

November 9, 1998

7:00 PM

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 5) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.

- 1. Pledge of Allegiance - Cub Scout Pack #667**
 - 2. Roll Call**
 - 3. Consideration of Minutes of Preceding Meetings**
 - 4. Presentations**
 - A. Proclamation re Hyland Hills Park and Recreation District in recognition of winning Colorado Lottery Starburst Award
 - B. Environmental Excellence Award Presentation to Ian Williamson re dedication and commitment to improving the environment in the Westminster community
 - 5. Citizen Communication (5 minutes or Less in Length)**
 - 6. Report of City Officials**
 - A. City Manager's Report
 - 7. City Council Comments**
- The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.
- 8. Consent Agenda**
 - A. Retention of Special Legal Counsel of Perkins Coie re FAA Regulations and JeffCo Airport
 - B. Bids for 1999 Traffic Signal Maintenance to Rocky Mountain Signal for \$78,365
 - C. Retention of Special Legal Counsel of Opperman & Assoc for Hawn Trail and Open Space Condemnations
 - D. Big Dry Creek Sewer Interceptor Phase III Construction Award to ERS Constructors for \$1,289,780
 - E. CB No. 67 on second reading re Big Dry Creek Watershed Engineering Services appropriating \$48,600 from EPA Grant (Allen-Merkel)
 - F. CB No. 68 on second reading re Fees for Fire Department Training Tower Facility (Scott-Smith)
 - 9. Appointments and Resignations**

None
 - 10. Public Hearings and Other New Business**
 - A. TABLED - CB No 27 re Definitions for Hotels/Motels
 - B. Resolution No. 68 re Church Ranch Business Center, Phase III Development Project as an Economic Development Project located at 103rd Avenue and Church Ranch Boulevard
 - C. Councillor's Bill No. 69 re Village at Park Center Business Assistance Package at the northwest corner of 120th Avenue and Huron Street
 - D. Councillor's Bill No. 70 re Kohl's Department Store Business Assistance Agreement for the southwest corner of 120th Avenue and Sheridan Boulevard
 - E. Stratford Lakes Park Land Purchase - acquisition of 5.15 acres at 114th Avenue and Federal Boulevard for a park site
 - F. Set Date for Special City Council Meeting to be held November 16th re Capital Facilities Financing
 - G. Change Date of December 28th Council meeting to December 21st
 - 11. Old Business and Passage of Ordinances on Second Reading**
 - A. CB No. 58 on second reading re Standley Lake Marketplace Assistance Package to build the Standley Lake Marketplace at the northeast corner of Church Ranch Blvd & Wadsworth Pkwy (Merkel-Dixon)
 - 12. Citizen Presentations (5 Minutes + in Length) & Miscellaneous Business**
 - A. City Council
 - B. Request for Executive Session
 1. Real Estate Negotiations re Open Space/School Site
 - 13. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, NOVEMBER 9, 1998 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE:

Members of Cub Scout Pack #667 led Council, Staff and the audience in the Pledge of Allegiance.

ROLL CALL:

Present at roll call were Mayor Heil, Mayor Pro Tem Merkel and Councillors Allen, Atchison, Dixon, Scott and Smith. Also present were William Christopher, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk. Absent none.

CONSIDERATION OF MINUTES:

A motion was made by Allen and seconded by Merkel to accept the minutes of the meeting of October 26, 1998 with no additions or corrections. The motion carried unanimously.

A motion was made by Allen and seconded by Merkel to accept the minutes of the meeting of October 28, 1998 with the correction to reflect that Ron Hellbusch was Acting City Manager. Councillor Scott requested to abstain as he was not present at the meeting. The motion carried with 6 aye votes and Councillor Scott abstaining.

PRESENTATIONS:

Mayor Heil presented a proclamation to Hyland Hills Park and Recreation Board President Don VanArsdale and Executive Director Greg Mastriona proclaiming November 10 as Hyland Hills Park and Recreation District Day in the City in recognition of the District's winning the Colorado Lottery Starburst Award.

Mayor Heil and Environmental Analyst Rachel Harlow-Schalk presented the Environmental Excellence Award to Ian Williamson for his outstanding environmentally conscious efforts.

CITIZEN COMMUNICATION:

Dana Bowling, Chairperson of the Board of Seniors' Resource Center, Candy Wagonbaum, Public Information and Jane Yager, Director of Transportation, thanked Council for all the City's support in past years and advised Council of the transportation services available to seniors in Adams and Jefferson County.

CITY COUNCIL COMMENTS:

Mayor Heil, Mayor Pro Tem Merkel and Councillor Dixon talked about the open house conducted by Diana Smeltzer last weekend. Last year her home had been burned by arson and the insurance company refused to pay all of the costs to restore the home. The open house was held to thank all the people involved, including the Westminster Fire Department.

CONSENT AGENDA:

The following items were considered as part of the consent agenda: Retention of Special Legal Counsel - Authorize the City Manager to execute a fee agreement not to exceed \$10,000 with Ms. Bobbee Musgrave of the law firm of Perkins Coie for assistance in the area of FAA regulations and the Jefferson County Airport; Bids for 1999 Traffic Signal Maintenance - Authorize the City Manager to execute a contract for traffic signal maintenance during 1999 with the low bidder, Rocky Mountain Signal Inc., in the amount of \$78,365 and charge the expense to the appropriate 1999 Department of Community Development operating budget account; Contract for Hawn Trail and Open Space Condemnations - Authorize the City Manager to sign a contract on behalf of the City with the law firm of Opperman & Associates because

it is in the best interests of the City and charge the expense to the appropriate budget account in the Open Space Fund;

Big Dry Creek Sewer Interceptor - Authorize the City Manager to execute a contract with ERS Constructors in the amount of \$1,289,780 for the construction of the Big Dry Creek Sewer Interceptor-Phase III and charge the expense to the Utility Fund Capital Improvement Projects Account; Councillor's Bill No. 67 re EPA Grant Appropriation; and Councillor's Bill No. 68 re Fire Department Training Tower Fees.

The Mayor asked if there was any member of Council or anyone from the audience who would like to have any of the consent agenda items removed for discussion purposes or separate vote. There was no request.

A motion was made by Scott and seconded by Atchison to adopt the Consent Agenda items as presented. The motion carried unanimously.

COUNCILLOR'S BILL NO. 27 - HOTEL DEFINITIONS:

A motion was made by Atchison and seconded by Allen to remove from the Table and pass Councillor's Bill No. 27 on first reading adding definitions of Full Service, Mid-Tier, Extended Stay Hotel and Limited Service Hotel to Section 11-2-9 of the Westminster Municipal Code. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 68 - CHURCH RANCH PHASE III DEVELOPMENT PROJECT:

A motion was made by Merkel and seconded by Dixon to adopt Resolution No. 68 designating Church Ranch Business Center Phase III, located at 103rd Avenue and Church Ranch Boulevard, as an Economic Development Project for the purpose of receiving administrative approval of the Official Development Plan. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 69 - VILLAGE AT PARK CENTRE ASSISTANCE PACKAGE:

A motion was made by Merkel and seconded by Allen to pass Councillor's Bill No. 69 on first reading authorizing the City Manager to execute and implement a business assistance agreement with Village at Park Centre, LLC for the construction of the Village at Park Centre. Larry Gayeski of Village at Park Centre, LLC, was present to address Council. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 70 - KOHL'S DEPARTMENT STORE ASSISTANCE PACKAGE:

A motion was made by Dixon and seconded by Smith to pass Councillor's Bill No. 70 on first reading authorizing the City Manager to execute and implement a business assistance agreement with Kohl's Department Store for the construction of the store at the southwest corner of 120th Avenue and Sheridan Boulevard. John Lyda, representing Kohl's Department Store, was present to address Council.

Upon roll call vote, the motion carried unanimously.

STRATFORD LAKES PARK LAND PURCHASE:

A motion was made by Smith and seconded by Atchison to authorize the City Attorney to file a condemnation case on the 5.15 acres and obtain a rule and order conveying title to the City free of the applicable covenants; and authorize the City Manager to sign the necessary documents to purchase for parkland the adjacent 2.25 acres as a cost of \$55,000 for a total purchase price of \$124,000 from McStain Enterprises Inc. and charge the expense to the appropriate project account in the General Capital Improvement Fund. The motion carried unanimously.

SPECIAL CITY COUNCIL MEETING/CHANGE DATE FOR REGULAR CITY COUNCIL MEETING:

A motion was made by Allen and seconded by Merkel to set the date of Monday, November 16 at 7:00 P.M. for a Special City Council meeting to consider actions pertaining to Capital Facilities Financing and designating Home Depot as an Economic Development prospect; and to change the date of the last City Council meeting of December from December 28 to December 21. The motion carried unanimously.

ORDINANCE NO. 2641 - STANDLEY LAKE MARKETPLACE ASSISTANCE PACKAGE:

A motion was made by Atchison and seconded by Dixon to adopt Councillor's Bill No. 58 as amended on second reading authorizing the City Manager to execute and implement in substantially the same form, an amended Business Assistance Agreement with S/S Land Holdings, LLC, for the construction of the Standley Lake Marketplace. City Attorney Martin McCullough entered the Revised Agreement as Exhibit A. Upon roll call vote, the motion carried unanimously.

