



CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) and Citizen Presentations (Section 12) are reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration except when addressing the City Council during Section 12 of the agenda.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. 50th Anniversary of the Westminster City Charter Proclamation
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda

- A. Asphalt Paver Purchase
- B. 2009 Traffic Signal Maintenance Contract
- C. Big Dry Creek Beaver Management Plan
- D. Adams County Juvenile Assessment Center (The Link) IGA
- E. Westminster Mall Redevelopment Project Consultant Contracts
- F. Legal Services Agreement with Carlson, Hammond and Paddock
- G. Engineering Services Agreement with Slattery Aqua Engineering
- H. Construction Contract for 94th Avenue and Quitman Lift Station Elimination
- I. IGA with RTD re the South Westminster Transit Oriented Development Project
- J. IBI Group Contract for Design Services re the South Westminster Transit Oriented Development Project
- K. Amendment to the Sale of the 2.65 Acre Parcel at Church Ranch Blvd and US36 re Open Space and Reed Street
- L. Second Reading Councillor's Bill No. 40 re Municipal Judge Salary
- M. Second Reading Councillor's Bill No. 41 re 2008 3rd Quarter Budget Supplemental Appropriation
- N. Second Reading Councillor's Bill No. 42 re Concession Agreement with Benders Bar & Grill
- O. Second Reading Councillor's Bill No. 43 re Water and Wastewater Rate Adjustments
- P. Second Reading Councillor's Bill No. 44 re Lease of Open Space Property - Feldman Property 12661 Pecos Street

9. Appointments and Resignations

10. Public Hearings and Other New Business

- A. Public Hearing re Westminster Gateway CLUP Amendment and PDP (SW corner of US36 & Church Ranch Blvd)
- B. Councillor's Bill No. 45 re Westminster Gateway Comprehensive Land Use Plan Amendment
- C. Westminster Gateway Preliminary Development Plan
- D. Resolution No. 54 re ROW Acquisition for the 112th Avenue, Clay Street to Huron Street Improvement Project
- E. Councillor's Bill No. 46 re Acquisition of Water Rights
- F. Councillor's Bill No. 47 re Amendments to Title V of the WMC re Home Occupation & Massage Therapist Licenses

11. Old Business and Passage of Ordinances on Second Reading

12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session

- A. City Council

13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.

- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.

- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.

- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.

- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.

- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;

- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);

- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;

- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.

- J.** Final comments/rebuttal received from property owner;

- K.** Final comments from City Staff and Staff recommendation.

- L.** Public hearing is closed.

- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, OCTOBER 27, 2008 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Dittman, to approve the minutes of the regular meeting of October 13, 2008, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that two consent agenda items represented the successful culmination of significant work projects for Staff. The agreements with the City of Brighton to supply treated and consumable water would benefit the cities of Brighton, Thornton, and Westminster, and the sale of the Westminster Westin Conference Center marked the beginning of a new era for the conference center under the ownership of the Westin Hotel. The City's ownership of the facility had been instrumental in the success of the Promenade development initially, and due to that success, could now be sold to private ownership.

Mr. McFall announced that at the conclusion of this meeting, City Council would meet in executive session to discuss Westminster Mall redevelopment strategy and progress and to provide direction and instructions to the City's negotiators, as allowed by Section 1-11-3 (C)(4) and (7) of the Westminster Municipal Code and Section 24-6-402(4)(e) of the Colorado Revised Statutes.

CITY COUNCIL COMMENTS

Councillor Briggs reported that Charles Jacoby, a long-time member of the Open Space Advisory Board, had passed away. His contributions to the Board and the community would be sorely missed. Councillor Briggs had been in Portland, Oregon since the last Council meeting and extended greetings from former Adams County Manager Mike Swanson, now the City Manager of Milwaukee. Finally, he congratulated Mayor Pro Tem Dittman on the role he played in a recent play sponsored by the Westminster Historical Society.

Councillor Major reported that the Halloween Carnival at City Park Recreation Center was a huge success for children of all ages. The costumes were creative and cute and there was plenty of fun for all. He commended the organizers of the event.

EMPLOYEE SERVICE AWARDS

Mayor Pro Tem Dittman presented a plaque and pin to Max Ruppeck for 20 years of service to the City. Mayor McNally presented plaques and pins to Doug Hall and Marcia Johnson and thanked them for 30 years of service to the City.

PRESENTATIONS

Mayor McNally presented the International City/County Management Association Certificate of Distinction for Performance Measures to the members of the City's Performance Measurement Team. The City was one of 23 nationwide to receive the award, and this was the fourth time Westminster had been a recipient.

Mayor McNally and Councillor Winter recognized Kathryn Arbour and Pam Pressel, the owners of Capabilities, for winning the “Make Mine a Million” program sponsored by Women Count. This national program helped women-owned businesses grow to the million dollar level. Capabilities provided a variety of products to help people with medical/physical limitations.

CONSENT AGENDA

The following items were submitted for Council’s consideration on the consent agenda: acceptance of the September 2008 Financial Report; acceptance of the third quarter 2008 Insurance Claim Report; change the date of the regularly scheduled City Council meeting of November 10 to November 17; authorize the Mayor to execute a revised employment agreement with J. Brent McFall for his services as City Manager for 2009 with an effective date of December 1, 2008, and automatic renewal for 2010 unless terminated by City Council; authorize the Mayor to execute a revised employment agreement with Martin R. McCullough for his services as City Attorney for 2009 with an effective date of December 1, 2008, and an automatic renewal for 2010 unless terminated by City Council; authorize payment to reimburse John Laing Homes in an amount not to exceed \$89,833 for City requested upgrades to the water transmission system installed as part of the Public Improvements Agreement related to the Country Club Highlands waterline improvements; authorize the Mayor to enter into a treated water supply agreement, a consumable water sale agreement and a consumable water lease agreement with the City of Brighton in substantially the same forms as those distributed with the agenda; authorize the City Manager to execute a \$427,200 contract with Synergy Mechanical Services, Inc. for the replacement of two mechanical roof top air handling units at the Swim & Fitness Recreation Center; authorize the City Manager to execute a Purchase and Sale Agreement in substantially the same form as that distributed in the agenda and all other ancillary agreements necessary for the sale of the Westminster Conference Center and Pavilion Banquet Facility to Westminster Boulevard LLC and authorize expenditure of closing costs, inclusive of the City’s share of 2008 capital costs for the Conference Center, in an amount not to exceed \$175,000; authorize the Department of Community Development to apply for a grant with the Natural Resource Trustees for Rocky Flats Natural Resource Damage Funds to acquire up to two parcels west and north of Standley Lake for open space; final passage of Councillor’s Bill No. 37 appropriating funds for the 2009/2010 Budget; final passage of Councillor’s Bill No. 38 amending City Council’s monthly allowance to \$300/month, with automatic adjustments every two years tied to the Denver-Boulder Consumer Price Index in concert with the adoption of the two-year budget, and monthly compensation as follows: Mayor \$1,400/month, Mayor Pro Tem \$1,200/month and Councillors \$1,000/month; both the allowance and compensation adjustments to be effective December 1, 2009; and final passage of Councillor’s Bill No. 39 appropriating a total of \$453,840 received from the Lambertson Farms Metropolitan District No. 1 as follows: \$400,000 to the 136th Avenue Pedestrian Underpass project and \$53,840 to the Capital Projects Reserve.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. None did.

It was moved by Councillor Major, seconded by Councillor Kaiser, to approve the consent agenda, as presented. The motion passed unanimously.

RESOLUTION NO. 52 TO SCHEDULE FEES FOR CRIMINAL JUSTICE RECORDS

Councillor Briggs moved to adopt Resolution No. 52 repealing Resolution No. 7, Series of 1986, setting forth a fee schedule for producing criminal justice records. The motion was seconded by Mayor Pro Tem Dittman and passed unanimously on roll call vote.

RESOLUTION NO. 53 SUPPORTING ADAMS 12 FIVE STAR SCHOOLS BALLOT MEASURES

It was moved by Councillor Winter and seconded by Councillor Kaiser to adopt Resolution No. 53 supporting Adams 12 Five Star Schools’ effort to gain voter approval for Ballot Measures 3A and 3B. At roll call, the motion passed unanimously.

REVISED EMPLOYMENT AGREEMENT WITH JOHN A. STIPECH

It was moved by Councillor Major, seconded by Councillor Kaiser, to authorize the Mayor to execute a revised employment agreement with John A. Stipech for his services as Presiding Judge for 2009 with an effective date of December 1, 2008, and an automatic renewal for 2010 unless terminated by City Council. The motion carried with all Council members voting affirmatively.

COUNCILLOR'S BILL NO. 40 INCREASING MUNICIPAL JUDGE'S SALARY

Upon a motion by Councillor Major, seconded by Councillor Kaiser, the Council voted unanimously at roll call to pass Councillor's Bill No. 40 on first reading amending the salary for the Municipal Judge for 2009.

COUNCILLOR'S BILL NO. 41 RE 2008 3RD QUARTER BUDGET SUPPLEMENTAL APPROPRIATION

It was moved by Councillor Lindsey, seconded by Councillor Kaiser, to pass Councillor's Bill No. 41 on first reading providing for supplemental appropriation of funds to the 2008 budget for the General and General Capital Improvement Funds. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 42 APPROVING CONCESSION AGREEMENT WITH BENDERS BAR & GRILL

Mayor Pro Tem Dittman moved, seconded by Councillor Major, to pass Councillor's Bill No. 42 on first reading approving a concession agreement with the City, Hyland Hills Recreation District Enterprise, and Benders Bar & Grill, to operate a restaurant in the former Jackson's All-American Grill located in the Ice Centre at the Promenade. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 43 INCREASING WATER & SEWER RATES

It was moved by Councillor Lindsey and seconded by Councillor Kaiser to pass Councillor's Bill No. 43 on first reading implementing water and sewer rate adjustments and meter service charges for 2009 and 2010. At roll call the motion passed unanimously.

COUNCILLOR'S BILL NO. 44 TO LEASE FELDMAN OPEN SPACE PROPERTY

It was moved by Councillor Briggs, seconded by Councillor Major, to pass Councillor's Bill No. 44 on first reading authorizing the execution of a lease agreement in substantially the same form as that attached to the agenda memorandum for the Feldman property located at 12661 Pecos Street, currently in unincorporated Adams County. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Kaiser and seconded by Councillor Major to adjourn. The motion passed unanimously, and the Mayor adjourned the meeting at 7:30 p.m.

ATTEST:

Mayor

City Clerk



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Proclamation re 50th Anniversary of the Westminster City Charter

Prepared By: Phil Jones, Management Analyst
Joe Reid, Senior Public Information Specialist

Recommended City Council Action

Mayor McNally is requested to present a proclamation on the 50th anniversary of the Westminster City Charter.

Summary Statement

- The year 2008 marks 50 years since the adoption of the Westminster City Charter.
- The Westminster City Charter was adopted in 1958 as the guiding document for the governance and management of the City.
- The first City Manager, Judge Phil Roan, will be in attendance Monday evening along with past city managers and mayors and their families to receive a commemorative copy of the 50th Anniversary Edition of the City Charter.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

This year, 2008, marks the 50th anniversary of the Westminster City Charter's original adoption in 1958. In recognition of this milestone, Staff has created a special-edition commemorative charter document complete with the most recent updates to the charter, the names of past managers and mayors, and the sitting Council. The commemorative charters will be presented to former mayors and city managers, current department heads, staff and City Council at a reception preceding the regular council meeting Monday night.

During the council meeting Judge Philip Roan will accept the proclamation from the Mayor and provide a few remarks regarding the formative years of Westminster when he served as City Manager.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

WHEREAS, In 1957 Westminster citizens desired more control over their future and less guidance by state statutes; and

WHEREAS, Mayor A.V. Wilson convened a citizen's committee that recommended the City should write a City Charter and adopt home rule; and

WHEREAS, A 21-member charter convention was elected to draft and review the new charter, which was approved by voters in January of 1958; and

WHEREAS, The principles of home rule, as outlined in the charter, give the Westminster City Council the authority to direct the City's destiny by providing vital financial control and capital improvement capabilities; and

WHEREAS, The City Charter also provides for a Council/Manager form of government, vesting the responsibility for managing the City's day-to-day operations in a professional City Manager; and

WHEREAS, The City Charter has been and continues to be the foundation of good governance for all.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim November 17, 2008 as

**THE HONORARY 50th ANNIVERSARY
OF THE WESTMINSTER CITY CHARTER**

Signed this 17th day of November, 2008.

Nancy McNally, Mayor



Agenda Item 8 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Asphalt Paver Purchase

Prepared By: Pat Sexton, Street Maintenance Supervisor
Ray Porter, Street Operations Manager

Recommended City Council Action

City Council action is requested to authorize the trade-in of one spreader box paver and approve the purchase of a new Bomag self propelled paver from Power Equipment Company, the low bidder, as approved in the City's 2009 Operating Budget for a total purchase price of \$52,782.

Summary Statement

- Street Operations has successfully rented a new asphalt paver in 2008 at \$4,000 a month for 6 months, totaling \$24,000.
- Power Equipment Co. has agreed to apply the 2008 rental costs towards the purchase price of the paver in 2009.
- The pay-off after the rental costs are applied to the purchase price, less \$1,000 trade-in, is \$52,782.
- Staff acquired quotes from three equipment dealers who were willing to apply the rental charges towards the purchase of a new paver pending final City Council adoption of the 2009 Budget.
- Adequate funds were budgeted in the 2009 Budget for this purchase.

Expenditure Required: \$52,782

Source of Funds: General Fund – Street Division 2009 Operating Budget - \$32,792
General Capital Outlay Replacement Fund (2009 GCORF) - \$19,990

Policy Issue

Should City Council approve the 2009 purchase of a new Bomag asphalt paver applying 2008 rental costs to reduce the 2009 purchase price?

Alternatives

One alternative is to not purchase the asphalt paver at this time and wait until 2009 to initiate the purchase. This option is not desirable since the City is able to maximize an available opportunity of purchasing the equipment at this time by applying rental fees paid in 2008 to the piece of equipment purchased in 2009. If not approved the \$24,000 rental fees will be lost and the 2009 purchase price increased.

A second alternative to purchasing this paver would be to continue renting at a 2009 cost of \$6,000 per month for a period of 6 months totaling \$36,000 in 2009. This \$36,000 along with the \$24,000 spent in 2008 is 114% of the cost to purchase this paver now.

Staff does not recommend either of these alternatives.

Background Information

This past summer the Department of Public Works & Utilities Staff made the decision to take the one remaining outdated spreader box paver out of service due to the lack of efficiency and safety reasons. The City purchased one paver unit in 2007; a second paver is needed to allow for a second patching and small overlay crew. Staff has been renting this second unit since June, and the crew's production increased by 32% and the work is of a higher quality. The equipment vendor, Power Equipment Company, has agreed to apply the 2008 rental fees towards the purchase of the paver in 2009.

Staff acquired three quotes for 2008 specified paver rental with an option to purchase pending City Council approval of the 2009 Operating Budget that included the paver replacement.

Lease/Purchase quotations were as follows:

<u>Vendor</u>	<u>Purchase Price</u>	<u>Trade-In</u>	<u>Rental</u>	<u>Pay-Off</u>
Power Equipment Co. / Bomag	\$77,782	\$1,000	\$24,000	\$52,782
Faris Machinery Co. / Mauldin	\$79,530	\$1,000	\$24,000	\$54,530
MacDonald Equipment Co. / LeeBoy	\$91,644	\$1,000	\$24,000	\$65,644

This purchase meets City Council's Strategic Plan Goals and Objectives of "Financially Sustainable City Government" by providing a well maintained, dependable fleet and improving service at the best possible price.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Item 8 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: 2009 Traffic Signal Maintenance Contract

Prepared By: Greg Olson, Transportation Systems Coordinator

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder, W.L. Contractors, Inc., in the amount of \$223,900 for traffic signal maintenance for calendar year 2009.

Summary Statement

- The City utilizes the services of a private contractor to perform maintenance of the City's traffic signals. The current contract expires on December 31, 2008.
- A total of three bids were received on October 28, 2008 for the contract for signal maintenance in 2009. City Council action is requested to award the 2009 traffic signal maintenance contract to the lowest bidder, W.L. Contractors, Inc.
- The contract amount is within the amount budgeted in the 2009 operating budget of the Department of Community Development for traffic signal maintenance activities.

Expenditure Required: \$223,900

Source of Funds: 2009 General Fund - Community Development Operating Budget

Policy Issue

Should the City continue the practice of outsourcing traffic signal maintenance to a private contractor?

Alternative

One alternative is to not enlist the full-time services of a private contractor. This alternative would require the City to hire a minimum of one full-time employee and invest in the equipment necessary to perform basic traffic signal maintenance. The part time services of a contractor would still be required to perform assistance for major emergencies and repairs and share with the after-hours maintenance responsibility. Staff completed a comprehensive analysis this year investigating the feasibility of performing in-house traffic signal maintenance and will continue with that investigation in future years. The results of the analysis indicate there would be no cost savings at this time and, therefore, Staff does not recommend performing the traffic signal maintenance “in-house” in 2009.

Background Information

The City utilizes the services of a traffic signal maintenance contractor to perform maintenance on traffic signals at 102 intersections and on 8 pedestrian crossing signals (total of 110 installations). The 2008 traffic signal maintenance contract, which was awarded to Sturgeon Electric, Inc. in November 2007, expires December 31, 2008.

City Staff requested and received formal bids from three qualified contractors for the 2009 traffic signal maintenance. The results of the October 28th bid opening are as follows:

Contractor	Bid Amount
W. L. Contractors, Inc.	\$223,900
Sturgeon Electric, Inc.	\$231,450
Integrated Electric, Inc.	\$258,750

The low bidder, W.L. Contractors, Inc., has satisfactorily performed the City’s traffic signal maintenance in the past. City Staff believes that in 2009, W.L. Contractors will be able to provide the high level of service that the City expects for traffic signal maintenance activities.

The 2009 bid documents utilize a conservative, estimated annual amount of labor, equipment hours, and materials for performance of all traffic signal maintenance functions. 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: annual preventive (routine) maintenance and 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 components of annual preventive maintenance include the following:

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 stopwatch 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 that detect the presence of a vehicle and 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 each signal location quarterly.
9. "Troubleshoot" and maintain the computerized signal system components to insure proper operation.
10. Maintain emergency vehicle preemption equipment (Opticom) 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, equipment, and materials costs for additional traffic signal maintenance items. Additional traffic signal maintenance items include emergency trouble calls, unscheduled maintenance items and an estimated cost for loop detector replacements. The contract assures the City that the contractor will be available to perform emergency or other repairs as required. It is necessary that the City have a contractor available seven days a week, 24 hours a day to respond to any emergency signal work that may arise.

The bid documents were based on a conservative, estimated amount of labor, equipment, and materials so that each bidder could 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 workload than may be experienced.

The contract for this work, which is a standard form that has been used by the City for a number of years, has been reviewed and approved by the City Attorney's Office.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Item 8 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Big Dry Creek Beaver Management Plan

Prepared By: Rod Larsen, Park and Open Space Supervisor
Richard Dahl, Park Services Manager

Recommended City Council Action

Adopt and direct City Staff to follow the attached Beaver Management Plan for City open space properties.

Summary Statement

- City Staff has noticed a dramatic increase in the beaver population over the last three years along with a significant loss of both mature and new cottonwood trees due to beaver activity.
- Big Dry Creek is a 12-mile-long corridor, which starts at Standley Lake and runs northeast through the heart of the City to 130th Avenue, where the City is experiencing problems caused by beavers.
- Some key points of the plan are as follows:
 - All wildlife in Colorado is the property of the state and owned by the people. Colorado Division of Wildlife (DCOW) allow for the “take” of beavers throughout the year as necessary to protect private property.
 - The City will work with CDOW personnel to manage beavers on City open space.
 - The plan will identify new and existing activity along the corridor and evaluate the impact to the environment as well as health and safety to open space users.
 - Where significant damage to natural resources or safety to human activity is determined, action will be taken to modify or eliminate beaver activities.
 - Resolutions for beaver activities may include: (see management plan for detailed explanation)
 1. Tree protection
 2. Beaver mitigation – replacing felled trees
 3. Establish beaver-free zones
 4. Water level control devices
 5. Live trapping and relocation
 6. Euthanizing beavers as a last alternative
 7. Continued monitoring of actions
- The proposed Beaver Management Plan provides information on the biology of the beaver as well as management and control options.
- This plan was reviewed with City Council at the November 3rd Study Session.

Expenditure Required: \$10,000

Source of Funds: Open Space Fund - Park Services 2008/2009 Budget

Policy Issue

Should Council adopt and direct Staff to follow a Beaver Management Plan for City open space properties that may include control and removal options?

Alternatives

1. Council could direct Staff to significantly revise the proposed Beaver Management Plan for open space properties. Staff does not recommend this as it is believed the proposed Management Plan would give Staff the appropriate options for management and control depending upon the circumstances for each site.
2. City Council could choose to not approve the Management Plan and direct Staff to continue with existing minimal control efforts, which includes beaver dam and lodge removal. Staff does not recommend this option as the number of Staff hours required to do this work on a daily basis is very time-consuming and does not preclude the beaver population from continuing to cut down trees to repair their dams.

Background Information

Over the last three years, Staff has noted a steady increase in the beaver population along the Big Dry Creek corridor. This increase in population has led to a loss of many mature and new cottonwood trees that were growing along the banks. These trees were either felled by the beavers themselves or have died due to the flooding caused by the beaver dams.

A field survey of Big Dry Creek completed the summer of 2008 recorded at least 30 active beaver dams along the Big Dry Creek corridor. Although the actual number of beavers is not known, it is estimated that there are at least 100 beavers currently living along Big Dry Creek.

Staff has prepared a Beaver Management Plan that provides information on the biology of the beaver as well as management options. Beavers provide a unique and beneficial quality to the ecosystem and it is not the intention of the Parks, Recreation and Libraries Department Staff to eliminate the beaver population within the Big Dry Creek corridor, but to reach a balance whereby the number of beavers can be supported by the existing natural resources without the total loss of the tree canopy. The management plan as proposed would aid in this goal.

Staff has identified \$10,000 as potential costs associated with implementing the Beaver Management Plan. Staff anticipates utilizing these funds to wrap trees along the creek and/or for beaver removal/relocation efforts.

The proposed Beaver Management Plan supports City Council's Strategic Plan Goals of "Safe and Secure Community" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment



WESTMINSTER

Beaver Management Plan



City of Westminster
Open Space
2008

**Beaver Management Plan
City of Westminster
2008**

Purpose of a Beaver Management Plan	page 1
Biology of the Beaver	page 2-3
Benefits and Problems Related to Beaver Activity	page 4-5
Policy for Beaver Management	page 6-7
Beaver Management Actions	page 8
1. Tree Protection	page 8-9
2. Beaver Tree Mitigation Policy	page 10
3. Establishment of “Beaver-Free Zones”	page 11
4. Water Level Control Devices	page 12
5. Live Trapping and Relocation	page 13
6. Euthanizing Animals	page 14
7. Monitoring Actions	page 15
8. Summary	page 16

Purpose of a Beaver Management Plan

In 1985, The City of Westminster initiated the Open Space program that began the purchase and preservation of undeveloped natural areas throughout the city. The Open Space Program Policy Statement (13-5-1) reads “In the broadest sense, the objective of the Open Space Program is to promote quality of life for the citizens of Westminster through the preservation and protection of the quality of the natural environment, which has given Westminster much of its character...” Open Space properties, therefore, are to be managed in a way that promotes the quality of the natural ecosystem. Establishing and maintaining wildlife habitat is a key goal in open space management, as is the protection of the natural resources. These two goals are at times in conflict with each other. Managers are sometimes faced with the choice of allowing beavers to inhabit an area with the knowledge that trees may be lost or protect the trees by eliminating the beavers in that area.

Beavers can be a valuable and desirable animal to have in an open space environment and at the same time they can be harmful to the existing natural resources. These benefits and detriments can often occur simultaneously at a single location. Because of the varying degrees of tolerance levels among people to beaver activity, there are bound to be disagreements on how best to deal with beaver conflicts.

This document is intended to be a foundation for future management decisions based on current scientific data and City of Westminster Open Space standards. This plan is not meant to provide a blanket policy for beaver management. Rather, this plan gives management options that staff can choose from when having to take action. Wildlife management is a fluid science and not every management option will work or be right for the given situation.



Beaver, (*Castor canadensis*)

Biology of the Beaver

The beaver (*Castor Canadensis*) is North America's largest rodent. Adult beavers typically weigh 45 to 60 pounds, but have been known to grow to 100 pounds. Wild beavers live about 11 years, unless they are trapped or killed by predators. Beavers are aquatic mammals with large webbed hind feet ideal for swimming, and hand-like front paws that allow them to manipulate objects with great dexterity. They have excellent senses of hearing and smell, and rely on these senses more than their less developed sense of eyesight. When swimming underwater a protective transparent membrane will cover their eyes, and flaps close to keep water out of their nostrils and ears.

Beavers are monogamous and mate for life. They do not breed until they are two to three years old. They have a gestation period of 4 months and will have one litter of 1 - 6 kits per year. Each established beaver "colony" consists of adult parents, and two years of offspring. Only the adult female breeds. The average number of beavers in an established family is typically six or seven beavers.

Once a beaver reaches the age of two they will usually leave the colony to find a mate and establish a colony of their own. This is the most dangerous time in the life of a beaver. Not only can they be killed by predators or cars, other beavers will attack them if they enter their ponds. Beavers have been noted to travel ten or more miles searching for a place to live.

Beaver dams are created as a protection against predators and to provide easy access to food during winter. Beavers always work at night and are prolific builders, carrying mud and stones with their fore-paws and timber between their teeth. Beavers usually can re-build a dam overnight if it has been breached, thereby making this technique ineffective. Beavers predictably select sites to build their dams based primarily on topography and food supply. Preferred sites for damming will be in areas where the dam will flood a large flat area and there are plenty of desirable woody plants for food in the vicinity. Streams that are more than two feet deep or have strong currents are not generally dammed. Beavers often situate their dams where there are constrictions in the stream flow (natural or manmade).

Each beaver colony will usually establish one large pond where they will build their lodge. In addition to this primary pond, other smaller dams up and downstream are usually built to create smaller ponds. These smaller ponds permit safe travel for the beaver as it seeks out new food supplies of native trees and shrubs. The average beaver colony will dam a half-mile length of a small stream.

To obtain food and building materials, beavers are well known for their ability to topple large trees using nothing but their specially adapted incisor teeth and powerful lower jaw muscles. Beaver teeth never stop growing, so they do not become too worn despite years of chewing hardwoods. Their four front teeth (incisors) are self-sharpening due to hard orange enamel on the front of the tooth and a softer dentin on the back. Therefore as beavers chew wood the softer backside of the tooth wears faster, creating a chisel-like cutting surface.



Beaver felled trees along Big Dry Creek, 2008.

Benefits and Problems Relating to Beaver Activity

The beaver is an important mammal to Colorado, as well as to North America, from both a historical perspective and from an aesthetic perspective. Beaver can be among the most beneficial of the City's wildlife. They create favorable wetland habitat for a variety of wildlife species including fish, birds, amphibians, reptiles, and mammals. This variety of wildlife is in turn valued for recreational, scientific, educational and aesthetic purposes. This increase in biodiversity of wildlife is a great asset to the open space ecosystem. Wildlife observation is an important product of the open space that is highly valued by trail users and the residents.

Beaver activity is also helpful in retaining storm water runoff and improves water quality by trapping sediment, nutrients, and pollutants. The dams act as natural check dams during floods and high water, reducing erosion and slowing the water enough to deposit solids. The higher water behind the dam also creates additional shoreline and enables water-loving plants and trees to grow and thrive.

Beaver activity can also have detrimental affects. Their actions can sometimes lead to flooding of roads and trails, the loss of trees and shrubs, and the destruction of both public and private property. Their impacts often occur suddenly and dramatically. Beavers are usually not noticed in an area until valuable trees have been felled or flooding along trails occurs. Often, when flooding occurs along trails, it is necessary to breach the dam. Although this can be a quick fix solution, the dams are usually rebuilt overnight.



Beaver dam on Big Dry Creek, 2008.

Policy for Choosing Beaver Management Options

Beaver activity emanating from city-owned open space and resulting in conflict and/or natural resource damage will be evaluated by the Department of Parks, Recreation and Libraries for the existence of, or potential of:

- impact to public health and safety
- unacceptable loss of natural resources
- impact to public and private property
- impact to public infrastructure

The significance of these impacts will determine the type of management action taken. Any action taken will be based on proven wildlife management techniques, appropriate animal welfare concerns, and applicable laws and regulations.

One function of open space lands is to provide habitat for wildlife. These areas are one of the few places left in the metro area where wildlife can live. In most cases, some level of loss of trees on open space lands is an accepted consequence of trying to achieve a balanced ecosystem.

The City of Westminster recognizes beaver as a natural and desirable component of the environment because of their contribution to the quality and diversity of natural habitat. However, it is also recognized that conflicts between beaver and humans arise when beaver activity impacts public health and safety, natural resources, private property, or public infrastructure.

The Colorado Division of Wildlife (CDOW) has issued the following statement concerning the management of beavers. “All wildlife in Colorado is the property of the State and owned by the people. Beavers are defined as “furbearers” under the CDOW rules and regulations, therefore, allowing private landowners permission to manage beavers in accordance with state laws and CDOW regulations. CDOW rules and regulations allow for the “take” of beaver year

round as necessary to protect private property.” The City of Westminster Open Space will work cooperatively with CDOW personnel, and other officials, when necessary, to manage beavers according to Westminster’s Beaver Management Plan.

All instances of beaver activity that impact the Big Dry Creek corridor will be reviewed by the Open Space management staff. Reports may come from several sources including any open space staff, residents, trail users, public officials or private individuals. All reports will be investigated by staff to verify location and collect basic information. New data will be added to the Beavers and Big Dry Creek Inventory that was completed in 2008.

It is the aim of the beaver management plan to identify new areas of beaver activity as soon as possible. New locations will be checked for real and potential natural resource damage, potential for damaging floods, location in a “beaver-free zone,” and private/public property damage. Where existing or potential negative impacts are identified, open space staff will contact appropriate parties who are likely to be involved in resolving any conflicts. Those contacted may include: appropriate Department and Division Heads, POST committee, appropriate city staff, affected property owners, Division of Wildlife personnel, and any other affected personnel.

Discussions with affected parties will determine the level of impact that is acceptable. It will be the primary goal of the City of Westminster’s beaver management plan to coexist with beavers wherever this is possible while, at the same time, protecting the natural resources. Where significant damage to natural resources or threats to human safety are demonstrated or inevitable, staff will take action to modify or eliminate beaver activities.



Beaver damage along Big Dry Creek, 2008.

Beaver Management Actions

The following actions and strategies may be used to resolve various kinds of beaver damage and conflicts, within and contiguous to the Big Dry Creek corridor. They are written in the form of guidelines to allow for flexibility as experience improves Staff's knowledge and abilities.

Problems between beavers, open space natural resources, and public or private property may be resolved by implementing one or more of the following actions.

The least intrusive actions will always be attempted first, where those actions fit the circumstances. More intrusive actions, up to and including live-trapping and euthanasia of the animal, will be done only when no other alternatives are available.

1. Tree Protection

Along Big Dry Creek, the most available and sought after tree by the beaver is the Plains Cottonwood. The semi-arid climate of Colorado makes it very difficult for trees to grow and thrive without supplemental irrigation. These trees along Big Dry Creek have managed to

survive over the years by tapping into the creek's water table. Because of the climatic factors and the overall small population of these native trees, any loss of trees along Big Dry Creek is dramatic.

Protecting trees is not 100% fool-proof all of the time, but the elimination of the beaver's food source is one of the most effective means of beaver control. Tree cutting by beavers can be prevented by the placement of hardware cloth or fencing fabric around the base of trees. Although not fool-proof, this technique has shown to be relatively effective and inexpensive, with only a small visual impact. Individual trees can be spared from beaver gnawing by placing wire cylinders around the base of their trunks. The purpose of this heavy wire cylinder is simply to keep the beaver from getting to the tree. The cylinders can be made from 3 to 4 foot tall galvanized wire mesh. The fencing should extend 2 feet above the highest snow level to prevent winter chewing. It generally does need to be anchored to the ground. The bottom is cut to fit a sloping ground, or to protect prominent roots from chewing, leaving a few inches of space between the tree and the wire allows for tree trunk growth. The fencing is replaced as needed with a larger diameter cylinder to allow for trunk expansion.

Although this method is relatively effective in protecting trees, it is very labor intensive. Location of the tree along the bank, size of tree, and accessibility are all factors that present challenges of effectively applying the tree wrap. As the tree grows, this wrap then needs to be manually widened to allow for the natural growth of the tree.



Protected trees using tree wrap, 2008.

2. Beaver Tree Mitigation Policy

The cottonwood trees that currently live along Big Dry Creek are the primary food source target for the beavers. Most of these trees are decades old and have established themselves despite a semi-arid climate. A tree mitigation, or replacement, policy would help offset the loss of trees by beavers. Although much smaller in size to the trees that are felled, these trees would provide the same benefits for future generations.

Any tree that is harvested by beavers along BDC would be replaced at a 1:1 ratio somewhere along the BDC corridor within a year. Example: A 6” cottonwood that is felled by a beaver would be replaced with 6 – 1” cottonwoods within 1 year in a suitable location along BDC. All trees that are planted would also be protected with wire mesh.



Felled cottonwoods along Big Dry Creek, 2008.

3. Establishment of Beaver-Free Zones

There may be areas along the BDC corridor where staff determines that would not be acceptable for beavers to inhabit. These zones may be determined based on flooding potential, historical significance, visual impact from trail users, or other criteria.

Once these zones have been established, all trees located in these zones would be protected by the use of wire mesh. Any beaver activity within these zones would immediately be addressed using dam destruction, trapping, and/or euthanasia of the beavers.

4. Water Level Control Devices

Water level control devices can be used in areas where the flooding of water behind the dam becomes an issue. Although this does not address the issue of losing trees, it is an option to be used regulating the water height in the beaver pond. A number of individuals and groups have developed a variety of devices that attempt to control the water level in beaver ponds. The devices consist of some type of conduit, either rigid PVC plastic, corrugated plastic tubing, metal pipe, or fabricated wooden box or steel mesh cylinder. The conduit is used in conjunction with metal screening or fencing that is arranged to prevent beaver from plugging the conduit. Depending upon its design, the device is placed in or near a culvert pipe, bridge, road ditch, or beaver dam. Beaver continue to dam against the device, however, the devices are designed to maintain water flow in spite of the beaver's efforts.

The success of water level control devices appears to depend upon site conditions, watershed size, and the persistence of individual beaver. Where an acceptable level of impounded water can be determined, and where site conditions are suitable, these devices provide a good means for coexistence with beaver. With experience, Open Space staff will develop criteria and techniques for the successful use of water level control devices in the open space.

This is most likely to be true where:

- a.) watershed size is relatively small,
- b.) the topography of the site is such that there is a sufficient elevation difference between the pond water level and the facility that requires protection,
- c.) the topography allows for the temporary storage of excess water near the beaver pond after heavy rains.

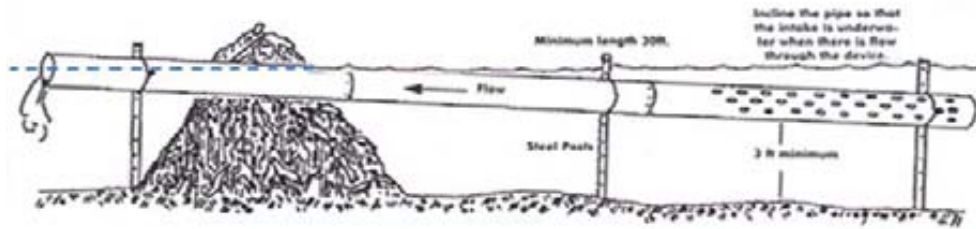


Diagram of water level control device for beaver dams, 2008.

5. Live Trapping and Relocation

Where it can be determined that a.) the impacts of beaver activity cannot be tolerated and, b.) other strategies or devices are not effective or appropriate, then the animal(s) will be removed from the site and relocated.

Relocation of beavers is accomplished by a state licensed contractor. The contractor usually has relocation sites for the beavers in the foothills and mountains. Relocations are only allowed by CDOW between June and September. Although this can be a good option for positive public relations, it can be expensive and is not reliable for large beaver population reductions. There are only a few licensed contractors in Colorado and they are usually in high demand for the services throughout the summer. Licensed contractors will be used to perform any relocation services. These contractors will be responsible for all aspects of relocation including finding appropriate relocation sites. To the extent possible, beaver family units will be relocated as a group. It should be noted that relocation of problem animals does not guarantee that new beavers won't re-inhabit the original beaver location.



Trapped beaver ready for relocation, 2008.

6. Euthanizing Animals

Where it can be determined that a.) the impacts of beaver activity cannot be tolerated, b.) available strategies and devices have not proven effective or appropriate, and c.) live-trapping and relocation is not possible, then problem animals will be euthanized.

This decision will be made by the POST committee after a review of all the facts and data. If this management route is chosen, City Council will be notified prior to the control. The City of Westminster Open Space staff will be responsible for initiating this process with a licensed contractor and overseeing this operation. The most humane methods of euthanasia will be used by a licensed contractor.



Beavers live-trapped, 2008.

7. Monitoring Actions

a.) Monitoring Beaver Activities in Problem Areas

Beaver activity in such areas will be inspected at least weekly by Open Space staff or volunteers, so that required management actions can be properly planned and implemented.

b.) Monitor Water Level Control Devices

Water level control devices will be inspected weekly following installation by Open Space staff or volunteers to ensure that they are functioning effectively. After a month of weekly inspections, monthly inspections will occur as long as beaver are active at a particular site.

c.) Monitor Beaver Population

The current inventory will be updated every 3 years. Newly affected areas will be identified. Currently active sites will be evaluated for impacts on sensitive resources. Estimates of the beaver population will be made from the GIS system, if and when that becomes necessary.



Cottonwoods along Big Dry Creek, 2008

Summary

The City of Westminster recognizes the value and importance that all wildlife brings to balancing the delicate eco systems in our preserved open spaces. As with other wildlife management policies, the Beaver Management Plan is intended to manage, not eliminate the City's beaver population. Only when all other options are exhausted will euthanizing of these important animals take place.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Adams County Juvenile Assessment Center (The Link)
Intergovernmental Agreement

Prepared By: Lee Birk, Chief of Police
Tim Carlson, Deputy Police Chief

Recommended City Council Action

Authorize the City to enter into an agreement with other jurisdictions in Adams County to participate in "The Link," a community assessment and resource center.

Summary Statement

- Since 1999, The Link has provided a centralized location for the coordinated provision of intervention programs and services for juveniles and their families who are referred to the program by law enforcement participants including: The Adams County Sheriff's Office, Brighton, Commerce City, Northglenn, Thornton and Westminster. It is recommended that an agreement be entered into that will provide funding for The Link and thereby ensure that The Link can continue to provide the necessary services to juveniles and their parents.
- The City Attorney's Office has reviewed the agreement and it has been signed as to form.
- Adequate funds were authorized in the 2009 Police Department General Fund Budget for this expense.

Expenditure Required: \$46,740

Source of Funds: 2009 General Fund - Police Department Operating Budget

Policy Issue

Should the City enter into an agreement with other jurisdictions in Adams County and commit budgeted funding to participate in The Link?

Alternatives

1. Do not participate in The Link operation. A lot of time and well thought out effort has been put into this approach, and Staff believes it is the best manner in which to provide these critical services.
2. Direct Staff to look at alternative means of dealing with juvenile issues, perhaps on a contractual basis. Staff is not aware of other resources/providers that will handle this needed service in a consistent and responsive manner.
3. Direct Staff to deal with juvenile issues in-house. Delivering these services in-house would require either the allocation of additional resources or the reallocation of existing resources. In either case, the price tag would be significantly greater than the \$46,740 annual fee under the IGA.

