAL YEAR OBLIGATION OF THE DISTRICT TO THE EXTENT PROVIDED THEREIN AND OTHERWISE AUTHORIZED BY LAW, AND IN CONNECTION THEREWITH SHALL THE DISTRICT BE AUTHORIZED TO MAKE COVENANTS REGARDING THE ESTABLISHMENT AND USE OF AD VALOREM TAXES, RATES, FEES, TOLLS, PENALTIES, AND OTHER CHARGES OR REVENUES OF THE DISTRICT, AND COVENANTS, REPRESENTATIONS, AND WARRANTIES AS TO OTHER MATTERS ARISING UNDER THE AGREEMENTS, ALL AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS OF THE DISTRICT?

Debt for developer funding, acquisition and reimbursement agreements:

SHALL ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT BE AUTHORIZED TO ENTER INTO AN AGREEMENT WITH ANY DEVELOPER OF PROPERTY IN THE DISTRICT FOR THE PURPOSE OF FINANCING THE COSTS OF ANY PUBLIC IMPROVEMENTS, FACILITIES, SYSTEMS, OR PROJECTS WHICH THE DISTRICT MAY LAWFULLY PROVIDE, WHICH AGREEMENT MAY CONSTITUTE A DEBT OR INDEBTEDNESS AND A MULTIPLE-FISCAL YEAR OBLIGATION OF THE DISTRICT TO THE EXTENT PROVIDED THEREIN AND OTHERWISE AUTHORIZED BY LAW, AND IN CONNECTION THEREWITH SHALL THE DISTRICT BE AUTHORIZED TO AGREE TO PAY SPECIFIED REVENUES OF THE DISTRICT TO THE DEVELOPER, TO MAKE COVENANTS REGARDING THE REVENUES OF THE DISTRICT, AND TO MAKE COVENANTS, REPRESENTATIONS, AND WARRANTIES

AS TO OTHER MATTERS ARISING UNDER THE AGREEMENTS, ALL AS
MAY BE DETERMINED BY THE BOARD OF DIRECTORS OF THE
DISTRICT?

Waiver of terms limitations:

SHALL MEMBERS OF THE BOARD OF DIRECTORS OF ORCHARD PARK
PLACE NORTH METROPOLITAN DISTRICT BE AUTHORIZED TO SERVE
WITHOUT LIMITATION ON THEIR TERMS OF OFFICE PURSUANT TO
THE RIGHT GRANTED TO THE VOTERS OF THE DISTRICT IN ARTICLE
XVIII, SECTION 11 OF THE COLORADO CONSTITUTION TO LENGTHEN,
SHORTEN, OR ELIMINATE THE LIMITATIONS ON THE TERMS OF
OFFICE IMPOSED BY SUCH SECTION?

EXHIBIT H

Form of Disclosure

Special Taxing District. The property is located within the boundaries of Orchard Park Place North Metropolitan District, a special taxing district (the "District"). The District has issued or expects to issue general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within the District. Buyer should investigate the debt financing requirements of the authorized general obligation indebtedness of the District, existing mill levies of the District servicing such indebtedness and any mill levies for operation and maintenance, and the potential for an increase in such mill levies.



Agenda Item 10 C-E

Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Resolution No. 28 re IGA with the Colorado Department of Transportation for the 112th Avenue Traffic Signal Installation Grant, IGA with Front Range Community College for Project Participation and Councillor’s Bill No. 38 re Supplemental Appropriation of Federal Grant Funds.

Prepared By: Mike Normandin, Transportation Engineer

Recommended City Council Action

1. Adopt Resolution No. 28 authorizing the City Manager to execute an Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation pertaining to a federal grant for the installation of a traffic signal on 112th Avenue at the east entrance to Front Range Community College.
2. Authorize the City Manager to execute an Intergovernmental Agreement with Front Range Community College which addresses cost sharing, ownership and maintenance of the new traffic signal on 112th Avenue.
3. Pass Councillor’s Bill No. 38 on first reading appropriating grant monies to be received from the Colorado Department of Transportation and the local match reimbursement from Front Range Community College for the design and construction of a new traffic signal on 112th Avenue.

Summary Statement

- City Council previously approved the submission of an application for a Federal Hazard Elimination Program grant in the amount of \$265,000, coordinated through the Colorado Department of Transportation (CDOT), for the installation of a traffic signal on 112th Avenue at Front Range Community College (FRCC). This application was recently approved for federal Fiscal Year 2013.
- Front Range Community College officials have indicated that the college is willing to provide the required 10% local match to the federal funds. This commitment is formalized in the attached Intergovernmental Agreement (IGA) between the City and FRCC.
- Further Council action is requested to appropriate these grant funds.

Expenditure Required: \$265,000

Source of Funds: Federal Highway Administration Grant
Front Range Community College Reimbursement for Local Match
(No City matching funds are required)

Policy Issue

Should the City enter into an Intergovernmental Agreement (IGA) with CDOT to receive funds from the Federal Hazard Elimination Program and execute an IGA with FRCC for project participation for the installation of a traffic signal on 112th Avenue at the east entrance to FRCC ?

Alternative

Do not enter into an IGA with CDOT for grant funding and an IGA with FRCC for project participation. Staff does not recommend this alternative as the IGA with CDOT would provide a 90% federally funded grant and the IGA with FRCC would provide reimbursement of the required 10% local match that would fund the installation of this traffic signal on 112th Avenue.

Background Information

City Council previously approved the submission of an application for a Federal Hazard Elimination Program (FHEP) grant in the amount of \$265,000, coordinated through the Colorado Department of Transportation (CDOT), for the installation of a traffic signal on 112th Avenue at Front Range Community College (FRCC). The FHEP is intended to improve safety characteristics at high accident locations. The accident history at the east entrance to the college over the past five years indicates that there were several accidents that could have been mitigated by the installation of a traffic signal. CDOT has informed the City that the grant, which is 90% federally funded, has been approved for fiscal year 2013. The purpose of the IGA with CDOT is to obligate the federal funds to the project as well as establish the federal requirements associated with the FHEP.

Front Range Community College officials have indicated that the college is willing to provide the required 10% local match to the federal funds. This commitment is formalized in the IGA between the City and FRCC. The IGA with FRCC also indicates that FRCC will provide any needed right-of-way for the traffic signal installation and that the City will own and maintain the traffic signal into the future.

The following represents Staff's anticipated schedule for completing the installation of the subject traffic signal:

October 2013 thru June 2013	Design and CDOT approval process
July 2013	Advertise for Bids
September 2013 thru November 2013	Construction

This project meets Council's Strategic Plan goals of a Safe and Secure Community and Financially Sustainable City Government by providing an improved transportation system utilizing outside funding sources.

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	7500.40610.0000	\$73,120	\$238,500	\$311,620
Reimbursements	7500.43080.0000	\$0	\$26,500	\$26,500
Total Change to Revenues			\$265,000	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Traffic Signal System Improvements	80175030143.80400.8888	\$103,153	<u>\$265,000</u>	\$368,153
Total Change to Expenses			<u>\$265,000</u>	

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- CDOT IGA
- Front Range Community College IGA
- Ordinance
- Location Map

RESOLUTION

RESOLUTION NO. **28**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

**A RESOLUTION
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
WESTMINSTER AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)
DEFINING FEDERAL AND LOCAL FUNDING OBLIGATIONS RELATING TO THE
INSTALLATION OF A TRAFFIC SIGNAL ON 112TH AVENUE AT THE EAST ENTRANCE TO
FRONT RANGE COMMUNITY COLLEGE**

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution as well as Sections 29-1-201, *et seq.*, and 29-20-205, C.R.S., authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, The Intergovernmental Agreement attached to this Resolution identifies local funding obligations of the City of Westminster and federal funding obligations administered by the Colorado Department of Transportation for the design and construction of a traffic signal on 112th Avenue at the east entrance to Front Range Community College which is located at the King Street alignment.

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

1. The Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation pertaining to the local and federal funding obligations and the design and construction of a traffic signal on 112th Avenue at the east entrance to Front Range Community College which is located at the King Street alignment is hereby approved.
2. The City manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement in substantially the same form as attached.