CITIZEN COMMUNICATION:

Elizabeth Line, 8671 W. 93rd Place addressed Council concerning the preservation of prairie dogs and their habitat.

MISCELLANEOUS BUSINESS:

Mayor Heil stated there would be an Executive Session to discuss real estate negotiations regarding Open Space/School Site and a potential annexation.

ADJOURNMENT:

The meeting was adjourned at 7:48 P.M.

ATTEST:

Mayor

City Clerk

Date: November 9, 1998
Subject: Proclamation re Hyland Hills Park and Recreation District Award
Prepared by: Michele Kelley, City Clerk

Introduction

City Council is requested to proclaim Tuesday, November 10th as Hyland Hills Park and Recreation Day in the City of Westminster to recognize their recent award from the Colorado Lottery.

Summary

The Hyland Hills Park and Recreation District recently won the top honor of the 1998 Colorado Lottery Starburst Award for projects costing more than \$200,000.

This award was presented for the Hyland Hills Gymnastics Center, which was created within the Community Senior Center building, located at 72nd Avenue and Irving Street. This building was previously used as a Safeway Store, and a portion of the building was being used for storage, which was then converted to the Gymnastics Center.

The Hyland Hills Park and Recreation District Board of Directors and Executive Director Greg Mastriona will be present to accept this proclamation.

Staff Recommendation

Proclaim Tuesday, October 10th as Hyland Hills Park and Recreation District Day in the City of Westminster to congratulate the District Board of Directors and Executive Director on receiving the Colorado Lottery Starburst Award.

Background Information

Major construction work for this facility included removing raised concrete platforms with drains, and the main roof support beam was moved 8 feet.

This project cost \$373,985 with 66% of the total project cost being funded through Lottery Conservation Trust Fund dollars.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

WHEREAS, Hyland Hills Park and Recreation District won the Denver Metropolitan Region Starburst Award of the Colorado Lottery in August, 1998; and

WHEREAS, Hyland Hills Park and Recreation District also won the Statewide Starburst Award of the Colorado Lottery at the Colorado Parks and Recreation Association conference in Grand Junction; and

WHEREAS, The Starburst Award is presented to recognize excellence in the use of Colorado Lottery proceeds for parks and recreation projects; and

WHEREAS, In 1997 the Hyland Hills Gymnastics program debuted in their new state of the art facility; which includes balance beams, vaulting equipment, uneven bars, and a 45 foot by 45 foot spring floor for floor exercises and tumbling/gymnastic performances; mirrored walls, high ceilings, climbing ropes and foam pits; and

WHEREAS, Since the new Gymnastic Center has opened community participating has doubled at this facility.

NOW, THEREFORE, The Westminster City Council does hereby proclaim Tuesday, November 10, 1998 as

HYLAND HILLS PARK AND RECREATION DISTRICT DAY

in the City of Westminster, in recognition of the Statewide winners of the 1998 Colorado Lottery Starburst Award for excellence in the use of Lottery Funds.

Signed this 9th day of November, 1998.

Nancy M. Heil, Mayor

Date: November 9, 1998

Subject: Environmental Excellence Award Presentation to Ian Williamson

Prepared by: Susan Nachtrieb, Environmental Compliance Coordinator

Introduction

Ian Williamson is to be recognized by City Council with the City of Westminster's "Environmental Excellence Award" to recognize his dedication and outstanding commitment to improving the environment in the Westminster community.

Summary

On August 1, Ian Williamson conducted a storm drain stenciling project to complete his Eagle Scout Project. Ian and his team stenciled a total of 107 storm drains on public property in the Sheridan Green/Ryan COG area. The purpose of Ian's project was to bring environmental awareness to the citizens of Westminster about storm drains and their direct connection to the region's watershed.

Staff Recommendation

Present Ian Williamson with the City's "Environmental Excellence Award" for his outstanding environmentally conscious efforts.

Background Information

On June 11, Ian Williamson contacted the Environmental Compliance Program Staff regarding the completion of his Eagle Scout Project. Ian's project goal was to develop an informative project that addressed an environmental problem in and around the city. Although the environmental problem could be wide-spread, Ian wanted to concentrate his efforts on the Sheridan Green/Ryan COG area. Ian decided his project would focus on educating citizens about the impacts on dumping oil and other hazardous chemicals into the street since the gutters and storm drains flow directly into local creeks and streams.

Ian planned to accomplish his project by recruiting the help of about 45 volunteers to stencil the words "DUMP NO WASTE - FLOWS TO STREAM" on the sidewalk next to 107 storm drains throughout the Sheridan Green/Ryan COG area. In addition, the volunteers would distribute flyers that list alternative sites where citizens could properly dispose of waste oil and chemicals.

Ian also obtained the support of many local sponsors from neighboring communities to help with his Westminster stenciling project including: KWAL Paint in Arvada; Share Colorado in Federal Heights; Einstein Brothers Bagels, King Soopers, Safeway, Albertsons, and Little Caesars Pizza in Broomfield.

Ian's Eagle Scout Project demonstrates that everyone benefits when people come together to achieve a common goal.

Ian's project helped the City increase the community's awareness of the pollution problem and provide citizens with suggestions and more information on how they can get involved in preventing the pollution problem from recurring in the future. Ian's volunteers all learned the many benefits of teamwork and were rewarded with the good feeling that they did something great for their community and for the wildlife living in and near the creeks and streams.

Our appreciation goes out to Ian Williamson and his volunteers for their help in keeping the City of Westminster a beautiful and healthy place to live, work, and play.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

Date: November 9, 1998
Subject: Retention of Special Legal Counsel
Prepared by: Martin R. McCullough, City Attorney

Introduction

City Council action is requested to approve the retention of Ms. Bobbee Musgrave with the law firm of Perkins Coie for additional legal services related to Federal Aviation Administration Agency Regulations, and the Jefferson County Airport.

Summary

- > City Council previously authorized the retention of Ms. Bobbee Musgrave with the law firm of Perkins Coie to assist the City in researching certain regulations promulgated by the Federal Aviation Agency ("FAA") in relation to the City's interest in the operation of the Jefferson County Airport.
- > Mr. John Andrews is currently involved in litigation with Centennial Airport concerning his desire to commence scheduled passenger service at Centennial Airport. Mr. Andrews' position was upheld by the FAA. The Airport Authority's position was upheld by the Colorado Supreme Court. The FAA decision is now on appeal, and is likely to end up in the U.S. Court of Appeals. Mr. Andrews just recently filed a formal complaint with the FAA which challenges the current moratorium by the Jefferson County Airport Authority on applications for scheduled passenger service.
- > Additional authorization is requested up to an amount not to exceed \$10,000 for Ms. Musgrave's attendance at future meetings and possibly public hearings regarding scheduled passenger service at Jefferson County Airport.

Staff Recommendation

Authorize the City Manager to execute a fee agreement not to exceed \$10,000 with Ms. Bobbee Musgrave of the law firm of Perkins Coie for assistance in the area of FAA regulations and the Jefferson County Airport.

Background Information

Ms. Bobbee Musgrave specializes in aviation law. Staff is recommending her retention to assist the City in developing information regarding certain FAA regulations so that the City may be better informed regarding the applicability of those regulations to the Jefferson County Airport.

Ms. Musgrave is proposing an hourly rate of \$165 an hour, which is well within the range of rates charged by similar specialists in the Denver metropolitan area.

The funds for this contract will be included as part of the City-wide end-of-year contingency funding request.

Respectfully submitted,

William M. Christopher, City Manager

Attachment: Contract for Legal Services

ADDENDUM NO. 1 TO THE
CONTRACT FOR LEGAL SERVICES BETWEEN
CITY OF WESTMINSTER AND PERKINS COIE LLP
FOR SERVICES RELATED TO THE JEFFERSON COUNTY AIRPORT
DATED MARCH 2, 1998

The City of Westminster ("the City") and Perkins Coie LLP (the "Firm") agree to amend the Contract described above as follows:

1. Paragraph 6. Payments pursuant to this Contract shall not exceed \$20,000 without further written authorization by the City.
2. All other terms and conditions of this Contract shall remain in effect.

This Addendum is dated _____.

CITY OF WESTMINSTER

By _____
Bill Christopher, City Manager

ATTEST:

City Clerk

PERKINS COIE LLP

By _____

Its _____

ATTEST:

Date: November 9, 1998
Subject: Bids for 1999 Traffic Signal Maintenance
Prepared by: Greg Olson, Transportation Systems Coordinator

Introduction

City Council action is requested to award the bid in the amount of \$78,365 for the 1999 Traffic Signal Maintenance Contract to Rocky Mountain Signal, Inc. Funds are available in the 1999 Department of Community Development Budget for this traffic signal maintenance expense.