Background Information

Functioning since 1999, one primary benefit of The Link is to provide a drop off point for juveniles not eligible for continued custody by the police. The vast majority of juveniles taken into custody by police officers are not held in custody or detention. Most are arrested for minor criminal offenses or “status” offenses such as being a runaway. Unlike an adult who can be released from custody on their own recognizance, juveniles can only be released to a responsible adult. The Link provides a non-custodial place for police officers to drop off these juveniles who have been released from custody. Staff at The Link then spends the time and energy contacting parents, guardians, or Social Service agencies to take custody of the juvenile. This process saves many hours of unnecessary work by police officers trying to make these arrangements. The officer is literally out the door in a matter of minutes.

In addition to this service, The Link provides the contacts and resources for parents and guardians to assist them in intervening in the poor behavior leading to the arrest. The Link also provides services to the juveniles by doing assessments when the juvenile is dropped off and arranging follow up intervention for them and their families while still at the facility. The goal is to intervene in order to reduce the likelihood (particularly for low level offenders) of repeated criminal behavior. The Link also provides quick and timely pre-screening for juveniles for placement in juvenile detention who have committed violent felony offenses.

There is a strong consensus among the Adams County participating agencies that The Link is a valuable program and should continue operating, including the continuance of financial support. Numerous meetings have been held with all of the Adams County participating agencies to determine what kind of stable, predictable funding would be arranged for the future. Grant funding has historically been a significant funding source, but over time grant funding options have been depleted and applications for future grant funds may no longer be possible. However, some grant funding has been procured to allow 2009 funding levels to stay the same as 2008.

Each agency’s share of funding is based on usage of The Link. The participating agencies for 2009 are the Adams County Sheriff’s Office, Brighton, Commerce City, Northglenn, Thornton and Westminster.

The Link agreement sets forth law enforcement funding for FY 2009 based on each agency’s usage of the facility during calendar year 2008. Future funding will be based on a similar formula for subsequent years. The formula takes into account only the Adams County portion of Westminster. Westminster Jefferson County juveniles have access to the Jefferson County Juvenile Assessment Center (JAC). Westminster’s share for The Link for 2009 will be \$46, 740.

Respectfully submitted,

Stephen P. Smithers, Acting City Manager
Attachment

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION AND FUNDING OF
JUVENILE ASSESSMENT SERVICES
BY THE LINK**

THIS INTERGOVERNMENTAL AGREEMENT (hereafter "IGA") is made and entered into by and between the City of Thornton, a Colorado municipal corporation ("Thornton"), the City of Brighton, a Colorado municipal corporation ("Brighton"), the City of Commerce City, a Colorado municipal corporation ("Commerce City"), the City of Northglenn, a Colorado municipal corporation ("Northglenn"), the City of Westminster, a Colorado municipal corporation ("Westminster"), Adams County, a political subdivision of the state of Colorado represented by and through the Adams County Sheriff's Office ("Sheriff"), and The Link, A Community Assessment and Resource Center and Colorado non-profit corporation ("The Link"). The municipal corporations and the Sheriff identified herein will be referred to as "Participating Jurisdictions" and collectively as "Parties" and each individually as "Party."

WITNESSETH:

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S., permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with one another to provide any function, service, or facility lawfully authorized by each of the contracting governments; and

WHEREAS, The Link has operated and initially served Adams County and the cities located within Adams County since its inception in October 1999, and seeks an intergovernmental agreement between itself and the identified Participating Jurisdictions it serves to establish joint funding obligations to enable The Link to continue to provide service to its Participating Jurisdictions; and

WHEREAS, the Parties collectively desire to enter into this IGA to provide funding for The Link and thereby ensure that The Link can continue to provide its services to juveniles and their parents.

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

I. GENERAL PROVISIONS

- A. The Link is committed to maintaining a centralized location for the provision of assessment, mediation and intervention services for juveniles and their families who are referred to The Link from the Participating Jurisdictions; and, agrees to provide the services, as identified herein, for the Parties that are represented in this IGA.

- B. The Link shall currently continue and maintain its operation at 690 W. 84th Avenue, Thornton, Colorado 80260, and will provide services to the Parties from this location. Nothing herein intends to restrict The Link from moving to another location within Adams County for practical and economical purposes. The Link will operate pursuant to the direction of a Board of Directors ("Board") as established by The Link's by-laws and management will be by an administrative director.
- C. The Participating Jurisdictions hereby agree to allocate and commit funds for the 2009 operating year to be provided to The Link in accordance with the terms of this IGA.
- D. The Participating Jurisdictions may also, throughout the term of this IGA, agree, without restriction or limitation, to provide in kind contributions to The Link to assist The Link in providing services to and for the benefit of all member participants that are a Party to this IGA.

II. SERVICES PROVIDED

- A. General Service. The Parties hereto agree that The Link shall have authority over the operation of its programs and facilities which are provided for the use and benefit of the Parties to this IGA and their constituents. The Parties hereby agree that funding of The Link, by the Parties hereto, for such services shall be as provided in this IGA.
- B. Specific Services. The Link shall be authorized to provide the services identified below to children who are between the ages of 8 years of age and 17 years of age ("Juvenile"). The principle purposes and powers of The Link are to:
 - 1. Provide a centralized location for the assessment of youth and referral to community resources and other intervention programs and services for Juveniles and their families who are referred to The Link by the Participating Jurisdictions.
 - 2. Conduct complete assessments of the needs of Juveniles and their families which may include, but is not limited to, screening for violence potential and self-destructive tendencies, abuse, neglect and future criminal behavior, risk and treatment need factors.
 - 3. Make prompt referrals of Juveniles and their families to appropriate community services and agencies based on needs assessment and any and all other pertinent information.
 - 4. Provide crisis and mediation intervention for Juveniles and their families referred by the Participating Jurisdictions and the

Juvenile's family. The Link shall utilize a case management process to evaluate the progress of the intervention. Case management shall include developing case plans addressing issues identified in the assessment, and supervising the accomplishment of the case plan, and preparing applicable pre-sentencing and status reports for municipal courts. The Link agrees to provide up to a maximum of eleven (11) case management services per month for juveniles on probation or as a part of sentencing through the municipal court to the Parties. Each Participating Jurisdiction's use of this service shall be based on the Participating Jurisdictions proportional use of The Link's services as outlined in Exhibit A. The Director of The Link shall have authority to modify the maximum number of case management services per month as appropriate to the circumstances.

5. Coordinate and centralize the information collected by The Link for the Participating Jurisdictions involved with the Juveniles and their families.
6. Provide rapid dissemination of assessment information to municipal courts, and the Participating Jurisdictions in accordance with all laws concerning confidentiality.
7. Provide multi-tiered service approach through provision of 24 hour detention and screening services for delinquent youth placed into the juvenile detention center or intervention for applicable alternatives to detention pursuant to Senate Bill 94 and the grant monies awarded The Link pursuant to that legislation.
8. Apply for and receive grants and other sources of funding and provide all services related to Juveniles which are authorized by the terms of any such grant or funding awards.
9. Provide ongoing intake protocol training, assessment and using The Link services for Participating Jurisdictions and intervention screening for the 17th Judicial District pursuant to the requirements of Senate Bill 94 and the grant monies awarded The Link pursuant to that legislation.
10. Provide immediate social and mental health service referrals to Juveniles through community service providers and private providers who offer such services.
11. Provide prescreening of youth for county and municipal offenses, misdemeanor and traffic warrants within the 17th Judicial District. In addition, The Link shall provide: Personal Recognizance bonding

for municipal charges; screening of youth into Level 4 Electronic Home Monitoring pursuant to the annual renewal of the Senate Bill 94 grant award; and screening of youth into the Juvenile Detention Center if charges are detainable.

12. Have any additional authority and power necessary to accomplish the foregoing programs and objectives.
- C. Contracts. The Parties hereto further acknowledge and agree that The Link shall have the responsibility and authority as reasonable and necessary to carry out the powers set forth in this IGA. Such authority shall include, but not be limited to, the authority to contract and lease property, purchase all necessary supplies, equipment, materials, and services, including professional services, and further to hire and discharge employees of The Link, as deemed necessary to operate The Link.
- D. Fees. Fees, if any are to be charged for services, shall be established by The Link and shall be uniform and reasonable. Nothing herein is intended to limit the ability of The Link to charge fees for recoupment of expenses, as deemed appropriate.
- E. Usage by other Entities. The Link Board by formal Board action may permit other entities to make use of The Link services, or to permit juveniles residing outside the 17th Judicial District, to be referred to The Link. The formal Board action shall include the charge to other entities to make use of The Link services and the terms of payment for such services.

III. APPROPRIATION AND PAYMENT BY PARTIES OF THE ANNUAL ASSESSMENT

- A. Appropriation and Funding Obligations. The Parties agree to commit and have the monies appropriated to pay the Annual Assessment as requested and set forth in Exhibit A by the first day of January of the year during which said funds are to be expended by The Link. The Parties agree to pay said amounts to The Link by January 31 of the year during which said monies are to be expended by The Link, with the exception of Brighton. Brighton shall make three payments to The Link to fulfill its obligation as delineated in Exhibit A. Each payment of \$13,848.88 shall be due in full to The Link on February 1, May 1 and August 1, 2009. All payments to The Link pursuant to this IGA are, however, subject to annual appropriation by the Parties hereto in the manner required by statute. It is the intention of the Parties that no multiple-year fiscal debt or other obligation shall be created by this IGA.

- B. Calculation of the Annual Assessment. The Parties agree that the portion of the budget to be assessed to each of the Participating Jurisdictions Annual Assessment shall be based upon that jurisdiction's pro rata share of the current six-year average historical juvenile transports from the jurisdiction as compared to the total for all of the Participating Jurisdictions. Provided however, the 2009 Annual Assessment shall be for the same amount as the 2008 Annual Assessment, which is reflected in Exhibit A under the Assessment Amount column. While the actual costs have risen, those actual costs will not be assessed but are reflected for comparison purposes in Exhibit A under the Actual Cost column.

Should any such jurisdiction be partially within and partially without the territorial limits of the 17th Judicial District, such Party's Juvenile transport data within the 17th Judicial District shall be computed with the pro-rata share of the Annual Assessment. Such jurisdiction shall only refer juveniles within the boundaries of the 17th Judicial District to the Link.

- C. Contributions of New Parties. In the event that any municipal jurisdiction or county enforcement agency, other than the Participating Jurisdictions, wishes to use The Link services and provide funding for such services, after January 1st of each year, such entity may be included in this IGA by amendment as a Participating Jurisdiction. The new Participating Jurisdiction's assessment for this first year shall be determined based upon that jurisdiction's proportional share of the historical juvenile arrests and/or transport data available as applicable from that jurisdiction as compared to the revised total for all of the Participating Jurisdictions times the Annual Assessment as adjusted for the number of months of service. The monies as determined by said formula will be appropriated and paid thirty (30) days subsequent to execution by all the Parties, as provided herein. For subsequent years, a new jurisdiction's Annual Assessment shall be based on the formula provided herein for Participating Jurisdictions.

IV. BUDGET

- A. Budget Process. Each year, The Link shall prepare a preliminary budget and submit said budget to The Link's Board of Director's ("Board") for approval. The budget shall contain detailed estimates of the operating expenses for the subsequent year. The budget shall identify the dollar amount of all revenue sources including the portion of revenue to be assessed to the Participating Jurisdictions ("Annual Assessment"). The preliminary budget shall be approved by The Link's Board on or before May 1st of each year. The approved preliminary budget shall be submitted to each of the governing bodies of the Parties hereto as soon as thereafter as possible.

1. The Parties may provide comments or concerns on its Annual Assessment to The Link's Board on or before July 1st of each year. The Link's Board may adjust the budget based on the comments of the Parties.
 2. The final budget shall then be approved by The Link's Board and certified by the secretary and treasurer of The Link's Board. A final budget shall be submitted to each of the governing bodies of the Parties no later than August 1st of each year that this IGA is in effect.
- B. Contributions to the Budget. The Parties hereto agree to contribute to the budget based upon the formula set forth in Exhibit A for each term of this IGA.

V. FUNDS AND OPERATIONS

- A. Designation of Funds. The Link agrees that the funds paid to The Link by the Parties hereto, and any monies generated by The Link itself shall be placed into a designated fund, and any expenses incurred by reason of operation of The Link shall be paid from said fund.
- B. Choice of Depository. All monies belonging to The Link or designated for use by The Link shall be deposited in the name and to the credit of The Link with such depositories as The Link shall from time to time designate, in compliance with all applicable laws.
- C. Disbursement of Funds. No disbursements of funds as provided by this IGA shall be made from the funds of The Link except by check, or credit card under the name of The Link.
- D. Fiscal Responsibility. The Link shall not borrow money nor shall it approve any claims or incur any obligations for expenditures unless there is sufficient unencumbered cash in the appropriate fund, credited to The Link with which to pay the same.
- E. Operating and Capital Reserves. The Board of Directors of The Link shall have the authority to set aside unexpended revenues generated by the operation of The Link for purposes of providing operating and capital reserves. The Board of Directors shall also have the authority to establish a capital improvement fund to provide for the operation of the Link..
- F. Insurance. The Link's Board shall obtain and maintain adequate liability and property insurance coverage to protect against any claims and liabilities which may arise due to the activities conducted by The Link or The Link's Board in an amount not less than the monetary limitations of

liability provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq., as the same may be amended from time to time.

- G. Use of Funds. Nothing herein is intended to restrict or prohibit The Link from using the budget funds for any purpose as authorized by any grant funds or in connection with the services provided by The Link.

VI. RECORDS AND REPORTS

- A. Record Keeping. The Link shall maintain accounts of its funds, properties, and business transactions, in accordance with applicable law.
- B. Annual Audit. The Link shall cause to be conducted an annual audit within 120 days after the end of the fiscal year July 1 to June 30. Such audit shall be conducted by an independent certified public accountant, registered accountants licensed to practice in the State of Colorado. The Link shall tender a copy of said audit to the respective Parties hereto upon request of any Party.
- C. Annual Report. Beginning in 2008 and thereafter, by March 1st of each year, The Link shall prepare and present to the respective Participating Jurisdictions, a comprehensive annual report of The Link's activities and finances during the preceding year.
- D. Reports Required by Law, Regulations or Contract. The Link shall also prepare and present such reports as may be required by law, regulation, or contract to any authorized federal, state and/or local officials to whom such report is required to be made in the course and operation of The Link.
- E. Reports Requested by the Parties. The Link may, where practical, render to the Parties hereto, at reasonable requests, such reports and accountings as the Parties hereto may from time to time request.

VII. DEFAULT IN PERFORMANCE

- A. Default by The Link. If, for whatever reason, The Link ceases its operation at anytime during the calendar year, with or without notice to the Participating Jurisdictions, such cessation of services shall constitute a material breach of this IGA and will relieve the Participating Jurisdictions of their funding obligation for any pro rata share of funding submitted for the end of the IGA term. Upon notification from The Link to the Participating Jurisdictions of such cessation of services, The Link agrees to reimburse to the Participating Jurisdictions their pro rata share to the extent that such funds are available. Upon such notice, the terms and conditions this IGA automatically terminates and relieves the Participating

Jurisdictions of any and all obligations contained herein. The same shall apply to Brighton if any one of its three payments is not paid in full on the due date.

- B. Default by Participating Jurisdiction. In the event that any Participating Jurisdiction fails or refuses to provide the agreed upon funding pursuant to Exhibit A for any calendar year, after January 31st of such calendar year, such failure to pay shall constitute a material breach of this IGA. The Link shall notify the Participating Jurisdiction of such breach and if such breach is not cured within 30 days of such notification, the failure to cure shall constitute a material default in terms of this IGA and said Participating Jurisdiction shall be deemed excluded as a Participating Jurisdiction from the scope of this IGA and The Link shall be free to refuse the provision of services for any juvenile from that Participating Jurisdictions' geographical area.

VIII. TERM, RENEWAL AND TERMINATION OF AGREEMENT

- A. Term and Renewal of Agreement. The IGA shall be in full force and effect for a period of one calendar year commencing on January 1, 2009, and ending on December 31, 2009, and the Parties to this IGA shall have an option to renew this IGA for an additional one year, at the end of each such term, upon written notification to The Link of intent to renew, dated 90 days prior to the end of the current term.
- B. Termination by Written Notice. This IGA or any Party's participation in this IGA, may be terminated effective by written notice from the Party or Parties to The Link dated at least 90 days prior to January 1st of any given year. Any Party terminating its participation pursuant to this provision shall not be entitled to any reimbursement of its annual operating cost contributions previously paid to The Link.
- C. Termination of Party/Loss of Funds. Upon termination of a Party whether by default in performance or by written notice, the remaining Parties may continue to participate in this IGA. The Link's Board, upon such termination of Party or Parties, shall act to adjust the budget or Annual Assessment or hours of operation to accommodate the loss in funds unless the remaining Parties negotiate an amendment to the IGA setting forth revised percentages of participation or the Parties agree to terminate the IGA.
- D. Powers of The Link upon Termination by a Majority. Upon termination by mutual agreement of a majority of the Parties to this IGA, the powers granted to The Link under this IGA shall continue to the extent necessary to make an effective disposition of the property, equipment, and assets under this IGA.

IX. AMENDMENT

This IGA may be amended at anytime in writing by agreement of the Parties to this IGA subject to approval of the various governing bodies of the Parties.

X. SEVERABILITY

If any article, section, paragraph, sentence, clause or phrase of this IGA is held to be unconstitutional or invalid for any reason, such holding shall not affect the validity, enforceability or constitutionality of the remaining provisions of this IGA.

XI. COUNTERPART

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

XII. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall give rise to any rights or allow any claim by any third party. It is the express intention of the Parties that any third party receiving benefits from this IGA shall be deemed an incidental beneficiary only.

XIII. SUPERSEDES

This IGA supersedes and replaces all prior agreements and all amendments,

XIV. NON-DISCRIMINATORY POLICY

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

XV. NO GENERAL OBLIGATION INDEBTEDNESS

As this IGA will extend beyond the current fiscal year, the Parties understand and intend that the obligation of the Parties to pay the Annual Assessment hereunder constitutes a current expense of the Parties payable exclusively from the Parties' funds and appropriated each fiscal year, and shall not in any way be construed to be a multi-fiscal year debt or other financial obligation within the meaning of Article X, Section 20, of the Colorado Constitution, a general obligation indebtedness of the Parties within the meaning of any provision of Article XI, of the Colorado Constitution, or any other constitutional or statutory indebtedness. None of the Parties has pledged the full faith and credit of the state, or the Parties to the payment of the charges hereunder, and this IGA shall not directly or contingently obligate the Parties to apply money from, or levy or pledge any form of taxation to, the payment of the annual operating costs.

CITY OF THORNTON

Jack Ethredge, City Manager Date

CITY OF BRIGHTON

By: Jan Pawlowski Date
Title: Mayor

CITY OF COMMERCE CITY

By: Paul Natale Date
Title: Mayor

CITY OF NORTHGLENN

By: Kathleen M. Novak Date
Title: Mayor

ADAMS COUNTY, COLORADO

By: Alice J. Nichol Date

THE LINK
A Community Assessment and
Resource Center

A Colorado Non-Profit Corporation

BY: Valorie A. Ladwig Date
Title: Executive Director

EXHIBIT A
2009 Annual Assessment

Agency	Total Number of Juvenile Transports 2001-2007	Six-Year Average	Pro-rata Share	Actual Cost	Assessment Amount
ACSO	882	145	20%	\$109,835	\$103,867
Brighton	314	62	8%	43,932	41,547*
Commerce City	400	79	10%	54,915	51,933
Northglenn	446	73	10%	54,915	51,933
Thornton	1,531	277	37%	203,188	192,153
Westminster	379	70	9%	49,424	46,740
Link			6% (Including Fed. Heights share)		60,985
Total	• 3,952		100%	\$549,158	\$519,333

• 4,169 including Federal Heights 6 year transports

* Brighton shall pay \$13,848.88 on January 1, April 1 and July 1, 2009.



Agenda Item 8 E

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Westminster Mall Redevelopment Project Consultant Contracts

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Authorize the City Manager to enter into agreements with consultants Mary Beth Jenkins and John Mullins to assist with the redevelopment of the Westminster Mall.

Summary Statement

- The Westminster Mall redevelopment project is gaining significant momentum.
- Consultants are now being brought on board to help facilitate the project.
- Council approval of the contracts is required since the fees exceed staff approval authority.
- Adequate funds have been budgeted and were anticipated for this purpose.

Expenditure Required: Not to exceed \$190,200 per year

Source of Funds: General Capital Improvement Fund – Westminster Mall Account

Policy Issue

Should the City proceed with hiring top notch consultants to assist with moving the redevelopment of the Westminster Mall forward?

Alternative

Do not hire experts to assist with and provide advice concerning the redevelopment of Westminster Mall. This is not recommended as this is a highly complex and critically important project to the City's future. The two consultants recommended by Staff have an excellent track record working on various redevelopment projects in the Denver Metropolitan area.

Background Information

Staff has initiated actions on several fronts to move forward the redevelopment of the Westminster Mall area. The following is a list of some of the major activity occurring within the project:

- Initiated a blight study of the mall and immediate area as a first step for potentially designating the area for urban renewal.
- Put together an internal staff team to address utilities, planning, engineering and financing issues.
- Put together an expert team of consultants to aid with the review of proformas and negotiations.
- Met with the developer and design team to work on site planning.

The outside expert team assembled for the Westminster Mall Redevelopment Project is the same group that City Staff worked with on The Orchard Project:

- John Mullins, Mullins & Associates, to provide commercial financing expertise, assist with the development of business terms, as well as strategic assistance.
- Malcolm Murray, Murray Dahl Kuechenmeister & Renaud LLP, to assist with legal negotiations and urban renewal questions.
- Mary Beth Jenkins, Laramie Company, to provide retail expertise, guidance on the appropriate tenant mix, review and feedback concerning sales projections and costs, and provide market data as needed.

Malcolm Murray has been previously approved by Council to provide legal council for the project. Contracts with John Mullins and Mary Beth Jenkins need Council authorization since the amount of both exceeds City Manager's approval authority. Mr. Mullins' monthly retainer is \$5,350 and Ms. Jenkins' monthly retainer is \$10,500. While expensive, the work of these individuals will be critical to achieving the broad vision the City has for the Westminster Mall site.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Legal Services Agreement with Carlson, Hammond and Paddock

Prepared By: Mary Jay Vestal, Water Resources Engineer
Michael Happe, P.E., Water Resources and Treatment Manager

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will best be served by authorizing the City Manager to execute a two-year sole source fee agreement with Carlson, Hammond and Paddock, L.L.C. (CHP) for special water counsel services in an amount not to exceed \$250,000 for 2009 and not to exceed \$250,000 for 2010.

Summary Statement

- The attorneys at CHP have effectively and successfully represented the City of Westminster in water matters since 1977 and have developed a very thorough knowledge of Westminster water supply and water quality issues.
- Over this time, CHP has become an integral part of the Public Works and Utilities Water Resources and Treatment Division team that is charged with developing and protecting Westminster's water supply.
- CHP's average billing rate to the City of Westminster is lower than the average for water rights attorneys representing large Colorado water users, based on a recent survey of major Colorado water users.
- Westminster's water supply is an extremely valuable asset that requires constant protection from water quality and water quantity degradation.
- Colorado's water rights system requires judicial action for many water matters; thus the City needs expert legal counsel specializing in water rights and water quality.
- Increasing development pressure requires vigilance in numerous water quality forums in the State in order to protect the water quality of Standley Lake and its tributary basins.
- CHP is extremely qualified and competent in water rights and water quality issues.
- Adequate funds are available in the 2009/2010 Utility Fund budget.

Expenditure Required: Not to exceed \$250,000 in 2009 and \$250,000 in 2010

Source of Funds: 2009 and 2010 Utility Fund —
Water Resources and Treatment Division Operating Budget

Policy Issue

Should the City retain Carlson, Hammond and Paddock as special water counsel on behalf of the City in connection with legal water matters for 2009 and 2010?

Alternatives

Do not retain special water counsel or seek new special water counsel to handle water matters for the City. The City could hire additional full-time attorneys to handle the City's water rights and water quality matters, however, this would reduce the amount of flexibility the City currently has with adjusting to meet changing work load requirements and would increase the City's long term commitment to full-time employees. The City could alternatively seek out new special water counsel, but given the good work, long-term outstanding professional relationship and low costs of the representation from Carlson, Hammond and Paddock, Staff does not recommend this alternative.

Background Information

The City of Westminster has a long history of representation on water matters from the principal members of the Carlson, Hammond and Paddock firm. In 1977, the City retained Holland and Hart to handle water matters for the City. John Carlson, Charlie Elliot and Mary Hammond were the principal attorneys working on Westminster issues for Holland and Hart. In 1985, John Carlson, Charlie Elliot and Mary Hammond left Holland and Hart to start their own firm. The City chose to stay with Carlson, Elliot and Hammond as the City's special water counsel instead of staying with Holland and Hart. Charlie Elliot passed away in 1985 and John Carlson passed away in 1992. Now Mary Hammond and Lee Johnson are the principal attorneys representing the City on water matters. Mary Hammond and Lee Johnson have been working on Westminster water matters for 29 years and 18 years, respectively.

The Carlson firm, or variations of it over the years, has played integral parts in a number of very noteworthy historical events involving the Westminster water supply. Here are a few examples:

1. The Four-Way Agreement between Westminster, Thornton, Northglenn and the Farmers Reservoir and Irrigation Company in 1978 that set forth the partnership in sharing Standley Lake for water storage.
2. Successful litigation with the City of Golden in 1985 that prevented Golden from taking Westminster's clean water headed to Standley Lake and replacing it with treated effluent.
3. A comprehensive settlement with the City of Golden and Coors over several water quality and quantity agreements that assured Standley Lake would be permanently protected from Coors and Golden treated sewage discharges along with the settlement of a number of other water disputes among Coors, Golden, Thornton and Westminster. This 1988 agreement became known as the "Cosmic Agreement" due to its size, scope and importance.
4. The successful completion through water court of the change of use for over \$200,000,000 worth of water rights from agricultural uses to municipal uses within the City of Westminster.
5. The protection of Standley Lake from contamination from the Rocky Flats Nuclear Weapons Plant through the development of the Standley Lake Protection Project, including Woman Creek Reservoir.
6. Successful litigation with the City of Golden that upheld the State Engineer's order for Golden to cease and desist the illegal diversions of Clear Creek water upstream of the Farmers' High Line Canal.

CHP has developed a very thorough knowledge of Westminster's water supply and water quality issues, and is a key player in helping develop and protect Westminster's raw water supply. The fees charged by CHP to the City are very favorable when compared with other major water suppliers in Colorado. Carlson, Hammond and Paddock is proposing to increase the rate charged for its services for all partners and associates from \$185 per hour to \$190 per hour for 2009 and to \$195 per hour for 2010. This increase is relatively small and still compares favorably to a survey completed in September of the principal water attorney rates charged to major water suppliers in Colorado. Carlson, Hammond and Paddock's rates are very competitive and still below the average of the 2008 survey.

Water Counsel Fees – 2008 Survey	
Entity	Hourly Rate
Brighton	\$195/hr.
Broomfield	\$225/hr.
Denver Water	\$210/hr.
Ft. Collins	\$275/hr.
Georgetown	\$150/hr.
Westminster (Proposed 2009 rate)	\$190/hr.

Based on all the factors detailed in this memorandum, Staff did not feel it was in the best interest of the City to seek bids on the City's legal services related to water rights and water quality and believes the City should retain Carlson, Hammond and Paddock as a sole source for water legal counsel for 2009 and 2010. This contract will assist in meeting the City's goal of Financially Sustainable City Government Providing Exceptional Services because it ensures efficient and cost-effective external services and secures the long term water supply of the City.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

CARLSON, HAMMOND & PADDOCK, L.L.C.
ATTORNEYS AT LAW

MARY MEAD HAMMOND
WILLIAM A. PADDOCK
LEE H. JOHNSON
KARL D. OHLSEN
BETH ANN J. PARSONS
ROGER L. PHILLIPS

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JOHN UNDEM CARLSON
(303) 861 9000

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website: www.chp-law.com

Sender's Email:

mhammond@chp-law.com

ljohnson@chp-law.com

August 26, 2008

Mr. J. Brent McFall
City Manager
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80030

Re: Carlson, Hammond & Paddock Representation.

Dear Brent:

As you know, Carlson, Hammond & Paddock, L.L.C. has represented the City as Special Water Counsel since the formation of the firm in 1986. In fact, John Carlson, one of the founding members of this firm, represented the City in water matters from the mid-1970's until his untimely death in 1992. In short, we have had a long term relationship with the City -- a relationship that has been immensely satisfying to us as lawyers. We sincerely value Westminster as a client and hope to continue to represent the City for many years to come.

In the past, we have not operated under any type of formal written agreement. In 2002, however, the City requested that we enter into a more formal written agreement. We were, of course, perfectly willing to comply with this request and operated pursuant to two year letter agreements since that time. We understand that the City wishes to renew the letter agreement approach for the coming two year period. Accordingly, this letter agreement is written to set forth the terms for the firm's representation of the City in 2009 and 2010.

As in the past, in 2009 and 2010, Carlson, Hammond & Paddock, L.L.C., will continue to work closely with City staff and represent the City on water matters, including but not limited to water rights and water quality, and related matters that may arise in the course of the year. As in the past, our work will be carried out at the direction of the relevant City staff, and we will continue to consult with water resources staff and city attorney staff in connection with this representation. Our representation will be consistent with the requirements of the Colorado Rules of Professional Conduct.

For our work during the 2009 calendar year, we will charge a flat rate of \$190.00 per hour for attorney time. During the 2010 calendar year, we will charge a flat rate of \$195.00 per hour. This does represent a slight increase over our prior year's hourly rate. We believe this is a very competitive rate as compared to other firms' billing rates in the metro area. We also occasionally

CARLSON, HAMMOND & PADDOCK, L.L.C.

Mr. Brent McFall
August 26, 2008
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employ law clerks and we currently bill for their time at \$60.00 per hour. We bill for all time spent in pursuit of a client's business, including necessary travel time. In addition, we also bill for expenses such as computerized legal research, copies, messenger services, extraordinary postage and out-of-town mileage, lodging and food, and other like items. We will not charge the City for faxes. We understand that our representation in calendar year 2009 is subject to an upper budget limit of \$250,000.00. We understand that our representation in calendar year 2010 is subject to an upper budget limit of \$250,000.00. Although we do not anticipate that the time and expenses associated with our representation of the City would exceed these amounts in either calendar year, if unforeseen circumstances arise, and our charges begin to approach this total, we will promptly notify the City and work with staff and the City to address the funding issues. To the extent that the City does not authorize additional payments, we will suspend our services. Carlson, Hammond & Paddock, L.L.C., acknowledges that nothing in this Agreement shall be construed or deemed as creating a multiple-year fiscal obligation of the City. All obligations of the City pursuant to this Agreement are subject to prior annual appropriation by the City Council. The City agrees to exercise utmost good faith and use its best efforts in making any appropriations required by the City to meet its obligations under this Agreement.

From time to time we find it necessary to raise our hourly rates to reflect our increasing costs and the increasing level of experience of our legal staff. Pursuant to this letter agreement, however, we agree that the flat rate for calendar year 2009 will remain \$190.00 per hour and for calendar year 2010 will remain \$195.00 per hour. We do reserve the right to raise rates in future years.

As we have done in the past, we will send monthly itemized statements setting forth our charges and expenses. It is our policy to charge interest at the rate of 1% per month on any balance that remains unpaid after 30 days. And, as you might anticipate, we do reserve the right to suspend work on behalf of a client when payment of statements is delinquent.

To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Carlson, Hammond & Paddock, LLC shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Carlson, Hammond & Paddock, LLC shall not enter into a contract with a subcontractor that fails to certify to the firm that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Carlson, Hammond & Paddock, LLC hereby certifies that as of the date of this letter, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that it will participate in the e-verify program or department program in order to

CARLSON, HAMMOND & PADDOCK, L.L.C.

Mr. Brent McFall
August 26, 2008
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confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Carlson, Hammond & Paddock, LLC has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the e-verify program or department program. Carlson, Hammond & Paddock, LLC shall not use either the e-verify program or the department program procedures to undertake pre employment screening of job applicants while the services contemplated under this Agreement are being performed.

If Carlson, Hammond & Paddock, LLC obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Carlson, Hammond & Paddock, LLC shall notify the subcontractor and the City within three (3) days that it has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Carlson, Hammond & Paddock, LLC shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Carlson, Hammond & Paddock, LLC shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

In connection with the provision of legal services contemplated under this agreement, Carlson, Hammond & Paddock, LLC shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

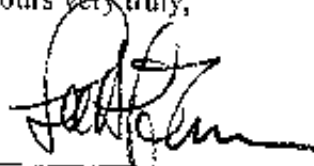
It is very important to us that our clients be satisfied with our services. We believe that open communication is essential, and therefore urge you to contact us with any questions you may have concerning our services, our policies, or our bills, at any time. Please feel free to call us if you have any questions

We sincerely appreciate the opportunity to continue our work with the City. As in the past, we will strive at all times to provide you with the highest quality of legal service for a fair price. Please do not hesitate to call us if you have any questions or concerns regarding our ongoing work for the City of Westminster. Finally, if the terms outlined in this letter are acceptable to the City, please so indicate by executing this letter in the space provided, and return a copy to us.

CARLSON, HAMMOND & PADDOCK, L.L.C.

Mr. Brent McFall
August 26, 2008
Page 4

Yours very truly,



Mary M. Hammond
Lee H. Johnson


CARLSON, HAMMOND & PADDOCK, L.L.C.

Approved for the Year 2009 and 2010:

CITY OF WESTMINSTER

APPROVED AS TO LEGAL FORM:

By: _____
J. Brent McFall
City Manager



City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Engineering Services Agreement with Slattery Aqua Engineering

Prepared By: Mary Jay Vestal, Water Resources Engineer
Michael Happe, P.E., Water Resources and Treatment Manager

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will best be served by authorizing the City Manager to execute a two-year sole source fee agreement with Slattery Aqua Engineering, L.L.C. (SAE) for water resources engineering services in an amount not to exceed \$60,000 for 2009 and not to exceed \$60,000 for 2010.

Summary Statement

- James Slattery, the founder of SAE, has effectively and successfully performed engineering for the City of Westminster on water matters since 1995 and has developed a very thorough knowledge of Westminster water rights and water supply planning issues.
- Slattery Aqua Engineering's billing rate to the City of Westminster is reasonable and is lower than the average for water resources engineers advising large Colorado water users, based on a recent survey of major Colorado water users.
- Westminster's water supply is an extremely valuable asset that requires an engineer's expertise to correctly assess and fully utilize.
- Colorado's water rights system requires professional engineering testimony for many water matters; thus the City needs expert engineering consultation specializing in water rights and water planning.
- Increasing development pressure requires vigilance in numerous water planning forums in the State in order to protect the water supply of the City.
- Slattery Aqua Engineering is very well qualified and competent in water rights and water quality issues.
- It is anticipated that actual spending for SAE's engineering services will be lower than the do-not-exceed amount of \$60,000. Adequate funds are budgeted for this expense in the 2009 and 2010 Budget approved by City Council.

Expenditure Required: Not to exceed \$60,000 in 2009 and \$60,000 in 2010

Source of Funds: 2009 and 2010 Utility Fund —
Water Resources and Treatment Division Operating Budget

Policy Issue

Should the City retain Slattery Aqua Engineering as engineering consultant in connection with water matters for 2009 and 2010?

Alternatives

Do not retain Slattery Aqua Engineering as water resources engineering consultant or seek new water resources engineering consultant to handle water matters for the City. The City could hire additional full-time engineers to handle the City's water rights and water planning efforts; however, this would reduce the amount of flexibility the City currently has with adjusting to meet changing work load requirements and would increase the City's long term commitment to full-time employees. The City could alternatively seek out new water resources engineering consultants, but given the good work, long-term relationship and low costs of the representation from Slattery Aqua Engineering, this alternative is not recommended by Staff.

Background Information

The City of Westminster has a long history of engineering consultation on water matters from James Slattery. In 1995, the City retained Helton & Williamsen, P.C. to handle water matters for the City. James Slattery was one of the principal engineers working on Westminster issues for Helton & Williamsen. In 2007, Mr. Slattery left Helton & Williamsen to start his own firm. The City chose to stay with Mr. Slattery as the City's water resources engineering consultant instead of staying with Helton & Williamsen. Mr. Slattery is currently the principal engineer consulting for the City on water matters. Mr. Slattery has been working on Westminster water matters for 13 years.

James Slattery, both in his previous position at Helton & Williamsen and as the founder of SAE, has played an integral part in a number of very noteworthy historical events involving the Westminster water supply. Here are a few examples:

1. Development and subsequent management of the water resource planning model that the City uses in its long range planning efforts.
2. Worked with City staff to protect Westminster's water rights by negotiating adequate terms and conditions in transfers proposed by the City of Aurora, Blackhawk, Central City, Consolidated Mutual Water Company, Public Service Company, Georgetown, City of Golden, and other water users in the basin.
3. Assisted the City in recent long range planning efforts including planning for the expansion of the reclaimed system and evaluation of various water supply options.
4. Continues to work with City staff to update accounting procedures in the format required by previous water transfer decrees.
5. Prepared an expert report that was submitted to water court to quantify the yield associated with the purchase of Farmers High Line and Manhart Ditch shares.
6. Assisted City staff in the evaluation of the transfer of the Thornton lease to the City of Brighton.
7. Continues to work on options to maximize the yield of Wattenberg Lake and the City's excess consumable effluent.

Slattery Aqua Engineering has developed a very thorough knowledge of Westminster's water supply and water quality issues and is a key player in helping to develop and protect Westminster's raw water supply. The fees charged by SAE to the City are very favorable when compared with other major water suppliers in Colorado. Slattery Aqua Engineering is proposing to increase the rate charged for its services from \$135 per hour to \$142 per hour for 2009 and to \$150 per hour for 2010. Even with this increase, Slattery's rate still compares favorably to a survey completed in September of the principal engineer rates charged to major water suppliers in Colorado. Slattery Aqua Engineering's rates are very competitive and still below the average of the 2008 survey. Mr. Slattery will sub-contract with Mr. Randy Hendrix of Helton & Williamsen, P.C. to assist on certain Geographical Information System (GIS) applications and for cost effective data gathering. Mr. Hendrix's rate will be \$118 per hour for 2009 and \$126 per hour for 2010. The overall cash for these services will not exceed \$60,000 in 2009 and 2010.

Water Engineer Fees – 2008 Survey

Entity	Hourly Rate
Brighton	\$203/hr.
Broomfield	\$220/hr.
Georgetown	\$150/hr.
South Adams County Water and Sanitation District	\$150/hr.
Westminster	\$142/hr. (Proposed 2009 rate)

Based on all the factors detailed in this memorandum, Staff did not feel it was in the best interest of the City to seek bids on the City's engineering services related to water rights and water resources engineering and believes the City should retain Slattery Aqua Engineering as a sole source for water engineering services for 2009 and 2010. This contract will assist in meeting the City's goal of Financially Sustainable City Government Providing Exceptional Services because it ensures efficient and cost-effective external services and secures and develops the long term water supply of the City.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Construction Contract for 94th Avenue and Quitman Lift Station Elimination

Prepared By: Michael Wong, Senior Engineer
Abel Moreno, Capital Projects and Budget Manager

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder Arapahoe Utilities and Infrastructure, Inc. (AUI) in the amount of \$1,376,242 and authorize a 10% contingency of \$137,624; authorize a contract amendment with URS Corporation in an amount not to exceed \$160,000 for construction phase services; and authorize the City Manager to enter into an easement agreement with Hyland Hills Parks and Recreation District for the new sewer line located within the Hyland Hills Golf Course.