PASSED AND ADOPTED this 24th day of September, 2012.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

(FMLAWRK)
PROJECT SHO M356-026 (19132)
REGION 6/(JH/wma)

Routing # 13 HA6 46557
SAP # 331000558
FOR CDOT TRACKING PURPOSES (subject
to change).

Rev 7/01/09

STATE OF COLORADO
Department of Transportation
Agreement
with
CITY OF WESTMINSTER

TABLE OF CONTENTS	
1. PARTIES.....	2
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.....	2
3. RECITALS.....	2
4. DEFINITIONS.....	2
5. TERM and EARLY TERMINATION.....	3
6. SCOPE OF WORK.....	3
7. OPTION LETTER MODIFICATION.....	7
8. PAYMENTS.....	8
9. ACCOUNTING.....	10
10. REPORTING - NOTIFICATION.....	11
11. LOCAL AGENCY RECORDS.....	11
12. CONFIDENTIAL INFORMATION-STATE RECORDS.....	12
13. CONFLICT OF INTEREST.....	12
14. REPRESENTATIONS AND WARRANTIES.....	12
15. INSURANCE.....	13
16. DEFAULT-BREACH.....	14
17. REMEDIES.....	15
18. NOTICES and REPRESENTATIVES.....	17
19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.....	17
20. GOVERNMENTAL IMMUNITY.....	17
21. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....	17
22. FEDERAL REQUIREMENTS.....	18
23. DISADVANTAGED BUSINESS ENTERPRISE (DBE).....	18
24. DISPUTES.....	18
25. GENERAL PROVISIONS.....	19
26. COLORADO SPECIAL PROVISIONS.....	21
27. SIGNATURE PAGE.....	23
28. EXHIBIT A – SCOPE OF WORK.....	1
29. EXHIBIT B – LOCAL AGENCY RESOLUTION.....	1
30. EXHIBIT C – FUNDING PROVISIONS.....	1
31. EXHIBIT D – OPTION LETTER.....	1
32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST.....	1
33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS.....	1
34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE.....	1
35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES.....	1
36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS.....	1
37. EXHIBIT J – FEDERAL REQUIREMENTS.....	1
38. EXHIBIT K– SUPPLEMENTAL FEDERAL PROVISIONS.....	1

1. PARTIES

THIS AGREEMENT is entered into by and between the City of Westminster CDOT Vendor # 2000053, ("Local Agency"), and the STATE OF COLORADO acting by and through the Department of Transportation ("State" or "CDOT").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee ("Effective Date"). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

i. Federal Authority

Pursuant to § 1007(a) of TEA-21, at 23 U.S.C. § 133(d)(2), certain Surface Transportation project funds are made available only for eligible "Transportation Enhancement Activities", as defined in § 23 U.S.C. § 101(a), and this contract provides for the performance by the Local Agency of a project for an eligible Transportation Enhancement Activity.

Pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21st Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS § 23 U.S.C. § 101(a), CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA.

D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement or Contract

"Agreement" or "Contract" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

B. Agreement Funds

"Agreement Funds" means funds payable by the State to Local Agency pursuant to this Agreement.

C. Budget

"Budget" means the budget for the Work described in Project Payment Provisions in **Exhibit C**.

D. Consultant and Contractor

"Consultant" means a professional engineer or designer hired by Local Agency to design the Work and "Contractor" means the general construction contractor hired by Local Agency to construct the Work.

E. Evaluation

"Evaluation" means the process of examining the Local Agency's Work and rating it based on criteria established in **§6** and **Exhibits A and E**.

F. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Disadvantaged Business Enterprise), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions) and **Exhibit J** (Federal Requirements).

G. Goods

"Goods" means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

H. Oversight

"Oversight" means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration ("FHWA") and as it is defined in the Local Agency Manual.

I. Party or Parties

"Party" means the State or the Local Agency and "Parties" means both the State and the Local Agency

J. Work Budget

Work Budget means the budget described in Project Funding Provisions in **Exhibit C**.

K. Services

"Services" means the required services to be performed by the Local Agency pursuant to this Contract.

L. Work

"Work" means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and **Exhibits A and E**, including the performance of the Services and delivery of the Goods.

M. Work Product

"Work Product" means the tangible or intangible results of the Local Agency's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM and EARLY TERMINATION

The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate five (5) years from date of contract execution (Controller's signature), unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in **Exhibits A and E**. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed hereunder by the Local Agency, or any Consultants or Contractor shall be considered the Local Agency's, Consultants' or Contractors' employee(s) for all purposes and shall not be employees of the State for any purpose.

D. State and Local Agency Commitments

i. Design

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.
- b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f) Provide final assembly of Plans and all other necessary documents.
- g) Be responsible for the Plans' accuracy and completeness.
- h) Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. Local Agency Work

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If the Local Agency enters into a contract with a Consultant for the Work:
 - (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
 - (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.

(3) Local Agency shall require that all billings under the consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

(4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

(5) Local Agency may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).

(6) Local Agency shall ensure that the Consultant agreement complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

a) If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with the **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

c) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq.

Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).

(b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.

(c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.

(3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.

(4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.

(a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

(b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

(c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.

(d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

iv. State's Commitments

a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**,

v. ROW and Acquisition/Relocation

a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation

Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.

d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under the following categories:

- (1) Right of way acquisition (3111) for federal participation and non-participation;
- (2) Relocation activities, if applicable (3109);
- (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

vi. Utilities

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

vii. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:

- a) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b) Obtain the railroad's detailed estimate of the cost of the Work.
- c) Establish future maintenance responsibilities for the proposed installation.
- d) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

viii. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

ix. Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

Option Letters may be used to extend Agreement term, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. These options are limited to the specific scenarios listed below. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

A. Option 1- Level of service change within current term due to unexpected overmatch in an overbid situation only.

In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract.

This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding. The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (**Exhibit D**), which will bring the maximum amount payable under this contract to the amount indicated in **Exhibit C-1** attached to the executed Option Letter (future changes to **Exhibit C** shall be labeled as **C-2, C-3**, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

B. Option 2 – Option to add overlapping phase without increasing contract dollars.

The State may require the contractor to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

C. Option 3 - To update funding (increases and/or decreases) with a new Exhibit C.

This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc). The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in **Exhibit C-1**, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

8. PAYMENTS

The State shall, in accordance with the provisions of this §8, pay the Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute.

The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Contract Funds shall be used only for eligible costs identified herein.

D. Matching Funds

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C.** The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

E. Reimbursement of Local Agency Costs

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8.** The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C.** However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to

the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred);

9. ACCOUNTING

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

A. Local Agency Performing the Work

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

B. Local Agency-Checks or Draws

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

C. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

D. Local Agency-Invoices

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency, for which it seeks reimbursement; the dates such costs were incurred; and the amounts thereof, and shall not be submitted more often than monthly.

E. Invoicing Within 60 Days

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds, shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred; and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

D. Documents

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

11. LOCAL AGENCY RECORDS

A. Maintenance

The Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and exercise the remedies available under this Agreement, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program

data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

12. CONFIDENTIAL INFORMATION-STATE RECORDS

The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

B. Notification

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §12.

13. CONFLICT OF INTEREST

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

A. Standard and Manner of Performance

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

B. Legal Authority – The Local Agency and the Local Agency’s Signatory

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency’s authority to enter into this Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

15. INSURANCE

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

A. The Local Agency

i. Public Entities

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to sub-contractors that are not "public entities".

B. Contractors

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker’s Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractors, Subcontractors, or Consultant's employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket Agreementual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §15.

16. DEFAULT-BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt

of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §17.

Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis..

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

ii. Payments

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or

services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify the Local Agency of the termination in accordance with §17, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

iii. Payments

If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the Local Agency's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to the Local Agency until corrections in the Local Agency's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to the Local Agency's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of the Local Agency's employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State's option (a) obtain for the State or the Local Agency the right to

use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Nashat Sawaged
CDOT Region 6
2000 South Holly Street
Denver, Colorado 80222
(303) 757-9940

B. Local Agency:

Mike Normandin
City of Westminster
Dept. Community Development
4800 West 92 nd Avenue
Westminster, Colorado 80031
(303) 658-2143

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §21 applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance

information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance.

Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in **Exhibit J**.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State-approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement, shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this

Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein.

Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§25(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification - General

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Limitations of Liability

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes, but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

I. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement,

properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

J. Order of Precedence

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The provisions of the main body of this Agreement,
- iii. **Exhibit A** (Scope of Work),
- iv. **Exhibit B** (Local Agency Resolution),
- v. **Exhibit C** (Funding Provisions),
- vi. **Exhibit D** (Option Letter),
- vii. **Exhibit E** (Local Agency Contract Administration Checklist), and
- viii. Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them.

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

26. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Agreements except where noted in *italics*.

1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR.

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees.

Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.

The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement.

The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to Intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, Intergovernmental Agreements, or information technology services or products and services] The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

27. SIGNATURE PAGE
Agreement Routing Number: 13 HA6 46557

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

<p align="center">THE LOCAL AGENCY CITY OF WESTMINSTER CDOT Vendor # 2000053</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p>	<p align="center">STATE OF COLORADO JOHN W. HICKENLOOPER, GOVERNOR</p> <hr/> <p align="center">Timothy J. Harris, P.E., Chief Engineer for Donald E. Hunt, Executive Director Colorado Department of Transportation</p>
<p align="center">2nd Local Agency Signature if Needed</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p>	<p align="center">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____</p> <p align="center">Signature - Assistant Attorney General</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: _____</p> <p align="center">Colorado Department of Transportation</p> <p>Date: _____</p>

28. EXHIBIT A – SCOPE OF WORK

112th Avenue and King Street Traffic Signal

Project No SHO M356-026

SA #19132

The proposed improvement consists of the installation of a new traffic signal at the intersection of 112th Avenue and King Street (map follows). This intersection is located in the City of Westminster. This traffic signal installation should significantly reduce the number of right angle accidents.

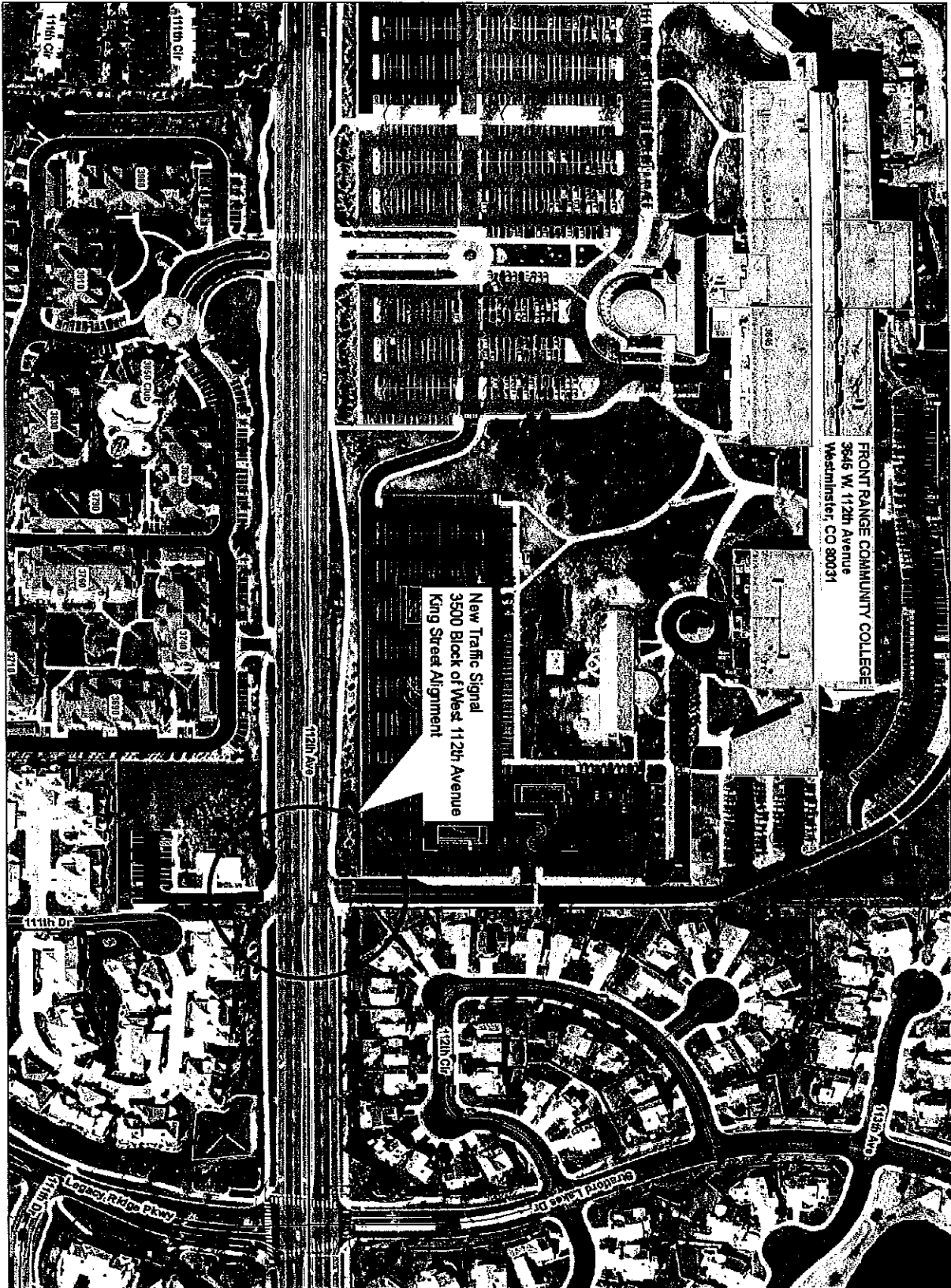
New traffic controllers and cabinets are included. It is anticipated that video detection and fire pre-emption units will be installed. Signal improvements, pole types/colors, and possible traffic signal interconnect systems will be in accordance with the City of Westminster requirements.

Some minor ancillary improvements may include curb ramp improvements, median cover material and/or new pavement markings for cross walks and stop bars. Minor signing improvements may be involved, including mast arm mounted signs and other signs related to the signalized intersection.

Design Standards for the City of Westminster will be used for the design and construction of the project since this is an Off-System project.

Project is funded by the FY 2013 Hazard Elimination Program with a total budget of \$265,000 (Federal Funds=\$238,500, Westminster Funds=\$26,500, State=\$0).

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK



29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

SHO M356-026 (19132)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$265,000.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds (FY 13 Hazard Elim @ 90%)				\$238,500.00
b. Local Agency Matching Funds (FY 13 Hazard Elim @ 10%)				\$26,500.00
c. Local Agency Overmatch				\$0.00
TOTAL BUDGETED FUNDS				\$265,000.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
(90% of Participating Costs)				
b. Local Share				
Local Agency Share of Participating Costs		\$0.00		
Non-Participating Costs (Including Non-Participating Indirects)		\$0.00		
Estimated to be Billed to Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$238,500.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$238,500.00
FOR CDOT ENCUMBRANCE PURPOSES				
Federal Funds (1a)				\$238,500.00
Local Agency Matching Funds (1b)				\$26,500.00
Local Agency Overmatch (1c)				\$0.00
Total Encumbrance Amount				\$265,000.00
<i>*Funds are currently not available. Funds will be added when they become available by a formal amendment or Option Letter*</i>				
Less ROW Acquisition 3111 and/or ROW Relocation 3109				(\$0.00)
Net to be encumbered as follows:				
	WBS Element 19132.10.30	Design	3020	\$0.00
	WBS Element 19132.20.10	Const	3301	\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 90% federal-aid funds (CFDA #20 2050) to 10% Local Agency funds, it being understood that such ratio applies only to the \$265,000.00 (\$238,500.00 Federal Funds and \$26,500.00 Local Agency Funds) that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$265,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 10% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$265,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$238,500.00 (For CDOT accounting purposes, the federal funds of \$238,500.00 and the Local Agency matching funds of \$26,500.00 will be encumbered for a total encumbrance of \$265,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ****Funds are currently not available. Funds will be added when they become available by a formal amendment or Option Letter.*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

All state and local government and non-profit organization Sub-The Local Agencies receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to Sub-The Local Agencies receiving federal funds are as follows:

i. Expenditure less than \$500,000

If the Sub-The Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding than \$500,000-Highway Funds Only

If the Sub-The Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding than \$500,000-Multiple Funding Sources

If the Sub-The Local Agency expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below and may not be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
Original Contract CMS #		Option Letter CMS #	
Original Contract SAP #		Option Letter SAP #	

Vendor name: _____

A. SUBJECT: (Choose applicable options listed below **AND** in section B and delete the rest)

1. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
2. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
3. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

B. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

(Insert the following language for use with Option #1):

In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The Agreement is now increased by (*indicate additional dollars here*) specified in Paragraph/Section/Provision _____ of the original Agreement.