Summary

The City utilizes the services of a private contractor to perform maintenance on the City's traffic signals. The current contract expires on December 31, 1998. Formal bids for the 1999 traffic signal maintenance were opened on October 15. The low bid by Rocky Mountain Signal, Inc. is eight percent lower than the next bidder.

Staff Recommendation

Authorize the City Manager to execute a contract for traffic signal maintenance during 1999 with the low bidder, Rocky Mountain Signal, Inc., in the amount of \$78,365 and charge the expense to the appropriate 1999 Department of Community Development operating budget account.

Background Information

The City utilizes the services of a traffic signal maintenance contractor to perform maintenance on traffic signals at 68 intersections and on eight pedestrian crossing signals (total of 76 installations). The current traffic signal maintenance contract, which was awarded to Rocky Mountain Signal, Inc. in November, 1997, expires on December 31, 1998.

The 1999 bid documents utilize a conservative, estimated annual amount of labor and equipment hours for performance of all traffic signal maintenance items. There are two general categories of work activities that provide the basis for the estimated hours of equipment and labor unit prices in the traffic signal maintenance contract, (1) annual preventive (routine) maintenance, and (2) additional traffic signal (occasional) maintenance.

Annual preventive maintenance: The first section of the contract addresses annual preventive maintenance at each of the traffic signal locations. The estimated hours of equipment and labor do not cover material costs associated with any repairs made as the result of the annual preventive maintenance inspection. These material costs are paid from the balance of the City's traffic signal maintenance account. The components of annual preventive maintenance include the following tasks:

1. Clean signal controller cabinets and components.
2. Check all field wiring for inadequacies (i.e., proper grounding etc.).
3. Check critical controller settings (i.e., amber time) with a stop watch to insure adequate operation.

4. Check for adequate power levels in the communications cable which links the signals in the computerized signal system.
5. Check and calibrate vehicle loop detectors to insure proper operation. (Vehicle loop detectors are wires embedded in the roadway which detect the presence of a vehicle which trigger a change in the traffic signal.)
6. Check signal heads, signal poles and associated hardware for damage and make repairs as necessary.
7. Check and record incoming voltage at all intersections to prevent excessive wear on the signal control equipment.
8. Inspect quarterly at each signal location.
9. "Troubleshoot" and maintain the computerized signal system components to insure proper operation.
10. Maintain emergency vehicle preemption equipment to insure proper operation. (Emergency vehicle preemption equipment consists of an electric component which preempts the traffic signal to allow a green signal indicator for fire equipment.)
11. Based on the activities listed above, provide the City with a prioritized list of items in need of repair.

Additional Traffic Signal Maintenance Items: The remaining section of the contract reflects estimated labor and equipment costs for additional traffic signal maintenance items. It should be noted that this section of the contract does not include material costs, with the exception of light bulbs, as it is difficult to estimate the type and amount of materials needed for emergency trouble calls and unscheduled maintenance items. Again, these material costs are paid for from the balance of the City's traffic signal maintenance account. Additional traffic signal maintenance items include emergency trouble calls, unscheduled maintenance items, the annual light bulb replacement program and an estimated cost for loop detector replacements. The contract also assures the City that the contractor will be available to perform emergency or other repairs as required. Therefore, it is necessary that the City have a firm available seven days a week, 24 hours a day to respond to any emergency signal work that may arise.

The bids are based on a conservative, estimated amount of labor and equipment hours so that each bidder would provide unit prices based upon the same assumption. Staff typically estimates on the low side the number of labor and equipment hours that will be necessary so that the contractor will not rely on a higher work load than may be experienced.

Request for bids for the 1999 program were opened on October 15, 1998. Bids were submitted by three contractors in the Denver metro area who currently provide traffic signal maintenance services.

The results of the bids are as follows:

| <u>Contractor</u> | <u>Bid Amount</u> |
|-----------------------------|--------------------------|
| Rocky Mountain Signal, Inc. | \$ 78,365 |
| W.L. Contractors, Inc. | \$ 85,110 |
| Sturgeon Electric, Inc. | \$101,995 |

Rocky Mountain Signal, Inc. is highly qualified to perform traffic signal maintenance and has adequate Staff and a proven track record to do the work.

Possible alternatives to awarding the contract to the lowest bidder for traffic signal maintenance are very limited. The City does not have the equipment and the labor force required to perform traffic signal maintenance.

Respectfully submitted,

William M. Christopher
City Manager

Date: November 9, 1998

Subject: Contract with Opperman & Associates for Hawn Trail and Open Space Condemnations

Prepared by: Vicky Bunsen, Assistant City Attorney

Introduction

City Council consideration is requested pertaining to the attached contract with the law firm of Opperman & Associates.

Summary

City Council previously approved the hiring of the law firm of Gorsuch Kirgis LLP, and then Holme Roberts & Owen LLP, to represent the City in the condemnation of land from R. Dean Hawn Interests for public purposes including trails and open space. Hawn alleged that each firm had a conflict of interest that prevented its representation of the City. In order to avoid any further delay in pursuing these cases, Staff recommends that Opperman & Associates be hired to represent the City in these cases.

Staff Recommendation

Authorize the City Manager to sign a contract on behalf of the City with the law firm of Opperman & Associates because it is in the best interests of the City and charge the expense to the appropriate budget account in the Open Space Fund.

Background Information

City Council previously authorized the acquisition, by condemnation if necessary, of certain properties for several public purposes including open space and trail development. The properties are owned by R. Dean Hawn Interests, represented by Bill Kearney of Dallas, Texas. Negotiations were initiated by City Staff, but no agreement on any issue could be reached with Mr. Kearney.

Because of the heavy work load anticipated in litigating these cases, the decision was made to ask City Council to hire special condemnation counsel to handle them. (The City Attorney's Office is involved in a number of cases at this time, including two condemnations involving pads at the Plaza, the Hawn-Hewitt utility acquisition in Adams County, an open space and trail condemnation, and the Semper, Federal Investments and Public Service overcharge cases. The City Attorney's Office is also co-counsel on a number of CIRSA cases. In addition, the Office is involved in major projects such as the City Center reinvestment effort, the Promenade and a number of capital improvement projects.)

Staff recommended two law firms with substantial experience that appeared to be the most economical choices for the City. Hawn alleged conflicts of interest against each firm in turn, and each firm felt compelled to withdraw from representing the City.

Therefore, Staff recommends that Marlin Opperman be hired to handle these cases. Mr. Opperman has represented the City in the past in cases involving Hawn. He is one of the top eminent domain experts in the state, has extensive training in appraisal methodology and is familiar with the City and the Hawn properties. Among many other clients, he represents a number of cities and the Denver Urban Renewal Authority.

He proposes the following fee schedule:

| | |
|------------------|------------|
| Marlin Opperman | \$185/hour |
| William Schell | \$155/hour |
| Douglas Widlund | \$110/hour |
| Legal Assistants | \$30/hour |

These rates are within the range of \$150 to \$185 per hour that have been proposed by law firms when the City has requested proposals over the past three years.

A specific cap on fees has not been included in the proposed contract because the Hawn cases are expected to be somewhat time-consuming, and it is difficult to anticipate how much attorney time will be needed through trial.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

Date: November 9, 1998
Subject: Big Dry Creek Sewer Interceptor-Phase III Construction Award
Prepared by: Diane M. Phillips, Public Works and Utilities Capital Improvement Projects Coordinator

Introduction

City Council action is requested to authorize the City Manager to sign a contract with ERS Constructors in the amount of \$1,289,780 for the construction of the Big Dry Creek Sewer Interceptor-Phase III. Funds for construction are available in the Utility Fund Capital Improvement Projects Account.

Summary

The Big Dry Creek Sewer Interceptor-Phase III will be constructed from 112th Avenue and Sheridan Boulevard, running north and east along the Big Dry Creek to approximately 120th Avenue and Federal Boulevard. The area served by the Big Dry Creek Water Reclamation Facility was evaluated for existing and future wastewater flow conditions, and it was determined that additional 10 MGD capacity would be required to meet further demands.

The following bids were received and opened on October 27:

| | |
|---------------------------|-------------|
| ERS Constructors | \$1,289,780 |
| Tierdael Construction Co. | \$1,319,978 |
| Trainor Construction Co. | \$1,369,175 |
| Grimm Construction Co. | \$1,449,665 |
| Wycon Construction Co. | \$1,513,698 |
| T-Lowell Construction | \$1,500,000 |
| RMCI, Inc. | \$1,586,290 |
| BT Construction | \$1,704,125 |
| Tale Construction Co. | \$1,844,000 |

ERS Constructors has submitted the low bid for construction of the Interceptor at \$1,289,780.

Staff Recommendation

Authorize the City Manager to execute a contract with ERS Constructors in the amount of \$1,289,780 for the construction of the Big Dry Creek Sewer Interceptor-Phase III. The expense for this construction should be charged to the Utility Fund Capital Improvement Projects Account.