Summary Statement

- The City sent contract documents to eight reputable construction contractors that could perform this specialized work through the golf course.
- City Council is being requested to approve a contract with the lowest responsible bidder, Arapahoe Utilities and Infrastructure, Inc., for construction of the 94th Avenue and Quitman Lift Station Elimination project.
- The work includes demolition of the existing lift station concrete structure, installation of approximately 3,800 ft of 15-inch PVC sewer pipeline through the Hyland Hills Golf Course to transmit the sewage flows to the Big Dry Creek Wastewater Treatment Facility.
- An amendment to the engineering contract with URS Corporation has been negotiated to cover the cost for the construction phase services due to the delay in commencing construction and the additional time needed to cover the duration.
- An easement agreement has been negotiated with the Hyland Hills Parks and Recreation District for the construction of the new sewer line in the District's golf course east of the City Center Drive and Sheridan Blvd. In return for the easement agreement, the City will be installing nearly 1,800 linear feet of concrete golf cart path on the 17th and 18th holes.
- Adequate funds are available in the project budget to cover the construction contract and engineering contract amendment.

Expenditure Required: \$1,673,866

Source of Funds: Utility Fund Capital Improvement – 94th Avenue and Quitman Lift Station Elimination Project

Policy Issues

Should City Council authorize a contract with Arapahoe Utilities and Infrastructure, Inc., authorize the contract amendment with URS, and authorize the easement agreement with Hyland Hills Parks and Recreation District?

Alternatives

The City could choose from the following alternatives:

1. Reject all bids and rebid the project. The City received bids from six construction companies, and it is not likely that new bids would be less costly or the City would receive additional qualified bids.
2. Reject Staff's recommendation to execute a contract with Arapahoe Utilities and Infrastructure, Inc. and choose not to eliminate the existing 94th Avenue and Quitman Lift Station. Continuing to operate the lift station under its current condition will risk the flooding of nearby residential basements due to a power outage or equipment malfunction. The City will continue paying the Metro Wastewater Reclamation District for treating the wastewater flows and will not be receiving the benefit of increasing the effluent in the City's reclaimed water system.

Staff does not recommend these alternatives since the bids are competitive and there is adequate funding to complete the project.

Background Information

The existing 94th Avenue and Quitman Lift Station has been in operation since the 1970s. It serves the area bounded by Federal Blvd. on the east, Xavier Street on the west, 92nd Avenue on the south and 97th Avenue on the north. The service area is geographically situated in the Big Dry Creek drainage basin.

Due to power outages and equipment malfunctions incidents involving sewer backups in nearby residential basements has occurred in the past. There was not sufficient storage capacity either in the wet well or sewer pipeline to prevent these wastewater overflows from occurring. Over the past several years, Staff has been looking for a permanent solution to eliminate this serious public health issue.

In March 2007, Staff retained URS Corporation to perform a feasibility study for eliminating the 94th Avenue and Quitman Lift Station. The study confirmed that the lift station could indeed be eliminated by diverting its wastewater flows via a gravity sewer line to the City's Big Dry Creek Wastewater Treatment Facility. As an added benefit, the treated wastewater would increase the effluent in the City's reclaimed water system. URS was authorized to finish the final design in the summer of 2007.

Permanent and construction easements were negotiated with Hyland Hills Parks and Recreation District. Staff agreed the pipeline construction work in the Hyland Hills Golf Course should only be performed during the golf off season. The construction project was originally scheduled from November 2007 to March 2008. A separate agreement negotiation with Metro Wastewater Reclamation District for service area exclusion from the Little Dry Creek drainage basin has delayed the construction project to November 2008 through March 2009. In exchange for the easement through the golf course, the City will be installing a 1,800 linear foot concrete golf cart path on the 17th and 18th holes. The path on the 18th hole will also benefit the City's future access for maintenance purposes.

Because of the construction work within the golf course, Staff prequalified eight local contractors specialized in pipeline installation and surface restoration in parks and golf courses to receive the Invitation to Bid. A pre-bid conference was held on October 10, 2008 to stress the importance of the City's relationship with Hyland Hills Parks and Recreation District and minimize the impact to the golf course operations during construction. Bids were publicly opened and read on October 27, 2008. Six qualified bids were received by the City of Westminster. The following is a tabulation of the bids and the Engineer's estimate:

Bidder's Alternate Lump Sum Bid

Arapahoe Utilities and Infrastructure, Inc.	\$1,376,242
Nelson Pipeline Construction	\$1,378,510
Twin Peaks Construction	\$1,450,335
Scott Contracting	\$1,490,841
T Lowell Construction	\$1,637,420
BT Construction Company	\$1,753,887
URS Engineer's Estimate	\$1,678,177

After a thorough review of the statement of qualifications and other references provided by Arapahoe Utilities and Infrastructure, Inc., Staff is confident that the contractor is qualified for the 94th Avenue and Quitman Lift Station Elimination project. Arapahoe Utilities and Infrastructure, Inc. has successfully completed several utility projects for the City in the past.

URS Corporation was retained in early 2007 for the design of the 94th Avenue and Quitman Lift Station Elimination and bidding documents were being developed in July 2007. At the same time, negotiation with Metro Wastewater Reclamation District for approval of a partial service area exclusion from the Little Dry Creek basin required additional studies requested by Metro District. Staff used some of the funding from the original engineering agreement authorized by City Council in March 2007 to pay for the additional study work. The lack of the Metro District's support of this lift station elimination early on caused the delay of the construction project beyond November 2007, making it impossible to complete the pipeline installation in the golf course by March 2008. The project has to be rescheduled between November 2008 and March 2009.

In accordance with Article III, Section 302 and 303 of the Service Contract between the City of Westminster and Metro, the City can request exclusion of property subject to approval by Metro. The formal request requires passing an ordinance by the City Council and submitting it to Metro according to due process as stated in the Service Contract, which City Council authorized at its July 23, 2007 City Council meeting. The Metro District recently approved the exclusion of this service area from its basin at its October 21, 2008 Board of Directors meeting.

The following is a breakdown of the estimated total project cost:

Arapahoe Utilities and Infrastructure, Inc. Contract	\$1,376,242
Amendment No. 2 to URS Agreement	160,000
Construction Contingencies (10%)	<u>137,624</u>
Total	\$1,673,866

The 94th Avenue and Quitman Lift Station Elimination helps to achieve the City Council's Strategic Plan goals of "Safe and Secure Community" by improving public health and safety to the City's environment; "Financially Sustainable City Government" by contributing to the objective of well-maintained City infrastructure and facilities; and "Beautiful City" by eliminating an outdated wastewater lift station site.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

94TH & QUITMAN LIFT STATION LOCATION MAP



1,000 500 0 1,000 Feet





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Intergovernmental Agreement with RTD Related to the South Westminster Transit Oriented Development Project

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Authorize the City Manager to execute an Intergovernmental Agreement (IGA) with the Regional Transportation District (RTD), in substantially the same form as attached (Attachment A), for the funding and administration of federal grant proceeds to be used in conjunction with the preparation of a conceptual development and improvement plan for the immediate area around the planned transit rail station at Hooker Street and the Burlington Northern & Santa Fe (BNSF) Railroad tracks, and authorize the expenditure of \$64,930 as the City’s matching funds for this project.

Summary Statement:

- The Regional Transportation District (RTD) and the Colorado Department of Transportation (CDOT), as part of the FasTracks transit project are planning a transit rail station in south Westminster to be generally located at Hooker Street and the BNSF Railroad tracks.
- RTD is in the process of completing an environmental assessment (EA) report that will include potential acquisitions and preliminary design specifications for the transit facilities including the tracks, passenger loading platform, parking, pedestrian connections, and utilities.
- RTD has agreed to work in concert with the City to develop a mutually acceptable plan detailing improvements that would be incorporated into preliminary and final FasTracks design plans, and has offered a \$30,000 grant to be applied towards preparation of a conceptual development and improvement plan.
- The City has also been awarded a \$75,000 matching grant of federal funds from the Denver Regional Council of Governments (DRCOG) to be used towards preparation of the plan. RTD has been selected by DRCOG as the administrative agent relative to expenditure of the funds.
- The City of Westminster has a matching requirement of \$64,930 for funding development of the conceptual plan.
- The City is required by RTD to enter into an intergovernmental agreement (IGA) for granting and administering the RTD and DRCOG funds.

Expenditure Required: \$169,930

Source of Funds: \$30,000 - RTD Grant
 \$75,000 - DRGOG Grant
 \$64,930 - City General Capital Improvement Fund - South Westminster Account

Policy Issue

Should the City accept the grant proceeds and move forward with preparation of a development and improvement plan for the South Westminster rail station area given the funding uncertainty for the Northwest transit corridor, but knowing that RTD is still moving forward with the preparation of design plans and engineering for improvements along the corridor?

Alternative

The City could choose not to approve the IGA and reapply for the grants at such time as RTD has finalized a funding strategy to proceed with construction of the Northwest commuter rail line. Staff recommends that this option not be pursued, as the grants from RTD and DRCOG would be redirected to other projects along the several transit corridors. The probability of the City receiving such grants in the future could also be diminished.

Background Information

RTD plans to construct a commuter-rail transit station at about Hooker Street and the BNSF railroad tracks within the South Westminster Transit Oriented Development (TOD) area. The area, being generally defined by a ¼ mile radius of the station, encompasses about 150 acres of land bounded generally by 72nd and 68th Avenues on the north and south, and Federal and Lowell Boulevard on the east and west. About half of the area is currently located within the City of Westminster; the balance of the area is currently located in unincorporated Adams County. Little Dry Creek and the commuter rail line run through the middle of the project area. A significant portion of the project area is currently undeveloped given the massive floodplain and the haphazard development associated with the area. Of the developed land, much of it is old, in substantial disrepair or underutilized. The prospective commuter-rail line and station provides a unique opportunity to reshape the fabric of the community and market the site to prospective developers.

As part of the FasTracks project, RTD is in the process of preparing a required Environmental Assessment report. The EA, upon completion, will include potential acquisitions and preliminary engineering plans relative to improvements required to serve the rail station, including the rail tracks, passenger loading platforms, pedestrian connections and facilities, parking lots, bus and car drop-offs and pick-ups, and utilities such as storm water detention. These design elements are of critical concern to City staff as to the aesthetic and functional qualities of the RTD facilities themselves, and the possible design impact on future development on the adjacent privately-held properties.

Given the complexities regarding RTD's plans, City Staff is proposing to retain the services of a design consultant to prepare a detailed development plan working in coordination with RTD and affected property owners. The planning effort would include developing a mutually agreeable set of design considerations that would be incorporated into RTD's Environmental Assessment report, which would then set forth the parameters for preliminary and final engineering design. The planning effort will further identify and establish funding responsibilities and options relative to implementation of the plan.

The City has received a bid of \$169,930 to complete the development and improvement plan. RTD and DRCOG are offering to provide \$105,000 in planning grants towards the endeavor. RTD has agreed to provide a grant of \$30,000 and DRCOG has offered to award a grant of \$75,000. RTD has been selected by DRCOG as the administrative agent for the disbursement of the federal funds. The City of Westminster is required to enter into an IGA with RTD to receive both the RTD and DRCOG grant proceeds, and authorize RTD to assume responsibility for the disbursement, oversight, and regulatory monitoring of the federal grant proceeds. Per the IGA, the City would also be responsible for a \$64,930 matching contribution. The City has funds available in the South Westminster Revitalization CIP account.

Respectfully submitted,

Stephen P. Smithers, Acting City Manager
Attachment: IGA

INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE

**CITY OF WESTMINSTER
4800 West 92nd Avenue
Westminster, Colorado 80031**

and

**REGIONAL TRANSPORTATION DISTRICT
1600 Blake Street
Denver, Colorado 80202**

This Intergovernmental Agreement made this ____ day of November, 2008 (this "Agreement") between the Regional Transportation District ("RTD"), a political subdivision of the State of Colorado, and the City of Westminster ("City"), a Colorado home-rule municipality, is to provide funding assistance for the development of a Transit Oriented Development ("TOD") Planning Study ("Study") for the area surrounding the South Westminster Station at 71st Avenue and Irving Street ("Station Area") on the Northwest Rail Corridor.

RECITALS:

The context for this Agreement for RTD is established in the RTD TOD Policy dated April 18, 2006 attached hereto as Exhibit A. The purpose of the Study shall be to accomplish the following:

- Develop a community vision and goals for transit oriented development for the station area.
- Identify opportunities and constraints for the implementation of TOD in the station area.
- Develop an infrastructure framework plan to support TOD which includes a supportive transportation network for bikes, pedestrians, buses and automobiles.
- Identify a transit supportive mix of land uses.

- Identify strategies for implementing TOD, including infrastructure improvements, financing mechanisms, zoning changes and other methods to advance the implementation of TOD in the station area.

Generally, the parties wish to maximize integration of mass transit into the City so that access to residences, commercial enterprises, and retail facilities is facilitated and enhanced.

NOW, THEREFORE, it is hereby agreed that:

1. **Recitals, Exhibits.** The recitals set forth above and exhibits attached hereto are incorporated herein by reference.
2. **Funding.** Funds shall be provided through a Congestion Mitigation and Air Quality (CMAQ) grant from the Federal Transit Administration (FTA), administered by RTD. The Denver Regional Council of Governments has awarded the City a Seventy-Five Thousand Dollars (\$75,000) CMAQ grant to be used in conjunction with the planning effort and to be administered by RTD. RTD shall contribute a maximum of Thirty Thousand Dollars (\$30,000.00) in local match funds for the Study. The City shall contribute Sixty Four Thousand Nine Hundred Thirty Dollars (\$64,930) in local cash match funds. Any additional funds required for the Study over and above the CMAQ funds received by RTD and committed local match funds shall be the responsibility of the City.

South Westminster Station Area Study Funding

Funding Source	Amount
Federal CMAQ Share	\$ 75,000
RTD Share	\$ 30,000
City Share	\$ 64,930
Total	\$169,930

3. **Scope of Work.** The scope and cost for the Study (the "Scope") are shown in Exhibit B. No changes to the Scope shall be made without prior written agreement between the City and RTD.
4. **Consultant.** The City shall issue a Request for Proposals to engage a consultant ("Consultant") to conduct the Study. RTD and the City shall each be entitled to review the form of Consultant's contract prior to award and RTD shall advise the City of changes necessary to comply with the above-described grant or other

applicable RTD funding requirements. Compliance with any such RTD-requested changes shall be a condition of receipt of funding for the Study.

5. Review. The City shall manage all activities performed by any Consultant(s) for the Study. RTD shall have the opportunity to review and comment upon all documents, drawings, exhibits, etc., produced by the Consultant as part of the Study, including preliminary drafts. RTD shall withhold payment of the last ten percent (10%) of the CMAQ grant funding until it has had an opportunity to provide comments to the final draft of the Study, prior to adoption by the City. Any property or information provided by RTD for the Study shall be returned to RTD. RTD shall be entitled to receive copies of all reports, drawings, data, and other material produced or collected by the Consultant at no additional cost.
6. Meetings. RTD shall have the right to attend and shall receive notice of all meetings with the Consultant not less than forty-eight (48) hours in advance. RTD shall not give direction to the Consultant but shall coordinate all comments through the City.
7. Reporting Requirements. RTD shall be responsible for all grant reporting for the Study. The City shall be responsible for providing data generated within the scope of work of the consultant contract that provides to support towards the calculation of air quality benefits derived from the Study which is required as part of the federal CMAQ process. The methodology for this data collection will be provided by RTD.
8. Invoices. The City shall invoice RTD for Consultant's work up to a maximum amount of One Hundred and Five Thousand Dollars (\$105,000.00). Such invoices shall include the Consultant's invoice and other available background information regarding the work being invoiced. RTD shall pay for actual Consultant work only. RTD shall pay all approved invoices within thirty (30) days of receipt. If RTD disputes any invoice or portion thereof it shall provide written notice of the dispute. RTD shall not be liable for any financial contribution to the Study funded pursuant to this Agreement other than as set forth herein, unless previously authorized in writing. RTD shall not be responsible for paying Consultant bills directly.
9. Small Business Opportunity Office. It shall be the responsibility of the City to provide RTD's Small Business Opportunity Office with a copy of all proposals at least two weeks in advance of selection of the successful Consultant. The City acknowledges that:
 - a. All Prime contractors/ bidders/ proposers must complete and return a Schedule of Disadvantaged Business Enterprise (DBE) Subcontractors

Participation and a Letter of Intent to Perform to RTD's Small Business Opportunity Office.

- b. Immediately upon execution of any subcontract agreements, the Prime Contractor shall provide copies to RTD's Contract Manager and RTD's Small Business Opportunity Office.
 - c. All extensions, amendments, and change orders of the contract are subject to the review of RTD's Small Business Opportunity Office.
 - d. On a monthly basis, the Prime Contractor will provide RTD with a copy of all processed Consultant's Certification of Payment forms, which will summarize payments made by the City to the primes, and payments made to subcontractors by the primes.
 - e. RTD may contact subcontractors directly if needed to verify payments from primes to subcontractors.
 - f. The Prime Contractor must provide proof of good faith efforts using RTD's documentation process should it prove unable to meet the DBE goal.
 - g. The RTD established DBE goal for this project is 10 percent.
10. Study Recommendations. The parties acknowledge this Agreement is for the performance of the Study only. The parties will make best efforts to secure approvals from their respective governing bodies to implement zoning code changes, adopt master plans and other regulatory changes, and will incorporate these planning efforts into local ordinances, regulations or requirements governing development of the planned area. Nothing herein commits either party to fund any improvements pursuant to adopted plans.
11. Third Parties. No person or entity not a party to this Agreement shall have rights hereunder.
12. Conflicts. No officer, member or employee of RTD or the City, no members of the respective governing bodies of RTD or the City, and no other public officials or employees of RTD or the City during his or her tenure, or for one year thereafter, shall have any personal interest, direct or indirect, in any solicitation for services made pursuant to this Agreement or the proceeds thereof.
13. Termination. This Agreement may be terminated for any of the following reasons:
- a. Funds not Available. In the event that CMAQ grant funds required for funding of this Agreement are not made available, this Agreement shall terminate. In the event available funds are insufficient to pay for Study costs, RTD is under no obligation to provide any funding for the Study.
 - b. Termination for Mutual Convenience. The parties may terminate this Agreement and terminate the Study if both parties agree that the continuation of the Study would not produce beneficial results commensurate with the further expenditure of funds.

c. Termination of Contract for Cause. If through any cause, the City either party fails to fulfill in a timely and proper manner its obligations under this Agreement, or violates any of the covenants, agreements, or stipulations of this Agreement, ~~RTD~~ the non-defaulting party has the right to terminate this Agreement by giving thirty (30) days written notice to the City other of such termination.

14. Audit. RTD, FTA, or any auditor or contractor acting on their behalf shall have the right to audit the City's books and records and the books and records of the Consultant(s) performing the Study, and the contracts awarded for the Study shall provide that RTD shall have the right to audit contractor's books and records as they pertain to this Study for a period of three (3) years from the date of completion of the Study.

15. Merger. This Agreement represents the entire agreement between the RTD and the City and may be amended only in writing, signed by the parties.

16. Notices. All contacts, communications, and data required to be performed or exchanged pursuant to this Agreement will be sent to the following persons:

REGIONAL TRANSPORTATION
DISTRICT:

Bill Sirois
Manager of Transit Oriented Development
Regional Transportation District
1560 Broadway
Suite 700
Denver, Colorado 80202

City of Westminster:

Tony Chacon
Senior Project Coordinator
City of Westminster
Community Development Department
4800 W. 92nd Avenue
Westminster, Colorado 80031

17. Term. This Agreement shall become effective upon the date of execution and will terminate upon completion and final acceptance of the Study by the City.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the _____ day of _____, 2008.

REGIONAL TRANSPORTATION
DISTRICT

By: _____
Clarence W. Marsella
General Manager

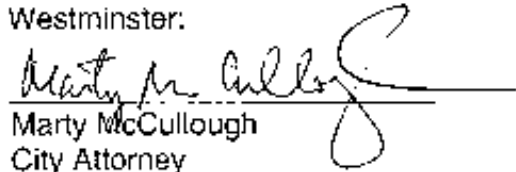
CITY OF WESTMINSTER

By: _____
J. Brent McFall
City Manager

Approved as to legal form for the Regional
Transportation District:

Lori L. Graham
Associate General Counsel

Approved as to legal form for the City of
Westminster:



Marty McCullough
City Attorney

ATTEST:

Linda Yeager
City Clerk

**Exhibit A
RTD TOD Policy**

RESOLUTION NO. 1 SERIES OF 2006

REVISED TRANSIT ORIENTED DEVELOPMENT POLICY

Whereas, the Board of Directors has determined that transit oriented development (TOD) can enhance the value and effectiveness of transit in the district by increasing ridership and will promote cohesiveness and development in existing communities and;

Whereas the Board has determined that the adoption of TOD policies will provide the framework for RTD staff, local governments, and developers to collaborate on the implementation of TODs in the district; and

Whereas, popular support of the FasTracks transit expansion program will provide TOD opportunities that were not envisioned when the existing TOD policies were adopted in 2001; and

Whereas, the Federal TIFIA and New Starts programs give considerable weight to TOD in evaluating competing request for transit funding; and

Whereas, developers and local and regional agencies are increasingly seeking district support in developing TODs at existing and future transit stations; and

Whereas TODs have the potential to affect alignments and station locations, design, and schedule for implementing FasTracks; and

Whereas, RTD seeks to implement a TOD policy that recognizes the expanded interest in TOD, provides a flexible approach to TOD throughout the district, promotes TOD early in the planning and implementation of rapid transit projects, proactively engages partners for TOD and station area planning in a broader geographic area, maximizes the ridership and financial benefits of TOD for RTD, seeks to capitalize on the lessons learned from other TODs, and provides RTD with a range of participation in order to maximize TOD opportunities;

NOW THEREFORE BE IT RESOLVED that the Board of Directors adopt the attached Transit Oriented Development Policy which shall be used as the framework to support TOD planning and development at existing and future stations throughout the district

Passed and adopted this 18th day of April 2006.

Christopher Martinez
Chairperson

Barbara J. Brohl
Secretary

RTD TOD Policy

Definition of TOD

While TOD can have many physical forms, it generally includes the following design principles:

- More compact and dense development around transit facilities compared to existing development patterns in the same area;
- A mix of uses—either horizontal or vertical—usually including residential, retail, and office employment;
- High-quality, pedestrian-oriented urban design and streetscapes

By focusing compact development around transit stations, TOD capitalizes on the value of public infrastructure investments and promotes sustainability. These development synergies promote increased transit ridership for transit agencies. In addition to increased ridership, TOD also is a successful tool for promoting local economic development, helping communities plan for sustainable growth, and increasing the overall quality of life in a region.

Basis for TOD

TOD's ability to increase transit usage while achieving valuable ancillary benefits for the region means that it plays a crucial role in fulfilling RTD's organizational mission—"To meet our constituents' present and future public transit needs by offering safe, clean, reliable, courteous, accessible and cost-effective service throughout the district,"—as well as in accomplishing the three core goals of FasTracks, RTD's long-range transit plan, which are to:

1. Provide improved transportation choices and options to the citizens of the District,
2. Increase transit mode share during peak travel times, and
3. Establish a proactive plan that balances transit needs with future regional growth.

RTD's mission is to provide transit service, and RTD recognizes that other public agencies and private developers are primarily responsible for the region's built environment. However, RTD believes that increased coordination among public and private organizations in promoting TOD throughout the land use planning, zoning, and development process will result in higher-quality sustainable development that meets the varying objectives of all parties.

RTD has the power of eminent domain, or condemnation, to carry out the purposes set forth in its enabling act (C.R.S. 32-9-161). Pursuant to its enabling act, RTD is authorized to operate a mass transportation system (C.R.S. 32-9-107). Therefore, RTD may exercise the power of eminent domain as necessary for the operation of its mass transportation system. RTD does not have authority to exercise its power of eminent domain for any other use, even if it serves a public purpose.

TOD Vision

RTD's vision for TOD is to encourage compact, mixed-use, pedestrian-oriented, high-quality development at and around transit stations consistent with federal requirements, regional goals, and community objectives—including sustainable growth—while operating an attractive, comfortable, and convenient transit system for the residents of the district.

Since there is no one-size-fits-all approach to TOD, RTD has identified four key goals to best achieve success:

1. Promoting multi-sector, cross-jurisdictional partnerships;
2. Encouraging sustainable development that supports the transit system;

3. Ensuring a hierarchy of multimodal access; and
4. Protecting and enhancing RTD's transit assets.

Goals and Strategies

Goal 1: RTD will foster relationships with local jurisdictions, regional agencies, private developers, local residents and businesses, and other stakeholders to support transit station area planning and TOD.

Strategies to achieve this goal include:

- Providing RTD staff expertise and resources to local jurisdictions for station area planning and zoning
- Supporting efforts to encourage TOD by the Denver Regional Council of Governments (DRCOG), which include conducting research, sharing information, and providing planning assistance to connect transit service expansion to economic and community development that supports sustainable growth consistent with the DRCOG Metro Vision Plan
- Working with trade and advocacy organizations—such as the Urban Land Institute—to promote TOD education and best practices
- Establishing guidelines for how TOD relates to the planning and design of transit projects and RTD's project development process
- Establishing a framework for developing partnerships with private developers on joint development projects where developers acquire, use, or modify RTD property and stations

Goal 2: RTD will encourage sustainable development that supports the transit system.

Strategies to achieve this goal include:

- Collaborating with local jurisdictions on station area planning and TOD for areas within ½-mile of stations
- Advocating for new development around stations which generally meet the following principles:
 - It is denser than existing development patterns in the area
 - It contains a mix of uses
 - It has a compact and attractive urban design
 - It is oriented to allow easy pedestrian access to transit facilities
- Encouraging local jurisdictions to adopt TOD supportive policies, plans and zoning for transit stations within their jurisdiction that provide a flexible framework for TOD and prevent development which does not support transit
- Considering both the function and relationship of transit stations to the surrounding community when evaluating joint development projects. The objectives of maximizing revenues and ridership should be evaluated in this context.

Goal 3: RTD supports multimodal access to the transit system by all users.

Strategies to achieve this goal include:

- Creating a hierarchy of access which considers the following modes in order of priority: pedestrians, bus riders, bicyclists, vehicles (short-term parking), and vehicles (long-term parking)

- Considering access needs beyond RTD property in the planning and design of transit stations, including:
 - Pedestrian connections to destinations within a 5- to 10-minute walk
 - Regional bus transit and bicycle connections
 - Vehicular access for the station catchment area
- Strategically managing the use and construction of RTD parking facilities to balance vehicular access and the opportunity for TOD to maximize ridership at stations and minimize the need for single-occupancy vehicle trips by transit riders outside of their trips to stations
- Optimizing RTD parking at stations by considering: proximity to Downtown Denver (less parking closer in), local feeder bus service (less parking with higher levels of service), and pedestrian connectivity (less parking with good pedestrian connections)

Goal 4: Protect and enhance RTD's transit assets and investments.

Strategies to achieve this goal include:

- Considering TOD as an opportunity to increase the value of RTD-owned land near stations
- Encouraging local jurisdictions to support TOD by:
 - Utilizing best practices in TOD planning and implementation around transit stations
 - Encouraging station area planning early in the transit planning process, consistent with the Federal Transit Administration's New Starts guidelines for transit-supportive land uses
- Leveraging Federal investment in the regional transit system, recognizing that there is significant competition among regions throughout the country for Federal transit support, by:
 - Ensuring consistency of local policy with the FTA's funding guidelines for transit joint development, which mandate a transit element, economic development, new or enhanced inter-modal coordination, and non-vehicular capital improvements resulting increased transit usage
 - Ensuring consistency of local policy with the Federal Highway Administration's economic development goals stated in the Federal Transportation Infrastructure Finance Innovation Act
- Using surface parking as a strategic land bank for potential TOD opportunities, and utilizing shared and joint-use parking when available to reduce costs to build and maintain parking facilities
- Favoring the acquisition of permanent rights that meet transit requirements or long-term ground leases as an alternative to ownership in fee simple when RTD property is available for joint development projects
- Utilizing joint development as a means to maintain control of and receive long-term revenue from RTD assets, or to identify capital projects that can be funded or developed from land sales or swaps
- Where land sales are pursued for joint development projects, ensuring that the project will support the long-term generation of revenue for RTD through the protection and enhancement of station ridership and the continuing utilization of the land for TOD purposes

Exhibit B Scope of Work

1. Examination of applicable Plans and Studies prepared by the City and RTD

The consultant will examine the South Westminster Transit Area Redevelopment Plan and companion appendices and studies, as prepared by the City, to gain a general understanding of the "technical" and design considerations that provided the development framework agreed to in principle by both the City and RTD.

The consultant will consult regularly with RTD and its consultants to coordinate the Study with the Northwest Corridor Environmental Evaluation (EE) process. The Study will build from the findings of the EE to optimize the opportunity for TOD in the Station Area. Any findings from the Study do not have standing in the EE process.

The consultant, using a site visit(s) and other documentation and records will identify and present opportunities and constraints in a visual format. The map will set out both the opportunities afforded by the site development as well as the challenges.

Deliverables: Opportunities and Issues map

2. Traffic Circulation and Street Improvement Needs Analysis

a. General Traffic Analysis -- A traffic model for the transit area prepared by the firm of Aldridge Transportation Consultants, LLC (ATC) dated August 15, 2007 for the City shall serve as the basis for analyzing circulation and capacity needs relative to this planning process. The Consultant will provide input data to ATC as needed and upon receiving results shall consult with ATC to formulate recommendations relative to any proposed improvements. The consultant will be responsible for identifying site development issues associated with the road network (elevation, grade, access issues for example).

b. Irving Street Extension -- The consultant shall evaluate the desirability, practicality, and cost of extending Irving Street or another street, or pedestrian underpass, to the south to provide vehicular and/or pedestrian passage across the railroad tracks. This evaluation shall include a thorough assessment of the physical and financial viability of pursuing such improvements. Potential groundwater issues relative to any "underpass" option will need to be assessed.

*Deliverables: Irving Street Extension Feasibility Report including cost assessment
Illustrative drawings of option(s)*

3. Utility Infrastructure Analysis

The City will be responsible for examining the capacities of the existing water, storm sewer, and sanitary sewer infrastructure. The consultant will provide input data as necessary to assist the City in evaluating the required capacities. The City will determine the levels of improvement required and provide such information to the consultant for further financial analysis.

The consultant will coordinate with Xcel Energy, Inc. to evaluate and identify required improvements to electrical and gas infrastructure.

The consultant shall prepare recommendations for improvements and a financial assessment of costs based upon the final development concept agreed to by RTD and the City.

Deliverables: Improvements Analysis Report including cost estimates

4. Commuter Parking Analysis

RTD will provide the consultant with the optimal level of opening-day and time-horizon parking required to serve the train station. RTD will further provide input on design considerations to be incorporated into determining parking location, configuration and pedestrian connectivity to the train station. The consultant shall take information from RTD and develop locational alternatives based upon the City's desire to provide structured parking. The consultant will work with the City and RTD to identify a preferred parking strategy that could include shared parking arrangements between the City, RTD and/or private development. The final plan shall establish a preferential methodology (i.e. surface, structural, combination), locational preference, architectural attributes and phasing options, as applicable, using parking space requirements established by RTD.

Upon receipt of authorization by RTD and the City of a preferred alternative, the consultant will assess design issues relative to the parking facilities and identify mitigation strategies. The consultant shall incorporate concepts agreed to by RTD and the City into architectural elevation drawings in support of transit use and private development opportunity.

*Deliverables: Parking Facility Plan including cost estimate
Facility Location Map and Architectural Drawings*

5. Preparation of Development Options relative to Station Area

a. The consultant will work with City and RTD staff to establish design criteria for the following improvements within the study area:

- Views of development from the train
- Pedestrian facilities and connections beyond the transit facility
- Non-transit parking structures
- Public plazas and amenities beyond the transit facility
- Interface with private development
- "Private" space adjoining public areas (e.g. outdoor table seating, etc.)
- Directional and informational Signage beyond the transit facility
- Bridges as appropriate
- Other features beyond the transit facility as deemed appropriate

b. The consultant may identify desired enhancements to RTD facilities including

signage, park-n-Rides, kiss-n-Rides, bus shelters, and the station platform, with the understanding that these must meet RTD's design criteria and that any design enhancements that cost more than the base project budget must be paid for by the City or a third party.

c. The consultant will work with the City and RTD to recommend preferred bus access routes to the station through the study area.

d. The consultant will prepare 2-3 conceptual station area development options for staff consideration and comment providing sufficient visual detail so as to understand vertical and horizontal relationships of proposed development.

e. The consultant will work with the City and RTD to refine the development options into a preferred development alternative providing detailed two and three dimensional plans for how the site could be developed along with corresponding floor plan detail sufficient to permit the analysis of construction costs and pro-forma analysis required. The plans shall be of sufficient quality to be used in conjunction with public presentations and marketing endeavors.

f. The consultant will further confirm the level of infrastructure improvements required to support the preferred alternative and establish costs and phasing allowances.

Deliverables: Preferred Development Concept Plan (Birds-eye view)

3-D Renderings of Preferred Development Alternative

Cross-section drawings of at-grade and sub-grade improvements as applicable

6. Construction Cost Estimates and Phasing

The consultant will prepare construction cost estimates for required public improvements based on the preferred plan. The consultant will provide a Pro-Forma development analysis to determine how the development could be phased and funding options focusing on public-private partnership.

Deliverables: Cost Estimate and Phasing Report

Funding Alternatives and Strategies Report



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: IBI Group Contract for Planning & Design Services Related to the South Westminster Transit Oriented Development Project

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Authorize the City Manager to sign a contract with the IBI Group in the amount of \$169,930 for planning, design and engineering services for the preparation of conceptual development and improvement plans for the immediate area incorporating and adjacent to the planned transit rail station at Hooker Street and the Burlington Northern Santa Fe (BNSF) Railroad tracks.

Summary Statement:

- The Regional Transportation District (RTD) and the Colorado Department of Transportation (CDOT), as part of the FasTracks transit project are planning a transit rail station in South Westminster to be generally located at Hooker Street and the BNSF Railroad tracks.
- RTD is in the process of completing an environmental assessment (EA) report that will include potential acquisitions and preliminary design specifications for the transit facilities including the tracks, passenger loading platform, parking, pedestrian connections, and utilities.
- RTD has agreed to work in concert with the City to develop a mutually acceptable plan detailing improvements that would be incorporated into preliminary and final FasTracks design plans, and has offered a \$30,000 grant to be applied towards preparation of a conceptual development and improvement plan.
- The City has also been awarded a \$75,000 matching grant of federal funds from the Denver Regional Council of Governments (DRCOG) to be used towards preparation of the plan.
- Pursuant to federal procurement requirements, the City issued a request-for-qualifications (RFQ) for prospective design and planning consultants. The City received nine submittals.
- Based upon interviews with three of the prospective consultants, Staff selected the IBI Group as the preferred design consultant with which to negotiate a contract.
- The negotiated contract with IBI Group is \$169,929.50, of which \$105,000 is funded by DRCOG and RTD grants, with the balance to be funded by the City from the South Westminster Revitalization CIP account.

Expenditure Required: \$169,930

Source of Funds: \$30,000 - RTD Grant
 \$75,000 - DRGOG Grant
 \$64,930 - General Capital Improvement Fund - South Westminster Account

Policy Issues

Should the City proceed with preparation of a development and improvement plan for the South Westminster rail station area given the funding uncertainty for the Northwest transit corridor, but knowing that RTD is still moving forward with the preparation of design plans and engineering for improvements along the corridor?

Alternative

The City could choose not to proceed with preparation of the plans until such time as RTD has finalized a funding strategy to proceed with construction of the Northwest commuter rail line. Staff recommends that this option not be pursued. Since the grants from RTD and DRCOG would be redirected to other projects along the several transit corridors, and the probability of the City receiving such grants in the future could be diminished. Further, RTD expects to finalize the preliminary design as part of the EA process within the next several months, which could affect the City's ability to modify the plans after adoption.

Background Information

RTD plans to construct a commuter-rail transit station at about Hooker Street and the BNSF railroad tracks within the South Westminster Transit Oriented Development (TOD) area. The area, being generally defined by a ¼ mile radius of the station, encompasses about 150 acres of land bounded generally by 72nd and 68th Avenues on the north and south, and Federal and Lowell Boulevard on the east and west. About half of the area is currently located within the City of Westminster; the balance of the area is currently located in unincorporated Adams County. Little Dry Creek and the commuter rail line run diagonally through the project area. A significant portion of the project area is currently undeveloped given the massive floodplain and the haphazard development associated with the area. Of the developed land, much of it is old, in substantial disrepair or underutilized. The prospective commuter-rail line and station provides a unique opportunity to reshape the fabric of the community and market the site to prospective developers.

As part of the FasTracks project, RTD is in the process of preparing a required Environmental Assessment report. The EA, upon completion, will identify potential acquisitions and include preliminary engineering plans relative to improvements required to serve the rail station, including the rail tracks, passenger loading platforms, pedestrian connections and facilities, parking lots, bus and car drop-offs and pick-ups, and utilities such as storm water detention. These design elements are of critical concern to City staff as to the aesthetic and functional qualities of the RTD facilities, and the possible design impact on future development on the adjacent privately held properties.

Given the potential impacts and conflicts regarding RTD's plans, City staff is proposing to retain the services of a design consultant to prepare a detailed development plan working in coordination with RTD and affected property owners. The planning effort would include developing a mutually agreeable set of designs that would be incorporated into RTD's Environmental Assessment report, which would then set forth the parameters for preliminary and final engineering design. The planning effort will further identify and establish funding responsibilities and options for implementation of the plan.

RTD and DRCOG are offering to provide \$105,000 towards the endeavor. RTD has agreed to provide a grant of \$30,000 and DRCOG has offered to award a grant of \$75,000. Based upon these potential grants, City staff initiated an effort to choose a design consultant for the project. Since the DRCOG grant is federal funds, federal procurement policy requires that a design consultant be chosen through a RFQ process focusing on a firm's qualifications, rather than a request-for-proposal (RFP) process based upon cost. Accordingly, the City sent out an RFQ that resulted in the City receiving nine responses. From

these respondents, Staff interviewed three firms for final consideration. The IBI Group was then selected as the preferred consultant due to their high level of TOD expertise, existing working relationship with RTD, and a local office presence in Denver. Negotiations with the IBI Group resulted in a proposed contract cost of \$169,930. Based upon this price, the City of Westminster would be responsible for funding a balance of \$64,930. The City has adequate funds available in the South Westminster Revitalization CIP account.

The preparation of the plan for the South Westminster TOD area is premised on RTD's plan to proceed with construction of the planned rail station at Hooker Street and the BNSF tracks. FasTracks funding issues recently identified by RTD have raised questions about the construction of part or all of the Northwest Corridor within which the South Westminster station is located. RTD is evaluating several scenarios for developing this corridor. All but one alternative continues to include construction of this station regardless of what happens to improvements along the remainder of the corridor. Further, RTD is continuing work on the EA, including preliminary engineering design, which would be completed over the next several months. Based on RTD's intent to complete the EA, City staff proposes to continue with preparation of the plan to ensure the City's interests are presented and incorporated into the document.