(Insert the following language for use with Option #2):

In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to add an overlapping phase in (*indicate Fiscal Year here*) that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*). Total funds for this Agreement remain the same (*indicate total dollars here*) as referenced in Paragraph/Section/Provision/Exhibit _____ of the original Agreement.

(Insert the following language for use with Option #3):

In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The Agreement is now (*select one: increased and/or decreased*) by (*insert dollars here*) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original Agreement. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

(The following language must be included on ALL options):

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ amount of change) to a new Agreement value of (\$ _____) to satisfy services/goods ordered under the Agreement for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total Agreement value to include all previous amendments, option letters, etc. is (\$ _____).

The effective date of this Option Letter is upon approval of the State Controller or delegate.

APPROVALS:

For the The Local Agency:

Legal Name of the Local Agency

By: _____
Print Name of Authorized Individual

Signature: _____

Date: _____

Title: Official Title of Authorized Individual

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

**State Controller
David J. McDermott, CPA**

By: _____

Date: _____

Form Updated: June 12, 2008

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

**COLORADO DEPARTMENT OF TRANSPORTATION
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

Project No. M356-026, SA#19132	STIP No. 6731.137	Project Code 19132	Region Six
Project Location 112 th Ave. and King St. Traffic Signal			Date 06-11-2012
Project Description Traffic Signal Installation			
Local Agency City of Westminster		Local Agency Project Manager Mike Normandin 303-658-2143	
CDOT Resident Engineer Leela Rajasekar		CDOT Project Manager Nashat Sawaged	

INSTRUCTIONS:

This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the *CDOT Local Agency Manual*.

The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	x	x
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	x	
5.4	Conduct Design Scoping Review Meeting	x	x
5.5	Conduct Public Involvement	x	
5.6	Conduct Field Inspection Review (FIR)	x	x
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	x	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	x	
5.9	Obtain Utility and Railroad Agreements	x	
5.10	Conduct Final Office Review (FOR)	x	x
5.11	Justify Force Account Work by the Local Agency	x	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	x	
5.13	Document Design Exceptions - CDOT Form 464	x	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	x	
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		x
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Leela Rajasekar _____ 303-757-9862 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		x
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	x	
7.2	Advertise for Bids	x	
7.3	Distribute "Advertisement Set" of Plans and Specifications	x	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	x	
7.5	Open Bids	x	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	x	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	x	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	x	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	x	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	x	
	Pre-survey		
	• Construction staking	x	
	• Monumentation	x	
	Partnering (Optional)	N/A	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	N/A	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	N/A	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	x	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	x	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Dave Loseman _____ 303-658-2125 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer	x	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	x	
	Construction inspection and documentation	x	
8.6	Approve Shop Drawings	x	
8.7	Perform Traffic Control Inspections	x	
8.8	Perform Construction Surveying	x	
8.9	Monument Right-of-Way	x	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. Mike Normandin _____ 303-658-2143 Local Agency Representative Phone number	x	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	N/A	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	x	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	x	
8.16	Prepare and Submit Monthly Progress Reports	x	
8.17	Resolve Contractor Claims and Disputes	x	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. LEELA RAJASEKAR _____ 303-757-9862 CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X N/A N/A N/A	
9.6	Approve Sources of Materials	x	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	x	x x
9.8	Approve mix designs • Concrete • Hot mix asphalt	x x	x x
9.9	Check Final Materials Documentation	x	
9.10	Complete and Distribute Final Materials Documentation	x	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

- cc: CDOT Resident Engineer/Project Manager
 CDOT Region Program Engineer
 CDOT Region EEO/Civil Rights Specialist
 CDOT Region Materials Engineer
 CDOT Contracts and Market Analysis Branch
 Local Agency Project Manager

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

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

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

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

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 23. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office
Colorado Department of Transportation
4201 East Arkansas Avenue, Room 287
Denver, Colorado 80222-3400
Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
 7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
 8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 Electronic version – March 10, 1994

FHWA Form 1273

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

I. General	1
II. Nondiscrimination	1
III. Non-segregated Facilities	3
IV. Payment of Predetermined Minimum Wage	3
V. Statements and Payrolls	6
VI. Record of Materials, Supplies, and Labor	6
VII. Subletting or Assigning the Contract	7
VIII. Safety: Accident Prevention	7
IX. False Statements Concerning Highway Projects	7
X. Implementation of Clean Air Act and Federal Water Pollution Control Act	8
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion	8
XII. Certification Regarding Use of Contract Funds for Lobbying	9

ATTACHMENTS

A. Employment Preference for Appalachian Contracts
(included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this Agreement, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this Agreement. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Agreement. In the execution of this Agreement, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal

Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor

either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Agreement.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this Agreement. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to

be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this Agreement or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Agreement. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this Agreement.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this Agreement or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this Agreement.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise

disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this Agreement the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this Agreement, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency

entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

2. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly

37. EXHIBIT J – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation:

- i. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
- ii. the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
- iii. the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements;
- iv. to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable;
- v. the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or sub-the Local Agencies).

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and sub-the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agencies and sub-the Local Agencies in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

G. Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. Nondiscrimination

42 USC 6101 et seq., 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

M. Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance.

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

T. Incorporation of Provisions§22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended As of October 15, 2010

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. **“Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1. Grants;
- 1.1.2. Contracts;
- 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4. Loans;
- 1.1.5. Loan Guarantees;
- 1.1.6. Subsidies;
- 1.1.7. Insurance;
- 1.1.8. Food commodities;
- 1.1.9. Direct appropriations;
- 1.1.10. Assessed and voluntary contributions; and
- 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

- 1.1.12. Technical assistance, which provides services in lieu of money;
- 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14. Any award classified for security purposes; or
- 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. **“Central Contractor Registration (CCR)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.bpn.gov/ccr>.

1.3. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.4. **“Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.5. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

- 1.6. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C;
 - 1.6.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.6.2. A foreign public entity;
 - 1.6.3. A domestic or foreign non-profit organization;
 - 1.6.4. A domestic or foreign for-profit organization; and
 - 1.6.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.7. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.8. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.9. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.10. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.11. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.12. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.13. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s Central Contractor Registration (CCR) profile, if applicable.
- 1.14. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

1.17 "Vendor" means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. Compliance. Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.

3.1. CCR. Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information.

3.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

4. Total Compensation. Contractor shall include Total Compensation in CCR for each of its five most highly compensated Executives for the preceding fiscal year if:

4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and

4.2. In the preceding fiscal year, Contractor received:

4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

5. Reporting. Contractor shall report data elements to CCR and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above.

The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.

6. Effective Date and Dollar Threshold for Reporting. The effective date of these supplemental provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is

subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

7. Subrecipient Reporting Requirements. If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To CCR. A Subrecipient shall register in CCR and report the following data elements in CCR *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1** Subrecipient's DUNS Number as registered in CCR.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

9. Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

**INTERGOVERNMENTAL AGREEMENT BETWEEN FRONT RANGE COMMUNITY
COLLEGE AND CITY OF WESTMINSTER FOR
INSTALLATION OF A TRAFFIC SIGNAL**

THIS AGREEMENT is made and entered into this ____ day of September, 2012, by and between the CITY OF WESTMINSTER, a Colorado home-rule municipality, hereinafter called the “City” and the State of Colorado, Department of Higher Education, by the State Board for Community Colleges and Occupational Education for the use and benefit of FRONT RANGE COMMUNITY COLLEGE, hereinafter referred to as “FRCC.” The City and FRCC may be referred to collectively or separately as “Parties” or “Party” or “Jurisdiction.”