Background Information

As development continues in the area served by the Big Dry Creek Water Reclamation Facility, flow in the existing Interceptor has increased to near capacity. Study of the existing flow and evaluation of the future flow that will be contributed by development shows that the existing Interceptor is flowing near capacity. A 1987 Pre-design Report identified that there would be a need for installation of an additional phase of the Interceptor in 1998 or 1999 and Staff has budgeted and planned for this Phase accordingly. The work will consist of installing approximately 9,800 feet of 30-inch diameter sewer line. Construction will start in November and be completed in the Spring of 1999.

The project could be delayed as an alternative to the current construction schedule; however, this delay would interfere with the widening and construction of 112th Avenue and would cause capacity problems for the new development. In addition, future construction costs will likely increase, making future improvements more expensive.

The proposed construction will provide for future sanitary sewer service to the Big Dry Creek Basin area through build-out under current comprehensive plan use scenarios.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Location Map

Date: November 9, 1998

Subject: Councillor's Bill No. 27 re Hotel Definitions

Prepared by: David Falconieri, Planner III
Daniel Osborn, Planning Intern

Introduction

City Council action is requested to remove from the Table and pass the attached Councillor's Bill on first reading to add Full Service Hotel, Mid-Tier Hotel, Extended Stay Hotel, and Limited Service Hotel definitions to the Westminster Municipal Code Section 11-2-9, Subsection (B), (C), (D) and (E).

Summary

The City of Westminster Municipal Code does not provide a definition of a hotel. Staff's intent is to present a clear, succinct definition to describe the various types of hotels. The City of Westminster has seen an increase in interest from developers to build a variety of different types of hotels and the Westminster Municipal Code (WMC) does not contain definitions to use during the Preliminary Development Plan (PDP) and Official Development Plan (ODP) processes to define these various types of hotels.

Staff had prepared and presented an early version of these definitions to City Council for adoption. During the City Council study session on July 13, 1998, Council members had several concerns with elements of the proposed definitions. In response, Staff contacted the Urban Land Institute (representing industry), the American Planning Association (representing professional planners), local municipal governments, and representatives of several hotels. Based on input received from those resources, revised definitions were drafted (see attached) which represent a synthesis of ideas from both the public and private sectors, creating a standard inline with current industry practices and City developmental goals. These definitions will serve as the standard language for hotels on PDP's and ODP's in the future.

These definitions were reviewed by City Council in their Study Session held October 19, 1998. Based on Council comments, a clause requiring housekeeping services was added to the Extended Stay definition and the amenities required were clarified for each type of hotel.

Staff Recommendation

Remove from the Table and pass Councillor's Bill No. 27 on first reading adding definitions of Full Service, Mid-Tier, Extended Stay Hotel, and Limited Service Hotel to Section 11-2-9 of the Westminster Municipal Code.

Background Information

There has recently been a significant interest in the development of various types of hotels within the City of Westminster. However, hotel use is not defined in the Westminster Municipal Code. This has caused a lack of certainty as to what type of facility may be constructed. Adoption of these definitions will enable Staff to specifically define on the PDP and ODP the type of facility that may be constructed.

Hotel Definitions

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In order to encourage quality development, eliminate confusion and provide a consistent use of terminology, the proposed definitions will create standards in several areas:

1. Staff has defined four categories of hotels that will permit the City to specify the level of services desired for each hotel development.
2. Ingress and egress points into the building have been specified for each hotel definition. This requirement will help further define the level of architecture and aesthetic quality required for each hotel type.
3. Staff has defined the type and number of amenities required. This has been done to delineate between hotel types and create a consistent level of service within same types. Staff has included a clause allowing hotels to co-op recreational amenities with local fitness clubs when appropriate.
4. In order to maintain appropriate land uses in the future, the code prohibits the conversion of hotels to apartments or condominiums.
5. Staff has included language that prohibits guests from using any hotel as their primary permanent residence.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. _____

SERIES OF 1998 INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE ADDING DEFINITIONS FOR FULL SERVICE HOTEL, EXTENDED STAY HOTEL, COMMERCIAL HOTEL, LIMITED SERVICE HOTEL TO THE WESTMINSTER MUNICIPAL CODE.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title II, Chapter 2, Section 9 of the Westminster Municipal Code is hereby amended by the following additions:

11-2-9

(B) Full Service Hotel: Any establishment that provides temporary lodging for compensation, generally providing between 100-600 guest rooms and may include suites providing larger living space separate from the bedroom. Hotels in this category shall have large internal lobbies sufficient to handle check-in and checkout functions associated with conference traffic. This type of facility shall provide conference, meeting or banquet rooms. Access to rooms shall be through internal corridors. The facility may provide retail space for newsstands, gift shops, and business service centers. Food and beverage outlets, including formal restaurants offering various styles of food across a range of prices will be available. The establishment shall provide daily housekeeping, room, maid, linen, telephone and other similar services. Hotels of this type shall provide a swimming pool and a fully equipped fitness center and may provide whirlpools, sauna and steam rooms. A hotel of any type shall at all times operate only as a hotel and in no event shall it be converted to a multiple unit dwelling or any other form of permanent residence. A guest shall at all times be prohibited from using a hotel room or suite as a primary permanent residence.

(C) Extended Stay Hotel: Any establishment that provides temporary lodging for compensation, providing larger rooms (greater than 400 square feet) with a living space separate from the bedroom. Extended Stay Hotels shall provide 75 percent of all suites with Pullman kitchens (sink, built-in cook top or stove, microwave oven and refrigerator). Ninety percent of all rooms within this category shall be available to guests staying 90 days or less. Hotels in this category shall have a main office providing check-in, checkout and customer service functions at all hours. Housekeeping/maid service shall be provided. Ingress and egress to units shall be either internal or through a secured internal courtyard. This type of facility shall provide hospitality lounge and/or meeting rooms and may provide limited retail space for newsstands, gift shops, and business service center. Extended Stay Hotels are encouraged to provide a formal restaurant or cafe and a fully equipped fitness center for use by guests, on-site or through co-op, are encouraged. A hotel of any type shall at all times operate only as a hotel and in no event shall it be converted to a multiple unit dwelling or any other form of permanent residence. A guest shall at all times be prohibited from using a hotel room or suite as a primary permanent residence.

(D) Mid Tier Hotel: Any establishment that provides temporary lodging for compensation, generally providing between 80-500 guest rooms and may include suites. Ingress and egress shall be through an internal lobby with an office providing check-in, checkout and related services at all hours. Access to rooms shall be through an internal corridor. This type of facility may provide limited retail space for gift shops or other similar uses. A formal restaurant or cafe is encouraged. Separate meeting rooms should be provided for conferences or banquets. Mid Tier hotels shall provide, on-site, a swimming pool and are encouraged to provide whirlpool, sauna, steam room and a fully equipped fitness center. A hotel of any type shall at all times operate only as a hotel and in no event shall it be converted to a multiple unit dwelling or any other form of permanent residence. A guest shall at all times be prohibited from using a hotel room or suite as a primary permanent residence.

(E) Limited Service Hotel: Any establishment that provides temporary lodging, for compensation, generally providing between 50-125 rooms at rates below the prevailing rates of full-service facilities in the same area. Hotels in this category shall have a main office providing check-in, checkout and customer service functions at all hours. Ingress and egress to rooms can be either internal or external (internal will be encouraged). Hotels in this category are encouraged to provide on-site or through co-op, a fully equipped fitness center for use by guests. The establishment shall provide daily housekeeping, room, maid, linen, telephone and other similar services. A hotel of any type shall at all times operate only as a hotel and in no event shall it be converted to a multiple unit dwelling or any other form of permanent residence. A guest shall at all times be prohibited from using a hotel room or suite as a primary permanent residence.

Section 2. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

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 9th day of November, 1998.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of , 1998.

ATTEST:

Mayor

City Clerk

Date: November 9, 1998

Subject: Resolution No. re Church Ranch Phase III Development Project

Prepared by: Becky Johnson, Economic Development Specialist
Max Ruppeck, Planner III

Introduction

City Council action is requested to designate Church Ranch Business Center Phase III as an Economic Development Project, for the purpose of allowing the development to receive Administrative Review per City Code subsection 11-5-8(B). The project meets the City's economic development goals and qualifies for economic assistance.

Summary

The Church Ranch Business Center, Phase III, site comprises 17.38 acres, located at the southwest corner of 103rd Avenue and Church Ranch Boulevard. It is an important economic development project for the City of Westminster since the project will provide office space for primary job creation.

The City Code permits administrative approval of an Official Development Plan (ODP), for a non-residential project under 20 acres in size, by the City Manager, if City Council determines that the project furthers the economic development goals of the City, or if it qualifies for economic development assistance. The proposed use development is zoned for the use intended; and the proposed use conforms to the City's Comprehensive Land Use Plan. Staff also believes that Church Ranch Business Center Phase III meets the criteria under the Westminster City Code to be considered an economic development project given its potential for significant primary job creation. Allowing administrative approval is important to the financing of the project and to keep it on a time sensitive construction schedule.

Staff Recommendation

Adopt Resolution No. designating Church Ranch Business Center Phase III, to be located at 103rd Avenue and Church Ranch Boulevard as an Economic Development Project for the purpose of receiving administrative approval of the Official Development Plan.