Given substantial grant funding from RTD and DRCOG, and the availability of City funds, Staff recommends that the IBI Group be awarded the contract in the amount of \$169,930.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – IBI Contract

**AGREEMENT TO FURNISH PLANNING AND DESIGN SERVICES
TO THE CITY OF WESTMINSTER FOR THE SOUTH WESTMINSTER TRANSIT
STATION AREA DEVELOPMENT PLAN**

A Project which will be funded in part by the Federal Government

THIS AGREEMENT, made and entered into this ____ day of November, 2008, between the CITY OF WESTMINSTER, hereinafter called the "City," and the IBI Group, 1401 17th St., Suite 610, Denver, Colorado 80202, , a general partnership organized pursuant to the laws of the State of California hereinafter called the "Consultant", is as follows:

WHEREAS, the City wishes to prepare design and development concepts for the immediate area inclusive of and adjacent to the planned south Westminster commuter train station being developed as part to the Regional Transportation District (RTD) FasTracks project; and

WHEREAS, the City desires to engage the Consultant to render the professional planning and design services (Services) described in this Agreement and the Consultant is qualified and willing to perform such services; and

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

WHEREAS, the City has been granted and will obtain funds for the Services and other aspects of this project from the Federal Government, the Denver Regional Transportation District (RTD) and the City's General Capital Improvement Fund.

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

I. THE SERVICES

The Services under this Agreement consist of the preparation of design and development concepts for the South Westminster rail transit station area generally bound by 71st Avenue, Federal Boulevard, the Burlington Northern Santa Fe rail tracks, and Irving Street extended to the rail tracks. The design concepts will be developed in consultation and coordination with RTD to develop consensus on conceptual facilities design and implementation. The Services include conceptual design of transit facilities relative to parking, plaza, loading platforms, pedestrian connections, underpasses or overpasses, and evaluation of integration of adjacent private development opportunity. Consultants final design concepts will be compiled into a bound report and drawings drawn to scale that will be used by RTD, the City and a separately-engaged architect engineer in the preparation of final "for construction" plans and specifications for the proposed Project improvements.

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the

professional and technical Services as described in Appendix A, attached hereto and incorporated herein by this reference.

III. ADDITIONAL SERVICES

When authorized by the City, the Consultant agrees to furnish or obtain from others, additional professional services in connection with the Project due to changes in the scope of the Project or its conceptual design, subject to mutual agreement as to additional compensation for additional services.

IV. CONSULTANT'S FEE

The compensation for the Services shall be at the Consultant's standard billing rates, as contained in Appendix B, attached hereto and incorporated herein by this reference, including reimbursable expenses as described therein. The maximum amount billable under this Agreement shall not exceed One Hundred Sixty Nine Thousand Nine Hundred and Twenty Nine Dollars and 50/100 (\$169,929.50.) The Consultant shall submit invoices to the City for services rendered during the preceding month, such invoices to be in such form and detail as shall reasonably be required by the City. Reimbursable expenses shall be itemized. The City agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

V. COMMENCEMENT & COMPLETION OF SERVICES

The Consultant understands and agrees that time is an essential requirement of this Agreement. The Services shall be completed as soon as good practice and due diligence will permit. In any event, the Services shall be completed within Six (6) months after the Consultant receives notice to proceed, exclusive of time lost or due to delays beyond the control of the Consultant.

VI. TERMINATION

This Agreement shall terminate at such time as the work in Section 2 is completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all work previously authorized and completed prior to the date of termination plus any Services the City deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the City all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing the Services included in this Agreement, whether completed or in progress.

VII. INSURANCE

During the course of the Services, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado, Professional Liability Insurance in the minimum amount of \$500,000, but in any event sufficient to cover Consultant's liability under paragraph X.D.1. below, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence, and Commercial General Liability of \$500,000 per person/\$1,000,000 per occurrence. The City shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, and these coverages shall be occurrence-based policies, and shall specifically provide

that all coverage limits are exclusive of costs of defense, including attorney fees. The Consultant shall provide certificates of insurance to the City indicating compliance with this paragraph.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

IX. PROHIBITED INTEREST

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

X. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Services, the Consultant shall act as an independent contractor and not as agent of the City except to the extent the Consultant is specifically authorized to act as agent of the City.

B. Books and Records. The Consultant's books and records with respect to the Services and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the City's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Services.

C. Ownership of Drawings. All plans, drawings, specifications and the like relating to the Services shall be the joint property of the City and Consultant. Upon completion of the Services, or at such other time as the City may require, the Consultant shall deliver to the City a complete corrected set of drawings and such additional copies thereof as the City may request, corrected as of the date of completion of the Services.

D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Services the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to the City for any loss, damages or costs incurred by the City for the repair, replacement or correction of any part of the Services which is deficient or defective as a result of any failure of the Consultant to comply with this standard.

2. Indemnification. To the fullest extent permitted by law and except for all professional

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

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

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph D.2. The City may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the City on account of such injuries.

In any and all claims against the City or any of its agents or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph D.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

The Consultant further agrees to indemnify and hold harmless the City and City's agents and employees against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of the City's implied warranty of the adequacy of the design and plans prepared by the Consultant for the purposes intended by this agreement.

E. **Communications.** All communications relating to the day-to-day activities for the Services shall be exchanged between the respective Project representatives of the City and the Consultant who will be designated by the parties promptly upon commencement of the Services.

All other notices and communications in writing required or permitted hereunder shall be delivered personally to the respective representatives of the City and the Consultant set forth below or shall be mailed by registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. Notices hereunder shall be effective three (3) days after mailing.

F. **Assignment.** The Consultant shall not assign this Agreement in whole or in part, including the Consultant's right to receive compensation hereunder, without the prior written consent of the City; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Consultant's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Consultant of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Consultant's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado and the Charter of the City of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

H. Remedies. Consultant agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000) shall not serve as a limitation on the City's right to pursue tort remedies in addition to other remedies it may have against Consultant. Such rights and remedies shall survive the Services or any termination of this Agreement.

I. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Services for the Project.

J. Subcontracting. Except subcontractors clearly identified and accepted in the Consultant's Proposal, Consultant may employ subcontractors to perform the Services only with City's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

K. Enforcement of Agreement. In the event it becomes necessary for the City to bring an action to enforce any provision of this Agreement or to recover any damages the City may incur as a result of the breach of this Agreement, including, but not limited to defective work, and the City prevails in such litigation, the Consultant shall pay the City its Court-awarded attorney fees.

L. Authorization. The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

XI. COMPLIANCE WITH FEDERAL REGULATIONS

A. Retention of Records. The Consultant shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the operation of programs or the delivery of services under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or such further period as may be necessary to resolve any matter which may be pending.

B. Federal Civil Rights Obligations. Consultant understands that this project will be funded in part by the Federal Government as administered by the State of Colorado. Therefore, in compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Consultant, for itself, its assignees and successors in interest, agrees as follows:

1. Compliance with Regulations. The Consultant shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination. The Consultant, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the grounds of race, color,

sex, mental or physical handicap, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations. Consultant shall notify each potential subconsultant or supplier of Consultant's obligation under this Agreement and the Regulations relative to non-discrimination on the ground of race, color, sex, mental or physical handicap, or national origin.

3. **Information and Reports.** The Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant therein, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulation, order and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State, or the Federal Highway Administration as appropriate, and shall set forth what efforts have been made to obtain the information.

4. **Sanction for Noncompliance.** In the event of the Consultant's noncompliance with the nondiscrimination provisions of the contract, the State will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to withholding of payments to the Consultant under the contract until the Consultant complies, or cancellation, termination or suspension of the contract in whole or in part.

5. **Incorporation of Provisions.** The Consultant shall include the provisions of subparagraphs 1 through 4 of this paragraph XLB. in every subcontract, including procurements of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued pursuant therein. The Consultant shall take such action with respect to any subcontract or procurement as the State or the Federal Highway Administration may direct as a means of enforcing such provisions including sanction for noncompliance, provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request the State or the Federal Highway Administration to enter into such litigation to protect their respective interests.

C. **Patent Rights (Federal Funds).** If any invention, improvement, or discovery of the Consultant or any of its subconsultants or subgrantees is conceived or first actually reduced to practice in the course of or under this contract work, and if such is patentable, the Consultant shall notify the City immediately and provide a detailed written report. The rights and responsibilities of the Consultant, third party contractors, and the City with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations in existence on the date of execution of this contract which define consultant title, right to elect title, federal government "march in" rights, and the scope of the federal government's right in a nonexclusive, irrevocable, paid-up license to use the subject invention for its own. The Consultant shall include the requirements of this paragraph in its third party contracts for the performance of the work under this contract.

D. **Rights in Data and Copyright (Federal Reserved Rights).** Except for its own internal use, the Consultant shall not publish or reproduce any data/information, in whole or part, that is recorded in any form or medium whatsoever and that is delivered or specified to be delivered under this contract, nor may it authorize or permit others to do so, without the written consent of the federal government, through the City, until such time as the federal government may have released such data/information to the public. As authorized by 49 C.F.R. 18.34, the federal government, through the City, reserves a royalty-free,

nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize the City and others to use:

1. any work developed under this contract or a resulting third party contract irrespective of whether it is copyrighted; and
2. any rights of copyright in which a contractor, or third party contractor purchases ownership with federal assistance.

B. **Consultant Progress Reports.** The Consultant shall submit monthly progress reports to the City. Failure to submit a progress report may result in non-payment to the Consultant for the month. The progress report will be reviewed by the City and, after deemed satisfactory by the City, will be used as justification for billing. The progress report shall contain, but not limited to the following:

1. Report on progress of each work activity or milestone identified in the contract, to show the amount of work accomplished during the current month and the amount of work accomplished overall.
2. A report on the time scheduled for each work activity or milestone identified in the contract to show planned time completion and actual time used to do the work.
3. A description of the cause for delays beyond the planned completion time of work activities or milestones contained in the contract.
4. A report on the cost incurred to date on each work activity or milestone contained in the contract and a comparison to the cost estimates for such activity or milestone.
5. A description of possible remedies to get activities or milestones that are behind schedule, back on schedule, and to get activities or milestones that are exceeding cost estimates, back within planned costs.
6. Documentation of meetings that were held during the subject time period.
7. A report on the participation of Disadvantaged Business Enterprise (DBE) subconsultants.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO COMMUNITY DEVELOPMENT DEPARTMENT, ATTENTION: TONY CHACON,

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

IBI GROUP

CITY OF WESTMINSTER

By: [Signature]
Printed Name: Peter Zurawel
Title: Director

By: _____
Printed Name: J. Brent McFall
Title: City Manager

By: [Signature]
Printed Name: Scott Stewart
Title: Managing Director

Address:
1401 17th St., Ste. 610
Denver, Colorado 80202

Address:
4800 West 92nd Avenue
Westminster, Colorado 80031

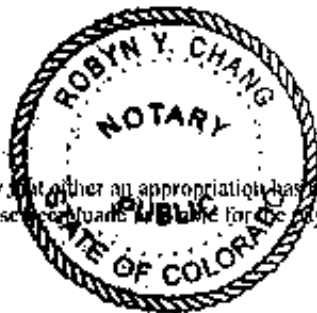
ATTEST:
[Signature]
Title: Office Administrator

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM

By: [Signature]
City Attorney



I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Agreement.

my commission expires 8/18/2010

City Manager
Account No. _____

Appendix A Scope of Work

1. Examination of applicable Plans and Studies prepared by the City and RTD

The consultant will examine the South Westminster Transit Area Redevelopment Plan and companion appendices and studies, as prepared by the City, to gain a general understanding of the "technical" and design considerations that provided the development framework agreed to in principle by both the City and RTD.

The consultant will consult regularly with RTD and its consultants to coordinate the Study with the Northwest Corridor Environmental Evaluation (EE) process. The Study will build from the findings of the EE to optimize the opportunity for TOD in the Station Area. Any findings from the Study do not have standing in the EE process.

The consultant, using a site visit(s) and other documentation and records will identify and present opportunities and constraints in a visual format. The map will set out both the opportunities afforded by the site development as well as the challenges.

Deliverables: Opportunities and Issues map

2. Traffic Circulation and Street Improvement Needs Analysis

a. General Traffic Analysis – A traffic model for the transit area prepared by the firm of Aldridge Transportation Consultants, LLC (ATC) dated August 15, 2007 for the City shall serve as the basis for analyzing circulation and capacity needs relative to this planning process. The Consultant will provide input data to ATC as needed and upon receiving results shall consult with ATC to formulate recommendations relative to any proposed improvements. The consultant will be responsible for identifying site development issues associated with the road network (elevation, grade, access issues for example).

b. Irving Street Extension -- The consultant shall evaluate the desirability, practicality, and cost of extending Irving Street or another street, or pedestrian underpass, to the south to provide vehicular and/or pedestrian passage across the railroad tracks. This evaluation shall include a thorough assessment of the physical and financial viability of pursuing such improvements. Potential groundwater issues relative to any "underpass" option will need to be assessed.

*Deliverables: Irving Street Extension Feasibility Report including cost assessment
Illustrative drawings of option(s)*

3. Utility Infrastructure Analysis

The City will be responsible for examining the capacities of the existing water, storm sewer, and sanitary sewer infrastructure. The consultant will provide input data as necessary to assist the City in evaluating the required capacities. The City will determine the levels of improvement required and provide such information to the consultant for further financial analysis.

The consultant will coordinate with Xcel Energy, Inc. to evaluate and identify required improvements to electrical and gas infrastructure.

The consultant shall prepare recommendations for improvements and a financial assessment of costs based upon the final development concept agreed to by RTD and the City.

Deliverables: Improvements Analysis Report including cost estimates

4. Commuter Parking Analysis

RTD will provide the consultant with the optimal level of opening-day and time-horizon parking required to serve the train station. RTD will further provide input on design considerations to be incorporated into determining parking location, configuration and pedestrian connectivity to the train station. The consultant shall take information from RTD and develop locational alternatives based upon the City's desire to provide structured parking. The consultant will work with the City and RTD to identify a preferred parking strategy that could include shared parking arrangements between the City, RTD and/or private development. The final plan shall establish a preferential methodology (i.e. surface, structural, combination), locational preference, architectural attributes and phasing options, as applicable, using parking space requirements established by RTD.

Upon receipt of authorization by RTD and the City of a preferred alternative, the consultant will assess design issues relative to the parking facilities and identify mitigation strategies. The consultant shall incorporate concepts agreed to by RTD and the City into architectural elevation drawings in support of transit use and private development opportunity.

*Deliverables: Parking Facility Plan including cost estimate
Facility Location Map and Architectural Drawings*

5. Preparation of Development Options relative to Station Area

a. The consultant will work with City and RTD staff to establish design criteria for the following improvements within the study area:

- Views of development from the train
- Pedestrian facilities and connections beyond the transit facility
- Non-transit parking structures
- Public plazas and amenities beyond the transit facility
- Interface with private development
- "Private" space adjoining public areas (e.g. outdoor table seating, etc.)
- Directional and informational Signage beyond the transit facility
- Bridges as appropriate
- Other features beyond the transit facility as deemed appropriate

b. The consultant may identify desired enhancements to RTD facilities including signage, park-n-Rides, kiss-n-Rides, bus shelters, and the station platform, with the understanding that these must meet RTD's design criteria and that any design enhancements that cost more than the base project budget must be paid for by the City or a third party.

c. The consultant will work with the City and RTD to recommend preferred bus access routes to the station through the study area.

d. The consultant will prepare 2-3 conceptual station area development options for staff consideration and comment providing sufficient visual detail so as to understand vertical and horizontal relationships of proposed development.

e. The consultant will work with the City and RTD to refine the development options into a preferred development alternative providing detailed two and three dimensional plans for how the site could be developed along with corresponding floor plan detail sufficient to permit the analysis of construction costs and pro-forma analysis required. The plans shall be of sufficient quality to be used in conjunction with public presentations and marketing endeavors.

f. The consultant will further confirm the level of infrastructure improvements required to support the preferred alternative and establish costs and phasing allowances.

Deliverables: Preferred Development Concept Plan (Birds-eye view)
3-D Renderings of Preferred Development Alternative
Cross-section drawings of at-grade and sub-grade improvements as applicable

6. Construction Cost Estimates and Phasing

The consultant will prepare construction cost estimates for required public improvements based on the preferred plan. The consultant will provide a Pro-Forma development analysis to determine how the development could be phased and funding options focusing on public-private partnership.

Deliverables: Cost Estimate and Phasing Report
Funding Alternatives and Strategies Report

Appendix B

Hourly Wage Rates

IBI Group

		<u>Hourly Wage</u>	<u>Hours</u>
Peter Zurawel	Director	\$165.59	146
Gary Hartnett	Senior Architect	\$130.79	66
Ray Whitechurch	Architect	\$130.79	160
Lewis Stackpole		\$ 95.52	302
Gary Andrishak		\$165.59	78
TBD	Junior Planner	\$ 80.00	171
Salvatore Birritteri	Architect	\$ 73.36	54
Roxanne Dobens		\$ 43.22	264
Charles Varela	CAD Design	\$ 64.25	156
Todd Silvermail	CAD Design	\$ 31.84	398
Robyn Chang	Administration	\$ 41.16	122

David Evans & Associates

		<u>Hourly Wage</u>	<u>Hours</u>
Stacy Tschuor	Senior Task Leader	\$160.00	60
Scott Burger	Senior Engineer	\$130.00	76
Heather Gade	Engineering Technician	\$ 85.00	24
Perry Palmer	Senior Landscape Architect	\$125.00	68
Chau Nguyen	Senior Engineer	\$130.00	32
Cassie Vetter	Engineer	\$110.00	6
Sue Grabler	Senior Task Leader	\$170.00	3
TBD	Administrative Support	\$ 80.00	8
Ed Schumm	Senior Task Leader	\$160.00	15

SOUTH WESTMINSTER STATION AREA PLANNING PROJECT				
DRAFT FEE ESTIMATE SUMMARY				
	IBI	DEA	DBE	TOTAL
TASK 1	\$ 27,596.43	\$ 16,895.00	\$ 4,500.00	\$ 48,991.43
TASK 2	\$ 23,703.43	\$ 13,255.00	\$ 3,700.00	\$ 40,658.43
TASK 3	\$ 29,042.74	\$ 3,660.00	\$ 3,300.00	\$ 36,002.74
TASK 4	\$ 16,368.80	\$ 990.00	\$ 1,700.00	\$ 19,058.80
TASK 5	\$ 5,278.10	\$ 2,740.00	\$ 800.00	\$ 8,818.10
TOTAL	\$ 101,989.50	\$ 37,540.00	\$ 14,000.00	\$ 153,529.50
DIRECT COSTS	\$14,700	\$200	\$1,500	\$16,400
GRAND TOTAL	\$ 116,689.50	\$ 37,740.00	\$ 15,500.00	\$ 169,929.50



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Amendment to the Sale of the 2.65 Acre Parcel Located at the Southwest Corner of Church Ranch Boulevard and US36

Prepared By: Heather Cronenberg, Open Space Coordinator
Susan Grafton, Economic Development Manager

Recommended City Council Action

Authorize the Amendment of the Purchase and Sale Agreement with Resolute Investment, Inc. to clarify the conveyance of Reed Street; allow for the sale of 0.170 acres of Open Space south of Reed Street to Resolute Investments, Inc.; allow the land exchange of 0.131 acres of Open Space for 0.822 acres of floodplain with Resolute Investments, Inc.; and authorize the City Manager to execute all documents necessary to complete the closing of this transaction.

Summary Statement

- The Purchase and Sale agreement for the RTD site needs to be amended to clarify conveyance of a portion of Reed Street.
- Staff proposes selling the 0.170-acre Open Space parcel to the developer, Resolute Investments, Inc., for the placement of a water quality pond. The parcel is a portion of the former Chamberlain property and was dedicated by the City as Open Space in the Church Ranch Amoco final plat.
- Staff proposes to exchange a 0.131 acre portion of open space from the former Hawn property for Resolute Investments' 0.822 acres of floodplain. This represents a 6:1 ratio for value of floodplain to upland property received by the City. The floodplain area that will be dedicated to the City is adjacent to the current Walnut Creek Open Space.
- The Reed Street conveyance, the Open Space sale and exchange of Open Space will be an amendment to the larger Purchase and Sale Agreement that Resolute Investments, Inc. has negotiated with City for the sale of the former RTD Park-n-Ride site.
- According to comparisons of real estate values in this area, \$6 per square foot is a favorable price for this portion of open space. This sale will provide approximately \$44,431.00 that will be deposited into the Parks, Open Space and Trails fund to be used for high priority open space purchases.
- Closing on the sale of the property is expected to occur by December 29, 2008.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City sell the 0.170 acres of Open Space to Resolute Investments, Inc. for \$6 per square foot and exchange 0.131 acres of Open Space with Resolute Investments, Inc. for 0.822 acres of floodplain?

Alternatives

1. Do not sell and exchange City Open Space property. This action would hinder the development of the Westminster Gateway project and stop the City from receiving .822 acres of buffer around Walnut Creek for open space.
2. Request more money for the property. This is a very fair offer at \$6 per square foot.

Background Information

Resolute Investments, Inc. has submitted plans to develop property located at the southwest corner of Church Ranch Boulevard and US36, including the Chamberlain property and former RTD Park-n-Ride site. Westminster City Council approved the sale of the former RTD site to Resolute Investments, Inc. for this development on October 8, 2007. During the development review process, Resolute Investments, Inc. approached the City about a trade in which they would dedicate 0.882 acres of the floodplain as Open Space, in exchange for a 0.131 acre sliver of current Open Space to the east of the property. This exchange will create a wider buffer to Walnut Creek and will benefit the City's Open Space program.

Resolute Investments, Inc. additionally negotiated a sale of City Open Space for the location of their water quality pond. This property will be landscaped to provide a visually appealing entrance into the development. Income in the amount of \$44,431.00 from the sale of this property will be deposited into the Parks, Open Space, and Trails (POST) fund.

The property being sold to Resolute Investments, Inc. is a portion of the former Chamberlain parcel. This property was initially purchased by the Westminster Economic Development Authority as part of the Mandalay Town Center Project, subsequently renamed the Shops at Walnut Creek. It was intended to serve as a relocation site for a BP service station since the station's original location did not conform to the plan for the project. The City dedicated the southern portion, along Walnut Creek, as Open Space in the Church Ranch Amoco plat. The Parks, Open Space, and Trails (POST) fund is currently reimbursing WEDA for this property.

It was also discovered during the review process that a portion of Reed Street could not simply be vacated as former right of way as originally intended. The City holds a fee simple title and therefore must convey the property. Because the original intent was for Resolute to take ownership of Reed Street through the right-of-way vacation process there will not be an increase in the purchase price to account for the land within the Reed Street right of way.

Closing on the property is anticipated to occur by December 29, 2008. The Reed Street conveyance as well as the sale and exchange of City Open Space will be amendments to the larger Purchase and Sale Agreement for the development, which includes the sale of the former RTD site. Council authorization is needed to allow the City Manager to amend the Purchase and Sale Agreement as well as execute all other documents necessary to close this land transaction with Resolute Investments, Inc.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments: Third Contract Amendment
Vicinity Map

THIRD AMENDMENT TO CONTRACT TO BUY AND SELL REAL ESTATE

This Third Amendment to Contract to Buy and Sell Real Estate (this "**Third Amendment**") is made and entered into by and between Church Ranch Development, LLC, a Colorado limited liability company ("**Buyer**"), as successor in interest to Rohr Investments, Inc., a Colorado corporation ("**Rohr**"), and the City of Westminster, a Colorado home-rule municipality ("**Seller**"), effective as of the date of the last party's execution hereof below (the "**Effective Date**").

RECITALS

- A. Seller and Buyer are parties to that certain Contract to Buy and Sell Real Estate dated as of October 9, 2007 and amended by that certain First Amendment to the Contract to Buy and Sell Real Estate, dated as of June 5, 2008, and Second Amendment to Contract to Buy and Sell Real Estate, dated as of October 30, 2008 (collectively, the "**Contract**").
- B. Rohr assigned all of its right, title and interest in and to the Contract to Buyer pursuant to that certain Assignment and Assumption of Purchase and Sale Agreement dated as of October 30, 2007.
- C. Buyer and Seller now desire to further amend the Contract in accordance with the terms and conditions provided below.

AGREEMENT

1. Capitalized terms not defined herein shall have the same meaning as set forth in the Agreement.
2. Section 1 of the Contract shall be deleted in its entirety and the following substituted therefor:

I. AGREEMENT. Subject to the terms and conditions of this Contract, the parties agree to the following:

- a. Buyer agrees to buy and the undersigned Seller agrees to sell the RTD Property and Open Space Property defined in Section 2.b.(i) and (ii), respectively, below.
- b. Buyer agrees to dedicate to Seller that parcel of real property described as "Tract D" defined in Section 2.b.(vi), below, and, in complete consideration therefor, Seller agrees to convey to Buyer that parcel of real property described as "Tract C" defined in Section 2.b.(iv), below.
- c. Further, in consideration of the mutual promises, conditions and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller

agrees to convey to Buyer the Reed Street Parcel defined in Section 2.b.(iii), below, and Buyer agrees to dedicate the ROW Tracts, defined in Section 2.b.(vii), back to Seller pursuant to that certain Westminster Gateway Subdivision Final Plat.

3. Subsection h. and Subsection d. of Section 2 of the Contract shall be deleted in their entirety and the following substituted therefor:

2. DEFINED TERMS.

b. Property; Tract D; ROW Tracts.

(i) **RTD Property.** The "RTD Property", shown as "Parcel A", "Tract E", and "Tract F" on Exhibit "A", attached hereto and incorporated herein, consists of approximately 2.647 acres of land located on the southwest corner of Highway 36 and Church Ranch Boulevard in the City of Westminster, Colorado, including all improvements, easements, tenements, hereditaments, rights and appurtenances belonging thereto and all personal property associated therewith. The RTD Property is more particularly described on Exhibit "B", attached hereto and incorporated herein by this reference.

(ii) **Open Space Property.** The "Open Space Property" shown as "Parcel D" on Exhibit "A", consists of approximately 0.170 acres of land located to the south of Reed Street in the City of Westminster, Colorado, including all improvements, easements, tenements, hereditaments, rights and appurtenances belonging thereto and all personal property associated therewith. The Open Space Property is more particularly described on Exhibit "C", attached hereto and incorporated herein by this reference.

(iii) **Reed Street Parcel.** The "Reed Street Parcel", shown as "Tract A", "Tract B", and "Tract G" on Exhibit "A", consists of approximately 0.874 acres of land located in the City of Westminster, Colorado, including all improvements, easements, tenements, hereditaments, rights and appurtenances belonging thereto and all personal property associated therewith. The Reed Street Parcel is more particularly described on Exhibit "D", attached hereto and incorporated herein by this reference.

(iv) **Tract C.** That parcel of real property shown as "Tract C" on Exhibit "A", consisting of approximately 0.131 acres of land located in the City of Westminster, Colorado, including all improvements, easements, tenements, hereditaments, rights and appurtenances belonging thereto and all personal property

associated therewith. Tract C is more particularly described on Exhibit "E", attached hereto and incorporated herein by this reference.

(v) **Property.** The RTD Property, Open Space Property, Reed Street Parcel, and Tract C shall be collectively referred to as the "Property."

(vi) **Tract D.** That certain parcel of real property shown as "Tract D" on Exhibit "A", consisting of approximately 0.822 acres of land located in the City of Westminster, Colorado, including all improvements, easements, tenements, hereditaments, rights and appurtenances belonging thereto and all personal property associated therewith. Tract D is more particularly described on Exhibit "F", attached hereto and incorporated herein by this reference.

(vii) **ROW Tracts.** Those certain parcels of real property shown as "Tract A", "Tract E", "Tract F", & "Tract G" on Exhibit "A", consisting of approximately 0.64 acres of land located in the City of Westminster, Colorado, including all improvements, easements, tenements, hereditaments, rights and appurtenances belonging thereto and all personal property associated therewith. The ROW Tracts are more particularly described on Exhibit "G", attached hereto and incorporated herein by this reference.

d. **Attachments.** Exhibit "A" – Property Exchange Exhibit
Exhibit "B" – RTD Property
Exhibit "C" – Open Space Property
Exhibit "D" – Reed Street Parcel
Exhibit "E" – Tract C
Exhibit "F" – Tract D
Exhibit "G" – ROW Tracts

4. Section 4 of the Contract shall be deleted in its entirety and the following substituted therefor:

4. PURCHASE PRICE AND TERMS. The Purchase Price, as defined in Section 4.c., below, shall be payable in U.S. Dollars by Buyer as follows:

a. **RTD Property.** The purchase price for the RTD Property shall be an amount equal to Nine and 00/100 Dollars (\$9.00) multiplied by the number of square feet currently comprising the RTD Property (115,346.9 square feet) excluding the ROW Tract A and Tract F located adjacent to U.S. Highway 36 and Church Ranch Boulevard (19,064 square feet). Based on the calculation set forth in this Section 4.a., the purchase price

for the RTD Property shall be Eight Hundred Sixty Six Thousand Five Hundred and Forty Six and 10/100 Dollars (\$866,546.10) (the "RTD Property Purchase Price").

b. Open Space Property. The purchase price for the Open Space Property shall be an amount equal to Six and 00/100 Dollars (\$6.00) multiplied by the number of square feet currently comprising the Open Space Property (7,411 square feet). Based on the calculation set forth in this Section 4.b., the purchase price for the Open Space Property shall be Forty-Four Thousand and Four Hundred Sixty-Six and No/100 Dollars (\$44,466.00) (the "Open Space Property Purchase Price").

c. Purchase Price. The "Purchase Price" shall mean the sum of the RTD Property Purchase Price and the Open Space Property Purchase Price, and shall be Nine Hundred Eleven Thousand and Twelve and 10/100 Dollars (\$911,012.10).

Item No.	Reference	Event	Amount	Amount
1	§ 4c	Purchase Price	\$911,012.10	
2	§ 4d	Earnest Money		\$20,000.00
3	N/A	New Loan		\$ -
4	N/A	Assumption Balance		\$ -
5	§ 4e	Seller or Private Financing		\$ -
6	§ 4f	Cash at Closing		
7	§ 24e	First Deposit		\$20,000.00
8		TOTAL	\$911,012.10	

d. Earnest Money. The Earnest Money set forth in this Section, in the form of a Cashier's Check, Money Order, or Wired Funds (to be cashed by Earnest Money Holder), is part payment of the Purchase Price and shall be payable to and held by First American Heritage Title Company, Mej Ellsworth (Earnest Money Holder), in an interest-bearing trust account, on behalf of both Seller and Buyer. The Earnest Money shall be tendered on or before the Earnest Money Deadline Date (§2c).

e. Seller or Private Financing. *Intentionally omitted.*

f. Cash at Closing. All amounts paid by Buyer at Closing including Cash at Closing, plus Buyer's closing costs, shall be funds which comply with all applicable Colorado laws, and may be in the form of cash, electronic transfer funds, certified check, money order or cashier's check ("Good Funds").

5. Section 7 of the Contract shall be amended as follows:

Wherever used, the term "Property" shall be replaced with the term "RTD Property" and the term "Purchase Price" shall be replaced with "RTD Property Purchase Price."

6. Section 7 of the Contract shall be further amended by adding the following subsection c.:

c. Evidence of Title; Open Space Property, Tract C. On or before ten (10) days after the Effective Date of this Third Amendment, Seller shall cause to be issued and delivered to Buyer a commitment for an ALTA Form B extended owner's coverage title insurance policy issued by the Title Company, wherein said insurer agrees to issue to Buyer upon the recording of the respective deeds and the conveyance documents a 2006 ALTA Form B Owner's Title Insurance Policy with a zoning endorsement and so-called owner's extended coverage endorsement in an amount equal to the Open Space Purchase Price with respect to the Open Space Property and Thirty-Four Thousand and Two-Hundred and Forty-Two and No/100 Dollars (\$34,242.00) with respect to Tract C. If a title insurance commitment is furnished, it shall commit to delete or insure over the standard exceptions which relate to: (i) parties in possession, (ii) unrecorded easements, (iii) survey matters, (iv) any unrecorded mechanics' liens, (v) gap period (effective date of commitment to date deed is recorded), and (vi) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

All premium expense to obtain title insurance for Buyer with respect to the Open Space Property and Tract C shall be paid by Seller.

7. Section 8 of the Contract shall be amended as follows:

Wherever used, the term "Property" shall be replaced with the term "RTD Property."

8. Section 10 of the Contract shall be amended as follows:

Wherever used, the term "Property" shall be replaced with the term "RTD Property."

9. Section 11 of the Contract shall be deleted in its entirety and the following substituted therefor:

11. CLOSING. Delivery of deed(s) from Seller to Buyer for the Property shall be at Closing ("Closing"). Contemporaneously therewith, Buyer shall dedicate to Seller pursuant to the Plat the ROW Tracts and Tract D. Closing shall be on the date specified as the "Closing Date" (§2c) or within fifteen (15) days after recording of the Official Development Plan, whichever occurs first. The hour and place of Closing shall be as designated by agreement.

10. Section 16 of the Contract shall be deleted in its entirety and the following substituted therefor:

16. POSSESSION. Possession of the Property shall be delivered to Buyer and possession of Tract D shall be delivered to Seller on Possession Date and Possession Time (§2c), subject to the following lease(s) or tenancy(s): NONE.

11. With the exception of those terms and conditions specifically modified and amended herein, the Contract shall remain in full force and effect in accordance with all of its terms and provisions. In the event of any conflict between the terms and provisions of the Contract and the terms and provisions of this Third Amendment, the terms and provisions of this Third Amendment shall supersede and control.

12. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this Third Amendment, the parties may execute and exchange telefaxed or e-mailed counterparts of this Third Amendment and such counterparts shall serve as originals.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto, acting herein by duly authorized individuals, have caused this Third Amendment to be executed effective as of the date first above written.

BUYER:

CHURCH RANCH DEVELOPMENT, LLC, a
Colorado limited liability company

By: Resolute Investments, Inc.
Its: Managing Member

By: _____
Gary E. Rohr
Its: President
Date: _____

Buyer's Address: 7374 S. Alton Way, Suite 203
Englewood, Colorado 80112

Buyer's Email: grohr@resoluteinvestments.com
Buyer's Telephone: (303) 645-0555
Buyer's Fax No.: (866) 305-0930

With copies of notifications to:

Brownstein Hyatt Farber Schreck
410 17th Street, Suite 2200
Denver, Colorado 80202
Attn: Howard J. Pollack, Esq.
(303) 223-1100
(303) 223-0912 (fax)

SELLER:

CITY OF WESTMINSTER, a Colorado home-
rule municipality

By: _____
Name: _____
Title: City Manager
Date of Seller's signature: _____

Authorized by City Council on: _____

EXHIBIT A
PROPERTY EXCHANGE EXHIBIT

See Attached

EXHIBIT B
RFD PROPERTY

PROPERTY DESCRIPTION

A PORTION OF THE SOUTHEAST ¼ OF SECTION 11 AND THE SOUTHWEST ¼ OF SECTION 12 TOWNSHIP 2 SOUTH RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH-EAST CORNER OF SAID SECTION 11, WHENCE THE SOUTH-EAST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS SOUTH 89°52'28" WEST A DISTANCE OF 2311.05 FEET.

THENCE NORTH 44°39'44" EAST NON-TANGENT WITH THE FOLLOWING DESCRIBED CURVE A DISTANCE OF 68.04 FEET TO THE POINT OF BEGINNING.

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 87° 52'43" A RADIUS OF 80.00 FEET, A CHORD BEARING SOUTH 84°27'36" WEST A DISTANCE OF 111.62 FEET, AND AN ARC DISTANCE OF 122.76 FEET.

THENCE SOUTH 74°29'34" WEST NON-TANGENT WITH THE LAST DESCRIBED CURVE A DISTANCE OF 66.26 FEET.

THENCE SOUTH 80°48'21" WEST TANGENT WITH THE FOLLOWING DESCRIBED CURVE A DISTANCE OF 369.69 FEET.

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 190°0'00" A RADIUS OF 31.60 FEET, A CHORD BEARING NORTH 65°40'09" WEST A DISTANCE OF 27.36 FEET, AND AN ARC DISTANCE OF 28.26 FEET.

THENCE NORTH 11°02'39" WEST TANGENT WITH THE LAST AND FOLLOWING DESCRIBED CURVES A DISTANCE OF 78.57 FEET.

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 92°45'06" A RADIUS OF 31.60 FEET, A CHORD BEARING NORTH 65°33'55" EAST A DISTANCE OF 47.78 FEET, AND AN ARC DISTANCE OF 53.42 FEET, SAID CURVE BEING TANGENT WITH THE FOLLOWING DESCRIBED CURVE.

THENCE ALONG THE SOUTHEASTERLY LINE OF A PARCEL OF LAND DESCRIBED IN RECEIPTION NO. 00021174, JEFFERSON COUNTY CLERK AND RECORDER'S OFFICE.

TANGENT WITH THE LAST DESCRIBED CURVE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 95°2'36" A RADIUS OF 1613.50 FEET, A CHORD BEARING NORTH 50°50'07" EAST A DISTANCE OF 237.87 FEET, AND AN ARC DISTANCE OF 238.08 FEET.

THENCE NORTH 60°03'45" EAST CONTINUING ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL TANGENT WITH THE LAST DESCRIBED CURVE A DISTANCE OF 121.37 FEET.

THENCE SOUTH 47°39'53" EAST ALONG THE SOUTHWESTERLY LINE OF A PARCEL OF LAND DESCRIBED IN SAID RECEIPTION NO. 00021174 A DISTANCE OF 351.72 FEET.

THENCE SOUTH 51°53'47" EAST CONTINUING ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL A DISTANCE OF 75.24 FEET TO THE POINT OF BEGINNING.

CONTAINING 115,395 SQ. FT., (2.64± ACRES) MORE OR LESS.

EXHIBIT C
OPEN SPACE PROPERTY

LEGAL DESCRIPTION
PARCEL "D"

A PARCEL OF LAND BEING A PORTION OF TRACT "A" AS SHOWN IN THE RECORDED PLAT OF "CHURCH RANCH AMOCO" RECORDED AT RECEPTION NO. 2005021540, BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE S 57° 07' 16" W, A DISTANCE OF 530.91 FEET TO THE ARC OF A NON-TANGENT CURVE TO THE RIGHT AND THE POINT OF BEGINNING;

THENCE 148.65 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 34° 04' 02", AND A CHORD WHICH BEARS N 71° 12' 23" W, A DISTANCE OF 146.47 FEET;

THENCE N 54° 10' 22" W, A DISTANCE OF 18.67 FEET;

THENCE S 89° 54' 28" E, A DISTANCE OF 51.68 FEET TO THE POINT OF A NON-TANGENT CURVE TO THE LEFT;

THENCE 116.37 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 133.50 FEET, A CENTRAL ANGLE OF 49° 56' 45", AND A CHORD WHICH BEARS N 65° 08' 55" E, A DISTANCE OF 112.72 FEET;

THENCE S 00° 05' 32" W A DISTANCE OF 105.40 FEET TO THE POINT OF BEGINNING;

CONTAINING 7,411 SQ. FT. 0.170 ACRES, MORE OR LESS.

For and on behalf of:
Bohannon Huston
9785 Maroon Circle - Suite 140
Englewood, Colorado 80112
Ph: 303-799-5103
Fax: 303-799-5104

EXHIBIT D
Reed Street Parcel

LEGAL DESCRIPTION

A TRACT OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11, THE SOUTHWEST QUARTER OF SECTION 12, AND THE NORTHEAST QUARTER OF SECTION 14 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEPTION NO. F0321025, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET; SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE S 00° 42' 12" W, A DISTANCE OF 78.99 FEET AND NON-TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 60.24 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 43° 08' 25", A CHORD BEARING N 58° 57' 24" W, A DISTANCE OF 58.82 FEET;

THENCE 30.41 FEET ALONG THE ARC OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 52° 48' 11", A CHORD BEARING N 63° 47' 17" W, A DISTANCE OF 29.35 FEET;

THENCE S 89° 48' 40" W NON-TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 332.10 FEET;

THENCE N 36° 22' 57" E, A DISTANCE OF 87.12 FEET;

THENCE N 89° 48' 21" E, A DISTANCE OF 245.66 FEET;

THENCE N 74° 29' 34" E, A DISTANCE OF 66.26 FEET AND NON-TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 122.71 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 87° 52' 52", A CHORD BEARING N 84° 27' 42" E, A DISTANCE OF 111.03 FEET;

THENCE S 51° 35' 46" E NON-TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 102.22 FEET TO THE SOUTH LINE OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M.;

THENCE N 89° 38' 38" W, A DISTANCE OF 142.00 FEET, ALONG THE SOUTH LINE OF SAID SECTION 12 TO THE POINT OF BEGINNING.