RECITALS

WHEREAS, the City and FRCC recognize a need for and support a traffic signal on 112th Avenue at the east entrance of FRCC in the City (hereinafter referred to as the “Traffic Signal Project”); and

WHEREAS, the City intends to utilize federal funds awarded to the City for the project by the Federal Hazard Elimination Program (FHEP); and

WHEREAS, the FHEP grant requires the payment of matching funds in the amount of ten percent (10%) of the Traffic Signal Project costs; and

WHEREAS, the total estimated cost of the Traffic Signal Project is Two Hundred Sixty-Five Thousand Dollars (\$265,000); and

WHEREAS, the FHEP grant is in the amount of Two Hundred Thirty-Eight Thousand Five Hundred Dollars (\$238,500) and FRCC has agreed to fund the ten percent (10%) match in the amount of Twenty-Six Thousand Five Hundred Dollars (\$26,500); and

WHEREAS, FRCC has further agreed to grant to the City at no cost any right-of-way that may be needed for the Traffic Signal Project, and to convert, at FRCC’s cost, the main entrance to FRCC to a right turn in, right turn out only ingress and egress (the “Main Entrance Conversion”).

NOW, THEREFORE, in consideration of mutual covenants contained herein, the City and FRCC hereby agree as follows:

1. Following substantial completion of the Project, the City shall provide FRCC an invoice for FRCC’s share of the Traffic Signal Project. FRCC agrees to pay the City FRCC’s share of the Traffic Signal Project within forty-five (45) days of receipt of said invoice.
2. The City shall construct and administer the Traffic Signal Project in accordance with all applicable federal and Colorado Department of Transportation regulations.
3. The City shall own and maintain the Traffic Signal Project.

4. Prior to advertising the Project for bid, FRCC agrees to convey by special warranty deed any right-of-way needed from FRCC for the Traffic Signal Project, and deliver the Real Property Donation form attached hereto as Exhibit A.

5. FRCC shall commence the Main Entrance Conversion not later than the commencement of the Traffic Signal Project, and shall complete the Main Entrance Conversion not later than the completion of the Traffic Signal Project.

6. At all times during the performance of this Intergovernmental Agreement, the Parties shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

7. This agreement is made pursuant to Article XIV, Section 18(2)(a) and Article XX of the Colorado Constitution and Sections 29-10-201, et seq., and 30-11-101, et seq. of the Colorado Revised Statutes.

8. This agreement is not intended to create a separate governmental entity as that term is defined in Article I, Title 29 of the Colorado Revised Statutes.

9. **Special Provisions.** These Special Provisions apply to all contracts except where noted in *italics*.

A. CONTROLLER'S APPROVAL. CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts

required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d)

amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed this ____ day of September, 2012.

STATE OF COLORADO
JOHN HICKENLOOPER, GOVERNOR
Department of Higher Education, by the
State Board for Community Colleges and Occupational
Education, for the use and benefit of Front Range
Community College

ATTEST:

By: _____

Title: _____

By: _____
Andrew R. Dorsey, President

APPROVED AS TO FORM:

STATE CONTROLLER
DAVID J. MCDERMOTT, CPA

By: _____
N/A
Attorney General

By: _____
Jennifer H. Sobanet
Date: _____

CITY OF WESTMINSTER, COLORADO

ATTEST:

By: _____
Linda Yeager, City Clerk

By: _____
J. Brent McFall, City Manager

APPROVED AS TO FORM:

Martin R. McCullough, City Attorney

EXHIBIT A

State Highway Number Not Applicable
Location 112th Avenue at the East Entrance
to Front Range Community College
Project Code 19132

REAL PROPERTY DONATION

State of Colorado, Department of Higher Education, by the State Board for Community College and Occupational Education for the use of and benefit of Front Range Community College, as owners of certain real property located in Section 6, Township 2 South, Range 68 West, of the 6th Principal Meridian, which property is more particularly described on Exhibit A, which is attached hereto and incorporated herein, wish to donate a fee simple interest, over said property to the City of Westminster (the "City"), for the purpose of constructing a traffic signal within the 112th Avenue right-of-way.

The undersigned owner(s) have been advised of their right to receive, and hereby waive and decline, the right to receive just compensation for the above described improvements. The property rights conveyed will be free of all liens and encumbrances.

Dated this _____ day of _____, 201____ .

OWNER:

STATE OF COLORADO

JOHN HICKENLOOPER, GOVERNOR

Department of Higher Education, by the
State Board for Community Colleges and Occupational Education, for the use and benefit
of Front Range Community College

By: _____
Andrew R. Dorsey, President

By _____

ACCEPTED FOR THE CITY

J. Brent McFall
City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **38**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2012 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3550 is hereby increased by \$265,000. This appropriation is due to the receipt of funds from the Colorado Department of Transportation and Front Range Community College.

Section 2. The \$265,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item #10 C-E , dated September 24, 2012 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$265,000</u>
Total	<u>\$265,000</u>

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

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

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

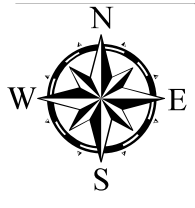
INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of September, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of October, 2012.

ATTEST:

Mayor

City Clerk



FRONT RANGE COMMUNITY COLLEGE
3645 W. 112th Avenue
Westminster, CO 80031



New Traffic Signal
112th Ave. FRCC East Drive
(King Street Alignment)

113th Ave

112th Cir

112th Ave

111th Cir

111th Cir

111th Cir

111th Cir

111th Cir

Seton Pl

111th Dr

3645

3705

3820

3740

3960

3850 Club

3690

3910

3790

3760

3970

3920

3840

3710

3780

3720



Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Councillor's Bill No. 39 re 2012 HUD Section 108 Loan Fund Appropriation

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 39 on first reading appropriating funds received from the United States Department of Housing and Urban Development, HUD Section 108 Loan Fund Program, in the amount of \$1,400,000.

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill appropriating funds awarded by the U.S. Department of Housing and Urban Development (HUD) through the HUD Section 108 Loan Fund Program in the amount of \$1,400,000.
- The City Council approved Resolution No. 33 on September 27, 2010 authorizing Staff to apply for the Section 108 funds, and accepted an award of \$2.534 million in funding capacity on December 12, 2011.
- HUD has awarded an initial drawdown of \$1,500,000 to be used in conjunction with land acquisition and site preparation relative to redevelopment of a portion of the 7200 block of Lowell Boulevard.
- Staff is requesting that \$1,400,000 of the award be appropriated to provide funding for pending acquisitions and site preparation for future development. The remaining \$100,000 shall remain in a reserve account to provide security for three to four years of interest payment coverage.
- City Council authorized Staff to proceed with the purchases on August 13, 2012.

Expenditure Required: \$ 1,400,000

Source of Funds: HUD Section 108 Loan Fund Program

Policy Issue

Should the HUD Section 108 funds in the amount of \$1,400,000 be appropriated to support redevelopment in the 7200 block of Lowell Boulevard?

Alternative

Do not appropriate the funds. This alternative is not recommended as it will impact the ability of the City to close on pending acquisitions to support future redevelopment.

Background Information

The City of Westminster is designated by the U.S. Department of Housing and Urban Development (HUD) as a “CDBG entitlement” jurisdiction, and as such receives an annual allocation of Community Development Block Grant funds in the range of \$500,000. As an “entitlement” jurisdiction, the City of Westminster is also eligible to participate in the HUD Section 108 Loan Program that provides funding to assist in facilitating revitalization and redevelopment in economically distressed areas. The South Westminster area qualifies as a distressed economic area. Under the program, the City was entitled to apply for Section 108 Loan Program proceeds up to five times its annual CDBG allocation equaling \$2.534 million. As a “loan” program the proceeds would be repaid over a 20-year period from revenues generated by a development project or by payment using CDBG proceeds. By participating in the program, the City’s future CDBG allocations are also pledged as collateral to cover any default on repayment.