Background Information

Church Ranch Business Center, Phase III is a joint venture between Charlie McKay and Gregg Bradbury, with Home Place Land & Cattle Company, Inc. and the Etkin Johnson group. A limited partnership entitled Church Ranch Business Center Phase III, LLC, has been formed to develop, build, and own four buildings at this location.

Church Ranch Business Center is comprised of four buildings, totaling approximately 207,500 square feet. Three of the four buildings are designed primarily for office use, the fourth is designed for office/warehouse use. A business assistance package is in process for Church Ranch Business Center Phase III, LLC.

Staff believes the long-term benefits to the City from Church Ranch Business Center Phase III are significant. It will serve as a strong employment center for the future. Church Ranch Business Center Phase III has completed their official development plan and is ready to begin construction before year end 1998.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 1998

DECLARING CHURCH RANCH BUSINESS CENTER PHASE III AS AN ECONOMIC DEVELOPMENT PROJECT FOR THE CITY OF WESTMINSTER

WHEREAS, the City is engaged in the development of Church Ranch Business Center Phase III, a four building office/showroom development, totaling approximately 207,500 square feet

WHEREAS, the project will result in providing additional employment space for primary job creation, and create permit fees, building use tax, and property tax to the City of Westminster, and

WHEREAS, Church Ranch Business Center Phase III will be composed of a 17.38 acre site, designated for business park development, and

WHEREAS, Section 11-5-8(B) of the Westminster Municipal Code allows that an Official Development Plan (ODP) for a non-residential project under 20 acres in size may be administratively approved by the City Manager if it is determined that the project furthers the City's economic development goals, or if it qualifies for economic development assistance.

NOW, THEREFORE, be it resolved that the Westminster City Council resolves that Church Ranch Business Center Phase III be designated as an economic development project, enabling the City Manager to administratively approve the Official Development Plan for the project.

Passed and adopted this 9th day of November, 1998.

ATTEST:

Mayor

City Clerk

Date: November 9, 1998

Subject: Councillor's Bill No. Village at Park Centre

Prepared by: Susan Grafton, Economic Development Manager

Introduction

City Council action is requested to pass the attached Councillor's Bill on first reading approving an assistance package totaling \$872,400 for Village at Park Centre, LLC to build the Village at Park Centre at the northwest corner of 120th Avenue and Huron Street.

Summary

The Official Development Plan (ODP) for this project is nearing completion. The over 165,000 square foot center will contain a hotel, restaurants, and a retail plaza. To facilitate this project, an \$872,400 assistance package is being proposed, which will be funded by fee and recovery waivers, as well as new tax dollars generated by the new retail center.

Staff Recommendation

Pass Councillor's Bill No. on first reading authorizing the City Manager to execute and implement in substantially the same form a business assistance agreement with Village at Park Center, LLC for the construction of the Village at Park Centre.

Background Information

Staff began working with Larry Gayeski, of the Village at Park Centre, LLC, in March 1997 concerning the potential development of a retail and office project in Park Centre. As planned, the project will contain about 97,000 square feet of retail, restaurants, financial institutions, and a hotel, as well as approximately 150,000 square feet of office to be built in a future phase on the north 13 acres of the site.

Staff has been working with Mr. Gayeski to achieve a retail project that will be unique, with above average architecture. Upgraded entry signs, light fixtures, and increased brick have been added to the project.

Total assistance recommended for this project is \$872,400. Based on a 165,547 square foot retail center and hotel, that equates to \$5.27 per square foot, similar to the City Center Marketplace project. This assistance will help defray the cost of such items as the relocation of electrical lines, and architectural and landscaping upgrades.

It is expected that the Village at Park Centre will generate approximately \$819,650 in Accommodations Tax and Sales Tax revenue per year. This is based on average sales of \$205 per square foot for the 60,000 square foot retail center, plus Accommodations Tax from the 104-room hotel, and Sales Tax from two restaurants. The projected five year total for accommodations tax and retail sales tax is expected to be \$4,098,250. Permit fees are estimated to be \$93,000, while construction use tax should total \$288,270.

Gayeski & Associates has worked diligently to develop an attractive shopping center to serve both the business and residential communities. The finished project will have the design features and landscaping desired for this important entry point into the City. Staff recommends that assistance be provided to the project as follows:

Building Permit Fee Rebate \$46,500

50% of the fees applicable to building and other related permits will be rebated.
(\$93,000 estimate permit fees X 50% = \$46,500)

Building Use Tax Rebate \$144,000

50% of the Use Tax assessed on \$9.6 million in construction will be rebated.
(\$288,000 X 50% = \$144,000)

Waterline Recovery Fee Reduction \$12,000

The total waterline recovery due is \$15,994.

The recovery amount is being reduced by \$12,000, to \$3,994. The project will be assessing a different waterline.

Sales and Accommodations Tax Rebate \$669,900

50% of the Sales and Accommodations Tax collected from the retail, restaurants, and hotel at the Village at Park Centre will be rebated. (Based on the City's 3.0% sales tax, and excluding the .25% open space tax, and the total 7% City accommodations tax.)

Total Assistance **\$872,400**

It is further recommended that the Sales and Accommodation Tax rebate not be initiated until the core 60,000 square foot retail plaza is built.

It is estimated that this assistance will be paid within 12 months of full occupancy of the shopping center which is within the City's guideline on retail development. Also, no capital outlay by the City is necessary to fund this assistance package, which will be funded by rebates of permit fees, waivers of a recovery, as well as a tax rebate of new sales and accommodations tax dollars generated by this project.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

ASSISTANCE AGREEMENT
FOR THE CONSTRUCTION OF THE VILLAGE AT PARK CENTRE
IN THE CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this _____ day of _____, 1998, between the CITY OF WESTMINSTER (the "City"), and VILLAGE AT PARK CENTRE, LLC, a Colorado Limited Liability Company (VPC).

WHEREAS, the City wishes to provide certain assistance to Village at Park Centre, LLC, to aid in the construction of the Village at Park Centre ("the project") within the City ; and

WHEREAS, the proposed center is projected to generate over \$819,000 annually in general sales and accommodations tax; and

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

In consideration of the mutual promises set forth below, the City and Village at Park Centre, LLC, agree as follows:

1. The City shall rebate to VPC, within 60 days following the month of receipt, the payment of 50% of the building and related permit fees, not including tap fees, required under W.M.C. Section 11-9-3(E), which will result from the construction of the approximately 165,000 square foot of hotel, restaurants, and retail space to be completed no later than July 1, 2001. The value of the permit fee rebate is estimated to be \$46,500.

2. The City shall rebate to VPC, within 60 days following the month of receipt, the payment of 50% of the Building Use Taxes on the construction materials, which are to be used in the construction of the approximately 165,000 square foot Village at Park Centre, required under W.M.C. sections 4-2-9 and 4-2-3. The value of the rebate is estimated to be \$144,000.

3. The City shall waive \$12,000 of the waterline recoveries due by Village at Park Centre, LLC, per Ordinance 88-1.

4. Sales and Accommodations Tax Rebate.

- a. The City shall rebate to Village at Park Centre, LLC, an amount not to exceed \$872,400 less the amount actually waived or rebated per paragraphs 1, 2, and 3 above (the "Sales and Accommodations Tax Rebate"). The Sales and Accommodations Tax Rebate is estimated to be \$669,900. Such Sales and Accommodations Tax rebate shall be payable exclusively from sales and accommodations tax revenues collected and received by the City from the Village at Park Centre development and attributable to the imposition of the City's 7.0% accommodations tax and 3.0% general sales tax (excludes the City's .25% Open Space Tax).
- b. The Sales and Accommodation Tax Rebate shall be paid by the City in quarterly installments from accommodations and sales tax revenue actually collected and received by the City from the hotel and retailers within the project, in installment amounts to be computed as 50% of the accommodations and general sales tax revenue collected until such time as the maximum amount established in paragraph 4a has been paid.
- c. Such quarterly installments shall continue and be paid until such time as the Sales and Accommodations Tax Rebate amount has been paid. The final installment will be adjusted as may be necessary to limit the total waivers, provided for in paragraphs 1, 2, and 3, plus the Sales and Accommodations Tax Rebate, to no more than \$872,400.
- d. The payment of each quarterly installment shall be made within 20 days following the close of each calendar quarter.

5. This Assistance Agreement shall terminate and become void and of no force or effect upon the City if Village at Park Centre, LLC, has not completed construction of the approximately 60,000 square feet of core retail by July 1, 2001, as identified in the Official Development Plan for the project.

6. In such event, Village at Park Centre, LLC, shall pay to the City the total amount of fees and taxes which were due and payable by Village at Park Centre, LLC, to the City but were waived or rebated by the City, as well as reimburse the City for any other funds provided to Village at Park Centre, LLC, pursuant to this Agreement.