CONTAINING 38,080 SQ. FT. OR 0.874 ACRES, MORE OR LESS.

For and on behalf of:
Bohannon Huston
9785 Maroon Circle – Suite 140

Englewood, Colorado 80112
Ph: 303-799-5103 /Fax: 303-799-5104

EXHIBIT E

TRACT C

A TRACT OF LAND LYING WITHIN THE NORTHWEST QUARTER OF SECTION 13 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEIPTION NO. P0800645, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 13, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET; SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE S 89° 38' 38" E, A DISTANCE OF 26.90 FEET;

THENCE S 00° 42' 14" W, A DISTANCE OF 182.64 FEET;

THENCE N 89° 17' 46" W, A DISTANCE OF 17.98 FEET;

THENCE S 00° 42' 14" W, A DISTANCE OF 89.25 FEET;

THENCE N 88° 45' 44" W, A DISTANCE OF 8.92 FEET;

THENCE N 00° 42' 14" E, A DISTANCE OF 192.66 FEET;

THENCE N 00° 42' 12" E, A DISTANCE OF 78.99 FEET TO THE POINT OF BEGINNING.

CONTAINING 5,707 SQ. FT. OR 0.131 ACRES, MORE OR LESS.

For and on behalf of:
Bohannon Huston
9785 Maroon Circle – Suite 140
Englewood, Colorado 80112
Ph: 303-799-5103
Fax: 303-799-5104

EXHIBIT F

TRACT D

A TRACT OF LAND LYING WITHIN THE NORTHEAST QUARTER OF SECTION 14, BEING A PORTION OF LOT 1, CHAMBERLAIN SUBDIVISION (RECEPTION NO. F2121485), ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 14, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE S 00° 42' 13" W, A DISTANCE OF 271.65 FEET TO THE POINT OF BEGINNING;

THENCE S 00° 42' 14" W, A DISTANCE OF 91.35 FEET;

THENCE S 88° 52' 14" W, A DISTANCE OF 441.63 FEET;

THENCE N 00° 05' 32" E, A DISTANCE OF 83.47 FEET;

THENCE S 89° 51' 50" E, A DISTANCE OF 334.91 FEET;

THENCE N 78° 57' 13" E, A DISTANCE OF 92.58 FEET;

THENCE S 88° 45' 44" E, A DISTANCE OF 16.76 FEET TO THE POINT OF BEGINNING.

CONTAINING 35,840 SQ. FT. OR 0.822 ACRES, MORE OR LESS.

For and on behalf of:
Bohannon Huston
9785 Maroon Circle – Suite 140
Englewood, Colorado 80112
Ph: 303-799-5103
Fax: 303-799-5104

EXHIBIT G

ROW TRACTS – TRACTS A, E, F, & G

LEGAL DESCRIPTION

TRACT "A"

A TRACT OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11 AND THE SOUTHWEST QUARTER OF SECTION 12, BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEIPTION NO. F0321025, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE S 89° 38' 38" E, ALONG THE NORTH LINE OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M., A DISTANCE OF 26.90 FEET TO THE POINT OF BEGINNING;

THENCE N 00° 42' 14" E, A DISTANCE OF 24.08 FEET;

THENCE N 50° 17' 03" W, A DISTANCE OF 71.13 FEET AND NON-TANGENT TO THE FOLLOWING DESCRIBED CURVE:

THENCE 95.18 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 68° 10' 12", A CHORD BEARING S 85° 41' 00" E, A DISTANCE OF 89.67 FEET;

THENCE S 51° 35' 46" E, A DISTANCE OF 102.22 FEET TO THE NORTH LINE OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M.;

THENCE N 89° 38' 38" W ALONG THE NORTH LINE OF SAID SECTION 13, A DISTANCE OF 115.10 FEET TO THE POINT OF BEGINNING.

CONTAINING 6,722 SQ. FT. OR 0.154 ACRES, MORE OR LESS.

LEGAL DESCRIPTION

TRACT "E"

A TRACT OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11 AND THE SOUTHWEST QUARTER OF SECTION 12 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEIPTION NO. 2007109822, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE N 00° 17' 41" E, A DISTANCE OF 111.23 FEET TO THE POINT OF BEGINNING;

THENCE S 51° 35' 36" E, A DISTANCE OF 78.25 FEET AND NON-TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 95.18 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 68° 10' 12", A CHORD BEARING N 85° 41' 00" W, A DISTANCE OF 89.67 FEET;

THENCE N 50° 17' 03" W NON-TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 109.38 FEET;

THENCE N 27° 18' 29" W, A DISTANCE OF 153.60 FEET;

THENCE S 47° 59' 55" E, A DISTANCE OF 245.86 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,544 SQ. FT. OR 0.242 ACRES, MORE OR LESS.

**LEGAL DESCRIPTION
TRACT "F"**

A TRACT OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEPTION NO. 2007109822, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE N 36° 20' 37" W, A DISTANCE OF 411.06 FEET TO THE POINT OF BEGINNING;

THENCE S 60° 03' 45" W, A DISTANCE OF 131.54 FEET AND TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 266.06 FEET, ALONG THE ARC OF SAID TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1591.50 FEET, A CENTRAL ANGLE OF 09° 34' 43", A CHORD BEARING S 55° 16' 24" W, A DISTANCE OF 265.75 FEET;

THENCE 40.95 FEET, ALONG THE ARC OF NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 71° 05' 47", A CHORD BEARING N 16° 03' 52" E, A DISTANCE OF 38.37 FEET;

THENCE 238.09 FEET, ALONG THE ARC OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 1613.50 FEET, A CENTRAL ANGLE OF 08° 27' 16", A CHORD BEARING N 55° 50' 07" E, A DISTANCE OF 237.87 FEET;

THENCE N 60° 03' 45" E, TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 124.37 FEET;

THENCE S 47° 59' 55" E, A DISTANCE OF 23.14 FEET TO THE POINT OF BEGINNING;

CONTAINING 8,520 SQ. FT. OR 0.195 ACRES, MORE OR LESS.

**LEGAL DESCRIPTION
TRACT "G"**

A TRACT OF LAND LYING WITHIN THE NORTHEAST QUARTER OF SECTION 14 AND THE SOUTHEAST QUARTER OF SECTION 11, BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEIPTION NO. F0321025, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE S 83° 39' 42" W, A DISTANCE OF 330.74 FEET TO THE POINT OF BEGINNING;

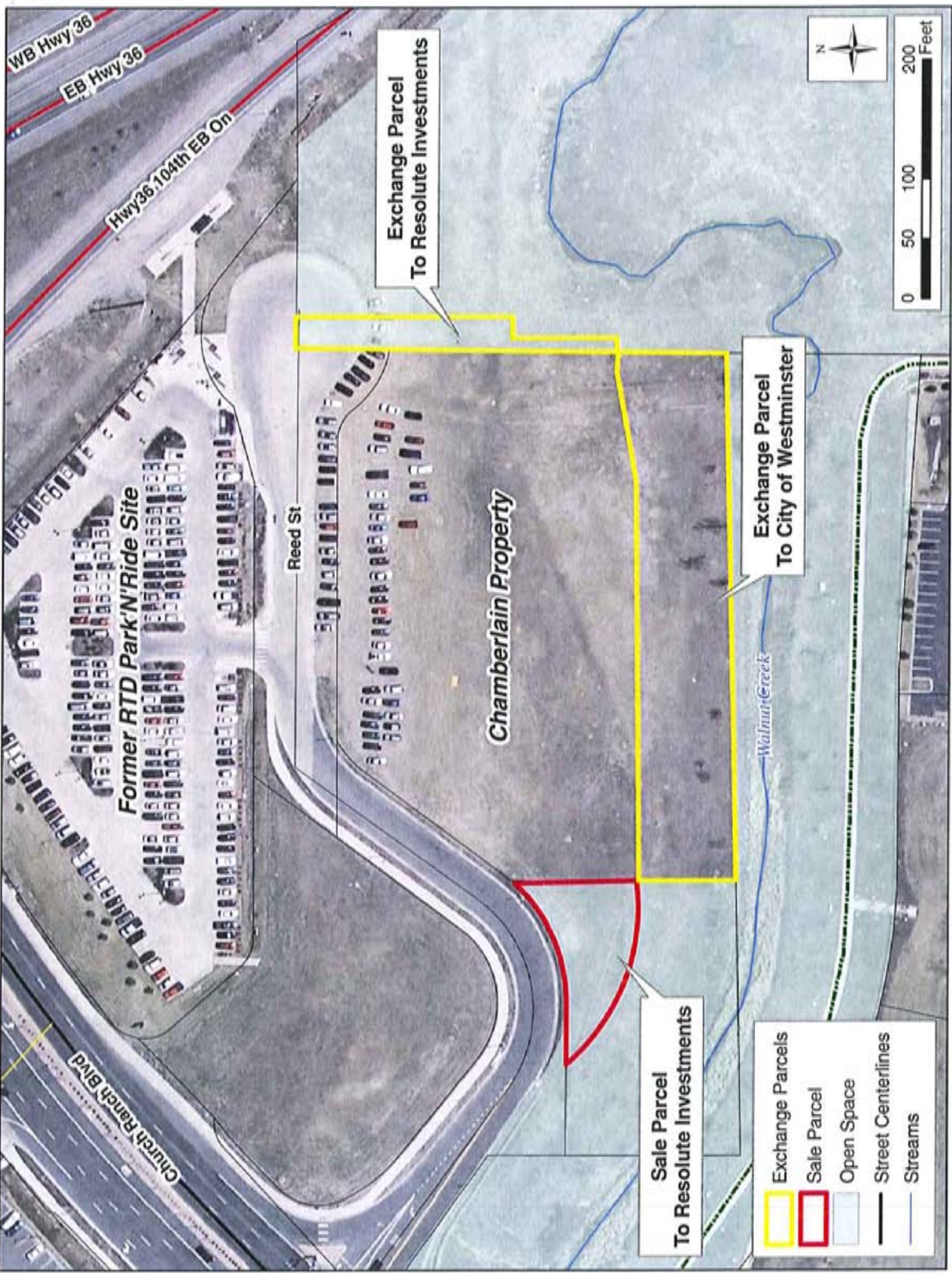
THENCE S 89° 48' 37" W, A DISTANCE OF 81.08 FEET;

THENCE N 36° 22' 57" E, A DISTANCE OF 61.59 FEET;

THENCE S 42° 05' 19" E, A DISTANCE OF 66.46 FEET TO THE POINT OF BEGINNING;

CONTAINING 2,005 SQ. FT. OR 0.046 ACRES, MORE OR LESS.

For and on behalf of:
Bohannon Huston
9785 Maroon Circle – Suite 140
Englewood, Colorado 80112
Ph: 303-799-5103
Fax: 303-799-5104





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Second Reading Councillor's Bill No. 40 re Municipal Judge Salary

Prepared By: Matt Lutkus, Deputy City Manager

Recommended City Council Action

Pass Councillor's Bill No. 40 on second reading amending the salary for the Municipal Judge for 2008.

Summary Statement

- City Council previously approved a revised employment agreement with John A. Stipech for services as Presiding Judge that will go into effect on December 1, 2008, and extend through 2009. The agreement will automatically be renewed for 2010 unless it is terminated by City Council no later than October 31, 2009.
- Judge Stipech's 2009 combined salary and deferred compensation will be \$127,683, which represents a five percent increase over his annual compensation for 2008. The agreement allows the Judge to designate a portion of his salary as City-paid deferred compensation to be paid as a lump sum at the beginning of 2009. The agreement previously approved by City Council also includes a bonus of \$5,000 payable in 2008.
- The City Charter requires that the Presiding Judge's salary be approved by ordinance.
- This Councillor's Bill was passed on first reading on October 27, 2008.

Expenditure Required: 2008 - \$5,000
2009 - \$127,683 plus the cost of fringe benefits as described in the attached employment agreement

Source of Funds: General Fund - Municipal Court Division Budget

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **40**

SERIES OF 2008

INTRODUCED BY COUNCILLORS
Major - Kaiser

**A BILL
FOR AN ORDINANCE AMENDING THE SALARY OF THE MUNICIPAL JUDGE**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-7-2, W.M.C., is hereby AMENDED as follows:

1-7-2: MUNICIPAL JUDGE: The salary of the Municipal Judge shall be as follows:

~~\$121,603~~ \$127,683 per annum, EFFECTIVE JANUARY 1, 2009, payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation. SUCH DEFERRED COMPENSATION AMOUNT MAY, AT THE MUNICIPAL JUDGE'S OPTION, BE PAID AS A LUMP SUM AT THE BEGINNING OF THE CALENDAR YEAR. A BONUS OF \$5,000 SHALL BE PAYABLE ON OR BEFORE DECEMBER 12, 2008.

SECTION 2. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17th day of November, 2008.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Second Reading of Councillor's Bill No. 41 re 2008 3rd Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 41 on second reading providing for supplemental appropriation of funds to the 2008 budget of the General and General Capital Improvement Funds.

Summary Statement

- City Council action is requested to adopt the attached Councillor's Bill on Second reading authorizing a supplemental appropriation to the 2008 budget of the General and General Capital Improvement Funds.
 - General Fund amendments total: \$166,074
 - General Capital Improvement Fund amendments total: \$25,745
- This Councillor's Bill was passed on first reading October 27, 2008.

Expenditure Required: \$191,819

Source of Funds: The funding sources for these expenditures include receipt of donations, contributions, reimbursements, program revenues, and grants.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **41**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

Lindsey - Kaiser

A BILL

FOR AN ORDINANCE AMENDING THE 2008 BUDGETS OF THE GENERAL AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2008 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the General and General Capital Improvement Funds, initially appropriated by Ordinance No. 3316 are hereby increased in aggregate by \$191,819. This appropriation is due to the receipt of donations, contributions, reimbursements, program revenues, and grants.

Section 2. The \$191,819 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10E dated October 27, 2008 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$166,074
General Capital Improvement Fund	<u>25,745</u>
Total	<u>\$191,819</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27TH day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17TH day of November, 2008.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Second Reading on Councillor’s Bill No 42 re Concession Agreement with Benders Bar & Grill

Prepared By: Bill Walenczak, Director of Parks, Recreation and Libraries

Recommended City Council Action

Pass Councillor’s Bill No. 42 on second reading approving a concession agreement between the City of Westminster, Hyland Hills Recreation District Enterprise and Benders Bar & Grill to operate a restaurant in the former Jackson’s All-American Grill located in the Ice Centre at the Promenade.

Summary Statement

- In September 2008, Hyland Hills Park and Recreation District staff advertised for proposals from qualified concessionaires to take over the lease space of the former Jackson’s All-American Grill located in the Ice Centre at the Promenade.
- Two qualified concessionaires submitted proposals and were interviewed by Hyland Hills Executive Director Greg Mastriona, Ice Centre Manager Bob Bebber and Director of Parks, Recreation and Libraries Bill Walenczak.
- After careful review of each proposal, the interview team recommends signing a concession agreement with Benders Bar & Grill.
- This Councillor’s Bill was approved on first reading by City Council on October 27, 2008

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

Stephen P. Smithers
Acting City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **42**

SERIES OF 2008

INTRODUCED BY COUNCILLORS
Dittman - Major

**A BILL
FOR AN ORDINANCE APPROVING AND RATIFYING A LEASE AGREEMENT FOR
CONCESSION OPERATION AT THE ICE CENTRE**

WHEREAS, the City and Hyland Hills Park and Recreation District (the "District") co-own the Ice Centre at 10710 Westminster Boulevard; and

WHEREAS, it is in the City's and the District's interest to maximize the income generated from such operation by collecting rental income from the concession operation space located in the Ice Centre.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. Pursuant to City Charter Section 13.4, the Lease Agreement attached hereto as Exhibit A is hereby approved and ratified.

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

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The lease agreement attached hereto as Exhibit A shall be executed by the lessee prior to consideration of this ordinance on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17th day of November, 2008.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

EXHIBIT A

DRAFT LEASE - NOT FOR SIGNATURE – NON-BINDING

This Lease, made and entered into this ___ day of _____, 2008, by and between HYLAND HILLS PARK AND RECREATION DISTRICT and the CITY OF WESTMINSTER, hereinafter collectively referred to as "Landlord" and Village Bistro and Wine Bar, Inc, d/b/a Benders Bar and Grill, a Colorado corporation, hereinafter referred to as "Tenant".

1. LEASED PREMISES:

Upon the terms, conditions, covenants, limitations and agreements, and at the rental and for the terms as hereinafter set forth, Landlord hereunto leases unto Tenant and Tenant hereby leases from Landlord the Leasehold Premises ("Premises"), containing approximately 6,000 square feet of floor area, at Landlord's ("Ice Centre"), 10710 Westminister Blvd., Jefferson County, Colorado, as more fully described in Exhibit "A" attached hereto.

2. TERM:

The term of this Lease and the right of Tenant to take possession and occupy the Premises, pursuant to this Lease, shall commence at 12:01 a.m. on the ___ day of _____, 2008, and, unless sooner terminated or later extended, as provided herein, shall expire at 12:00 a.m. on the 31st day of December, 2013.

3. USE OF PREMISES:

3.1 Tenant shall occupy, use and operate the Leasehold Premises as a top quality Concession operation for the sale and service of food and beverages, including alcoholic beverages, to the general public and patrons of the Premises at such prices and under such standards of operation as will assure prompt, courteous, and convenient services to the general public and patrons. The Concessionaire shall comply with all guidelines and standards that are contained in Exhibit "B," attached hereto and incorporated herein. Tenant acknowledges that Landlord has an existing contract with Pepsi Cola Metropolitan Bottling, Inc. ("Pepsi") dated February 22, 1999 (the "Pepsi Contract"), paragraph 2 of which limits the type of beverage products that may be sold at any of Landlord's facilities, including the Premises and Tenant agrees to the limitations set forth therein.

3.2 Tenant shall not:

a. Permit any unlawful practice to be carried on or committed on the Leasehold Premises;

b. Make any use or allow the Leasehold Premises or any part thereof to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by Landlord, for any purposes other than those hereinabove specified, nor for any purpose that shall constitute a public or private nuisance, shall be in

violation of any governmental laws, ordinances or regulations, shall be contrary to any restrictive covenants, agreements or limitations of record, or shall render the premises, or any part thereof, uninsurable with standard insurance at ordinary rates. Notwithstanding the foregoing, Landlord believes and understands that use of the Leased Premises for the Permitted Use will not invalidate or increase the rate of Landlord's insurance, and is not contrary to any restrictive covenants, agreements or limitations of record.

c. Keep or permit to be kept or used on the Leasehold Premises any flammable fluids, toxic materials, or substances of any nature reasonably deemed dangerous by the Lessor or the Lessor's insurance carriers without obtaining prior written consent of the Lessor, except for small quantities of cleaning and cooking products incidental to the permitted uses described in this Agreement;

d. Use the Leasehold Premises for any purpose which creates a nuisance or injures the reputation of the Leasehold Premises or the Lessor;

e. Commit or suffer any waste in or about the Leasehold Premises;

f. Permit any odors to emanate from the Leasehold Premises in violation of any local, state or federal law or regulation;

g. Use any portion of the Leasehold Premises for storage of other purposes except as is necessary and required with its use specified in this Agreement; or

h. Conduct, or allow to be conducted, gambling on site.

4. RENT AND SECURITY DEPOSIT:

4.1 Tenant shall pay to Landlord as minimum rent during the term of this Lease: \$5,000 per month, for the first two years of the Lease Term; \$7,000 per month for years three and four of the Lease Term; and, \$7,500 per month for year five of the Lease Term – all together with any additional rents as may hereinafter be reserved. Said rental, exclusive of any additional rents, shall be payable in advance, commencing on the rental commencement date of January 1, 2009, and on that same date of the month for every month of the rental term thereafter. Every such payment referenced above shall be payable at the office of Landlord, 1800 West 89th Avenue, Denver, Colorado 80260, without notice or demand whatsoever. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to terminate this Lease in the event Tenant is unable to obtain all licenses and permits necessary for Tenant to operate its business in the Premises, despite using reasonable efforts to obtain the same, within sixty (60) days after the date hereof.

4.2 Tenant shall pay to Landlord, upon execution of this Agreement, the sum of \$10,000.00 as a security deposit. Said security deposit will be returned, minus any amounts retained and applied to damages (ordinary wear and tear excepted), caused by Tenant, or rent owing to Landlord from Tenant, upon completion of all necessary repairs to the Premises or within ninety (90) days of termination of the this Lease, whichever comes earlier.

4.3 If during the first year of this Lease Agreement or any following year, Tenant shall have gross revenues in excess of \$900,000.00, Tenant shall pay to Landlord, as additional rent, two percent of all such gross revenues. However, for any year during which gross revenues exceed \$900,000, the total of such additional rent and monthly rental for each such year shall not exceed and shall be capped at ten percent (10%) of the said gross revenues. Such additional rent shall be due on the 1st day of February following the completion of the respective year. This and any other sums of money or charges to be paid by the Tenant, pursuant to the provisions of this Lease, shall also be designated as "additional rent". A failure to pay additional rent shall be treated in all events as the failure to pay rent.

4.4 If the payment of any rent, additional rent or any other monies payable under the terms of this Lease shall be more than ten (10) days in arrears, Tenant agrees, upon demand of Landlord, to make a late charge payment of five percent (5%) of the amount in arrears.

5. OCCUPANCY OF THE PREMISES:

Occupancy of all or a part of the Premises by Tenant shall be deemed an acceptance of the same in good and suitable condition by said Tenant. Notwithstanding the foregoing, Landlord represents and warrants that to the best of its knowledge, as of the delivery of the Premises to Tenant, the Premises shall be in compliance with all applicable laws, rules and regulations, including, without limitation, the Americans with Disabilities Act.

6. PARKING:

Landlord agrees that Tenant, its employees and customers, shall have the non-exclusive right to use the parking lots adjoining and adjacent to the Ice Centre together with other patrons of the Promenade Center.

7. UTILITIES:

Tenant shall pay all charges for, gas, electrical, telephone, cable and all other utilities serving the Premises and for trash removal for the Premises. In addition, Tenant shall pay to Landlord 10% of the Ice Centre's total expenses for common area maintenance and insurance, payable monthly; provided that common area expenses shall not include utilities, trash removal or any other expenses for which Tenant is billed directly or separately. Total charges will change year to year based on the actual cost of providing the common area maintenance services and snow removal. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to contribute to any costs incurred in connection with snow removal from the parking lots of the Ice Centre.

Landlord, not later than April 1 of each year of term of this Agreement, shall provide Tenant with an itemized statement of the Ice Centre's expenses for common area maintenance and insurance incurred by Landlord during the preceding calendar year. To the extent such accounting reveals that the total of Tenant's monthly payment exceed 10% of such expenses during the preceding calendar year, Landlord shall credit such overpayment against the next due monthly rental payments.

8. MAINTENANCE AND REPAIRS:

8.1 Except as covered by any maintenance agreement entered into by Landlord for Landlord owned equipment and furnishings pursuant to section 8.4, below, Tenant shall keep and maintain the Premises, including all Landlord owned equipment and furnishings and all sewer and water connections which exclusively serve the Premises, in good condition and repair at the sole expense of Tenant and, at the expiration of this Lease, Tenant shall surrender and deliver up the said Premises in as good order, condition and repair, loss by inevitable accident, Act of God and ordinary wear and tear excepted, as said Premises were accepted by Tenant at the commencement of this Lease. Landlord shall transfer and assign to Tenant any and all warranties on said sewer and water connections for the term of this lease.

8.2 Tenant shall keep the Premises, including the restrooms located in the Ice Centre Lobby, clean and in the sanitary condition required by the ordinances and health and police regulations of the City of Westminster, County of Jefferson and State of Colorado. Tenant shall neither permit nor suffer any disorderly conduct, noise or nuisance whatsoever about the Premises.

8.3 If Tenant shall fail or refuse to complete or perform any maintenance, repairs or upkeep required pursuant to the terms of this paragraph 8 within fifteen (15) days after written request by Landlord so to do, Landlord may cause such maintenance, repairs or upkeep to be made or done and may thereafter charge the reasonable cost thereof to Tenant and the same shall be and constitute additional rent due hereunder.

8.4 Landlord shall enter into a maintenance agreement for all HVAC systems serving the premises and Tenant shall pay to Landlord, as additional monthly rent, an amount equal to 1/12 of the yearly cost of such agreement.

9. LIENS AND CLAIMS AGAINST LANDLORD:

9.1 Tenant shall pay, when due, for all work performed on or for the benefit of or materials furnished to, the Premises, by any person at Tenant's request. In this regard, Tenant shall indemnify and hold harmless and defend Landlord from any and all liability and expense resulting from any lien, claim of lien, or claim against Landlord arising from such work or labor. Tenant shall have the right to contest the validity of such lien, claim of lien, or claim.

9.2 Tenant shall not contract for the performance of any such labor or the acquisition of or delivery of any such materials in connection with, or the installation of any such improvements, unless Tenant shall first obtain Landlord's written approval thereof which approval shall not be unreasonably withheld, conditioned, or delayed.

10. INSURANCE:

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

- a. Commercial General Liability Insurance with combined single limit of \$3,000,000 per occurrence. This policy must include Contractor Liability; Products Liability; Broad Form Property Damage including, but not limited to, coverage for any damage to any Landlord personal or real property due to fire or water related to Tenant's operations pursuant to this Agreement; and Personal Injury;
- b. Owned, hired, and non-owned automobile liability coverage with \$600,000 limit;
- c. Statutory workers' compensation on all employees;
- d. All risk insurance for full insurable replacement value of Landlord-owned equipment and personal property.

10.2 The required insurance policies shall be endorsed to include the City of Westminster and Hyland Hills Park and Recreation District as additional insureds as their interests may appear under this Agreement. Every policy required above shall be primary insurance, and any insurance carried by the City of Westminster and/or Hyland Hills Park and Recreation District, their respective elected officials, officers, employees, or others working on their behalf, or carried by or provided through any self-insurance pool of the City or Hyland Hills, shall be excess and not contributory insurance to that provided by Tenant. Each party to this Agreement agrees to waive subrogation on respective property insurance.

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

Executive Director
Hyland Hills Park and Recreation District
1800 W. 89th Ave
Denver, Colorado 80260

A certified copy of any policy shall be provided to the Landlord upon its request.

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

10.5 Tenant covenants that it will neither permit nor suffer the Premises or the walls or floors thereof to be endangered by overloading, nor said Premises to be used for any purpose which would render the insurance void or the insurance risk more hazardous.

11. DAMAGE BY FIRE OR OTHER CASUALTY:

11.1 Unless as set forth in subparagraph 11.2, below, this Lease and all agreements, covenants, terms and conditions contained herein shall remain in full force and effect notwithstanding damage to or destruction of any of the furniture, fixtures, inventory or equipment maintained upon the Premises and, regardless of the nature or extent of the damage and Tenant shall not be entitled to any reduction in or abatement of the rental hereinabove reserved, nor shall Tenant be entitled to any reduction, abatement, or postponement of any of the monthly rental installments hereinabove reserved for or on account of such damage or destruction.

11.2 However, in the event that such damage or destruction was not caused by any act of Tenant, its officers, employees, or agents, than in that event, Landlord shall inform Tenant, within thirty (30) days of the date of destruction or damage, of Landlord's intent to remedy such damage or destruction by replacement or renovation of the damaged property (except for such damage covered under the policies of insurance more fully described in paragraph 10, above). If Landlord does not replace or renovate the non-covered damage or destruction or if the Premises cannot be reasonably restored to the condition existing at the time of the damage or destruction, either within ninety (90) days of such damage or destruction, Tenant may, at Tenant's option terminate this Lease without further obligation on Tenant's part and Tenant shall vacate the Premises within twenty (20) days of such decision to terminate or Tenant may elect to continue the Lease and shall cooperate fully with Landlord in restoring/repairing the damage or destruction. If Tenant elects to so continue the Lease, and if the Premises are untenable, Tenant shall receive an apportionment of the rent until the Premises are tenable.

12. ASSIGNMENT AND SUBLETTING:

12.1 Tenant may not assign, in whole or in part, this Lease or any interest therein, nor may Tenant sublet all or any part of the Premises without the prior written consent of Landlord being first had and obtained, which consent shall not be unreasonably withheld, conditioned or delayed; provided that the proposed transferee's use of the Premises is, in Landlord's opinion: (a) lawful, (b) consistent with the Permitted Use; (c) consistent with the general character of business carried on by tenants of the Ice Centre; (d) not in conflict with any exclusive rights or covenants not to compete in favor of any other tenant or proposed tenant of the Ice Centre; (e) not going to increase the likelihood of damage or destruction of the Premises or the Ice Centre; (f) not going to increase the rate of wear and tear to the Leased Premises or the Common Areas; (g) not likely to cause an increase in the insurance premiums for insurance policies applicable to the Building; and (h) not going to require new tenant improvements incompatible with the then existing Building systems and components. Any assignment or sublease in violation of the provisions of this paragraph shall be null, void and of no effect whatsoever, regardless of the fact that Landlord may have received other sums of money or

services from the proposed assignee or sublessee. Any sum so received shall be deemed to have been received from Tenant.

12.2 No attempted assignment or attempted subletting of all or any part of the Premises shall relieve Tenant from any of its obligations under the provisions of this Lease, including the payment of rent and any notice required to be given by the provisions of this Lease shall be deemed to be properly given to all putative assignees and putative sublessees when given to Tenant as herein provided.

12.3 Tenant may not grant any easement or license to any person or entity not a party hereto for any reason whatsoever without the express written consent of Landlord.

13. SURRENDER OF LEASEHOLD PREMISES:

Upon the expiration or other termination of this Lease or any extension thereof, Tenant shall quit and surrender the Premises and all Landlord owned equipment and furnishings to Landlord in as good order, condition and repair, loss by inevitable accident, Act of God and ordinary wear and tear excepted, as when said Premises, equipment and furnishings were accepted by Tenant at the commencement of this Lease. Tenant's obligation to observe or perform the provisions of this paragraph shall survive the expiration or termination of this Lease.

14. HOLDING OVER:

If, after the expiration or other termination hereof, Tenant shall remain in possession without a written agreement therefor, such holding over shall be deemed to be upon a month-to-month tenancy under the same terms, conditions and provision contained herein, and for a monthly rental equal to one hundred fifty percent (150%) of the amount of the last monthly installment of rent and additional rent paid pursuant to the terms hereof.

15. RENEWAL.

15.1 Landlord and Tenant shall meet, no later than 6 months prior to the termination of the Lease to discuss, in good faith, renewal thereof and any changes required to be made to this Lease.

15.2 Any renewal shall be subject to the discretion of Landlord and Landlord's determination of satisfactory performance by Tenant of the terms and conditions of this Lease, as well as mutual agreement between the parties regarding amendment of Section 4 regarding monthly rent to be paid by Tenant to Landlord.

15.3 This Lease may further be renewed for an additional renewal terms pursuant to the requirements and determinations set forth in subsections 15.1 and 15.2, above.

16. DEFAULTS BY LESSEE AND REMEDIES:

16.1 Subject to the other provisions of this paragraph, each of the following shall constitute a default by Tenant and a breach of this Lease:

a. If the rent, additional rent, or any part thereof, as herein reserved, shall be unpaid when due.

b. If Tenant does not comply with any provision of this Lease which imposes an obligation upon Tenant.

c. If Tenant should violate or fail to comply with any of the statutes, ordinances, rules, orders, regulation or requirements, as the same exist or may hereinafter be established, of the government of the United States of America, the State of Colorado, County of Adams and the City of Westminster, or of any bureau, department or subdivision thereof.

d. If the Premises should be abandoned or vacated. Abandonment or vacation shall include the attempted removal of equipment, furniture and/or fixtures such as to degrade the ability of Tenant to carry on its business upon the Premises or cessation of a substantial portion of Tenant's normal business dealings at the Premises.

e. If Tenant should attempt to sell, assign, sublet or mortgage all or any part of either the Premises or the leasehold interest herein created without the prior written consent of Landlord having been first had and obtained.

f. If by operation of law this Lease should be transferred to, or pass to, or devolve upon, any person or entity other than Tenant.

g. If Tenant should be adjudicated as bankrupt or insolvent and such proceeding should not be vacated within thirty (30) days.

h. If Tenant should file a petition in bankruptcy or make a general assignment for the benefit of creditors.

i. If Tenant should file a petition or answer seeking reorganization or readjustment under Federal bankruptcy laws.

j. If a Receiver or Trustee should be appointed with respect to all or substantially all property of Tenant in any suit or proceeding against Tenant or in any bankruptcy proceeding.

k. If any execution or attachment shall be issued against Tenant, or any of Tenant's property, whereby someone other than Tenant shall take or occupy the Premises.

16.2 Upon the occurrence of any of the events of default set forth above, then, and at any time thereafter, Landlord may, at Landlords' sole option and in addition to all other rights available to Landlord at law or equity or contained in this Lease, either:

a. Give Tenant written notice of Landlord's intention to terminate this Lease on the date of such notice or on any later date specified herein, upon which date Tenant's

right to use, occupancy and possession of the Premises shall cease and this Lease shall thereupon be terminated; or

b. Re-enter and take possession of the Premises or any part thereof and repossess the same as Landlord's former estate.

Should Landlord take such possession pursuant to the terms of this agreement, legal proceedings or pursuant to any notice provided by law or this Lease, Landlord may: (1) terminate this Lease at any time; or (2) from time to time without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Premises but reserving to Landlord the right at any time to elect to terminate this Lease as paragraph 16.2 (a) provides.

16.3 Unless Landlord shall have exercised its right to re-enter and take possession of the Premises pursuant to 16.2(b), in the event Landlord shall elect to terminate this Lease, Landlord shall give Tenant twenty (20) days written notice of the existence and nature of such default and of Landlord's election so to terminate. If such default exists at the expiration of such twenty (20) day period, and Landlord shall not have waived the same by written instrument, this Lease, and the term hereof, together with any and all right, title and interest in the Premises as herein granted to Tenant, shall terminate on the date fixed in said notice with the same force and effect (except as to the continuance of Tenant's liability) as if the date fixed by notice were the expiration of the term originally granted herein.

16.4 In the event Landlord shall elect to retake the Premises without terminating this Lease, Landlord shall give Tenant twenty (20) days written notice of the existence and nature of any such default and of Landlord's election to retake under the terms hereof. If such default exists at the expiration of said twenty (20) day period, and Landlord shall not have waived the same by written instrument, Landlord may, without terminating this Lease, retake possession of the Premises.

16.5 In the event that Landlord does not elect to terminate this Lease as permitted in paragraph 16.2 (a), but on the contrary elects to take possession as provided in paragraph 16.2 (b), then such possession of the Premises by Landlord shall not relieve Tenant of its liability and obligation under this Lease, all of which shall survive such repossession. In the event of such repossession, Tenant shall pay the fixed rent and all additional rent as herein provided up to the time of termination of this Lease (which Landlord can declare at any time), and thereafter Tenant, until the end of what would have been the term of this Lease in the absence of such repossession, and whether or not the Premises shall have been relet, shall be liable to Landlord for, and shall pay to Landlord as liquidated current damages:

a. The minimum rent and additional rent as herein provided which would be payable hereunder if such possession had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation all repossession costs, legal expenses and attorneys' fees and expenses of preparation for such reletting.

Tenant shall pay such current damages to Landlord on the days on which the fixed rent would have been payable hereunder if Landlord had not repossessed, and Landlord shall be entitled to receive the same from Tenant on each such day.

b. If Tenant breaches or defaults any term of this Lease and abandons or vacates the Premises before the end of the term hereof, or if Tenant's right to possession is terminated by Landlord because of a breach or default of this Lease, Landlord may recover from Tenant a judgment from a court of law having appropriate jurisdiction, in addition to any other damages provided for at law, in equity, in this Lease, or otherwise, a sum equal to the unpaid lost rent for the balance of the rental term, or any exercised extension thereto, minus the amount of such rental loss for the same period the Tenant proves could be reasonably avoided.

16.6 Tenant shall, at the expiration of the twenty (20) days notice periods set forth above and Tenant has not cured any default, immediately quit and surrender to Landlord the entire Premises, and Landlord may enter into or repossess the Premises either by force, summary proceedings, or otherwise. Tenant further agrees that, in the event of repossession by Landlord, Landlord may, without notice to Tenant, sell such of Tenant's inventory, furniture, fixtures or equipment as then remain upon the Premises in such manner and for such amount as Landlord may deem advisable. Thereafter, Landlord shall remit the proceeds of such sale, after deduction for the costs of the sale and any monies owed to Landlord by Tenant pursuant to the term of this Lease, to Tenant.

16.7 In the event of any default by Tenant pursuant to subparagraph 16.1d, above, or if Tenant violates the provisions of Section 17, below, and notwithstanding any other provision herein, Landlord shall have the right, at Landlord's sole option and without any necessity of notice (and without restricting or surrendering any of Landlord's other rights hereunder), and Tenant hereby agrees and consents thereto, to immediately take possession of the Premises and all equipment, inventory, contents, furniture and fixtures therein, of whatever kind or ownership, and to, within a reasonable time and in a reasonable manner, cause the same to be sold and the proceeds thereof applied to any monies owed to Landlord by Tenant pursuant to this Lease.

17. LESSEE'S BUSINESS OPERATIONS:

During the term of this Lease, and as the same may be extended or renewed, Tenant shall continuously conduct and carry on Tenant's business activities in the entire Premises.

18. IMPROVEMENTS TO LEASEHOLD PREMISES:

Tenant shall make no improvements to the Premises without the prior written consent of Landlord and only upon such terms and conditions as set forth by Landlord. All such improvements, however denominated, shall be and remain the property of Landlord unless

otherwise agreed to in writing between the parties hereto and may not be removed by Tenant at any time from the Premises, without the express written consent of Landlord.

19. SIGNAGE:

Tenant may cause to be installed one or more interior and exterior signs, at no additional rent or charge by Landlord to Tenant, in such design(s) and location(s) as shall be approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed. Such sign(s) shall be and remain the property of Tenant and Tenant shall be solely responsible for the purchase, installation, operation and maintenance of the sign(s) and all associated costs. Tenant shall maintain all signs or advertisements approved by Landlord in good and attractive condition. Landlord shall assist with the electrical hook-up of said sign(s). Upon the termination of the Lease, unless otherwise agreed to by Landlord, Tenant shall cause such sign(s) and any associated improvements to be immediately removed from the premises and repair any resulting damage to the Premises, all at Tenant's expense. All of Tenant's signs shall be in compliance with the requirements of the City of Westminster sign code and any other applicable regulations.

20. RELATIONSHIP OF PARTIES:

Landlord and Tenant are not nor shall they become, by virtue of this Lease, anything other than Landlord and Tenant. Landlord and Tenant are not joint venturers, partners, or agents of one another nor is either party employed by the other.

21. NOTICES:

All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been sufficiently given or served if deposited in the United State mails, registered or certified, postage prepaid, and addressed as indicated below:

Landlord:

Executive Director
Hyland Hills Park and Recreation District
1800 West 89th Avenue
Denver, Colorado 80260

Tenant:

22. PERMITS AND LICENSES:

22.1 Tenant shall procure, supply, and post, at its own expense, in places to be designated by the City, all permits and licenses necessary for the operation of the Concession and shall pay, at its own expense, all taxes assessed or levied against its business and merchandise.