Per City Council authorization on September 27, 2010, City staff submitted an application to HUD for a Section 108 Loan Program grant, which resulted in the City being awarded loan funding in the amount of \$2,534,000. City Council accepted the grant of funds on December 12, 2011. Upon acceptance of the loan funding, Staff proceeded to submit application to HUD to draw down \$1.5 million of the funds to assist in redeveloping a portion of the west side of the 7200 block of Lowell Boulevard. During this timeframe, Staff worked with a prospective developer interested in developing about 1.5 acres into a multi-story, mixed use project comprised of residential apartments over commercial space. A development agreement was approved by City Council on May 14, 2012 relative to proceeding with this project. Under the agreement, the City agreed to request from HUD a draw down of \$1.5 million of the Section 108 funds to be applied towards acquisition and site preparation for new development. Accordingly, the City applied for and received approval to receive a draw down of \$1.5 million to be applied towards the redevelopment project as proposed.

Staff is requesting \$1.4 million of the funds be appropriated in 2012 to allow the City to proceed with acquisitions as authorized by City Council on August 13, 2012. Staff is requesting the appropriations be made as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Note Proceeds	7600.46010.0000	\$0	<u>\$1,400,000</u>	\$1,400,000
Total Change to Revenues			<u>\$1,400,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Lowell Redvl HUD Section 108	81276030998.80400.8888	\$0	<u>\$1,400,000</u>	\$1,400,000
Total Change to Expenses			<u>\$1,400,000</u>	

The balance of the \$1.5 million in proceeds, \$100,000, will be held in reserve to provide about 2-3 years of coverage for repayment of interest as required under agreement with HUD. The interest payment is estimated to be in the range of \$35,000 to 45,000 per year.

The appropriation as requested supports the City of Westminster Strategic Plan Goal of creating and maintaining Vibrant Neighborhood and Commercial Areas, with the objective of maintaining and improving neighborhood infrastructure and housing, and the goal of Financially Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **39**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE INCREASING THE 2012 BUDGET OF THE COMMUNITY
DEVELOPMENT BLOCK GRANT (CDBG) FUND AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE
2012 ESTIMATED REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the CDBG Fund, initially appropriated by Ordinance No. 3550 is hereby increased by \$1,400,000. This appropriation is due to the receipt of the HUD Section 108 Loan Fund Program.

Section 2. The \$1,400,000 increase in the CDBG Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item #10 F, dated September 24, 2012 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

CDBG Fund	<u>\$1,400,000</u>
Total	<u>\$1,400,000</u>

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

Section 4. This ordinance shall take effect upon its passage after 2nd 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 24th day of September, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th Day of October, 2012.

ATTEST:

Mayor

City Clerk



Agenda Item 10 G&H

Agenda Memorandum

City Council Meeting
September 24, 2012



SUBJECT: Councillor’s Bill No. 40 re Federal Boulevard Trail Project Supplemental Appropriation and Construction Contract

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

1. Pass Councillor’s Bill No. 40 on first reading appropriating \$87,500 to the Federal Boulevard Trail Project as an advance of the Adams County share of the project’s construction costs.
2. Authorize the City Manager to execute a contract with the low bidder, Thoutt Bros. Concrete Contractor’s, Inc., in the amount of \$230,631.78 for the construction of this project; and authorize a construction contingency in the amount of \$25,000.

Summary Statement

- The Federal Boulevard Trail Project includes the construction of approximately 2,700 feet or ½ mile of concrete trail, 675 feet of landscape wall, curb ramps and 680 feet of curb and gutter (see attached project map).
- A total of \$87,500 of the project costs are funded by an Adams County Open Space grant with the remaining funds coming from the City’s General Capital Improvement Fund. Approval of the attached Councillor’s Bill appropriating the Adams County share of \$87,500 is requested. This appropriation is **not** an increase in the project budget but is necessary until the City is reimbursed by Adams County for its share of the project costs. The City is responsible for any expenses exceeding the County’s share of the project costs.
- The “Requests for Bids” for the construction of this project were advertised on the City’s web site for three weeks, and bids were opened on September 13. Five bids were received and opened, and the lowest bidder is Thoutt Bros. Concrete Contractor’s, Inc. with a bid of \$230,631.78.
- Staff has reviewed the bids and recommends awarding this contract to Thoutt Bros. Concrete Contractor’s, Inc. in the amount of \$230,631.78. A \$25,000 contingency is also recommended.

Expenditure Required: \$255,631.78

Source of Funds: General Capital Improvement Fund
- Federal Boulevard Project (\$168,813.78)
Adams County Open Space (\$87,500)

Policy Issue

Should the City proceed with the construction of the Federal Boulevard Trail Project?

Alternatives

Alternatives include postponing or abandoning the construction of this project. Many pedestrians use the western right-of-way of Federal Boulevard as their means of access to bus stops and other destinations located along this commercial corridor. Furthermore, the Adams County participation amount of \$87,500 would be lost if the City does not proceed with this project. These alternatives are not recommended.

Background Information

The Federal Boulevard Trail Project will provide a safe and convenient link for the residents of neighborhoods abutting this well-traveled arterial street to the numerous open space properties, bus stops, trails and other destinations in the vicinity of Federal Boulevard between 92nd Avenue and 120th Avenue. The current “trail” is a beaten down dirt path that, despite its sometimes icy or muddy condition, is heavily used by pedestrians. The project includes trail construction in two segments. The first segment includes a trail from a point approximately 150’ north of 92nd Avenue to the south boundary of Northpark Subdivision and the second segment from the north boundary of the College Hills Subdivision to approximately the 119th Avenue alignment. Once completed, there will be a continuous concrete trail along the west side of Federal Boulevard from 92nd Avenue to 119th Avenue.

In February 2012, the City of Westminster prepared an application to the Adams County Open Space Board of Directors requesting a grant award. The City was awarded funds in the amount of \$87,500 under the condition that a local match of at least \$87,500 would also be provided by the City. There is currently \$200,850 budgeted for this project from the City’s General Capital Improvement Fund, thus bringing the total project budget to \$288,350. Approval of the attached Councillor’s Bill is necessary to appropriate the Adams County share of the project costs until reimbursement is received after the construction of the project is completed. This appropriation will amend the General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Adams County Revenue	7500.40640.0010	\$0	<u>\$87,500</u>	\$87,500
Total Change to Revenues			<u>\$87,500</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Blvd Trail	81075030954.80400.8888	\$200,850	<u>\$87,500</u>	\$288,350
Total Change to Expenses			<u>\$87,500</u>	

Requests for bids for the construction of this project were advertised on the City’s bid web page for three weeks, and bids were opened on September 13. Five contractors submitted bids, and the bid results are as follows:

<u>Contractor</u>	<u>Submitted Bid</u>
Thoutt Bros. Concrete Contractors, Inc.	\$230,631.78
Northstar	\$296,283.25
Keene Concrete	\$322,427.50
Noraa Concrete	\$352,157.50
Silva	\$650,879.00
Engineer’s Estimate	\$220,249.00

Staff has reviewed the results of the bidding procedure and recommends that the low bidder, Thoutt Bros. Concrete Contractors, Inc., be awarded the contract for construction in the amount of \$230,631.78. Staff has worked with Thoutt Bros. Concrete Contractors, Inc. before. They are pre-qualified with the Colorado Department of Transportation and the company has adequate bonding capacity. Therefore, Staff believes that this company is very capable of constructing this type of project. The contingency amount of \$25,000 is just under 11% of the cost of construction, and Staff believes that this is adequate “insurance” for a project of this size.

This project would fulfill the City Council’s goals of Vibrant Neighborhoods and Livable Communities as well as Financially Sustainable City Government Providing Exceptional Services by providing a much desired pedestrian route, much of which will be paid through an outside funding source, to link neighborhoods along the Federal Boulevard corridor.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Project Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **40**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2012 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3550 is hereby increased by \$87,500. This increase is due to the appropriation of an Adams County Open Space Grant for construction costs necessary for the Federal Boulevard Trail Project.