7. This instrument shall constitute the entire business assistance agreement between the City and Village at Park Centre, LLC, and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

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

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

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

VILLAGE AT PARK CENTRE, LLC

CITY OF WESTMINSTER

By _____
Larry Gayeski
Manager
1333 W 120th Avenue, Suite 313
Westminster, CO 80234

William Christopher
City Manager
4800 West 92nd Avenue
Westminster, CO 80030

ATTEST:

ATTEST:

Title

Michele Kelley
City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 1998

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT WITH VILLAGE AT PARK CENTRE, LLC, A COLORADO LIMITED LIABILITY COMPANY.

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

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating incentives for high quality development to locate in the City; and

WHEREAS, the Village at Park Centre, LLC, has indicated an interest in building a new development in the City of Westminster known as the Village at Park Centre; and

WHEREAS, the Village at Park Centre, LLC, will build an approximately 165,000 square foot development with an estimated project cost of \$9.6 million; and

WHEREAS, a proposed Assistance Agreement between the City and the Village at Park Centre, LLC, is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No.53, Series of 1988, the members of the City Council of the City of Westminster direct and authorize the following actions by the City Staff:

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of November, 1998.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of , 1998.

ATTEST:

Mayor

City Clerk

Date: November 9, 1998

Subject: Councillor's Bill No. re Kohl's Department Store Assistance Package

Prepared by: Becky Johnson, Economic Development Specialist

Introduction

City Council action is requested to pass the attached Councillor's Bill on first reading approving an assistance package totaling \$348,000 for Kohl's Department Store to build a store at the southwest corner of 120th Avenue and Sheridan Boulevard.

Summary

The Official Development Plan (ODP) for this project is nearing completion. The Kohl's Department Store site comprises 9.31 acres.

Kohl's plans on building a 86,000 square foot facility, at an estimated cost of \$4.1 million. As proposed, this assistance package will provide \$40,550 of building permit fee and construction use tax waivers and \$307,450 of Sales Tax rebates. The total package of \$348,000 is only 12% of the \$2,966,000 sales tax, fee waivers, building use tax, and property tax revenue projected from this project during the first 5 years of operation.

Staff Recommendation

Pass Councillor's Bill No. on first reading authorizing the City Manager to execute and implement in substantially the same form, a Business Assistance Agreement with Kohl's Department Store for the construction of the store at the southwest corner of 120th Avenue and Sheridan Boulevard.

Background Information

Staff began working with representatives of Kohl's in April 1998 concerning the construction of an 86,000 square foot stand alone retail store on the southwest corner of 120th Avenue and Sheridan Boulevard. Building and site development are estimated to cost approximately \$5 million.

Kohl's is a 36 year old company based in Wisconsin. It is a family owned, value-oriented department store which offers moderately priced national brand apparel, shoes, accessories, and home products. In addition to the Westminster location, Kohl's plans on opening a total of 5 stores in the Denver metro area in April 1999.

Kohl's Department Store is expected to generate approximately \$570,000 in sales tax revenue per year. This is based on average sales of \$226/square foot for the approximately 86,000 square feet retail store. The projected five year total for retail sales tax, building permit fees, property tax, and building use tax is expected to be \$2,966,000.

Recommended Assistance

City staff recommends an assistance package in the amount of \$348,000 for this project. This assistance will help defray the costs of such things as improvements to the 120th Avenue frontage road, storm drainage improvements, a bridge connection across a drainage enhancement to 120th Avenue, a City of Westminster entry sign, brick and architectural enhancements, and the impact of delays caused by Broomfield. Staff recommends that the assistance be provided to this project as follows:

Building Permit Fee Waiver \$11,300

50% of the fees applicable to building and other related permits will be waived excluding tap fees. (\$22,600 estimated fees x 50% = \$11,300)

Building Use Tax Waiver \$29,250

50% of the Building Use Tax assessed on construction will be waived (\$58,500 estimated use tax x 50% = \$29,250)

Sales Tax Rebate \$307,450

50% of the general Sales Tax collected and received by the City from Kohl's Department Store, shall be rebated up to a maximum of \$307,450 (based on 3.25% Sales Tax, less the .25% of Open Space Tax)

Total Assistance **\$348,000**

It is estimated that this assistance will be paid within 12 months of the opening of the department store. This meets the guideline on retail development. Also, no capital outlay by the City is necessary to fund this assistance package, which will be funded by waivers of permit fees, as well as new sales tax dollars generated by the store.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

ASSISTANCE AGREEMENT
FOR THE CONSTRUCTION OF KOHL'S DEPARTMENT STORE
IN THE CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this _____ day of _____, 1998, between the CITY OF WESTMINSTER (the "City"), and KOHL'S DEPARTMENT STORE,

WHEREAS, the City wishes to provide certain assistance to Kohl's Department Store, to aid in the construction of the retail store ("the project") within the City ; and

WHEREAS, the proposed center is projected to generate over \$570,000 annually in sales tax revenues; and

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

In consideration of the mutual promises set forth below, the City and Kohl's Department Store, agree as follows:

1. The City shall waive the payment of 50% of the building and related permit fees, not including tap fees, required under W.M.C. Section 11-9-3(E), which will result from the construction of the approximately 86,000 square foot retail store to be completed no later than December 31, 1999. The value of the permit fee waiver is estimated to be \$11,300.

2. The City shall waive the payment of 50% of the Building Use Taxes on the construction materials, which are to be used in the construction of the approximately 86,000 square foot Kohl's Department Store, required under W.M.C. sections 4-2-9 and 4-2-3. The value of the waiver is estimated to be \$29,250.

3. Sales Tax Rebate.

a. The City shall rebate to Kohl's Department Store, an amount equal to \$348,000, less the amount actually waived per paragraphs 1 and 2 above and estimated to be \$307,450 (the "Sales Tax Rebate"). Such Sales Tax Rebate shall be payable exclusively from sales tax revenues collected and received by the City from Kohl's Department Store and attributable to the imposition of the City's 3.0% general sales tax (excludes the City's .25% Open Space Tax).

b. The Sales Tax Rebate shall be paid by the City in quarterly installments from sales tax revenue actually collected and received by the City from Kohl's Department Store, in installment amounts to be computed as follows: 50% of the general sales tax revenue collected, not to exceed the amount as defined by Paragraph 3a.

c. Such quarterly installments shall continue and be paid until such time as the maximum Sales Tax Rebate amount has been paid. The final installment will be adjusted as may be necessary to limit the total fee and use tax waivers provided for in paragraphs 1,2,3 plus the sales tax rebate to no more than \$348,000.

d. The payment of each quarterly installment shall be made within 20 days following the close of each calander quarter.

4. This Assistance Agreement shall terminate and become void and of no force or effect upon the City if Kohl's Department Store has not completed construction by December 31, 1999 at the southwest corner of 120th Avenue and Sheridan Boulevard.

5. In the event Kohl's Department Store ceases business operations within the City within three (3) years after the new operations commence, then in such event Kohl's Department Store shall pay to the City the total amount of fees and taxes which were due and payable by Kohl's to the City but were waived by the City, as well as reimburse the City for all funds provided to Kohl's Department Store pursuant to this Agreement.

6. This instrument shall constitute the entire business assistance agreement between the City and Kohl's Department Store and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

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

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

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

KOHL'S DEPARTMENT STORE

CITY OF WESTMINSTER

By _____
Mike Distel
Kohl's Department Store

William Christopher
City Manager
4800 West 92nd Avenue
Westminster, CO 80030

ATTEST:

ATTEST:

Title

Michele Kelley
City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 1998

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT WITH KOHL'S DEPARTMENT STORE:

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

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating incentives for high quality development to locate in the City; and

WHEREAS, Kohl's Department Store has indicated an interest in building a new retail store in the City of Westminster; and

WHEREAS, Kohl's Department Store will build an approximately 86,000 square foot retail store with an estimated project cost of \$5 million; and

WHEREAS, a proposed Assistance Agreement between the City and Kohl's Department Store is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No.53, Series of 1988, the members of the City Council of the City of Westminster direct and authorize the following actions by the City Staff:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with Kohl's Department Store, in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of November, 1998.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of November, 1998.

ATTEST:

Mayor

City Clerk

Date: November 9, 1998

Subject: Stratford Lakes Park Land Purchase

Prepared by: Richard Dahl, Park Services Manager
Janice Loudon, Assistant City Attorney

Introduction

City Council action is requested to authorize the City Attorney to condemn property of approximately 5.15 acres in the Stratford Lakes subdivision from McStain Enterprises, Inc. McStain is consenting to the condemnation. This land will provide for a future park on the south side of 114th Avenue at Federal Boulevard across the street from the Stratford Lake tennis court and pool complex. Funds are available in 1998 Parks, Recreation and Libraries Capital Improvement Program (CIP) for this acquisition.

Summary

City Council previously approved the acquisition of an additional 2.25 acres of land in Stratford Lakes in combination with the 2.9 acres being dedicated by McStain (5.15 total acres) to provide an adequately sized park site for this location. The property is at the corner of 114th Avenue and Federal Boulevard (attachment). Initially, McStain and the City agreed to enter into a Purchase and Sale Agreement. However, because the proposed park property is subject to recorded restrictive covenants, McStain would need to obtain the signatures of all of the homeowners before it could sell the property free of the covenants. If the covenants are not released, the homeowners association would have the power to levy assessments and reserve the right to approve structures in the City park. As an alternative, McStain suggested that the City bring a "friendly condemnation" action. This would require only the signature of a board member of the homeowners association. The City and McStain have already obtained the consent of a board member for the condemnation.