22.2 Tenant shall apply for a Hotel and Restaurant Liquor License, with Optional Premises within fifteen (15) business days after the date this Agreement is fully executed and shall maintain such license during the term of this Agreement. The Director will fully cooperate with Tenant in such application. Tenant shall pay all expenses necessary to obtain the liquor license. Nothing contained in this Agreement shall be construed to guarantee that the City of Westminster will approve the issuance of any license. In the event such license is denied, or in the event that such license is issued but later revoked or suspended BY THE LOCAL OR STATE LIQUOR LICENSING AUTHORITIES, such denial, suspension, or revocation may be deemed a material breach and event of default by Tenant, and Landlord may immediately terminate this Agreement. No transfer of the license shall be made without the approval of the City of Westminster and only as part of an assignment of this Agreement. Upon termination, the City of Westminster may designate a transferee of the liquor license. Tenant agrees to take all actions necessary to promptly transfer the existing license to the transferee.

23. ENTIRE AGREEMENT:

This Lease, with all exhibits and schedules annexed hereto, contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, waive, release, discharge, terminate, or effect an abandonment of, this Lease, in whole or in part, unless such executory agreement is in writing and signed by both Landlord and Tenant.

24. SEVERABILITY:

If any provision, sentence, phrase, or word of this Lease, or application thereof to any person or circumstance, shall be held invalid, the remainder of this Lease, or the application of such provision, sentence, phrase or work to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

25. BINDING EFFECT:

Except as is otherwise provided herein, this Lease shall be binding upon and inure to the benefit of the heirs, administrators, devisees, personal representatives, successors and assigns of Landlord and Tenant.

26. WAIVER:

No assent, express or implied, to any breach of any one or more of the covenants and agreements hereof shall be deemed or taken to be a waiver of any other or succeeding breach.

27. SURVIVAL CLAUSE:

All unperformed agreements, covenants and conditions herein contained shall survive the execution, expiration or termination hereof and shall not be merged therewith.

28. PARAGRAPH HEADINGS:

The paragraph headings contained herein are for convenience only and shall in no way change, alter, modify or affect any of the provisions or conditions herein contained.

29. ACKNOWLEDGMENT OF EXAMINATION:

The parties hereto acknowledge that they have carefully read and thoroughly understand the terms and conditions of this Lease. It contains the entire agreement and understanding under which they have entered into this Lease and the results and understandings of all of their negotiations have been merged in this Lease. Tenant and Landlord accept the terms and conditions hereof in all respects and agree to be bound thereby. Each of the parties hereto acknowledge that they have either had benefit of legal counsel in the negotiation and preparation hereof, or, in the alternative, they recognize the need for such counsel but have elected not to seek the same.

30. ACCESS AND INSPECTION:

Landlord, its designated agents, employees, servants, and any other person authorized by Landlord may enter the Leasehold Premises, at any reasonable time and with reasonable written notice, for the purpose of inspecting the same. Any entry onto or inspection of the Leasehold Premises by Landlord pursuant to this section shall not constitute interference with the operations of Tenant and no abatement of any payments due under this Agreement shall be allowed; provided, however, the scope and length of the inspection is reasonable.

31. OTHER PAYMENT OBLIGATION:

Tenant shall promptly pay all taxes and fees of whatever nature, applicable to the operation of the Leasehold Premises, and shall maintain all licenses, municipal, state or federal, required for the conduct of business and shall not permit any of said taxes or fees to become delinquent. Tenant shall pay promptly when due all bills, debts and obligations attributable to the Premises, including but not limited to its portion of charges for water, sewer, light and electricity as set out in Section 7 herein, as well as all charges for telephone service, refuse collection, and all other costs and expenses related to the operation of the Leasehold Premises and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of Lessor under this Agreement. All such costs and expenses of Tenant are to be borne by Tenant.

32. RELATIONSHIP TO TRUSTEE:

32.1 The parties hereto acknowledge that pursuant to that certain Ground Lease Agreement ("Lease"), and that certain Lease Purchase and Sublease Agreement ("Sublease") dated 1998, both by and between the City of Westminster and the City of Westminster Building

Authority, the City has leased to the City of Westminster Building Authority the Ice Centre building and the improvements located therein and said Building Authority has subleased to the City said building and improvements.

32.2 The parties hereto further acknowledge that the City of Westminster Building Authority has assigned certain of its rights pursuant to the documents described in subparagraph 32.1 and that certain 1998 Mortgage and Indenture of Trust ("Indenture") to the U. S. Bank National Association d/b/a Colorado National Bank, as Trustee.

32.3 The parties hereto further acknowledge that, pursuant to paragraph 13.2 of the above-referenced Sublease:

a. This Agreement is subordinate to the Lease, Sublease and Indenture;

b. If a Termination Event occurs (as defined in said Sublease), Tenant, provided Tenant's occupancy is not disturbed, shall pay to the Trustee all rents payable under this Agreement and this Agreement will be assigned to the Trustee;

c. So long as Tenant is in compliance with the terms of this Agreement, neither the Trustee, Landlord, nor the Building Authority shall disturb Tenant's use of the Premises.

32.3 Landlord warrants that nothing in this Agreement violates any terms of the Ground Lease or any associated document, law, or regulation and that Landlord is not in default thereof.

33. ATTORNEYS FEES:

If any dispute shall arise between the parties hereto regarding the interpretation of this lease or any provision thereof or the application of any provision, which dispute results in the filing of any suit or legal proceeding, the party adjudged by the judge or legal officer presiding over such proceedings to be the prevailing party shall be awarded its reasonable attorneys fees and costs from the non prevailing party.

34. DEFAULT BY LANDLORD:

34.1 Landlord's failure to perform or observe any material obligation hereunder which remains uncured for a period of thirty (30) days after the Landlord receives notice from Tenant setting forth in reasonable detail the nature and extent of the Default and identifying the applicable Lease provision(s) constitutes a default by Landlord.

34.2 In addition to any other remedies available at law or equity, Tenant may, upon prior written notice to Landlord, pursue any of the following remedies if Landlord's Default remains uncured pursuant to Paragraph 34.1 hereof:

a. Set off the reasonable cost of remedying the default against any Rent due, or;

b. Terminate this Lease and immediately surrender the Premises to Landlord.

34.3 In the event the Ice Centre is closed to the public in excess of thirty (30) days, other than during periods of maintenance and repair, which periods shall not exceed one hundred eighty (180) days, Tenant, at its option, may terminate this Lease.

36. CONSENT:

Throughout this Lease, where Landlord's consent is required, such consent shall not be unreasonably withheld or delayed.

37. INDEMNIFICATION.

Tenant agrees to indemnify and hold harmless Landlord, its boards of directors, council, officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of Tenant's operation of the Premises and liquor license, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Tenant, any contractor or subcontractor of Tenant, or any officer, director, shareholder, member, employee, representative, or agent of Tenant, or which arise out of any workers' compensation claim of any employee of Tenant or of any employee of any contractor or subcontractor of Tenant. Tenant agrees to investigate, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of Tenant, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

LANDLORD:

HYLAND HILLS PARK AND RECREATION DISTRICT

Greg Mastriona, Executive Director

Approved as to legal form: _____
Richard Fuller, Administrative Counsel

CITY OF WESTMINSTER

Brent McFall, City Manager

Linda Yeager, City Clerk

Approved as to legal form: _____
City Attorney

TENANT:

By: _____
Name: _____
Its: _____

EXHIBIT A

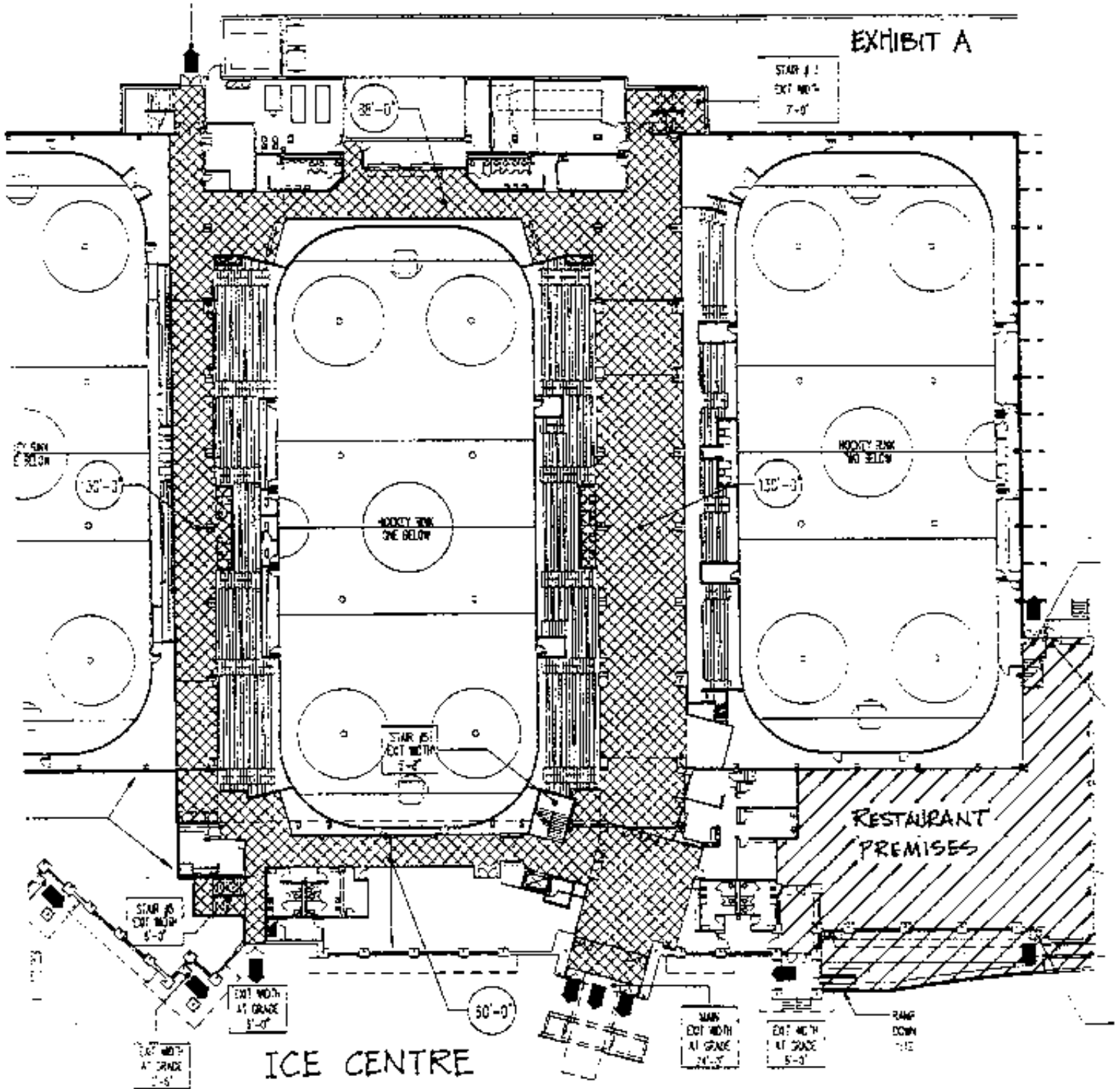


EXHIBIT B
GUIDELINES & STANDARDS OF OPERATIONS

Cleanliness Standards

1. Tenant will maintain, at all times, the kitchen, food preparation, dining, and banquet areas, and all equipment, fixtures, paraphernalia, materials, utensils and other items therein, in a clean and sanitary manner. Tenant shall keep the Premises clear of broken glass, litter, debris, and garbage. Tenant shall dispose of any waste water or other waste fluid in the sanitary sewer. In the event waste fluids may not legally be disposed of in the sanitary sewer, Tenant is responsible for disposing of same in an appropriate and lawful manner.

2. The Tenant shall comply with all applicable health and sanitation laws and regulations, including:
 - a. The sanitation code of the U.S. Food Service Industry as published by the National Restaurant Association.
 - b. All state of Colorado acts and regulations governing food service operations.
 - c. All applicable City of Westminster and Jefferson County public health/sanitation regulations.

3. At all times, the Tenant shall permit and facilitate inspection of the food/beverage areas by Landlord and by public health/sanitation/building/fire authorities so authorized.
 - a. The Tenant shall provide a copy of all health department inspections to Landlord on the same day the inspection form was issued. All health department violations are to be corrected within the time period allowed by the health inspector unless approval for a delay is granted by the health department or the Landlord.
 - b. Failure to pass health inspections, unless all failures are corrected within the time period allowed by the Health Department, is a material breach of this Agreement and may result in termination.

4. Tenant shall conduct inspections of the food service facilities once weekly. An inspection checklist shall be prepared and completed by Tenant for each inspection and the checklists shall be made available to Landlord upon request. The inspection report shall include corrective measures taken or to be taken by Tenant. Tenant shall also conduct daily inspections and take immediate corrective measures in all areas of the Premises and Concession Facilities.

5. Landlord may conduct a formal inspection of the food service facilities a minimum of four times per year, or as deemed necessary by Landlord. Tenant shall accompany Landlord's designated representative during the inspection.

6. Failure to comply with this section, after notice from Landlord, shall be an event of default.

Facility and Equipment Maintenance

1. Tenant shall be responsible for the daily cleanliness of all equipment and facilities for food and beverage handling. Prior to the first day of business under this Lease, Landlord and Tenant will conduct a walk-through inspection of all equipment and the facilities to note any repair/replacement items.

2. Failure to comply with this section, after notice from the City, shall be an event of default.

Custodial Maintenance

1. Unless covered by a maintenance agreement pursuant to section 8.4 of the Lease, Tenant will be responsible for custodial maintenance of the dining room, bar, kitchen, patio area, delivery area, cooktop ventilation hood system, grease trap system, restaurant storage area, and restaurant office areas. Window cleaning in the restaurant-dining room and the patio areas is the responsibility of the Tenant.

2. Custodial maintenance shall include, but not be limited to, routine sweeping, vacuuming, dusting, spill clean-up, debris and litter pick-up, laundry of linens and cloths, as well as carpet cleaning, window cover cleaning, interior and exterior window washing, and painting of walls and ceilings. All areas will be kept clean and neat at all times.

3. Tenant shall be responsible for trash removal service and regular service to the grease trap system. Tenant shall not discharge any grease into building drains and must keep all grease in proper containers for disposal. If grease is incorrectly disposed in the drain system, Tenant shall be responsible for cleaning or repairing drains.

4. Failure to comply with this section, after notice from Landlord, shall be an event of default.

Menu

1. The Tenant shall plan and prepare imaginative menu selection with an adequate variety of products, in consultation with Landlord.

2. Tenant shall adhere strictly to all pure food laws and regulation as adopted by the State of Colorado or the County Health Department. Food shall be prepared in such a way as to be

acceptable to most patrons. Hot food shall be hot and cold food shall be cold. The amount of food served shall be sufficient in relation to price and other services offered. Service shall be prompt, giving attention to the patron's needs and promoting a friendly relationship. The food shall complement the facility and shall reflect the eating preferences of most patrons.

3. Failure to comply with this section, after notice from the City, may be grounds for termination.

Entertainment

All costs for amenities such as background music, live entertainment, cable/satellite TV, and bar video games are the responsibility of Tenant.

Employee Conduct and Appearance

1. Tenant shall be responsible for employment and compensation of its own employees. All employees shall provide prompt and courteous service to all customers and the general public. Tenant shall provide qualified supervision, competent management staff, and numbers of employees necessary to maintain good service. Employees shall be clean and maintain appropriate clothing and appearance. Tenant shall at all times enforce strict discipline and good order among employees.

2. Failure to comply with this section, after notice from the City, may be grounds for termination.

Customer Service

1. If Landlord receives ongoing customer service complaints, Landlord may require a performance audit, utilizing customer surveys to determine customer satisfaction. Customers will be asked if they are "very satisfied," "satisfied," "dissatisfied," or "very dissatisfied" with the operations of Tenant. A reasonable number of customers shall be surveyed. The acceptable performance standard shall be 75 percent of the surveyed customers rating satisfied or very satisfied. A rating below 75 percent satisfaction may be grounds for termination of this Agreement. If a survey indicates less than 75 percent satisfaction, Tenant may request a second survey by an independent third party, at the sole cost of Tenant. If the second survey indicates customer satisfaction rating of 75 percent or above, Tenant will be deemed to have met the standard of acceptable performance.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Second Reading of Councillor’s Bill No. 43 re Water and Wastewater Rate Adjustments

Prepared By: Mike Happe, P.E., Water Resources and Treatment Manager
Christine Anderson Gray, Management Analyst

Recommended City Council Action

Pass Councillor’s Bill No. 43 on second reading implementing water and sewer rate adjustments and meter service charges for 2009 and 2010.

Summary Statement

- In 2006, City Council adopted financial policies to provide a sustainable framework for the City’s water and wastewater utilities.
- Water rates are recommended to be increased 3.00% in 2009 and 3.00% in 2010. Sewer rates are recommended to increase 4.50% in 2009 and 4.50% in 2010. The combined increase is 3.49% in 2009, and 3.49% in 2010 for the typical residential customer.
- The combined 2009 monthly average increase to a single-family home is \$1.70. The combined 2010 monthly average increase from 2009 to a single-family home is \$1.76.
- Monthly wastewater charges are based on the average volume of water consumed during the months of December, January and February. This time period is used because it reflects a more accurate use of indoor water use and therefore sewer flows.
- Single-family properties that use no water during this calculation period are currently charged the New Resident monthly charge that is based on an average use of 5,000 gallons (\$18.49 in 2008). If this charge is appealed to the City, Staff works with residents to determine an average volume using historical water usage.
- Residents whose homes are not occupied during the winter calculation months have voiced concern about the use of 5,000 gallons as the winter average for determining monthly wastewater charges. For single-family customers whose accounts show zero water use during December, January or February, Staff recommends setting the volume of usage to 2,000 gallons for each zero use month in that time period for the purpose of determining the average use for the year. This will assess an equitable wastewater charge to the customer in winter months when no water is consumed and will recover sufficient costs to maintain the wastewater treatment facility.
- This Councillor’s Bill was passed on first reading on October 27, 2008.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

Stephen P. Smithers
Acting City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **43**

SERIES OF 2008

INTRODUCED BY COUNCILLORS
Lindsey - Kaiser

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 8-7-7 AND 8-8-5 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING THE CITY'S WATER RATE SCHEDULE AND SANITARY SEWER SERVICE AND INCREASING USER CHARGES

WHEREAS, the City of Westminster operates a water and wastewater enterprise utility; and
WHEREAS, the City Charter requires that the utility be self-supporting; and
WHEREAS, the last water rate increase and the last rate increase for sewer user charges took effect January, 2008; and

WHEREAS, costs to operate the Water and Wastewater Utility have increased; and
WHEREAS, since the Utility is operated as an enterprise exempt from the TABOR amendment, the City Council may set rates to adequately fund the operation of the enterprise; and
WHEREAS, the City wishes to minimize the need for large increases in the future; and
WHEREAS, water rates have been designed so as to encourage water conservation.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1: Section 8-7-7, subsections (B), (C) and (D), W.M.C., is hereby AMENDED to read as follows:

8-7-7: WATER RATE SCHEDULE:

(B) RESIDENTIAL: ~~Three (3) dwelling units or less served by one meter primarily used for residential occupancy shall, in 2007, be charged a five dollar and sixty seven cent (\$5.67) per month meter service charge, and shall, in 2008, be charged a five dollar and eight three cent (\$5.83) per month meter service charge plus:~~

2007 Block Rate	2008 Block Rate	Monthly Consumption Rate
\$2.03 per 1,000 gallons	\$2.09 per 1,000 gallons	First 4,000 gallons
\$3.35 per 1,000 gallons	\$3.44 per 1,000 gallons	5,000 to 20,000 gallons
\$4.95 per 1,000 gallons	\$5.09 per 1,000 gallons	21,000 gallons and over

~~per unit. Unit consumption shall be determined by dividing the number of units using one meter.~~

THREE (3) DWELLING UNITS OR LESS SERVED BY ONE METER PRIMARILY USED FOR RESIDENTIAL OCCUPANCY SHALL, IN 2009, BE CHARGED A-SIX ZERO (\$6.00) CENT PER MONTH METER SERVICE CHARGE, AND SHALL, IN 2010, BE CHARGED A SIX DOLLAR AND EIGHTEEN (\$6.18) PER MONTH METER SERVICE CHARGE PLUS:

2009 BLOCK RATE	2010 BLOCK RATE	MONTHLY CONSUMPTION RANGE
\$2.15 PER 1,000 GALLONS	\$2.21 PER 1,000 GALLONS	FIRST 4,000 GALLONS
\$3.54 PER 1,000 GALLONS	\$3.64 PER 1,000 GALLONS	5,000 TO 20,000 GALLONS
\$5.24 PER 1,000 GALLONS	\$5.39 PER 1,000 GALLONS	21,000 GALLONS AND OVER

PER UNIT. UNIT CONSUMPTION SHALL BE DETERMINED BY DIVIDING THE NUMBER OF UNITS USING ONE METER.

(C) RESIDENTIAL IRRIGATION, TOWNHOME/CONDOMINIUM (CONSISTING OF FOUR UNITS OR MORE), PUBLIC/QUASI-PUBLIC USERS:

~~Shall, in 2007, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: four dollars and sixteen cents (\$4.16) per 1,000 gallons, and shall, in 2008, be charged a monthly meter service charge based on the meter size as listed in schedule A plus: four dollars and twenty seven cents (\$4.27) per 1,000 gallons.~~

~~Non-irrigation accounts for multiple residential units consisting of four (4) units or more that are not individually metered and that are classified as town homes or condominiums and can demonstrate that they are eighty percent (80%) owner occupied on a complex wide basis shall, in 2007, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: three dollars and forty four cents (\$3.44) per thousand (1,000) gallons, and shall, in 2008, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: three dollars and fifty three cents (\$3.53) per thousand gallons, for all water delivered through the meter. The Director of Finance is authorized to prescribe and accept such forms of documentation as the Director may deem sufficient to demonstrate an applicant's eligibility for the rate described in this paragraph. For purposes of this section, a town home or condominium is a residential unit physically attached to another residential unit and separately owned.~~

SHALL, IN 2009, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON THE METER SIZE AS LISTED IN SCHEDULE A PLUS FOUR DOLLARS AND THIRTY-NINE CENTS (\$4.39) per 1,000 gallons, AND SHALL, IN 2010, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON THE METER SIZE AS LISTED IN SCHEDULE A PLUS: FOUR DOLLARS AND FIFTY-TWO CENTS (\$4.52) PER 1,000 GALLONS.

NON-IRRIGATION ACCOUNTS FOR MULTIPLE RESIDENTIAL UNITS CONSISTING OF FOUR (4) UNITS OR MORE THAT ARE NOT INDIVIDUALLY METERED AND THAT ARE CLASSIFIED AS TOWN HOMES OR CONDOMINIUMS AND CAN DEMONSTRATE THAT THEY ARE EIGHTY PERCENT (80%) OWNER OCCUPIED ON A COMPLEX WIDE BASIS SHALL, IN 2009, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON THE METER SIZE AS LISTED IN SCHEDULE A PLUS: THREE DOLLARS AND SIXTY-THREE (\$3.63) CENTS PER THOUSAND (1,000) GALLONS, AND SHALL, IN 2010, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON THE METER SIZE AS LISTED IN SCHEDULE A PLUS THREE DOLLARS AND SEVENTY-THREE CENTS (\$3.73) PER THOUSAND GALLONS, FOR ALL WATER DELIVERED THROUGH THE METER. THE DIRECTOR OF FINANCE IS AUTHORIZED TO PRESCRIBE AND ACCEPT SUCH FORMS OF DOCUMENTATION AS THE DIRECTOR MAY DEEM SUFFICIENT TO DEMONSTRATE AN APPLICANT'S ELIGIBILITY FOR THE RATE DESCRIBED IN THIS PARAGRAPH. FOR PURPOSES OF THIS SECTION, A TOWN HOME OR CONDOMINIUM IS A RESIDENTIAL UNIT PHYSICALLY ATTACHED TO ANOTHER RESIDENTIAL UNIT AND SEPARATELY OWNED.

(D) COMMERCIAL: ~~Commercial users shall, in 2007, be charged a monthly meter service charge based on meter size as listed in Schedule A plus: four dollars and sixteen cents (\$4.16) per 1,000 gallons for the number of gallons used per monthly billing up to the breakpoint for the meter size listed in Schedule A, and shall, in 2008, be charged a monthly meter service charge based on meter size as listed in Schedule A plus: four dollars and twenty seven cents (\$4.27) per 1,000 gallons for the number of gallons used per monthly billing up to the breakpoint for the meter size listed in Schedule A. In 2007, commercial users shall be charged five dollars and five cents (\$5.05) per 1,000 gallons for all consumption exceeding the breakpoint on a monthly basis for the applicable meter size as listed in Schedule A, and in 2008, five dollars and nineteen cents (\$5.19) per 1,000 gallons for all consumption exceeding the breakpoint on a monthly basis for the applicable meter size as listed in Schedule A.~~

Schedule A					
Meter Size Code	Meter Size	Number of Service Commitments	2007 Monthly Meter Service Charge	2008 Monthly Meter Service Charge	Breakpoint for Second Tier Based on Meter Size (Gallons)
1	5/8" X 3/4"	1	\$5.67	\$5.83	20,000
2	3/4" x 3/4"	1.5	\$8.99	\$9.24	30,000
3	1"	2.5	\$12.37	\$12.71	50,000
5	1-1/2"	5	\$19.52	\$20.05	100,000
6	2"	8	\$27.07	\$27.81	160,000
7	2" x 5/8"	8	\$27.07	\$27.81	160,000
8	3"	17.5	\$55.32	\$56.84	350,000
9	3" x 3/4"	17.5	\$55.32	\$56.84	350,000
10	4"	30	\$65.08	\$66.86	600,000
11	4" x 1"	30	\$65.08	\$66.86	600,000
12	6"	62.5	\$100.87	\$103.63	1,250,000
13	6" x 1-1/2"	62.5	\$100.87	\$103.63	1,250,000
14	6" x 3"	62.5	\$100.87	\$103.63	1,250,000
15	8"	90	\$163.99	\$168.48	1,800,000
18	10"	145	\$227.76	\$234.00	2,900,000
20	10" x 12" x 6"	215	\$282.43	\$290.17	4,300,000

COMMERCIAL USERS SHALL, IN 2009, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON METER SIZE AS LISTED IN SCHEDULE A PLUS: FOUR DOLLARS AND THIRTY-NINE CENTS (\$4.39) PER 1,000 GALLONS FOR THE NUMBER OF GALLONS USED PER MONTHLY BILLING UP TO THE BREAKPOINT FOR THE METER SIZE LISTED IN SCHEDULE A, AND SHALL, IN 2010, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON METER SIZE AS LISTED IN SCHEDULE A PLUS: FOUR DOLLARS AND FIFTY-TWO CENTS (\$4.52) PER 1,000 GALLONS FOR THE NUMBER OF GALLONS USED PER MONTHLY BILLING UP TO THE BREAKPOINT FOR THE METER SIZE LISTED IN SCHEDULE A. IN 2009, COMMERCIAL USERS SHALL BE CHARGED FIVE DOLLARS AND THIRTY-FOUR CENTS (\$5.34) PER 1,000 GALLONS FOR ALL CONSUMPTION EXCEEDING THE BREAKPOINT ON A MONTHLY BASIS FOR THE APPLICABLE METER SIZE AS LISTED IN SCHEDULE A, AND IN 2010, FIVE DOLLARS AND FIFTY CENTS (\$5.50) PER 1,000 GALLONS FOR ALL CONSUMPTION EXCEEDING THE BREAKPOINT ON A MONTHLY BASIS FOR THE APPLICABLE METER SIZE AS LISTED IN SCHEDULE A.

SCHEDULE A					
METER SIZE CODE	METER SIZE	NUMBER OF SERVICE COMMITMENTS	2009 MONTHLY METER SERVICE CHARGE	2010 MONTHLY METER SERVICE CHARGE	BREAKPOINT FOR SECOND TIER BASED ON METER SIZE (GALLONS)
1	5/8" X 3/4"	1	\$6.00	\$6.18	20,000
2	3/4" x 3/4"	1.5	\$9.51	\$9.79	30,000
3	1"	2.5	\$13.09	\$13.48	50,000
5	1-1/2"	5	\$20.65	\$21.26	100,000
6	2"	8	\$28.64	\$29.49	160,000
7	2" x 5/8"	8	\$28.64	\$29.49	160,000
8	3"	17.5	\$58.54	\$60.29	350,000
9	3" x 3/4"	17.5	\$58.54	\$60.29	350,000
10	4"	30	\$68.86	\$70.92	600,000
11	4" x 1"	30	\$68.86	\$70.92	600,000
12	6"	62.5	\$106.73	\$109.93	1,250,000
13	6" x 1-1/2"	62.5	\$106.73	\$109.93	1,250,000
14	6" x 3"	62.5	\$106.73	\$109.93	1,250,000
15	8"	90	\$173.53	\$178.73	1,800,000
18	10"	145	\$241.02	\$248.25	2,900,000
20	10" x 12" x 6"	215	\$298.87	\$307.83	4,300,000

Section 2: Section 8-8-5, subsection (D), is hereby AMENDED to read as follows:

8-8-5: SERVICE AND USER CHARGES:

(D) The rates for user charges hereinafter set forth are based generally upon the quantity and quality of sewage collected and they are subject to change periodically as circumstances require. The minimum monthly rate for use of the City of Westminster sanitary sewerage system by residential, including multiple unit residential, and public users shall, ~~in 2007, be a sum equal to three dollars and forty seven cents (\$3.47) per thousand (1,000) gallons, and shall, in 2008, be a sum equal to three dollars and seventy cents (\$3.70) per thousand gallons~~ in 2009, BE A SUM EQUAL TO THREE DOLLARS AND EIGHTY-SIX CENTS (\$3.86) PER THOUSAND (1,000) GALLONS, AND SHALL, IN 2010, BE A SUM EQUAL TO FOUR DOLLARS AND THREE CENTS (\$4.03) PER THOUSAND GALLONS, multiplied by the average monthly water consumption per user billed during the months of January through March. The minimum monthly rate for use of the City of Westminster's Sanitary Sewage System by multiple units and commercial users shall, ~~in 2007, be a sum equal to three dollars and eighty eight cents (\$3.88) per thousand (1,000) gallons, and shall, in 2008, be a sum equal to four dollars and thirteen cents (\$4.13)~~ IN 2009, BE A SUM EQUAL TO FOUR DOLLARS AND THIRTY-ONE CENTS (\$4.31) per thousand (1,000) gallons, AND SHALL, IN 2010, BE A SUM EQUAL TO FOUR DOLLARS AND FIFTY CENTS (\$4.50), multiplied by the average monthly water consumption per user billed during the months of January through March. The minimum monthly sewer charge for commercial users may be appealed to the Utility Billing Division for user charges resulting from the average monthly water billed during the period of January through March and may be adjusted if the water billed during the months of July through September is less. Commercial users shall be allowed to install a separate meter to record out of house use which consumption will not be assessed a sewer use charge. The meter readings actually taken prior to and closest to the specified time frame shall be used for purposes of accomplishing the required calculation. However, City Council may by Resolution adjust the period of time to be used to calculate said user charges when, in the opinion of the Council, climate conditions and water consumption patterns warrant such an adjustment. The monthly charge shall apply to an account that is billed for more than fifteen (15) days service. Any new occupant of a residential unit shall, ~~in 2007, be charged seventeen~~

~~dollars and thirty six cents (\$17.36), and shall, in 2008, be charged eighteen dollars and forty nine cents (\$18.49)~~ IN 2009, BE CHARGED NINETEEN DOLLARS AND THIRTY-TWO CENTS (\$19.32), AND SHALL, IN 2010, BE CHARGED TWENTY DOLLARS AND EIGHTEEN CENTS (\$20.18) sewer charge until an experience rate has been established. SINGLE-FAMILY Residential customers that, based upon occupancy patterns, register no water use during ~~at least two months~~ ANY MONTH of the annual calculation period shall be charged ~~the new occupant rate for any period the water account is active~~ BASED ON A MONTHLY MINIMUM VOLUME OF TWO THOUSAND GALLONS (2,000) PER EACH MONTH OF ZERO WATER USE. Individual reviews of indoor water consumption may be made on a case-by-case basis.

Residential users who appeal the initial sewer charge rate can have the rate adjusted to actual usage of the first four (4) months of occupancy. Any new multi-unit or commercial account shall be charged a rate based on water consumption of similar accounts in the Westminster or the Denver Metro area. Any account not receiving Westminster water will be based on actual consumption, if available or consumption of similar accounts.

Section 3. This ordinance shall be effective for any water charges billed after January 1, 2009.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17th day of November, 2008.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Second Reading on Councillor’s Bill No. 44 re Lease of Open Space Property

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Pass Councillor’s Bill No. 44 on second reading authorizing the execution of a lease agreement in substantially the same form as the attached agreement for the Feldman property located at 12661 Pecos Street, currently in unincorporated Adams County.

Summary Statement

- City Council approved the purchase of the Feldman property at the September 8, 2008 meeting. The City plans to acquire the 4.46-acre Feldman property for open space on November 20, 2008.
- The City entered into a Purchase and Sale Agreement with Michelle and Patrick Feldman on October 16, 2008 to acquire the property. The terms of the negotiated purchase include leasing the property back to the current owners for up to eight months while the family relocates and cleans up the materials on the property. The Feldman’s have agreed to pay the City \$1,000 in rent per month through the lease term while they reside on the property. The lease can be terminated with thirty (30) days notice from either party.
- Included in the City Council approval of the Feldman property purchase was the statement that Staff will present a proposed ordinance approving the lease of the property, per the City Charter requirements, prior to closing on this acquisition so the sellers can continue their current use of the property. The form of lease has been approved by the City Attorney’s Office and by the sellers. The lease will not be executed until after the property closing has occurred.
- This Councillor’s Bill was approved on first reading by City Council on October 27, 2008.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

Stephen P. Smithers
Acting City Manager
Attachment (Ordinance w/Form of Lease)

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **44**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

Briggs – Major

A BILL

FOR AN ORDINANCE APPROVING A LEASE AGREEMENT FOR THE LEASE OF THE PROPERTY LOCATED AT 12661 PECOS STREET, NORTHGLENN, CO 80234.

WHEREAS, the City of Westminster will purchase the Feldman property located at 12661 Pecos Street, Northglenn, CO 80234; and

WHEREAS, Michelle and Patrick Feldman have requested that the City lease the property back to them on a month to month basis for up to eight months with the ability to terminate the lease with thirty (30) days notice; and

WHEREAS, the tenant has been screened and determined to be suitable for the property; and

WHEREAS, the final form of the lease agreement has been agreed to by the parties; and

WHEREAS, the City Charter requires such lease be approved by ordinance,

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease Agreement between Michelle and Patrick Feldman and the City for the property located at 12661 Pecos Street, Northglenn, CO 80234, in substantially the form attached to this Ordinance, is approved.

Section 2. This ordinance shall take effect upon its passage after second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17th day of November, 2008.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 20th day of November, 2008, between the **CITY OF WESTMINSTER**, a Colorado home rule municipality (the "City"), and Michelle and Patrick Feldman, whose address is 12661 Pecos Street, Northglenn, CO 80234, (the "Lessee").

WHEREAS, the City has purchased from the Lessee on this date the property located at 12661 Pecos Street, Northglenn, CO 80234 and described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, in conjunction with the sale of the Property to the City, Lessee has requested permission to remain on the Property for up to five months with the ability to extend the lease term pursuant to the terms of this Lease Agreement.

WITNESSETH that in consideration of the covenants and agreements by the Lessee hereinafter set forth, and for other good and valuable consideration, the City hereby leases unto the Lessee the Property situated in the County of Adams, State of Colorado at 12661 Pecos Street, Northglenn, CO 80234, subject to the following Terms and Conditions:

TERMS AND CONDITIONS OF LEASE

A. This lease will begin on November 20, 2008 and continue on a month-to-month basis for up to five (5) months provided however, that either party may terminate this lease for its convenience or for any reason upon written notice to the other at least thirty (30) days prior to the proposed date of termination.

B. In consideration of the lease of the Property, the Lessee covenants and agrees as follows:

1. Payment of Rent. Lessee agrees to pay the City as rent for the subject property \$5,000 total for five months up front at closing on the property. If the lease is extended past the initial five month term, rent will be paid at \$1,000 for each month that the Lessee resides on the property, to be paid in advance on or before the first day of each and every month throughout the term of the extended agreement. Payments may be mailed to the address of designated representative for the City whose address information is listed below.

2. Lawful Use. To use the Property for no purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances of the City of Westminster.

3. Entry by City: To allow the City access at all times to enter onto the Property.

4. Occupancy. Not to permit the Property to be used for any purpose that would render the insurance thereon void or the insurance risk more hazardous.

5. Alterations; Modifications. Not to make any alterations to, or modifications in or upon the Property without first obtaining the City's written consent. All such alterations or modifications shall be done in conformance with all applicable laws, codes, regulations, and rules of the City and the State of Colorado. All such alterations or modifications shall be done at the Lessee's expense. Further, unless the parties otherwise agree in writing, the Lessee shall be obligated to restore the Property to the original condition as entered upon if requested to do so in writing by City.

6. Duty of Care. To exercise reasonable supervision of all guests at all times when they are in or upon the Property.

7. Damage by Lessee. To reimburse the City for any expense incurred by it in repairing any damage to the Property caused by Lessee, his employees or agents, or any person in his care.

8. Indemnity. To indemnify and hold harmless the City from and against any claim for personal injury or property damage resulting from any act or omission of Lessee or its agents, to carry liability insurance covering bodily injury and property damage in an appropriate amount and to make the City, its directors, officers, employees and agents additional named insured under its policy of liability insurance, and to provide the City with a copy of such insurance policy as evidence of coverage.

9. Subletting. To sublet no part of the Property, or assign this lease or any interest therein.

10. Nuisance. Not to permit any disorderly conduct or nuisance whatever about the Property or the Property, including the buildings and the building grounds, and to not annoy, disturb or interfere with the City's or the public's use of the Property.

11. Surrender in Good Condition. At the expiration or termination of this lease to surrender and deliver up the Property in as good order and condition as when the same were entered upon, loss by fire, and ordinary wear excepted.

C. The City and the Lessee further covenant and agree that:

1. Maintenance by Lessee. Lessee shall be responsible for the total caretaking and maintenance of the exterior and interior of the Property and all items brought onto the Property by the Lessee.

2. Maintenance by the City. Lessee accepts the Property "as is" and acknowledges that the City shall have no obligation for maintenance or repair of the Property.

3. Emergency Repairs. Lessee agrees to perform all repairs of an emergency nature necessary to protect the Property from undue and avoidable injury or damage.

4. Utilities. All charges for water and water rents, for heating, and for lighting of the Property are to be paid by Lessee.

5. Telephone Charges. Lessee will be responsible for payment for all telephone installation and service charges.

6. Keys. The City will provide Lessee with a reasonable number of keys for interior and exterior doors of the buildings on the Property.

7. The City is Not Responsible for Lessee's Personal Property. The City shall have no responsibility or liability for any loss or damage to any personal property of the Lessee or any fixtures installed by the Lessee, whether Lessee has obtained insurance coverage or not.

8. Flammable, Hazardous Materials. Lessee shall store no flammable, toxic, dangerous, hazardous or obnoxious materials anywhere on the Property.

9. Live Animals. Lessee shall neither bring nor permit the bringing of any live animals into the Property, except pets to the extent permitted by the Westminster Municipal Code.

10. Untenantable Conditions. If the Property become so damaged by fire, flood, act of God or any other casualty not caused by the Lessee so as to render the Property untenantable, the Lessee may terminate this Lease without further obligation.

11. Vacancy of Property. If the Property is left vacant the City may, at its option, either retake possession of the Property, terminating the Lease and the City's and Lessee's obligations hereunder, or it may re-rent the Property.

12. Insolvency of Lessee. If the Lessee becomes insolvent, or is declared bankrupt, the City may terminate this Lease forthwith, and all rights of the Lessee hereunder shall thereupon terminate.