Section 2. The \$87,500 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item #10 G&H, dated September 24, 2102 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$87,500</u>
Total	<u>\$87,500</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.

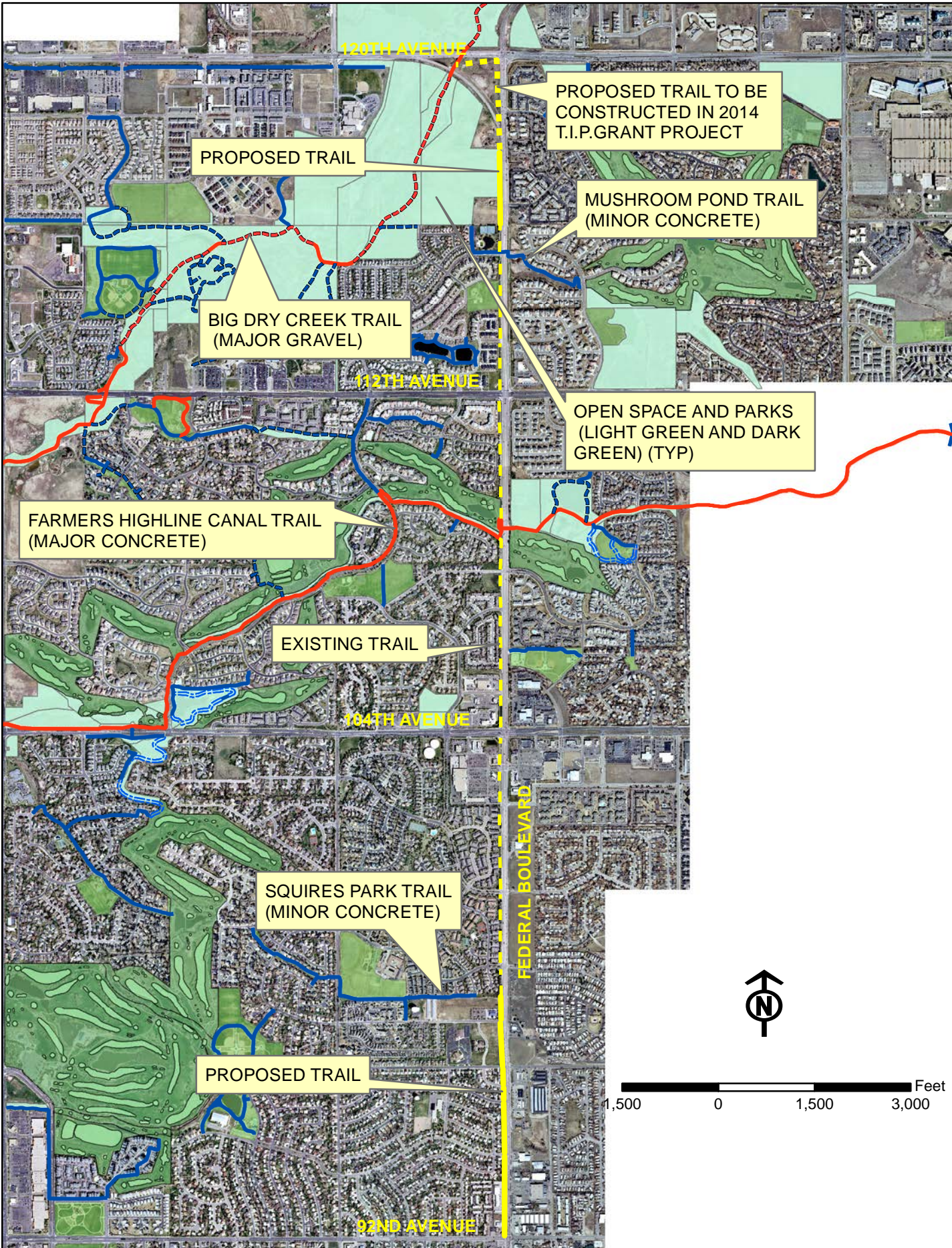
INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of September, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of October, 2012

ATTEST:

Mayor

City Clerk



**ATTACHMENT E
ADAMS COUNTY OPEN SPACE GRANT APPLICATION
FEDERAL TRAIL**



Agenda Memorandum

City Council Meeting
September 24, 2012



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

Prepared By: Walter Patrick, Planner II

Recommended City Council Action

Pass Councillor's Bill No. 26 on second reading making revisions to Title XI of the Westminister Municipal Code regarding accessory buildings.

Summary Statement

- Each year, staff proposes updates to the Westminister Municipal Code in order to remain current with development trends and "stay ahead of the curve" with regard to zoning regulations and requirements. One item on this year's list pertains to changes for Accessory Building regulations.
- The attached proposed ordinance includes amendments intended to reflect Council's discussion of the City's accessory building regulations at its August 13, 2012, Study Session. Subject to meeting all other code regulations pertaining to accessory buildings, the proposed amended ordinance would permit up to two accessory buildings per building lot in residential PUD districts, and up to two accessory buildings plus one detached garage in non-PUD residential districts.
- This amended Councillor's Bill was approved on first reading by City Council on August 27, 2012, by a vote of 4-3.
- This item is on the agenda again as old business following a 3-3 tie vote on a motion to approve the ordinance on second reading on September 10. Per Robert's Rules #27, this item can be considered again, still on second reading, at a subsequent meeting if any member of Council would like to RENEW the motion.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO. **3644**

COUNCILLOR'S BILL NO. **26**

SERIES OF 2012

INTRODUCED BY COUNCILLORS
Winter - Kaiser

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

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

(N) ACCESSORY BUILDINGS.

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

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

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

(4) Size: For all residential zone districts and residential PUD districts, the total of any detached garage and accessory buildings shall be limited to 5% of the building lot area or 600 square feet, whichever is greater, unless a different size is provided for in the PUD district. In no case shall the ~~combined square footage of all~~ accessory buildings be ~~larger more~~ than 2000 square feet ~~per building lot~~. For all nonresidential PUD zone districts, size will be determined in the ODP or ODP amendment. Maximum height of an accessory building shall be limited to fifteen (15) feet, except in O-1 zone districts where maximum height shall be limited to thirty-five (35) feet.

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

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

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

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

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

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

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

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

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

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, September 24, 2012

AT 7:00 P.M.

1. Roll Call

2. Minutes of Previous Meeting (September 10, 2012)

3. Purpose of Special WEDA Meeting is to consider

A. Public Hearing re 2012 Budget Amendment

B. Resolution No. 146 re Supplemental Appropriation to the 2012 Budget

4. Executive Session

Discussion of strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and the possible sale, acquisition, trade or exchange of property interests, including future leases, and provide instructions to the Authority's negotiators as authorized by CRS 24-6-402 (4)(a) and 24-6-402(4)(e) (*Verbal*)

5. Adjournment

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, SEPTEMBER 10, 2012, AT 7:55 P.M.

ROLL CALL

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

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Kaiser, to approve the minutes of the meeting of August 27, 2012, as written. The motion carried unanimously.

RESOLUTION NO. 145 – LOAN TO REFINANCE EXISTING LOAN FOR SOUTH SHERIDAN URA

It was moved by Board Member Briggs and seconded by Board Member Kaiser to adopt Resolution No. 145 authorizing the Executive Director or his designee to enter into a Loan Agreement for up to \$7.420 million with Vectra Bank Colorado to refinance an existing Loan between the Westminster Economic Development Authority and the Bank for the South Sheridan Urban Renewal Project (URA), as well as approving loan documents, in essentially the same form as attached, including but not limited to the Loan Resolution; Loan Agreement; and Cooperation Agreement with the City. On roll call vote, the motion passed unanimously.

ENGINEERING DESIGN CONTRACT FOR PORTIONS OF ORCHARD PKWY AND 142ND AVE.