Staff and the landowners have negotiated a proposed sales price of \$55,000 per acre for the additional 2.25 acres, for a total price of \$124,000. This is a reasonable price for this type of land, at this location, especially since McStain is obligated to make certain improvements to the site involving landscaping along Federal Boulevard and related drainage improvements. The remaining 2.9 acres is subject to a dedication requirement and is being included in the condemnation in order to extinguish the restrictive covenants.

Alternatives to the Proposed Action:

1. Do not acquire the proposed property. McStain is still obligated to dedicate the 2.9 acres for development of College Hill Filing No. 8, but Staff has determined this acreage to be too small to program the needs of the community at this location.
2. Delay purchase until some future date. In this case, it is likely that this property would be lost to development. Land values are likely to continue to climb and funding is now available but may not be in the future.
3. Look for other property instead of this land. A park might be acquired and developed at another location, though this property meets the requirement for developable land, is level, has excellent visibility and access, and is offered for sale by the developer at a reasonable cost.

Staff Recommendation

Authorize the City Attorney to file a condemnation case on the 5.15 acres and obtain a rule and order conveying title to the City free of the applicable covenants; and authorize the City Manager to sign the necessary documents to purchase for parkland the adjacent 2.25 acres as a cost of \$55,000 for a total purchase price of \$124,000 from McStain Enterprises Inc. and charge the expense to the appropriate project account in the General Capital Improvement Fund.

Background Information

The portion of this land which is proposed for park use is level, easily developed, has excellent visibility and access from 114th Avenue, is accessible by trails, and the proposed park's location is near the Big Dry Creek Open Space corridor. In addition the Parks, Recreation and Libraries Master Plan calls for a park in this area.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

Date: November 9, 1998
Subject: Set Date for Special City Council Meeting
Prepared by: Michele Kelley, City Clerk

Introduction

City Council is requested to set the date of Monday, November 16th for a Special City Council Meeting.

Summary

A Special City Council meeting will be required for Monday, November 16th for City Council to consider the actions pertaining to the Capital Facilities Financing package and designating Home Depot as an Economic Development prospect.

Staff Recommendation

City Council set the date of Monday, November 16th at 7:00 P.M. for a Special City Council meeting to consider actions pertaining to Capital Facilities Financing and designating Home Depot as an Economic Development prospect.

Respectfully submitted,

William M. Christopher
City Manager

Date: November 9, 1998
Subject: Change Date for Regular City Council Meeting
Prepared by: Michele Kelley, City Clerk

Introduction

City Council is requested to change the date of the regular City Council meeting scheduled for Monday, December 28th.

Summary

The last regular meeting of December would normally be held on Monday, December 28th. Since this is right after the Christmas Holiday, it is suggested that the date be changed to Monday, December 21st.

Staff Recommendation

Change the date of the last City Council Meeting of December from December 28th to December 21st.

Respectfully submitted,

William M. Christopher
City Manager

Date: November 9, 1998

Subject: Councillor's Bill No. 58 re Standley Lake Marketplace Assistance Package

Prepared by: Becky Johnson, Economic Development Specialist

Introduction

City Council action is requested to pass the attached Councillor's Bill on second reading approving an assistance package totaling \$1,030,700 for S/S Land Holdings, LLC to build the Standley Lake Marketplace at the northeast corner of Church Ranch Boulevard and Wadsworth Parkway.

Summary

City Staff is recommending language modifications to the business assistance package which was, approved by Council on the first reading on October 26. The modifications are needed to provide legal clarity in the agreement, along with describing the procedures for the conveyance of public art to the City of Westminster. Modifications can be found in the following places in the Business Assistance Agreement: the 1st "Whereas", and Paragraphs 1,2,4, 5, 6 and 11.

Staff Recommendation

Pass Councillor's Bill No. 58 on second reading authorizing the City Manager to execute and implement in substantially the same form, as amended Business Assistance Agreement with S/S Land Holdings, LLC, for the construction of the Standley Lake Marketplace.

Background Information

City Staff and Steven Gittleman and Robert "Skip" Nostrand, of S/S Land Holdings, LLC, have agreed to some minor language modifications throughout the business assistance agreement.

The most significant changes to the agreement are in Paragraphs 5, 6 and 7. It is now clarified that S/S Land Holdings, LLC will maintain, or "cause to be maintained", at no cost to the City, the art pieces for a period of 20 years. This clause allows the developer to contract with another company to maintain the art at no cost to the City. Paragraph 5 will now read as follows:

"5. Public Art: S/S Land Holdings, LLC agrees to dedicate to the City ~~all of~~ the public art TO BE provided as part of the project, no later than six months following the issuance of the Certificate of Occupancy for the Safeway. THE SPECIFIC WORKS OF ART, THE Locations and PUBLIC access easements for the ~~public~~ art are to be noted on the Official Development Plan. S/S Land Holdings, LLC further agrees to maintain, OR CAUSE TO BE MAINTAINED, at ~~their~~ NO cost TO THE CITY, said art for a period ~~not less than~~ OF 20 years."

Changes have been made to clarify that the grocery store, pharmacy, and in-line retail space must be completed by September 30, 2000. Completion of the pad sites has been excluded from this requirement. Paragraph 6 will now read as follows:

"6. This Assistance Agreement shall terminate and become void and of no force or effect upon the City if S/S Land Holdings LLC has not completed construction OF THE GROCERY STORE, PHARMACY, AND THE IN-LINE RETAIL SPACE BY September 30, 2000. IN SUCH EVENT, HOWEVER, ANY PUBLIC ART PREVIOUSLY DEDICATED TO THE CITY SHALL REMAIN THE PROPERTY OF THE CITY, WHICH SHALL BE RESPONSIBLE FOR ITS MAINTENANCE."

Paragraph 7 has been modified to clarify that if the shopping center ceases operations (not S/S Land Holdings, LLC) then the penalty defined would be enforced. This paragraph will now read as follows:

"7. In the event ~~S/S Land Holdings LLC~~ THAT STANDLEY LAKE MARKETPLACE ceases business operations ~~at the Standley Lake Marketplace~~ within the City within three (3) years after the new operations commence OR FAILS TO COMPLY TO THE REQUIREMENTS OF THIS AGREEMENT, then in such event S/S Land Holdings, LLC shall pay to the City the total amount of fees and taxes which were due and payable by S/S Land Holdings, LLC to the City by were waived, OR REBATED by the City, as well as reimburse the City for all funds provided to S/S Land Holdings, LLC pursuant to this Agreement."

Other minor changes occur in the agreement such as capitalizations, replacement of individual words, and an addition to Paragraph 11 to note how potential disputes will be handled.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

ASSISTANCE AGREEMENT
FOR THE CONSTRUCTION OF THE STANDLEY LAKE MARKETPLACE
IN THE CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this _____ day of _____, 1998, between the CITY OF WESTMINSTER (the "City"), and S/S LAND HOLDINGS, LLC, a Colorado Limited Liability Company,

WHEREAS, pursuant to the City's approval of the Official Development Plan ("ODP") for the Standley Lake Marketplace, S/S Land Holdings LLC, at substantial additional cost, has agreed to comply with certain requirements of the City including: Providing public art, upgrading the buildings, landscapes and hardscapes, and completion of public improvements. All of the aforementioned provide benefit and advance the public interest and welfare of the City and its citizens.

WHEREAS, the City wishes to provide certain assistance to S/S Land Holdings LLC, to aid in the construction of the Standley Lake Marketplace ("the Project") within the City ; and

WHEREAS, the Project is projected to generate over \$1,530,000 annually in general sales and use tax; and

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

In consideration of the mutual promises set forth below, the City and S/S Land Holdings LLC, agree as follows:

1. The City shall ~~rebate~~ PAY to S/S Landholdings LLC, not later than sixty (60) days after the calendar month in which collected, 60% of the building and related permit fees, not including tap fees, required under W.M.C. Section 11-9-3(E) collected by the City, which will result from the construction of the approximately 236,500 square feet of retail space in the Project to be completed no later than September 30, 2000. The value of this ~~permit fee rebate~~ PAYMENT is estimated to be \$15,250

2. The City shall ~~rebate~~ PAY to S/S Landholdings LLC, not later than sixty (60) days after the calendar month in which collect, 60% of the Building Use Taxes on the construction materials, which are to be used in the construction of the approximately 236,500 square feet of retail space in the Project, required under W.M.C. sections 4-2-9 and 4-2-3. The value of the ~~rebate~~ PAYMENT is estimated to be \$38,900.

3. The City shall waive 66% of the road recoveries due by S/S Land Holdings, LLC for the Church Ranch Boulevard road improvements, up to a maximum of \$138,000.