13. Peaceable Surrender. At the expiration of the term of this Lease, whether by passage of time or by act of the City as provided in this Lease Agreement, the Lessee shall surrender and deliver up the Property peaceably to the City, and if the Lessee shall remain in possession after termination of this lease, the Lessee shall be deemed guilty of a forcible detainer of the Property under the statute, and shall be subject to eviction and removal in accordance with state law.

14. Default. If default shall be made in any of the covenants or agreements contained in this Lease Agreement to be kept by Lessee, it shall be lawful, upon 30 days written notice, for the City to declare the term ended and to repossess the Property in accordance with state law.

15. No Waiver. No assent, express or implied, to any breach of any one or more of the covenants or agreements contained in this Lease Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

16. Designated Representatives. The following persons are hereby designated by the parties as the persons responsible for the implementation of this Lease. Should Notices need to be sent or problems arise concerning this Lease the parties agree to contact:

For the Lessee:

Michelle and Patrick Feldman
12661 Pecos Street
Northglenn, CO 80234

For the City of Westminster:
Heather Cronenberg, Open Space Coordinator
Department of Community Development
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031
303-658-2142

17. Insurance. The City will provide insurance against loss to the fixtures only due to fire or other casualty. The Lessee will be solely responsible for any loss to any personal property associated with the Property.

IN WITNESS WHEREOF the parties have executed this indenture the day and year first above written.

CITY OF WESTMINSTER

LESSEE:

By: _____
J. Brent McFall
City Manager

Michelle Feldman

Attest:

Patrick Feldman

By: _____
Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Exhibit "A"

09/15/2008 1:00:31 PM mab VM

Commitment No.: 274-H0219576-036-JJ5

Attached Legal Description

That part of the North $\frac{1}{2}$ Northwest $\frac{1}{4}$ of Section 33, Township 1 South, Range 68 West of the 6th P.M., more particularly described as follows:

Commencing at the Northeast corner of said Northwest corner of said Northwest $\frac{1}{4}$; Thence South along the East line of said Northwest $\frac{1}{4}$, a distance of 404.82 feet to the True Point of Beginning,
Thence South along the East line of said Northwest $\frac{1}{4}$, a distance of 521.86 feet to a point which is 417.5 feet North of the South line of said North $\frac{1}{2}$ Northwest $\frac{1}{4}$;
Thence South $89^{\circ}59'$ West, a distance of 417.5 feet along a line which is 417.5 feet North of and parallel with the South line of said North $\frac{1}{2}$ Northwest $\frac{1}{4}$;
Thence North parallel with the East line of said Northwest $\frac{1}{4}$, a distance of 521.68 feet;
Thence North $89^{\circ}59'$ East, a distance of 417.5 feet to the True Point of Beginning, except the East 40 feet thereof,

County of Adams,
State of Colorado.



Agenda Item 10 A-C

WESTMINSTER COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Public Hearing and Action on the Westminster Gateway Comprehensive Land Use Plan Amendment and Preliminary Development Plan

Prepared By: Max Ruppeck, Senior Projects Manager

Recommended City Council Action

1. Hold a public hearing.
2. Pass Councillor's Bill No. 45 amending the Comprehensive Land Use Plan for the Westminster Gateway development changing the designation of the northern portion of the property from Public/Quasi Public to Retail Commercial, and other parcels of the property from Retail Commercial to City Owned Open Space, and from City Owned Open Space to Retail Commercial. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
 - a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
 - b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
 - c) The proposed amendment is compatible with existing and planned surrounding land uses; and
 - d) The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
3. Approve the Westminster Gateway Preliminary Development Plan. This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met.

Summary Statement

- The proposed development consists of 5.5 acres located at the southwest corner of US 36 and Church Ranch Boulevard.
- The developer, Resolute Investment, is proposing retail commercial, office and/or hotel.
- Buildings will range in height from 40 ft. for retail uses to 140 ft. for office or hotel uses.
- Access to the development will be provided from Church Ranch Boulevard at Reed Street and a private drive.
- The northern part of the site was used until recently as an RTD park-n-ride. When the park-n-ride was relocated, RTD conveyed the site to the City which has it under contract to sell to Resolute Investment.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

At their regular meeting held on October 28, 2008, the Planning Commission voted unanimously (7-0) to recommend to the City Council that the Comprehensive Land Use Plan be amended changing the designation of the northern portion of the Westminster Gateway property from Public/Quasi Public to Retail Commercial and other parcels of the property from Retail Commercial to City Owned Open Space, and from City Owned Open Space to Retail Commercial. Planning Commission also voted unanimously (7-0) to approve the Westminster Gateway Preliminary Development Plan. Commissioner Anderson questioned the desirability to exchange/sell open space for development. Staff explained that there was a net gain of 0.52 acres of open space after the exchanges and sales were made. No one spoke in favor or opposition to the proposal.

Policy Issues

- 1) Should the City approve a Comprehensive Land use Plan amendment for the 5.5 acre Westminster Gateway development?
- 2) Should the City approve the Westminster Gateway Preliminary Development Plan (PDP)?

Alternatives

- 1) Deny the Comprehensive Land Use Plan (CLUP) amendment. This alternative is not supported because staff believes that the proposed CLUP amendment is appropriate and land use meets the requirements of City Code.
- 2) Deny the Westminster Gateway PDP. This alternative is not supported because staff believes that the proposed PDP is in compliance with the criteria set forth in Section 11-5-14 of the Westminster Municipal Code (WMC).

Background Information

Nature of Request

Westminster Gateway is a proposed retail commercial/office development consisting of three separate lots of approximately 0.6 acres, 1.6 acres and 3.3 acres. Allowed uses include retail commercial, restaurants, hotels and office (including banks). The northern portion of the site (Parcel A – 2.65 acres) is currently a vacated RTD Park-n-Ride facility and is owned by the City of Westminster. This parcel is designated as “Public/Quasi Public” in the CLUP. The southern portion of the site (Parcel C – 3.15 acres) is currently vacant and is designated as “Retail Commercial” in the CLUP. There are a number of smaller tracts designated for public right-of-way or for land swaps/purchases that is described in detail in Exhibit B.

Location

The site is generally located at the southwest corner of US 36 and Church Ranch Boulevard. The site is bounded on the south by City Open Space.

Comprehensive Land Use Plan Amendment

The Westminster Municipal Code requires proof that proposed amendments to the CLUP are in the public good and in overall compliance with the purpose and intent of the CLUP. Further, the CLUP provides four criteria to be used when considering amendments. Staff has reviewed these criteria and has provided the following comments on each.

- 1) The proposed amendment must “Demonstrate that there is justification for the proposed change, and that the Plan is in need of revision as proposed.” The site occupies the southwest corner of the US 36 – Church Ranch Boulevard intersection. The other quadrants of this intersection are all developed commercially: Walnut Creek Shops to the northwest, The Westminster Promenade to the northeast, and the Northpoint commercial development to the southeast. The approximate southern half of the subject property is designated as “Retail Commercial.” The northern half is the vacated RTD Park-n-Ride, currently owned by the City with the intent to be developed commercially. A sale of the property to the applicant is pending.

- 2) The proposed amendment must “Be in conformance with the overall purpose, intent, goals and policies of the Community Goals and Policies of the Plan.” CLUP Goals and Policies applicable to this development are:

- | | |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Goal A2 | Retain areas for commercial and industrial developments as significant revenue or employment generators on the remaining developable land. |
| Policy A2b | The majority of the existing vacant land in the City will be reserved for non-residential or mixed-use development in order to achieve a higher jobs per capita mix within the City with an emphasis on primary employment. |
| Goal D1 | Preserve, maintain, and improve a variety of shopping facilities offering all necessary goods and services to community residents and businesses. |
| Policy D1a | Necessary goods and services will continue to be made available within the City. |
| Policy D1b | Emphasis will be placed on enhancing the quality and diversity of retail and office commercial developments in a manner that makes a positive contribution to the City’s image and business environment. |

The proposed amendment meets these goals and policies in the following ways:

- The development is proposed to be mixed use retail, office, restaurant and hotel, improving the City’s tax base and providing significant employment for the City.
- The proposed development will provide necessary goods and services not only to Westminster residents but to a large number of persons using US 36.

- 3) The proposed amendment must “Be compatible with existing and surrounding uses.” Uses to the northwest and northeast are commercial. The southern and eastern boundaries of the property are City owned open space. Further south, beyond the open space, is the Church Ranch Business Park. There are no residential or institutional uses near the site.
- 4) The proposed amendment must “Not result in detrimental impacts to the City’s existing or planned infrastructure or provide measures to mitigate such impacts to the satisfaction of the City.” The existing and proposed infrastructure is adequate to accommodate the proposed development. Existing water and sewer lines are adequately sized. Church Ranch Boulevard is below capacity and can accommodate the proposed traffic generation.

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Westminster Window on November 6, 2008.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Two signs were posted on the property on October 29, 2008.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on October 17, 2008.

Applicant/Property Owner

Kristopher Barnes, Resolute Investment
Church Ranch Development LLC
88 Inverness Circle E. #A206
Englewood, Colorado 80112

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

Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	CLUP Designation	Use
Northwest: Shops at Walnut Creek	PUD	District Center	Retail
Northeast: US 36 Right-of-Way	N/A		US 36 Right-of-Way
South: City Owned Open Space	PUD	City Owned Open Space	Open Space

Traffic and Transportation

Access to the subject property is primarily from Reed Street which has a full signalized intersection with Church Ranch Boulevard. Reed Street is currently a public street serving the site of the former RTD Park-n-Ride, extending from Church Ranch Boulevard approximately 900 ft. eastward to a cul-du-sac near US 36. The proposed development will keep the (approximately) western 600 ft. of Reed Street as public right-of-way and relocate the cul-de-sac on private property at that point. A second private right-in/right-out access off of Church Ranch Boulevard is located approximately 200 ft. east of Reed Street. This access serves the existing 7-11 store and will also provide secondary access to the proposed development.

Site Design

The development is proposed to be divided into three lots. Lots 1 and 2 (0.6 and 1.6 acres respectively) are located along Church Ranch Boulevard between the existing 7-11 store and the US 36 interchange. A third, larger lot (3.3 acres) is located to the south. An Official Development Plan (ODP) has also been submitted on this site and is currently under review. The ODP has identified a bank user on Lot 1, a restaurant on Lot 2 and a hotel on Lot 3. These proposed uses are preliminary only and are not committed to with this CLUP amendment and PDP.

Landscape Design

This will be detailed in the ODP and will comply with the City’s landscape requirements.

Public Land/School Dedication

Since this is an exclusively non-residential development, no public land or school land dedication is required. However, there are several tracts that are dedicated for public right-of-way (Tract F for Church Ranch Boulevard right-of-way, and Tract E for US 36 right-of-way), and two “exchange” Tracts, C and D (0.131 acres and 0.822 acres respectively). Tract C, currently owned by the City and designated as “City Owned Open Space” will be exchanged for Tract B, currently owned by the developer and designated as “Retail Commercial” on the CLUP. In addition, the applicant will be purchasing Parcel D (0.17 acres) from the City for drainage detention. These land transactions will create a wider open space buffer along Walnut Creek.

Parks/Trails/Open Space

No park dedication will be provided with this development. Pedestrian/bicycle trails will be constructed in the public open space along the eastern and southern open space parcels. These will be detailed on the ODP.

Architecture/Building Materials

General architectural guidelines are included in the PDP. More specific guidelines and building designs will be included in the ODP and amendments thereto. The PDP guidelines are as follows:

- a) Building form and character shall be of an appropriate scale. Design considerations shall include the mass, bulk and proportion of the structure including roofs, walls and openings.
- b) All elevations of structures will be detailed to provide visual interest and avoid unattractive views.
- c) The building elevations will incorporate parapet walls and tower elements that are similar and complementary to the existing development across US Highway 36.
- d) Roofing materials, windows, building materials and finishes will be coordinated to achieve a cohesive design throughout the development. Primary building entrances awning, arcade or portico in order to provide shelter in inclement weather.
- e) Building colors shall be low-reflective, subtle, neutral or earth tone colors with the intent of promoting a harmonious appearance of the structure.
- f) All heating, air-conditioning, refrigeration, ventilation or other mechanical equipment located on the exterior and roof of any building or structure shall be screened from view of abutting public street and residential properties.
- g) Site lighting shall be in accordance with the City's performance standards.

A master Official Development Plan is currently being reviewed by Staff. This master ODP will provide considerably more detailed design guidelines for the development.

Signage/Lighting

These items will be addressed in the ODP.

Referral Agency Responses

Referrals were sent to Xcel Energy, Comcast, Qwest, and the Colorado Department of Transportation. No responses have been received to date.

Service Commitments

Service Commitments will be allocated to this project from Category C for non-residential development. The exact number of commitments will be calculated by staff at the time of building permit approval.

Neighborhood Meeting and Public Comments

In lieu of a neighborhood meeting, individual information packets were sent to all property owners (all non-residential) within 300 ft. Staff did receive an objection from Mr. Bill Kearney as to the proposed trade of open space for additional open space which is attached. The property being traded was acquired as a part of a much larger acquisition for park and open space by condemnation. Mr. Kearney claims that once land is acquired by condemnation for a particular public purpose such as a park or open space, it cannot thereafter be disposed of for some other purpose. The City Attorney has reviewed Mr. Kearney's concern and his response is also attached.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager
Attachments (as listed on next page)

- Vicinity Map
- Comprehensive Land Use Map
- Comprehensive Land Use Plan Ordinance
- Exhibit A – Legal Descriptions
- Exhibit B - Map
- Criteria and Standards for Land Use Applications
- Email from Mr. Kearney and M. McCullough response

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **45**

SERIES OF 2008

INTRODUCED BY COUNCILLOR'S

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER
COMPREHENSIVE LAND USE PLAN IN THE AREA
OF THE WESTMINSTER GATEWAY ODP**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to §11-4-16(D), W.M.C., owners of the properties described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from Open Space to Retail Commercial for two parcels together comprising less than one acre, and from Retail Commercial to Open Space for an approximately one acre parcel, and from Public/Quasi-Public to Retail Commercial for an approximately 4 acre parcel, generally located at the southwest corner of US 36 and Church Ranch Boulevard, all as shown on the map attached as Exhibit B, incorporated herein by reference

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on October 28, 2008, after notice complying with §11-4-16(B), W.M.C. and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with §11-4-16(B), W.M.C. and the City Clerk has certified that the required notices to property owners were sent pursuant to §11-4-16(D), W.M.C..

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly Goals A2: *Retain areas for commercial and industrial development as significant revenues or employment generators on the remaining developable land* and F1: *Continue to promote redevelopment of targeted areas as a pathway to economic revitalization and improved physical conditions.*

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designation of the property more particularly described on attached Exhibit A to the land use designations as depicted on the map attached as Exhibit B.

Section 3. 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 4. This ordinance shall take effect upon its passage after second reading.

Section 5. 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 17th day of November, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 8th day of December, 2008.

ATTEST:

Mayor

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.
9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

Official Development Plan (ODP) Application

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

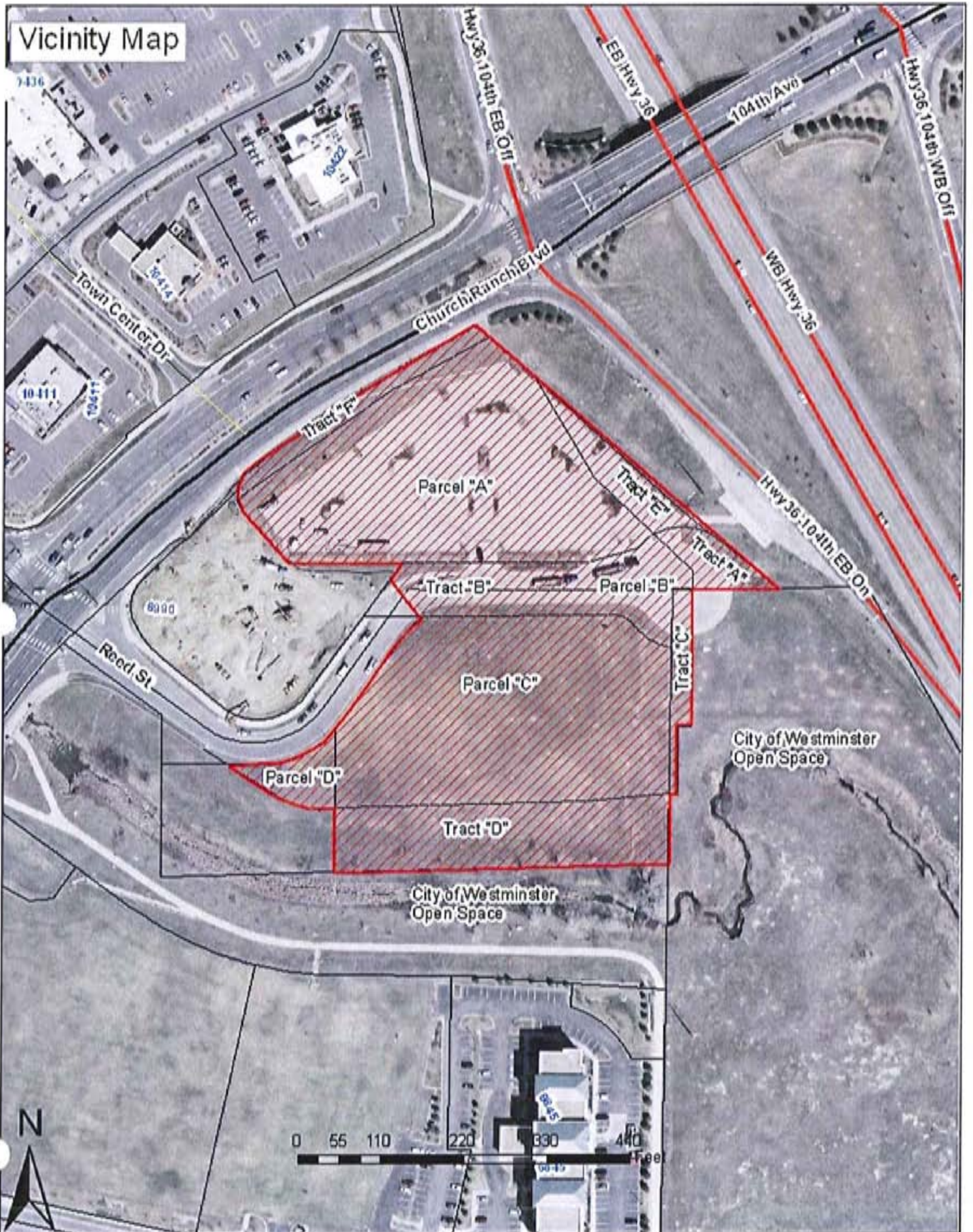
(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.

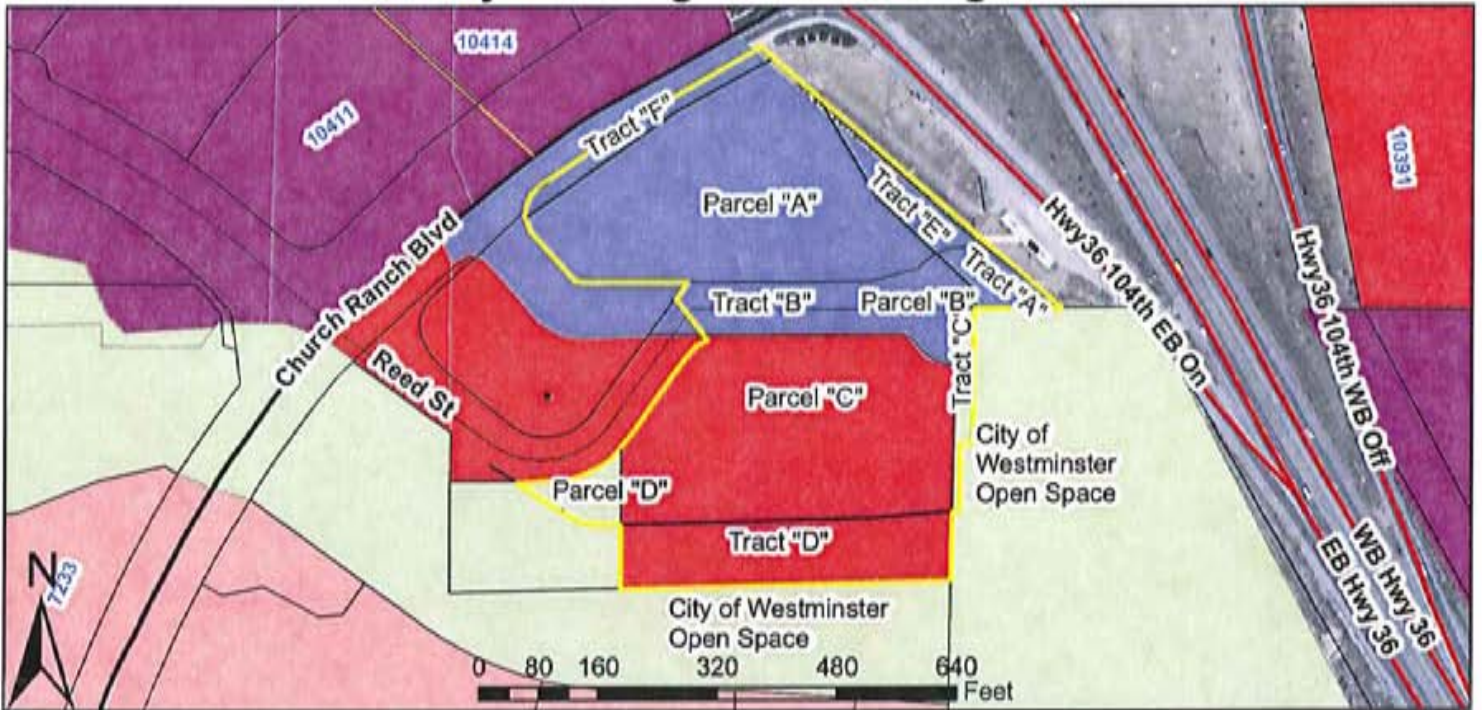
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

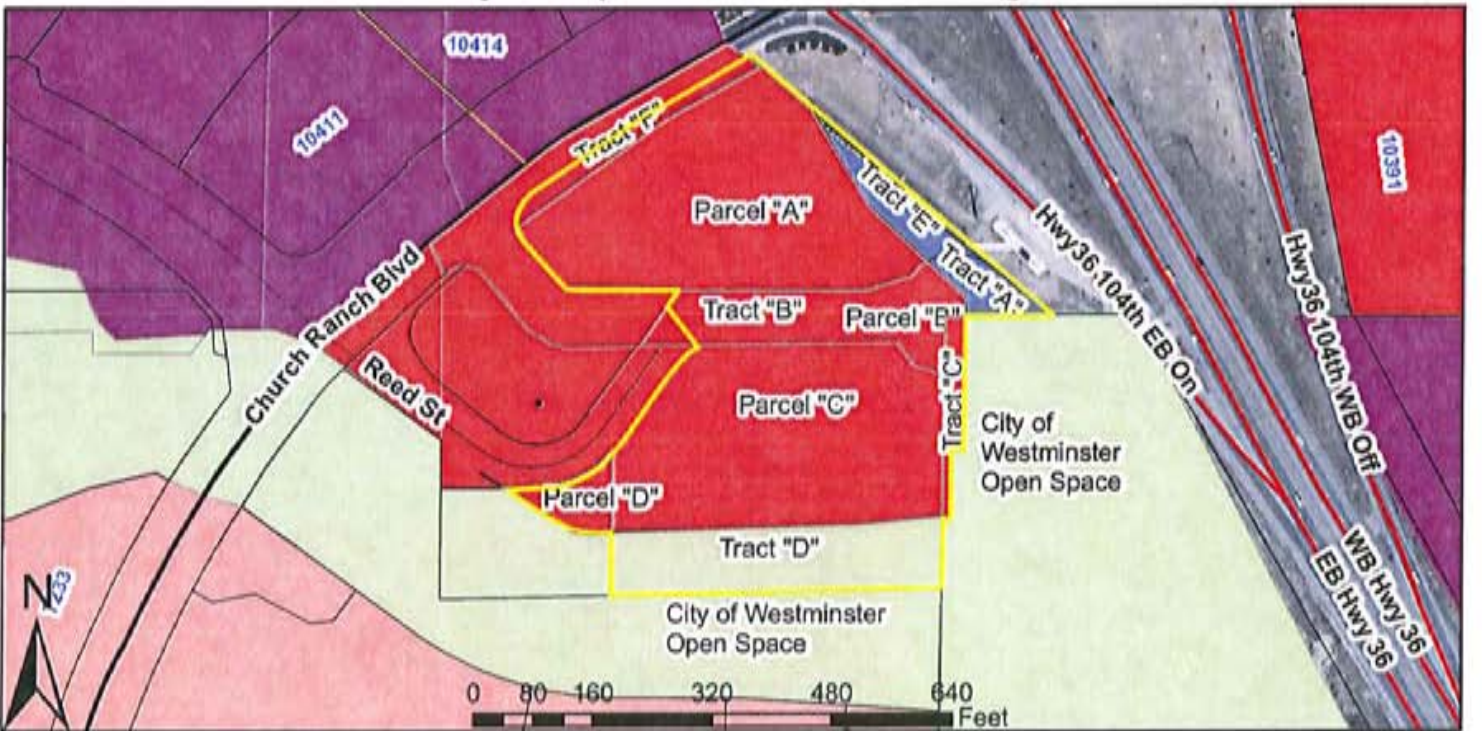
Vicinity Map



Westminster Gateway Existing CLUP Designations



Westminster Gateway Proposed CLUP Designations



CLUP Adjustments		
Parcel:	Current Designation	Proposed Designation
Parcel A:	Public/Quasi Public	Retail Commercial
Parcel B:	Public/Quasi Public	Retail Commercial
Parcel C:	No Change	
Parcel D:	City Owned Open Space	Retail Commercial
Tract A:	No Change	
Tract B:	Public/Quasi Public	Retail Commercial
Tract C:	City Owned Open Space	Retail Commercial
Tract D:	Retail Commercial	City Owned Open Space
Tract E:	No Change	
Tract F:	No Change	

Legend	
	Retail Commercial
	Public/Quasi Public
	Business Park
	District Center
	City Owned Open Space

EXHIBIT A

CLUP Change #1 - from Open Space to Retail Commercial

Parcel D

A PARCEL OF LAND BEING A PORTION OF TRACT "A" AS SHOWN IN THE RECORDED PLAT OF "CHURCH RANCH AMOCO" RECORDED AT RECEPTION NO. 2005021540, BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;
THENCE S 57° 07' 16" W, A DISTANCE OF 530.91 FEET TO THE ARC OF A NON-TANGENT CURVE TO THE RIGHT AND THE **POINT OF BEGINNING**;
THENCE 148.65 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 34° 04' 02", AND A CHORD WHICH BEARS N 71° 12' 23" W, A DISTANCE OF 146.47 FEET;
THENCE N 54° 10' 22" W, A DISTANCE OF 18.67 FEET;
THENCE S 89° 54' 28" E, A DISTANCE OF 51.68 FEET TO THE POINT OF A NON-TANGENT CURVE TO THE LEFT;
THENCE 116.37 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 133.50 FEET, A CENTRAL ANGLE OF 49° 56' 45", AND A CHORD WHICH BEARS N 65° 08' 55" E, A DISTANCE OF 112.72 FEET;
THENCE S 00° 05' 32" W A DISTANCE OF 105.40 FEET TO THE **POINT OF BEGINNING**;
CONTAINING 7,411 SQ. FT. 0.170 ACRES, MORE OR LESS.

CLUP Change #2 - from Open Space to Retail Commercial

Tract C

A TRACT OF LAND LYING WITHIN THE NORTHWEST QUARTER OF SECTION 13 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEPTION NO. F0800645, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 13, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET; SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE S 89° 38' 38" E, A DISTANCE OF 26.90 FEET;

THENCE S 00° 42' 14" W, A DISTANCE OF 182.64 FEET;

THENCE N 89° 17' 46" W, A DISTANCE OF 17.98 FEET;

THENCE S 00° 42' 14" W, A DISTANCE OF 89.25 FEET;

THENCE N 88° 45' 44" W, A DISTANCE OF 8.92 FEET;

THENCE N 00° 42' 14" E, A DISTANCE OF 192.66 FEET;

THENCE N 00° 42' 12" E, A DISTANCE OF 78.99 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 5,707 SQ. FT. OR 0.131 ACRES, MORE OR LESS.

CLUP Change #3 - from Retail Commercial to Open Space

Tract D

A TRACT OF LAND LYING WITHIN THE NORTHEAST QUARTER OF SECTION 14, BEING A PORTION OF LOT 1, CHAMBERLAIN SUBDIVISION (RECEPTION NO. F2121485), ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 14, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE S 00° 42' 13" W, A DISTANCE OF 271.65 FEET TO THE **POINT OF BEGINNING**;

THENCE S 00° 42' 14" W, A DISTANCE OF 91.35 FEET;

THENCE S 88° 52' 14" W, A DISTANCE OF 441.63 FEET;

THENCE N 00° 05' 32" E, A DISTANCE OF 83.47 FEET;

THENCE S 89° 51' 50" E, A DISTANCE OF 334.91 FEET;

THENCE N 78° 57' 13" E, A DISTANCE OF 92.58 FEET;

THENCE S 88° 45' 44" E, A DISTANCE OF 16.76 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 35,840 SQ. FT. OR 0.822 ACRES, MORE OR LESS.

CLUP Change #4 - from Public/Quasi-Public to Retail Commercial

Tract B

A TRACT OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11, THE SOUTHWEST QUARTER OF SECTION 12, AND THE NORTHEAST QUARTER OF SECTION 14 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEPTION NO. F0321025, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET; SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE S 00° 42' 12" W, A DISTANCE OF 78.99 FEET AND NON-TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 60.24 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 43° 08' 25", A CHORD BEARING N 58° 57' 24" W, A DISTANCE OF 58.82 FEET;

THENCE 30.41 FEET ALONG THE ARC OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 52° 48' 11", A CHORD BEARING N 63° 47' 17" W, A DISTANCE OF 29.35 FEET;

THENCE S 89° 48' 41" W TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 251.02 FEET;

THENCE N 42° 05' 19" W, A DISTANCE OF 66.46 FEET;

THENCE N 36° 22' 57" E, A DISTANCE OF 25.52 FEET;

THENCE N 89° 48' 21" E, A DISTANCE OF 245.66 FEET;

THENCE N 74° 29' 34" E, A DISTANCE OF 66.26 FEET AND NON-TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 27.52 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 19° 42' 38", A CHORD BEARING N 50° 22' 40" E, A DISTANCE OF 27.39 FEET;

THENCE S 50° 17' 03" E NON-TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 71.13 FEET;

THENCE S 00° 42' 14" W, A DISTANCE OF 24.08 FEET TO THE NORTH LINE OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M.;

THENCE N 89° 38' 38" W, A DISTANCE OF 26.90 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 29,353 SQ. FT. OR 0.673 ACRES, MORE OR LESS.

And,

Tract F

A TRACT OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEPTION NO. 2007109822, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE N 36° 20' 37" W, A DISTANCE OF 411.06 FEET TO THE **POINT OF BEGINNING**;

THENCE S 60° 03' 45" W, A DISTANCE OF 131.54 FEET AND TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 266.06 FEET, ALONG THE ARC OF SAID TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1591.50 FEET, A CENTRAL ANGLE OF 09° 34' 43", A CHORD BEARING S 55° 16' 24" W, A DISTANCE OF 265.75 FEET;

THENCE 40.95 FEET, ALONG THE ARC OF NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 71° 05' 47", A CHORD BEARING N 16° 03' 52" E, A DISTANCE OF 38.37 FEET;

THENCE 238.09 FEET, ALONG THE ARC OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 1613.50 FEET, A CENTRAL ANGLE OF 08° 27' 16", A CHORD BEARING N 55° 50' 07" E, A DISTANCE OF 237.87 FEET;

THENCE N 60° 03' 45" E, TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 124.37 FEET;

THENCE S 47° 59' 55" E, A DISTANCE OF 23.14 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 8,520 SQ. FT. OR 0.195 ACRES, MORE OR LESS.

And,

Parcel A

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11 AND THE SOUTHWEST QUARTER OF SECTION 12, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A

DISTANCE OF 2714.05 FEET;

THENCE N 44° 39' 59" E, A DISTANCE OF 88.04 FEET TO A POINT ON THE ARC OF A NONTANGENT

CURVE TO THE LEFT AND THE **POINT OF BEGINNING**;

THENCE 122.71 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 87° 52' 52", AND A CHORD WHICH

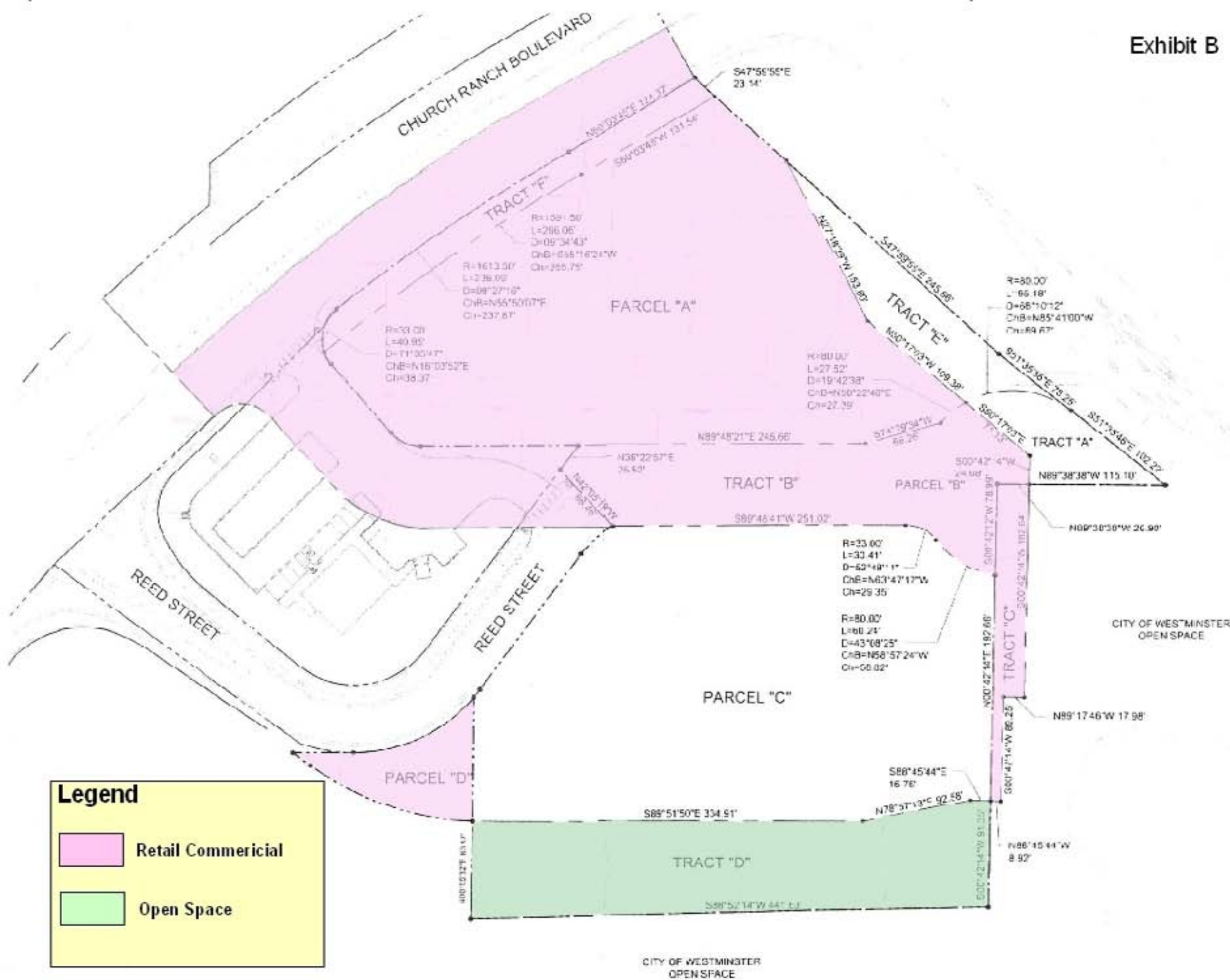
BEARS S 84° 27' 42" W, A DISTANCE OF 111.03 FEET;
THENCE S 74° 29' 34" W, A DISTANCE OF 66.26 FEET;
THENCE S 89° 48' 21" W, A DISTANCE OF 380.63 FEET TO THE POINT OF A NON-TANGENT CURVE TO THE RIGHT;
THENCE 28.26 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 49° 03' 28", AND A CHORD WHICH BEARS N 65° 40' 09" W, A DISTANCE OF 27.40 FEET;
THENCE N 41° 08' 39" W, A DISTANCE OF 78.57 FEET TO THE POINT OF A NON-TANGENT CURVE TO THE RIGHT;
THENCE 53.43 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 92° 45' 41", A CHORD WHICH BEARS N 05° 13' 55" E, A DISTANCE OF 47.78 FEET;
THENCE 238.09 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1613.50 FEET, A CENTRAL ANGLE OF 08° 27' 16", AND A CHORD WHICH BEARS N 55° 50' 07" E, A DISTANCE OF 237.87 FEET;
THENCE N 60° 03' 45" E, A DISTANCE OF 124.37 FEET;
THENCE S 47° 59' 55" E, A DISTANCE OF 351.72 FEET;
THENCE S 51° 35' 36" E, A DISTANCE OF 78.25 FEET TO THE **POINT OF BEGINNING**.
CONTAINING 115,335 SQ. FT. 2.65 ACRES, MORE OR LESS.

And,

The Southern half of Church Ranch Boulevard adjacent to Tract F.

And,

A portion of the previously vacated Reed St. as shown on the Church Ranch Amoco Final Plat Reception Number 2005051540, identified as former Reed Street.



Ruppeck, Max

From: Carpenter, John
Sent: Tuesday, November 11, 2008 9:47 AM
To: Smithers, Steve; McCullough, Marty
Cc: Ruppeck, Max; Grafton, Susan; Cummins, Mac; Cronenberg, Heather
Subject: RE: Westminster Gateway Development

I assumed that Bill wanted his concerns communicated to Council since he sent his message to the City Web site although it is unclear and he does not specifically ask that his comments be entered into the public hearing record. I guess I would defer to Marty regarding how to deal with this. My thought would be to include mention of Kearney's concerns and address them, perhaps using Marty's comments below.

From: Smithers, Steve
Sent: Tuesday, November 11, 2008 9:42 AM
To: McCullough, Marty
Cc: Ruppeck, Max; Grafton, Susan; Carpenter, John; Cummins, Mac; Cronenberg, Heather
Subject: RE: Westminster Gateway Development

Thanks Marty. John - Do we still feel we need to make mention of this in the agenda memo?

Steve

From: McCullough, Marty
Sent: Tuesday, November 11, 2008 9:40 AM
To: 'wmkearney@sbcglobal.net'
Cc: Ruppeck, Max; Grafton, Susan; Carpenter, John; Cummins, Mac; Cronenberg, Heather
Subject: RE: Westminster Gateway Development

Dear Bill:

Our office has reviewed your concern below. Our research indicates that the property in question was acquired free and clear of any future use restrictions or conditions. The law in Colorado as I understand it is that a condemning authority must have a public purpose at the time it exercises its power of eminent domain, but I am unaware of any case law in Colorado that says that thereafter the property cannot be sold or put to another use, public or private, as long as the City follows its own laws concerning the disposition and sale of public property. The City has express authority in the City code that authorizes the City to sell or trade City owned property. Your assertion that the city is giving this property away to a developer is incorrect. In this case, we are trading the open space property in question for other open space at a 6:1 favorable ratio. I would urge you to contact your legal counsel on this issue and have them call me if they wish to provide any other legal authority they may wish us to consider. Thank you.