It was moved by Councillor Major, seconded by Mayor Pro Tem Winter, to find, based upon the recommendation of the Executive Director, that the public interest would best be served by authorizing the Executive Director to execute a sole source contract with Blue Sky Engineering, LLC in the amount of \$150,017.50 and authorize a design contingency in the amount of \$10,000 for the final design of the Orchard Parkway, 138th Avenue to 144th Avenue Project and 142nd Avenue from Huron Street to Orchard Parkway. The motion passed unanimously.

ADJOURNMENT

There was no further business for the Authority's consideration, and it was moved by Kaiser, seconded by Winter, to adjourn. The motion passed and the meeting adjourned at 7:58 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A&B

Agenda Memorandum

Westminster Economic Development Authority Meeting
September 24, 2012



SUBJECT: Public Hearing and Resolution No. 146 re Westminster Economic Development Authority Supplemental Appropriation for the 2012 Budget

Prepared By: Karen Creager, Special Districts Accountant

Recommended Board Action

1. Hold a Public Hearing on the 2012 Budget amendment for the Westminster Economic Development Authority.
2. Adopt Resolution No. 146 authorizing a supplemental appropriation to the 2012 Westminster Economic Development Authority Budget.

Summary Statement

- When necessary, City Staff prepares a resolution to appropriate unanticipated revenues and adjust the budget side of transactions that occur during the year. Typically supplemental appropriations are prepared on a quarterly basis for Westminster Economic Development Authority (WEDA) to simplify administrative procedures and reduce paper work.
 - This is the 3rd quarter supplemental appropriation for WEDA for 2012.
 - 2012 Amendments:
 - \$1,900 Interest earnings
 - \$3,769 Property tax increment
 - \$100,000 Sales tax increment
 - \$30,589,169 Bond refinancing proceeds
 - \$59,000,000 Loan refinancing proceeds
 - \$11,877,498 Carryover funds
- A public hearing is required pursuant to Section 29-1-108 of the Colorado Revised Statutes.

Expenditure Required: \$101,572,336

Source of Funds: Interest earnings, incremental revenues, refinancing proceeds and carryover funds from previous years

Policy Issue

Should the WEDA Board appropriate funds as set forth in the attached Resolutions?

Alternative

The Board could decide not to appropriate funds. This is not recommended because the revenues requested to be appropriated have been earmarked to refinance the 2009 Mandalay Gardens Variable rate bonds, refinance the 2009 North Huron Loan and make required economic development agreement payments. All of these items have previously been authorized by the Board. Approval of the appropriation of these various funds will bring WEDA's books in line with the Board's previous actions.

Background Information

Interest income

Typically, interest in the WEDA Urban Renewal Areas is not included as part of the budget process unless needed to meet operating costs. An intergovernmental cooperation agreement (ICA) payment, as previously approved by the Board, is slightly higher than budgeted. Staff is recommending that interest earned on pooled cash funds in the Westminster Center East URA be appropriated to assist with the 2012 payments.

Property tax increment

Staff is recommending that a portion of the property tax increment received over the amount budgeted be appropriated to supplement interest earnings to cover the ICA payment described above.

Sales tax increment

Due to slightly higher than anticipated retail sales in the South Sheridan URA, EDA payments that based on retail sales will be higher than anticipated in 2012. Staff is requesting that sales tax increment received over the budget for 2012 be appropriated to cover the additional EDA expense.

Bond proceeds

On July 23, 2012, the Board approved refinancing of the 2009 WEDA tax-exempt adjustable rate tax increment revenue refunding bonds (Mandalay Gardens Project) up to \$30.5 million. The refinancing of the bonds settled on August 15, 2012. As part of the refinancing, the outstanding principal on the 2009 issue was reduced by \$4,620,000 using excess funds on hand at US Bank Trust. While the par amount of the new bonds was \$28,900,000, the attached resolution includes \$33,831,504 to appropriate the bond refinancing. The resolution amount includes appropriation of the excess funds, or carryover, to pay down the principal and pay costs related to the refinancing.

Loan proceeds

On August 27, 2012, the Board approved refinancing of the 2009 WEDA Compass Mortgage Corporation (North Huron Project) loan not to exceed \$60 million. The refinancing of the loan settled on August 28, 2012. Using excess revenues on hand at Compass Bank and proceeds from the new loan, a project fund of \$6.5 million was established for the construction of Orchard Parkway. While the amount of the new loan was \$59,000,000, the attached resolution includes \$67,629,558 to appropriate the loan refinancing. The resolution amount includes appropriation of the excess funds, or carryover, to establish the project fund and pay costs related to the refinancing.

Carryover

As described above, carryover specific to North Huron URA and Mandalay Gardens URA was used complete the refinancing of previously issued debt. In addition, North Huron URA also has two ICA payments that are anticipated to be slightly higher than budgeted in 2012. Carryover funds of \$5,605 are needed to cover the additional amount due under the obligations.

SUBJECT: Resolution re WEDA Supplemental Appropriation

Page 2

The amendments listed in the attached resolution will bring WEDA's accounting records up-to-date to reflect the various detailed transactions.

The action requested in this agenda memorandum relates to the Board's Strategic Plan goals of "Financially Sustainable City Government Providing Exceptional Services" and "Balanced, Sustainable Local Economy." These goals are met by ensuring a balanced budget where revenues are appropriated to expenditure accounts so the funds can be utilized as intended. In this case, the funds are intended to assist with refinancing existing debt to save on future interest costs and to cover existing ICA obligations.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment – Resolution

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **146**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2012

**2012 WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
BUDGET SUPPLEMENTAL APPROPRIATION**

WHEREAS, the Westminster Economic Development Authority (WEDA) initially adopted the 2012 budget on October 11, 2010 and

WHEREAS, proper notice for this amendment was published on September 20, 2012, pursuant to the requirements of Section 29-1-106 Colorado Revised Statutes; and

WHEREAS, a public hearing for this amendment was held on September 24, 2012, pursuant to the requirements of Section 29-1-108 Colorado Revised Statutes; and

WHEREAS, as necessary a resolution to make adjustments to the budget is presented to the Board; and

WHEREAS, there are adjustments to be made to the 2012 budget; and

WHEREAS, the revenue adjustments consist of increases totaling \$101,572,336; and:

WHEREAS, the expense adjustment consists of an increase of \$101,572,336.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Economic Development Authority:

Section 1. The \$101,572,336 increase shall be allocated to WEDA Revenue and Expenditure accounts as described below:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Interest Earnings	6800.42510.0189	\$958	\$1,900	\$2,858
Property tax increment	6800.40035.0189	354,357	3,769	358,126
Carryover	6800.40020.0182	166,714	3,242,335	3,409,049
Other Financing Source - Bonds	6800.46000.0182	0	30,589,169	30,589,169
Sales Tax increment	6800.40065.0190	772,800	100,000	872,800
Carryover	6800.40200.0183	(359,445)	8,635,163	8,275,718
Other Financing Source - Loan	6800.46000.0183	0	<u>59,000,000</u>	59,000,000
Total Change to Revenues			<u>\$101,572,336</u>	

EXPENDITURES

Description	Account Number	Current Budget	Amendment	Revised Budget
Contractual Svcs	68010900.67800.0189	\$82,000	\$5,669	\$87,669
Principal	68010900.78200.0182	1,250,000	4,620,000	5,870,000
Interest	68010900.78400.0182	350,456	2,186	352,642
Paying Agent Fees	68010900.78600.0182	477,245	65,624	542,869
Other Financing Use	68010900.78800.0182	28,340	29,143,694	29,172,034
Contractual Svcs	68010900.67800.0190	1,100,000	100,000	1,200,000
Contractual Svcs	68010900.67800.0183	212,956	5,605	218,561
Transfer to 750	68010900.79800.0750	268,000	6,500,000	6,768,000
Interest	68010900.78400.0183	2,564,612	345,558	2,910,170
Other Financing Use	68010900.78800.0183	83,026	<u>60,784,000</u>	60,867,026
Total Change to Expenses			<u>\$101,572,336</u>	

Section 2. The resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED 24th day of September, 2012.

ATTEST:

Chairperson

Secretary