4. ~~Sales Tax Rebate~~ REIMBURSEMENT. IN CONSIDERATION FOR THE PUBLIC ART,BUILDING UPGRADES, LANDSCAPE, PUBLIC IMPROVEMENTS TO BE PROVIDED BY S/S LAND HOLDINGS:

a. The City shall ~~rebate~~ PAY TO S/S Land Holdings LLC, an amount equal to \$1,030,700 less the amount actually ~~rebated or waived~~ PAID per paragraphs 1, 2, and 3 above (the "~~Sales Tax Rebate~~" "REIMBURSEMENT"). The ~~Sales Tax Rebate~~ REIMBURSEMENT is estimated to be \$838,550. Such ~~Sales Tax Rebate~~ REIMBURSEMENT shall be payable exclusively from sales tax revenues collected by the City from the Standley Lake Marketplace shopping center and attributable to the imposition of the City's 3.0% general sales tax (excludes the City's .25% Open Space Tax).

- b. The ~~Sales Tax Rebate~~ REIMBURSEMENT shall be paid by the City in quarterly installments from sales tax revenue actually collected and received by the City from the retailers within the project, to be computed as follows: (1) 50% of the general sales tax revenue collected during the first 12 months of operation (establish at the time of the Certificate of Occupancy to Safeway); (2) in the event of an unpaid balance of the ~~Sales Tax Rebate~~ REIMBURSEMENT, 30% of the general sales tax revenue generated until such time as the maximum amount established in paragraph 4a has been paid.
- c. Such quarterly installments shall continue and be paid until such time as the ~~Sales Tax Rebate~~ REIMBURSEMENT has been paid. The final installment will be adjusted as may be necessary to limit the total fee and use tax waivers and the ~~Sales Tax Rebate~~ REIMBURSEMENT to no more than \$1,030,700.
- d. The payment of each quarterly installment shall be made within 20 days following the close of each calendar quarter.

5. Public Art: S/S Land Holdings, LLC agrees to dedicate to the City the public art to be provided as part of the project, no later than six (6) months following the issuance of the Certificate of Occupancy for the Safeway. The specific works of art, the locations and public access easements for the art are to be noted on the Official Development Plan. S/S Land Holdings, LLC further agrees to maintain, or cause to be maintained, at no cost to the City, said art for a period of 20 years.

6. This Assistance Agreement shall terminate and become void and of no force or effect upon the City if S/S Land Holdings, LLC has not completed construction of the grocery store, pharmacy, and in-line retail space by September 30, 2000. In such event, however, any public art previously dedicated to the City shall remain the property of the City, which shall be responsible for its maintenance.

7. In the event that Standley Lake Marketplace ceases business operations within the City within three (3) years after the new operations commence or fails to comply to the requirement of this agreement, then in such event S/S Land Holdings, LLC shall REpay to the City the total amount of fees and taxes which were due and payable by S/S Land Holdings, LLC to the City but were PAID, waived, or ~~rebated~~ REIMBURSED by the City, as well as reimburse the City for ~~at~~ ANY OTHER funds provided to S/S Land Holdings LLC pursuant to this Agreement.

8. This instrument shall constitute the entire business assistance agreement between the City and S/S Land Holdings, LLC and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

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

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

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

S/S LAND HOLDINGS, LLC

CITY OF WESTMINSTER

By _____
Steven Gittleman

William Christopher
City Manager

By _____
Robert Nostrand

4800 West 92nd Avenue
Westminster, CO 80030

ATTEST:

ATTEST:

Title

Michele Kelley
City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 1998

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT WITH S/S LAND HOLDINGS, LLC, A LIMITED LIABILITY COMPANY:

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

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating incentives for high quality development to locate in the City; and

WHEREAS, S/S Land Holdings, LLC has indicated an interest in building a new retail center in the City of Westminster known as the Standley Lake Marketplace a project; and

WHEREAS, S/S Land Holdings, LLC will develop Standley Lake Marketplace which will contain an approximately 236,500 square foot retail center with an estimated project cost of \$16 million; and

WHEREAS, a proposed Assistance Agreement between the City and S/S Land Holdings, LLC is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No.53, Series of 1988, the members of the City Council of the City of Westminster direct and authorize the following actions by the City Staff:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with S/S Land Holdings LLC, in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 26th day of October, 1998.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of November, 1998.

ATTEST:

Mayor

City Clerk

ASSISTANCE AGREEMENT
FOR THE CONSTRUCTION OF THE STANDLEY LAKE MARKETPLACE
IN THE CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this _____ day of _____, 1998, between the CITY OF WESTMINSTER (the "City"), and S/S LAND HOLDINGS, LLC, a Colorado Limited Liability Company,

WHEREAS, pursuant to the City's approval of the Official Development Plan ("ODP") for the Standley Lake Marketplace, S/S Land Holdings LLC, at substantial additional cost, has agreed to comply with certain requirements of the City including: Providing public art, upgrading the buildings, landscapes and hardscapes, and completion of public improvements. All of the aforementioned provide benefit and advance the public interest and welfare of the City and its citizens.

WHEREAS, the City wishes to provide certain assistance to S/S Land Holdings LLC, to aid in the construction of the Standley Lake Marketplace ("the Project") within the City ; and

WHEREAS, the Project is projected to generate over \$1,530,000 annually in general sales and use tax; and

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

In consideration of the mutual promises set forth below, the City and S/S Land Holdings LLC, agree as follows:

1. The City shall pay to S/S Landholdings LLC, not later than sixty (60) days after the calendar month in which collected, 60% of the building and related permit fees, not including tap fees, required under W.M.C. Section 11-9-3(E) collected by the City, which will result from the construction of the approximately 236,500 square feet of retail space in the Project to be completed no later than September 30, 2000. The value of this payment is estimated to be \$15,250

2. The City shall pay to S/S Landholdings LLC, not later than sixty (60) days after the calendar month in which collect, 60% of the Building Use Taxes on the construction materials, which are to be used in the construction of the approximately 236,500 square feet of retail space in the Project, required under W.M.C. sections 4-2-9 and 4-2-3. The value of the payment is estimated to be \$38,900.

3. The City shall waive 66% of the road recoveries due by S/S Land Holdings, LLC for the Church Ranch Boulevard road improvements, up to a maximum of \$138,000.

4. Reimbursement. In consideration for the public art, building upgrades, landscape and public improvements to be provided by S/S Land Holdings:

a. The City shall pay TO S/S Land Holdings LLC, an amount equal to \$1,030,700 less the amount actually paid per paragraphs 1, 2, and 3 above (the "REIMBURSEMENT"). The reimbursement is estimated to be \$838,550. Such reimbursement shall be payable exclusively from sales tax revenues collected by the City from the Standley Lake Marketplace shopping center and attributable to the imposition of the City's 3.0% general sales tax (excludes the City's .25% Open Space Tax).

b. The reimbursement shall be paid by the City in quarterly installments from sales tax revenue actually collected and received by the City from the retailers within the project, to be computed as follows: (1) 50% of the general sales tax revenue collected during the first 12 months of operation (establish at the time of the Certificate of Occupancy to Safeway); (2) in the event of an unpaid balance of the reimbursement, 30% of the general sales tax revenue generated until such time as the maximum amount established in paragraph 4a has been paid.

c. Such quarterly installments shall continue and be paid until such time as the reimbursement has been paid. The final installment will be adjusted as may be necessary to limit the total fee and use tax waivers and the reimbursement to no more than \$1,030,700.

d. The payment of each quarterly installment shall be made within 20 days following the close of each calendar quarter.

5. Public Art: S/S Land Holdings, LLC agrees to dedicate to the City the public art to be provided as part of the project, no later than six (6) months following the issuance of the Certificate of Occupancy for the Safeway. The specific works of art, the locations and public access easements for the art are to be noted on the Official Development Plan. S/S Land Holdings, LLC further agrees to maintain, or cause to be maintained, at no cost to the City, said art for a period of 20 years.

6. This Assistance Agreement shall terminate and become void and of no force or effect upon the City if S/S Land Holdings, LLC has not completed construction of the grocery store, pharmacy, and in-line retail space by September 30, 2000. In such event, however, any public art previously dedicated to the City shall remain the property of the City, which shall be responsible for its maintenance.

7. In the event that Standley Lake Marketplace ceases business operations within the City within three (3) years after the new operations commence or fails to comply to the requirement of this agreement, then in such event S/S Land Holdings, LLC shall REpay to the City the total amount of fees and taxes which were due and payable by S/S Land Holdings, LLC to the City but were PAID, waived, or reimbursed by the City, as well as reimburse the City for any other funds provided to S/S Land Holdings LLC pursuant to this Agreement.

8. This instrument shall constitute the entire business assistance agreement between the City and S/S Land Holdings, LLC and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

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

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

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

S/S LAND HOLDINGS, LLC

CITY OF WESTMINSTER

By _____
Steven Gittleman

William Christopher
City Manager

By _____
Robert Nostrand

4800 West 92nd Avenue
Westminster, CO 80030

ATTEST:

ATTEST:

Title

Michele Kelley
City Clerk