Marty McCullough
City Attorney

From: Ruppeck, Max

11/11/2008

Sent: Friday, November 07, 2008 11:33 AM
To: Carpenter, John; Cummins, Mac; McCullough, Marty; Grafton, Susan; Cronenberg, Heather
Subject: FW: Westminster Gateway Development

I just received this from Bill Kearney.

From: William R Kearney [mailto:wmkearney@sbcglobal.net]
Sent: Friday, November 07, 2008 10:55 AM
To: Ruppeck, Max
Subject: Fw: Westminster Gateway Development

Max:
Below is my objections to the plan we discussed.
Bill

-- On Fri, 11/7/08, William R Kearney <wmkearney@sbcglobal.net> wrote:

From: William R Kearney <wmkearney@sbcglobal.net>
Subject: Westminster Gateway Development
To: westyemo@cityofwestminster.us
Date: Friday, November 7, 2008, 11:39 AM

I have objections to the above development currently being processed by the City and scheduled for Council approval on November 17th.

1. In 2000 the City condemned the Hawn family property on the west side of US 36 for Open Space & Parks but is now transferring at no cost "Tract C" to a private developer titled as part of Church Ranch Development. City attorneys Betts, Bunson, McCullough and the mayor, also an attorney, attended the 10 days of trials at various times with Marlin Opperman the lead attorney and John Carpenter representing the City. Much was made of the need to take this land over Hawn's objections in order to preserve the view of the mountains for the commuters along US 36. I felt then it was to preserve views of Church Ranch.
 2. Marlin Opperman argued the Cul de Sac at the end of Reed Street could be used for trail head parking for the Open Space Trail. Now the City is also closing Reed Street and giving it to the same private developer in an exchange. Is it equitable to the City?
 3. The remaining Hawn property is about 300 to 400 ft east of this project according to the scale yet no notice or request for comments was received. We have constant interaction with Community Development and Planning yet nothing was ever mentioned. Efforts to get a copy of the plan at this point have been met with come by City Hall and see it only!
- It is time to slow down, remove it from the agenda for Nov 17th and consider what was stated and promised in the past versus making a quick deal which may not benefit the City.
Feel free to call me at 972-620-1976.

Regards,
William R. Kearney, Mgr.
R. Dean Hawn Interests, Ltd.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Resolution No. 54 re Right-of-Way Acquisition for the 112th Avenue, Clay Street to Huron Street Improvement Project

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Adopt Resolution No. 54 authorizing City Staff to proceed with the acquisition of rights-of-way and easements necessary for the 112th Avenue, Clay Street to Huron Street improvement project, including the use of eminent domain, if necessary; and authorize up to \$230,000 for acquisition costs and all related expenses.

Summary

- The first phase of improvements to 112th Avenue between Clay Street and Winona Court was scheduled for construction in 2008 and the second phase of improvements to 112th Avenue between Santa Fe Drive and Huron Street was scheduled for construction in 2009. Due to asphalt shortages in 2008, the first phase was postponed and combined with the second phase. Both phases are now scheduled for construction in 2009.
- The final design of the project will be completed in December 2008, but the design is far enough along to allow right-of-way acquisitions to begin.
- There are two privately owned parcels affected by the proposed improvements. The parcel at the northwest corner of 112th Avenue and Huron Street is owned by the Kaiser Foundation and the parcel in front of the existing El Senor Sol Real restaurant is owned by the Rothe Family Trust (shown on attached exhibits). A fee simple acquisition will be necessary from each ownership.
- These right-of-way acquisitions are expected to be accomplished within the next three months, which will allow the construction project to be advertised for bids early in 2009.

Expenditure Required: \$230,000

Source of Funds: General Capital Improvement Fund –
112th Avenue, Clay Street to Huron Street Improvement Project

Policy Issue

Should the City proceed with right-of-way acquisitions for the 112th Avenue, Clay Street to Huron Street improvement project?

Alternative

The City Council could decide to not proceed with these acquisitions at this time. Staff does not recommend this action since the City has already postponed the first phase of this project one year and there is an expectation by the citizens in the area that this project will be constructed in 2009.

Background Information

The widening of 112th Avenue between Federal Boulevard and Huron Street is becoming more important with the increased traffic flows along this corridor. This increased flow is largely due to Northglenn's construction of the 112th Avenue "flyover" of I-25 as well as Westminster's intersection improvements at 112th Avenue and Federal Boulevard that were completed in 2003. These two projects provided two through lanes in both directions that feed into single lanes in both directions between much of the section of 112th Avenue located between Alcott Street and Huron Street. This "bottleneck" creates a capacity concern along this increasingly important arterial roadway. The construction of the first phase of this project between Clay Street and Wyandot Street was scheduled to occur in 2008 but was delayed due to asphalt shortages in the Denver-metro area. The revised plan is to combine this first phase with the second phase located between Santa Fe Drive and Huron Street and construct both phases in 2009.

The City of Northglenn was originally planning to participate in the construction of this project but has since decided to postpone their portion of the project at this time. Therefore, the eastbound (south side) portion of 112th Avenue from Alcott Street to Zuni Street will remain as one lane until Northglenn can budget for the widening of 112th Avenue within their jurisdiction.

Possession of the necessary right-of-way is a prerequisite to awarding the construction contract. At this point, the schedule calls for the construction of the project to begin in 2009. The acquisition effort will be aimed at a negotiated settlement for purchase or voluntary agreement for possession of the property necessary for construction by January 2009 so that advertising of the construction of the project can begin in early 2009.

The attached resolution authorizes Staff to proceed with the activities and expenditures necessary to secure legal possession and acquire right-of-way for the the112th Avenue, Clay Street to Huron Street improvement project.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments

RESOLUTION

RESOLUTION NO. **54**

INTRODUCED BY COUNCILLORS

SERIES OF 2008

**RIGHT-OF-WAY ACQUISITION FOR THE 112TH AVENUE,
CLAY STREET TO HURON STREET IMPROVEMENT PROJECT**

WHEREAS, the Westminster City Council has determined that it is necessary to the public health, safety and welfare to acquire certain parcels of land to accommodate the construction of the 112th Avenue, Clay Street to Huron Street improvement project; and

WHEREAS, the City will obtain property appraisals prepared by a professional appraisal company experienced in performing appraisals to determine the fair market value of the property rights being acquired in each of the parcels; and

WHEREAS, the City will make an earnest good faith offer to purchase each of the subject parcels; and

WHEREAS, a delay in the acquisition of any of the parcels could result in a delay of the 112th Avenue, Clay Street to Huron Street improvement project, thus creating a hardship on the general population of the City of Westminster wishing to utilize the proposed improvements; and

WHEREAS, the City Attorney has advised that the City may exercise its right of eminent domain should normal negotiations fail; and

WHEREAS, City Council finds that if acquisition by condemnation of any parcel described in this resolution is commenced, immediate possession by the City may be necessary for the public health, safety and welfare in order to keep the 112th Avenue, Clay Street to Huron Street improvement project on the desired schedule.

NOW, THEREFORE, the Westminster City Council resolves that:

1. The City Manager is hereby authorized to establish minimum just compensation for acquisition of the property interests necessary to build the 112th Avenue, Clay Street to Huron Street improvement project.

2. City Staff is authorized to proceed with negotiations to acquire the necessary property interests in the area shown on Exhibit A, attached hereto and incorporated herein by reference, including remainders pursuant to section 15-1-11, W.M.C., on the basis of the appraised value, or such higher value as is considered just and necessary to facilitate the acquisition and avoid the necessity of condemnation.

3. The City Manager is hereby authorized to acquire such property interests consistent with applicable law, including the execution of all documents necessary to complete these purchases.

4. The City Attorney is authorized to take all necessary legal measures to acquire the property interests in question, including proceeding with condemnation of the properties in question against the owner or owners and any other persons or entities claiming an interest therein or thereto, and to take such further action as may be reasonably necessary for or incidental to the filing and diligent prosecution of any litigation or proceedings required to obtain property interests should normal negotiations fail or exceed the time constraints of the overall project. In the event that acquisition by condemnation is commenced, the City Attorney is further authorized to request a grant of immediate possession of the necessary property interests.

5. The City Manager shall be further authorized to incur reasonable costs associated with acquiring the properties in question, including, without limitations, contractual services, the cost of title examination, title insurance, appraisal fee payments mandated by statute, normal closing costs, filings fees and charges and all other related or incidental costs or expenses customarily associated with the acquisition or condemnation of property. The cost shall be charged to the General Capital Improvement Fund.

6. The Senior Projects Engineer managing the project is hereby authorized to call for amendment of the legal descriptions of the parcel interests to be acquired, and the nature of the interests to be acquired, including the commencement date and duration of any temporary easement, if necessary in the course of the project.

PASSED AND ADOPTED this 17th day of November, 2008.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

EXHIBIT "A"
(6 PAGES)



J-R ENGINEERING
A Westlaco Company

PROPERTY DESCRIPTION

A PARCEL OF LAND OVER AND ACROSS GOODWIN TRACT, AS RECORDED UNDER RECEPTION NUMBER 892548 IN THE OFFICE OF THE CLERK AND RECORDER OF ADAMS COUNTY, COLORADO; SITUATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN; MONUMENTED AS SHOWN HEREON, AND HAVING AN ASSUMED BEARING OF N 89°20'32" E.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 4;

THENCE N 89°20'32" E, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 4, A DISTANCE OF 194.00 FEET;

THENCE N 00°16'32" W A DISTANCE OF 40.00 FEET TO SOUTHWEST CORNER OF SAID GOODWIN TRACT, BEING A POINT ON THE NORTHERLY RIGHT-OF-WAY OF WEST 112TH AVENUE, AND BEING THE POINT OF BEGINNING;

THENCE N 00°16'32" W, ALONG THE WESTERLY BOUNDARY LINE OF SAID GOODWIN TRACT, A DISTANCE OF 10.00 FEET;

THENCE N 89°20'32" E A DISTANCE OF 194.00 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID GOODWIN TRACT;

THENCE S 00°16'32" E, ALONG SAID EASTERLY BOUNDARY LINE OF GOODWIN TRACT, A DISTANCE OF 10.00 FEET;

THENCE S 89°20'32" W, ALONG SAID NORTHERLY RIGHT-OF-WAY OF WEST 112TH AVENUE, A DISTANCE OF 194.00 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 1,940 SQUARE FEET, MORE OR LESS.



JR ENGINEERING
A Western Company

SURVEYOR'S STATEMENT

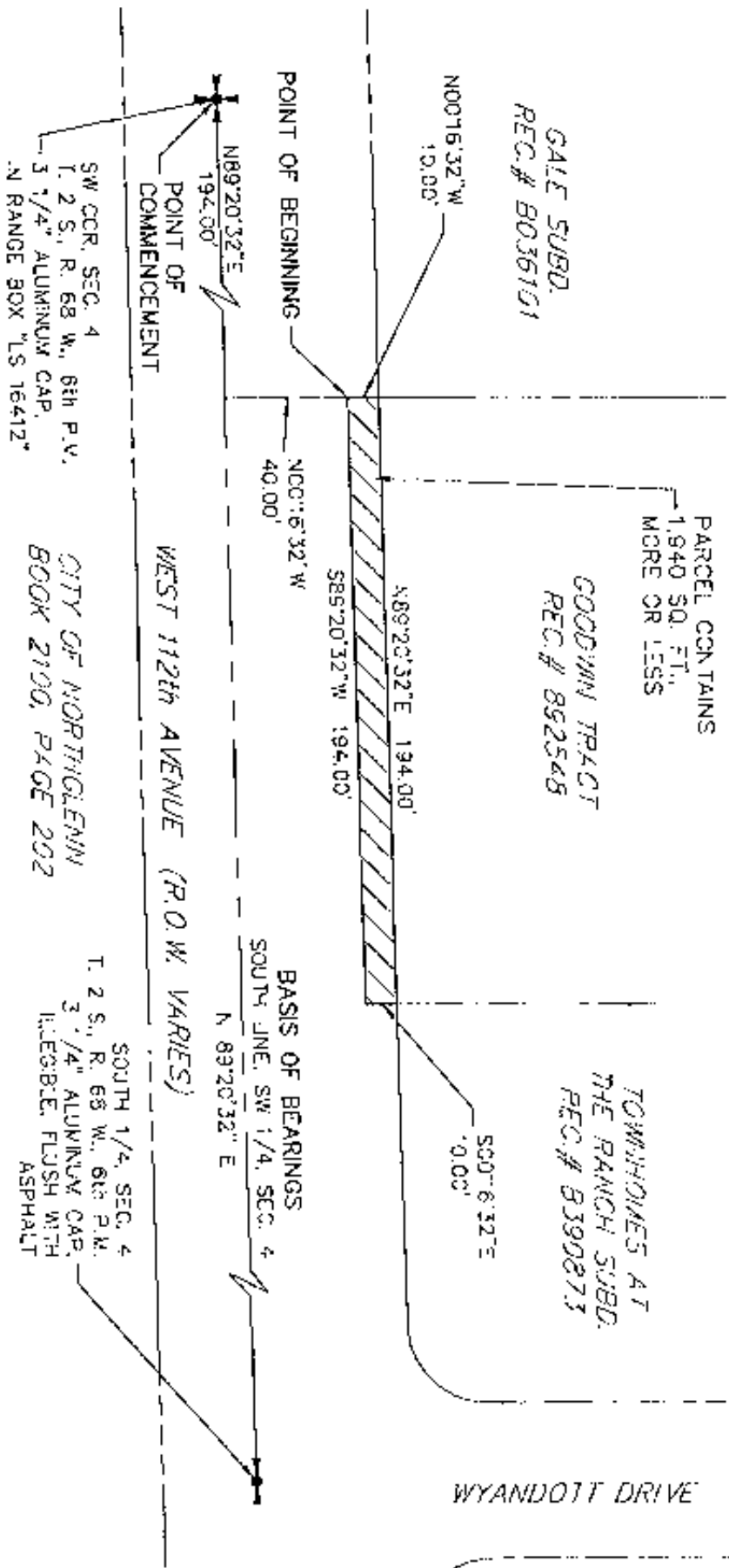
I, JAMES E. LYNCH, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.

JAMES E. LYNCH, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 37933
FOR AND ON BEHALF OF JR ENGINEERING, LLC
12195 MARIPOSA ST., SUITE 100
WESTMINSTER, CO. 80234

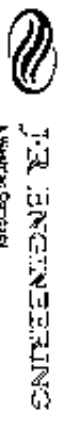


SW 1/4, SECTION 4, TOWNSHIP 2 SOUTH, RANGE 68 WEST, 6th P.M.

EXHIBIT



NOTE:
THIS EXHIBIT DOES NOT REPRESENT
A MONUMENTED SURVEY AND IS
INTENDED ONLY TO DEPICT THE
ATTACHED PROPERTY DESCRIPTION.



PARCEL EXHIBIT
112th AVENUE WIDENING
JOB NO. 15079.00
FEBRUARY 16, 2006
SHEET 3 OF 3

J.R. ENGINEERING
285 Virginia Street, Suite 120, Westport, CO 80294
Phone: (970) 742-1122 Fax: (970) 742-3853 www.jrengineering.com



J-R ENGINEERING
A Wootrian Company

PROPERTY DESCRIPTION

A PARCEL OF LAND OVER AND ACROSS THAT PROPERTY DESCRIBED IN BOOK 4005 AT PAGE 701 IN THE OFFICE OF THE CLERK AND RECORDER OF ADAMS COUNTY, COLORADO; SITUATED IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN; MONUMENTED AS SHOWN HEREON, AND HAVING AN ASSUMED BEARING OF N 89°22'02" E.

BEGINNING AT THE SOUTHEAST CORNER OF SAID PROPERTY DESCRIBED IN BOOK 4005 AT PAGE 701 IN THE OFFICE OF THE CLERK AND RECORDER OF ADAMS COUNTY, COLORADO, BEING A POINT ON THE NORTHERLY RIGHT-OF-WAY OF WEST 112th AVENUE;

THENCE S 89°22'02" W, ALONG SAID NORTHERLY RIGHT-OF-WAY OF WEST 112th AVENUE, A DISTANCE OF 673.30 FEET TO THE SOUTHWEST CORNER OF SAID PROPERTY DESCRIBED IN BOOK 4005 AT PAGE 701;

THENCE N 00°24'28" W, ALONG THE WESTERLY BOUNDARY OF SAID PROPERTY DESCRIBED IN BOOK 4005 AT PAGE 701, A DISTANCE OF 26.52 FEET;

THENCE THE FOLLOWING SEVEN (7) COURSES:

1. N 86°45'30" E, A DISTANCE OF 112.86 FEET;
2. N 81°22'02" E, A DISTANCE OF 142.87 FEET;
3. N 86°11'13" E, A DISTANCE OF 244.49 FEET;
4. N 89°21'32" E, A DISTANCE OF 134.54 FEET;
5. N 41°31'14" E, A DISTANCE OF 20.81 FEET;
6. N 00°24'28" W, A DISTANCE OF 52.00 FEET;
7. N 89°35'32" E, A DISTANCE OF 26.00 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID PROPERTY DESCRIBED IN BOOK 4005 AT PAGE 701, BEING A POINT ON THE WESTERLY RIGHT-OF-WAY OF HURON STREET;

THENCE S 00°24'28" E, ALONG SAID WESTERLY RIGHT-OF-WAY OF HURON STREET, A DISTANCE OF 133.66 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 37,855 SQUARE FEET OR 0.86 ACRES, MORE OR LESS.



JR ENGINEERING

A Westman Company

SURVEYOR'S STATEMENT

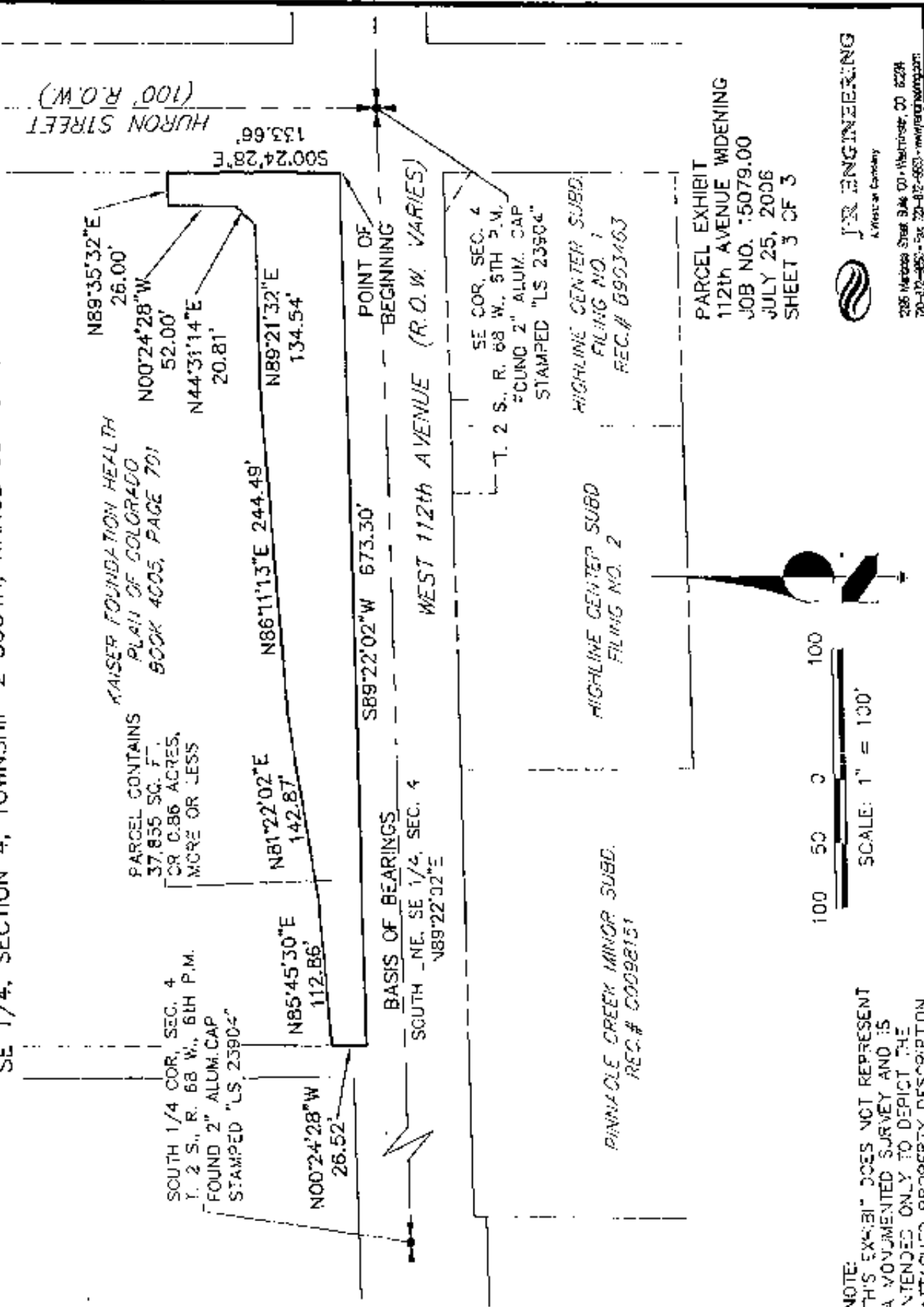
I, JAMES E. LYNCH, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.

JAMES E. LYNCH, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 37933
FOR AND ON BEHALF OF JR ENGINEERING, LLC
12195 MARIPOSA ST., SUITE 100
WESTMINSTER, CO. 80234



EXHIBIT

SE 1/4, SECTION 4, TOWNSHIP 2 SOUTH, RANGE 68 WEST, 6th P.M.



NOTE: THIS EXHIBIT DOES NOT REPRESENT A DOCUMENTED SURVEY AND IS INTENDED ONLY TO DEPICT THE ATTACHED PROPERTY DESCRIPTION.



J.R. ENGINEERING
A Professional Company

286 Harborside Street, Suite 100 • Westminster, CO 80291
703-472-9853 • Fax 703-472-9853 • www.jrengineering.com

PARCEL EXHIBIT
112th AVENUE WIDENING
JOB NO. 15079.00
JULY 25, 2006
SHEET 3 OF 3



Agenda Item 10 E

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Councillor's Bill No. 46 re Acquisition of Water Rights

Prepared By: Mary Jay Vestal, Water Resources Engineer
Josh Nims, Water Resources Engineering Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 46 on first reading authorizing an amendment to Title 15 of the City Code regarding the Acquisition of Water Rights.

Summary Statement

- Water rights acquisition is critically important for the City to meet the water demand of the City at buildout.
- In 1977, Resolution No. 19 was adopted to allow the City Manager to consummate water purchases without specific prior approval by City Council. This authority has given the City an advantage in a very competitive water market by allowing Staff to more quickly negotiate and purchase water rights.
- This Resolution outlined conditions including reporting such purchases to Council, proper prior investigation into the value and benefit of such water right and negotiation to acquire the rights in the most beneficial manner.
- Resolution No. 19 refers to certain sections of City Charter that have subsequently been superseded by Charter amendments and more recently adopted purchasing regulations, and is therefore out-of-date.
- The City Attorney's Office and Water Resources Staff have prepared an Ordinance to adopt a new section 15-1-12, titled Acquisition of Water Rights granting the same authorities and responsibilities covered in Resolution No. 19.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does City Council wish to authorize an amendment to City Code detailing formal purchasing procedures specific to the Acquisition of Water Rights?

Alternative

City Council could reject this ordinance and require Staff and the City Manager to obtain Council approval prior to purchasing any water rights in excess of \$50,000. This alternative is not recommended as a two-week delay to meet with Council could jeopardize the City's ability to negotiate and consummate water purchases in the tremendously competitive water market. Also, with the highly fractured market of shares left available, Council could see a large increase in their time devoted to approving such water purchases.

Background Information

Senior agricultural water rights are a proven commodity and are planned to comprise a significant portion of the future water supply of the City. Therefore, it will be important and beneficial to the City to be able to acquire water rights in the future.

The purchase of water rights often involves sums in excess of \$50,000 and is therefore subject to Section 15-1-2 of the City Code. However, the ability to purchase water rights often requires timely judgment and ability to negotiate and consummate purchases in a short period of time. To address this issue, Resolution No. 19 was adopted in 1977 to allow the City Manager to consummate water purchases without specific prior approval by City Council.

Resolution No. 19 also outlined conditions including reporting such purchases to Council, proper prior investigation into the value and benefit of such water right and negotiation to acquire the rights in the most beneficial manner. This authority gave the City an advantage in a competitive water market due to the ability to negotiate and close deals quickly. However, it recently came to Staff's attention that Resolution No. 19 refers to certain sections of City Charter which have subsequently been replaced and is in conflict with the purchasing limitation adopted in the Code.

City Attorney's Office and Water Resources Staff have prepared an ordinance to add a new section 15-1-12 titled Acquisition of Water Rights granting the same authorities and responsibilities covered in the old Resolution No. 19. The new language specifies that the City Manager will provide a report of the purchase to Council within twenty days. Such reports will be prepared by the Water Resources Staff and submitted to Council as an information-only Staff Report. It also limits purchases to funds already appropriated by City Council for water rights acquisition. Staff is recommending approval by Council at this time so that water purchases can continue in the most effective manner possible.

Adoption of this amendment to the City Code supports City Council's goal of Financially Sustainable City Government Providing Exceptional Services by providing for efficient, cost-effective internal services and securing and developing long-term water supply.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **46**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE PROVIDING FOR THE ACQUISITION OF WATER RIGHTS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Title 15, Chapter 1, W.M.C., is hereby amended BY THE ADDITION OF THE FOLLOWING NEW SECTION:

15-1-12: ACQUISITION OF WATER RIGHTS:

NOTWITHSTANDING ANY OTHER REQUIREMENTS OF THIS CHAPTER, THE CITY MANAGER IS AUTHORIZED TO ACQUIRE WATER RIGHTS, THROUGH DIRECT PURCHASE OR OTHERWISE, WITHOUT SPECIFIC COUNCIL PRE-AUTHORIZATION PRIOR TO SUCH PURCHASE, PROVIDED THAT THE CITY MANAGER:

(A) ASCERTAINS THE VALUE AND BENEFIT OF SUCH WATER RIGHTS BY MEANS OF AN APPROPRIATE ENGINEERING STUDY, IF NECESSARY, AND

(B) DETERMINES THAT AN EXPEDITED ACQUISITION OF SUCH RIGHTS IS NECESSARY TO PRESERVE THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF WESTMINSTER, AND

(C) FINDS THAT ADEQUATE FUNDS HAVE PREVIOUSLY BEEN APPROPRIATED FOR SUCH ACQUISITION, AND

(D) PROVIDES A WRITTEN REPORT TO THE CITY COUNCIL ADVISING THE COUNCIL OF ANY SUCH PURCHASE WITHIN TWENTY (20) DAYS OF THE ACQUISITION.

Section 2: This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 17th day of November, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2008.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
November 17, 2008



SUBJECT: Councillor’s Bill No. 47 re Amendments to Title V of the Westminster Municipal Code Concerning Home Occupation and Massage Therapist Licenses

Prepared By: Linda Yeager, City Clerk
Eugene Mei, Assistant City Attorney

Recommended City Council Action

Pass Councillor’s Bill No. 47 on first reading amending Title V of the Westminster Municipal Code concerning home occupation and massage therapist licenses.

Summary Statement

- Staff is recommending two changes to Title V of the Municipal Code. Both changes relate to the licensing of businesses within the City. These proposed changes are the elimination of a renewal requirement for home occupation licenses and the removal of the requirement for City licensure of massage therapists. Both proposed amendments will result in considerable savings of Staff time and resources.
- Home Occupation Licenses: As part of the 2009/2010 Budget development process, City Council evaluated Staff recommendations for changes to their operations and areas where they could better maximize the City’s limited resources by reallocating Staff time and funds. One of the potential changes identified was the elimination of the annual renewal requirement for home occupation licenses.

Council agreed that this change would have little impact on home businesses and would reduce costs for the City. Staff was directed to submit the necessary Code amendments to adopt the change at a future City Council meeting. The attached Councillor’s Bill accomplishes that objective.

- Massage Therapist Licenses: Effective April 1, 2009, the State of Colorado will be the sole licensing authority for massage therapists pursuant to SB 08-219, i.e., the legislation explicitly pre-empts local jurisdiction from regulating massage therapists. Accordingly, the attached Councillor’s Bill amends the Westminster Municipal Code (W.M.C.) to remove the local massage therapist licensing requirement from W.M.C. 5-15 Massage Parlors.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

Should Council amend the Westminster Municipal Code to eliminate the requirement for annual renewal of home occupation licenses?

Should Council amend the Westminster Municipal Code to eliminate the requirement for massage therapist licenses?

Alternatives

City Council could direct Staff to leave the current home occupation license renewal requirement in place, or to require renewal on a less frequent basis. Staff does not recommend these alternatives, as it has been determined that elimination of the renewal requirement will have little impact on our home businesses, but will save both hard-dollar and soft-dollar costs for the City.

City Council could direct Staff to leave the current massage therapist license requirement in place. Staff does not recommend this alternative because the state legislation explicitly prohibits local jurisdictions from regulating massage therapists.

Background Information

Home Occupation Licenses

As part of the 2009/2010 budget development process, Staff explored ways to do more with limited resources while still maintaining focus on the City's mission of providing exceptional value and quality of life. As a result of the June 9, 2008, post Council meeting session, Staff reviewed operations to look for areas where we might streamline, identifying efforts (Staff time and/or ongoing costs) that might not be as high of a priority to free up Staff and funding for higher priority services. One of the areas identified for potential savings was elimination of the requirement for home occupation license renewal.

The W.M.C. requires every person who operates a business from a residential address in the City to obtain a home occupation license. There is no fee for the license. There are currently 1,009 active home occupation licenses on file. Home occupation licenses must be renewed annually no later than December 31st. The renewal process requires the City Clerk's Office to mail a renewal form to all licensees, process the returned form, and mail a renewed license. In some cases the licensee has to be contacted because they failed to respond to the initial renewal request. The process involves both hard-dollar and soft-dollar costs.

Staff determined that the annual renewal process might be an area where savings could be realized by amending the City Code to eliminate this requirement. Discussions were held with representatives from the Community Development Department's Planning, Building and Economic Development Divisions, and the Police and Fire Departments, to insure that eliminating the annual renewal would not impact their operations. Staff indicated that they are not using the home occupation renewals to update any of their information and had no objection to eliminating the renewal requirement.

Even if the Code is amended, all home occupation licensees will continue to receive annual (or more frequent) City sales and use tax returns. The return affords these businesses an opportunity to communicate mailing address changes, or business discontinuation information to the City. Home occupation licensees who move to a different address in the City will still be required to apply for a new license and undergo the standard approval process, as is the current practice. Staff anticipates that eliminating the annual renewal requirement will have little impact on home businesses, but will save both hard- and soft-dollar costs for the City.

Massage Therapist Licenses

City Code currently requires all parties that provide massage services within the City limits to obtain a City massage therapist license [W.M.C. 5-15-3(A)]. Pursuant to SB 08-219 and effective April 1, 2009, the State of Colorado will be the sole licensing authority for massage therapists, i.e., the legislation explicitly pre-empts local jurisdictions from regulating massage therapists. Accordingly, the attached Councillor's Bill amends the W.M.C. to remove the local massage therapist licensing requirement effective December 31, 2008. The year-end date was chosen because it would not be an efficient use of City resources to re-issue the approximately 245 massage therapist licenses for just the three-month period prior to the effective date of SB 08-219. That renewal process would require the investment of approximately 160 hours by the City's only Liquor Enforcement Officer to conduct background checks. The State Department of Regulatory Agencies is still developing implementation plans for massage therapist licensing, and City staff will evaluate additional amendments to the City's massage parlor code, if necessary, once that information is available.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **47**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE
CONCERNING HOME OCCUPATION AND MASSAGE PARLOR LICENSES**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 5-3-3, subsections (B) and (C), W.M.C., are hereby AMENDED to read as follows:

5-3-3: LICENSE APPLICATION AND ADMINISTRATION:

~~(B) All home occupation licenses issued pursuant to this Chapter shall expire on December 31st of the year issued. An application for renewal of a home occupation license shall be filed with the City Clerk. In the event a suspension or revocation proceeding is pending when a license renewal application is filed, the application shall not be acted upon until the decision is issued. Renewal of a license may be denied as provided below.~~

~~(C) All licenses shall specify the name of the licensee, the business address, AND the nature of the business, the term of the license, and the date upon which it expires. Every license granted under the provisions of this Chapter shall be posted in a conspicuous place at the place of business for the full term of the license. Licenses shall be removed upon expiration. It shall be the duty of each licensee to show the license at any reasonable time when requested to do so by any City official.~~

Section 2. Section 5-3-5, subsections (A), (B), (C), and (D), W.M.C., are hereby AMENDED to read as follows:

5-3-5: LICENSE DENIAL, CANCELLATION, SUSPENSION OR REVOCATION:

(A) A license may be denied, cancelled, ~~denied renewal~~, suspended or revoked for any violation of the provisions of this Chapter, or for any reason set forth in Chapter 1 of this Title. Grounds for such action may also include:

(1) Nonconformance of the premises to the requirements of this Code;

(2) Nonconformance of the occupation or of the applicant or licensee with the limitations specified in Section 11-4-10 of this Code.

(B) Any of the following circumstances may be considered cause for denial of a license:

(1) ~~The required fees have not been paid.~~

~~(2) The application is incomplete or contains false, misleading or fraudulent statements.~~

(3) Nonconformance of the business, premises, building or land use with this Code.

The applicant may appeal a denial to the Special Permit and License Board, unless the reason for the denial is an incomplete application, OR nonconformance with provisions of this Code such as zoning or the building code, ~~or failure to pay required fees~~. The reason for the denial of the application shall be provided to the applicant in writing.

(C) A license may be denied, cancelled, ~~denied-renewal~~, suspended or revoked for any violation of the provisions of this Chapter for any reason set forth in Chapter 1 of this Title or on the grounds that the health, safety or welfare of the community may be endangered by the continued operation of the license.

(D) A license may be cancelled, ~~denied-renewal~~, suspended or revoked after the licensee has been given notice and hearing. The notice shall set forth the reasons for the proposed action, in writing, and shall be given by personal delivery to the applicant or mailed to the address contained in the license, postage prepaid, or as provided in Chapter 1 of this Title. Said notice shall be given no less than ten (10) days prior to a hearing to be scheduled before the Special Permit and License Board.

Section 3. Section 5-3-6, W.M.C., is hereby AMENDED to read as follows:

5-3-6: PENALTY: It shall be unlawful for any person to violate a provision of this Chapter. Violators shall be subject to the penalties provided by Section 1-8-1 of this Code and may also be subject to civil remedies provided by Chapter 4 of Title ~~IX~~ VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.

Section 4. Section 5-15-2, subsections (A), (D) and (F), W.M.C., are hereby AMENDED to read as follows:

5-15-2: DEFINITIONS: As used in this Chapter, the following shall mean:

(A) "License" means a grant of a license to operate a massage parlor ~~or to render services as a massage therapist.~~

(D) "Massage Therapy" means a method of treating the body for remedial or hygienic purposes by a massage therapist ~~licensed pursuant to this Chapter~~, including but not limited to rubbing, stroking, kneading, or tapping with the hand or an instrument or both.

(F) "Massage therapist" means ~~aN INDIVIDUAL REGISTERED BY THE STATE OF COLORADO TO ENGAGE IN THE PRACTICE OF MASSAGE THERAPY PURSUANT TO TITLE 12, ARTICLE 35.5, COLORADO REVISED STATUTES. person who has graduated from a massage therapy school accredited by the state educational board or division charged with the responsibility of approving private occupational schools, or from a school with comparable approval or accreditation from another state with transcripts indicating completion of at least five hundred hours of training in massage therapy. For the purposes of this subsection (F), a massage therapy school may include an equivalency program approved by the state educational board or division charged with the responsibility of approving private occupational schools. A massage therapist shall provide proof of meeting the requirements as defined in this subsection (F) and shall further meet all applicable licensing requirements of the City.~~

Section 5. Section 5-15-3, subsection (A), W.M.C., is hereby AMENDED to read as follows:

5-15-3: LICENSE REQUIRED; STATE STATUTES:

(A) It shall be unlawful for any person to operate a massage parlor ~~or to render massage therapy services for compensation~~ within the City of Westminster without first obtaining a license therefore pursuant to this Chapter.

Section 6. Section 5-15-4, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

5-15-4: LICENSE APPLICATION:

(A) The applicant for a license to operate a massage parlor ~~or to render massage therapy services for~~

~~compensation shall submit a verified application to the City Clerk on forms provided by the City Clerk. The application to operate a massage parlor shall include complete plans and specifications for the interior of the premises to be licensed, a copy of the lease or other evidence of the applicant's right to possession of the premises, information regarding the zoning of the location of the premises, the fees required by this Chapter, and any other information which is required by state statute. Applications to render services as a massage therapist shall include proof of certification as a massage therapist as defined by Section 5-15-2(F), the fees required by this Chapter, and any other information required by applicable law.~~

(B) The application for a license to operate a massage parlor shall be reviewed by the City Manager, who, within ten (10) days after receipt of the application and after such additional investigation as he may deem necessary, shall schedule a public hearing before the Special Permit and License Board not less than thirty (30) days from the date of the application. ~~An application to render services as a massage therapist shall be reviewed by the City Manager and a license issued if the applicant qualifies as a massage therapist pursuant to Section 5-15-2(F), and a criminal history check reveals no drug or prostitution related convictions. The City Manager may deny a license to render services as a massage therapist if the applicant has committed prior violations of this Chapter.~~

Section 7. Section 5-15-5, subsection (C), W.M.C., is hereby DELETED IN ITS ENTIRETY:

5-15-5: FEES:

~~(C) The fee for a license to render services as a massage therapist shall be five dollars (\$5), payable at the time of filing the application.~~

Section 8. Section 5-15-10, subsection (A), W.M.C., is hereby AMENDED to read as follows:

5-15-10: PROHIBITED ACTS:

(A) It shall be unlawful for any person:

- (1) To operate a massage parlor without holding a validly issued license;
- (2) To work in or upon the licensed premises of a massage parlor without obtaining and carrying a valid identity card pursuant to Section 5-15-9;
- (3) To render massage therapy services for compensation without VALID REGISTRATION PURSUANT TO TITLE 12, ARTICLE 35.5, COLORADO REVISED STATUTES ~~obtaining and carrying a license issued pursuant to this Chapter.~~
- (4) To perform other massage services within the City.
- (5) To obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under eighteen (18) years of age, unless such person is accompanied by his parent or has a physician's prescription for massage services;
- (6) To allow the sale, giving, or procuring of any massage services to any person under the age of eighteen (18) years, unless such person is accompanied by his parent or has a physician's prescription for massage services;
- (7) To permit any person under the age of eighteen (18) years to be employed as an employee in a massage parlor. If any person who, in fact, is not eighteen (18) years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation

or suspension of any license issued under this article unless the person employing such person knew or should have known that the proof of age was fraudulent.

(8) To fail to display at all times in a prominent place on the licensed premises a printed card with a minimum height of fourteen (14) inches and a width of eleven (11) inches with each letter a minimum of one-half (1/2) inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES.

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES. FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.

(9) To possess, consume or dispense or to allow the possession, consumption or dispensation of alcoholic beverages, drugs or narcotics upon the premises. This subparagraph shall not apply to the use of drugs or narcotics which have been prescribed by a licensed physician.

Section 9. Section 5-15-11, subsection (A), is hereby AMENDED to read as follows:

5-15-11: PENALTY:

(A) It shall be unlawful for any person to violate a provision of this Chapter. A violation of this Chapter shall be a criminal offense. Violators shall be subject to the penalties provided by Section 1-8-1 of this Code, including imprisonment, and may also be subject to civil remedies provided by Chapter 4 of Title ~~IX~~ VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.

Section 10. This ordinance shall take effect on December 31, 2008.

Section 11. 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 17th day of November, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2008.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office