



## CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
  - A. City Manager's Report
5. City Council Comments
6. Presentations
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. Colorado Municipal League 2013 Annual Dues
  - B. 2013 and 2014 Special Water Counsel Legal Services Agreement
  - C. 2013 and 2014 Water Resources Engineering Services Agreement
  - D. Wandering View Tanks Repairs Construction Change Order
  - E. Westminster Station – Pedestrian Tunnel Betterment Design and Construction
  - F. 2013 Proposed Community Development Block Grant and HOME Projects, and 2013 Action Plan
  - G. Tanglewood Creek Channel and Pond Improvements - IGA Second Amendment with UDFCD
  - H. Little Dry Creek Regional Detention Pond and Improvements - IGA Second Amendment with UDFCD
  - I. Second Reading of Councillor's Bill No. 48 re 2012 3<sup>rd</sup> Quarter Budget Supplement Appropriation
  - J. Second Reading of Councillor's Bill No. 49 re Amendments to the W.M.C. Concerning Storm Water Quality
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Resolution No. 39 re IGA with Federal Heights re 92<sup>nd</sup> Ave. and Federal Blvd Intersection Improvement Project
11. Old Business and Passage of Ordinances on Second Reading
  - A. TABLED to 2/25/13 – Continued Public Hearing and Action on the Second Amended Preliminary Development Plan and the Eighth Amended Official Development Plan for the Hyland Village Subdivision
12. Miscellaneous Business and Executive Session
  - A. City Council
  - B. Executive Session – Consultation with the City Attorney regarding a pending claim for damages asserted against the Police Department and discussions regarding negotiations of that claim pursuant to Sections 1-11-3(C)(3) and 1-11-3(C)(7) of the Westminster Municipal Code and C.R.S. 24-6-402(4)(b) and (e).

### 13. Adjournment

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

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



**WESTMINSTER**  
**Strategic Plan**  
**2012-2017**  
**Goals and Objectives**

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**STRONG, BALANCED LOCAL ECONOMY**

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



**FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES**

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



**SAFE AND SECURE COMMUNITY**

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



**VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY**

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



**BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY**

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



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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, NOVEMBER 26, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Atchison moved, seconded by Councillor Kaiser, to approve the minutes of the regular meeting of November 12, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported the annual holiday lighting ceremonies would be on Sunday, December 2, from 5:30 – 7:30 p.m. The expected highlight of this wonderful evening would be the rumored appearance of the jolly old elf, Santa Claus. The public was invited to join in the festivities.

City Council regular meetings were normally held on the 2<sup>nd</sup> and 4<sup>th</sup> Monday of each month, and Mr. McFall noted that the 4<sup>th</sup> Monday of December would fall on Christmas Eve this year. Accordingly, an agenda item had been prepared to change the 2<sup>nd</sup> meeting of December from December 24 to December 17. If approved by Council on the consent agenda, the City Council would meet in study session on December 3 and conduct back-to-back regular meetings on December 10 and 17. There would be no other meeting of City Council during the balance of the year unless an urgent matter were to arise.

CITIZEN COMMUNICATION

Rebecca Ridgeway, spokesperson for the Ridgeway Family, voiced the family's appreciation to City Council for considering the notion of renaming Chelsea Park after Jessica Ridgeway, who had lived in the nearby neighborhood and had perished at the hands of an abductor on October 4. Rebecca thanked the City Council, the City Staff, and the community for supporting the family throughout the tragic ordeal.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the October Financial Report; change the date of the second regularly scheduled City Council meeting in December from December 24 to December 17; authorize the City Manager to execute a \$223,807 contract with the low bidder, American Mechanical Services of Colorado Springs Inc., for the upgrade and modernization of the heating and cooling system at the Heritage Golf Clubhouse and authorize a 10% contingency of \$22,300 for a total project cost of \$246,107; authorize the Police Department to purchase five Sharp multi-function copiers (copier, printer, fax, and scanner) of varying size from Lewan and Associates for \$47,882.90; based upon the recommendation of the City Manager, determine that the public interest would be best served by ratifying the contracts with Precinct Police Products and Frontier Radio Communications and by approving any additional 2012 Police Department expenses with Precinct Police Products up to a maximum of \$95,000, as well as Citywide expenses with Frontier Radio Communications up to a maximum of \$115,000; authorize payment of \$26,390 to the North Metro Task Force, bringing the total to be paid to the North Metro Task Force in 2012 to \$54,297; and final passage on second reading of Councillor's Bill No. 47 implementing revisions to the Solid Waste Collection section of the Westminster Municipal Code as recommended by the Environmental Advisory Board to improve recycling in the community.



It was moved by Councillor Major, seconded by Councillor Atchison, to approve the consent agenda as presented and distributed. The motion carried with all Council members voting favorably.

RENAMING OF CHELSEA PARK

Mayor Pro Tem Winter was honored to move that Chelsea Park be renamed the Jessica Ridgeway Memorial Park. Councillor Atchison seconded the motion and it passed unanimously. Mayor McNally thanked the family members for being role models of strength and unity during a time of such devastation and horror. The family had brought honor to Jessica's memory and blessings to the community.

RESOLUTION NO. 38 ADOPTING 2013 LEGISLATIVE POLICY STATEMENT

Upon a motion by Councillor Major, seconded by Councillor Atchison, the Council voted unanimously on roll call vote to adopt Resolution No. 38 approving the City of Westminster 2013 Legislative Policy Statement.

COUNCILLOR'S BILL NO. 48 AUTHORIZING 3<sup>RD</sup> QUARTER SUPPLEMENTAL APPROPRIATION

It was moved by Councillor Kaiser and seconded by Councillor Major to pass on first reading Councillor's Bill No. 48, providing for a supplemental appropriation of funds to the 2012 budget of the General, Water, Storm Drainage, General Capital Outlay Replacement, and General Capital Improvement Funds. On roll call vote, the motion passed unanimously.

COUNCILLOR'S BILL NO. 49 MODIFYING STORM WATER QUALITY PROVISIONS OF W.M.C.

Mayor Pro Tem Winter moved, seconded by Councillor Atchison, to pass on first reading Councillor's Bill No. 49 authorizing revisions to Sections 8-11-3 through 8-11-8, 8-11-10, 8-11-11 and 11-6-5 and repealing Section 11-7-7 of the Westminster Municipal Code, all concerning storm water quality matters. The motion carried with unanimous support on roll call vote.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Mayor Pro Tem Winter and seconded by Councillor Major to adjourn. The motion passed and the Mayor adjourned the meeting at 7:09 p.m.

ATTEST:

\_\_\_\_\_  
Mayor

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



## Agenda Item 8 A

### Agenda Memorandum

City Council Meeting  
December 10, 2012



**SUBJECT:** Colorado Municipal League 2013 Annual Dues

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

### Recommended City Council Action

Authorize payment of \$59,253 for the City's 2013 Colorado Municipal League dues.

### Summary Statement

- The City of Westminster's Colorado Municipal League (CML) 2013 dues, which are based on a formula that factors population, assessed valuation, and sales tax collections, total \$59,253, which is an increase of \$1,726 over the 2012 dues.
- Adequate funds have been included in the Central Charges budget of the Adopted 2013 Budget that was approved by City Council in October 2012. Since these annual membership dues exceed \$50,000, City Council authorization is required, per Section 15-1-2 of the Municipal Code.
- CML provides services to 265 cities and towns throughout the state. The annual membership dues to CML include subscriptions to the bimonthly magazine, *Colorado Municipalities*, and the regular CML Newsletter for community officials. Other League services include municipal information services, municipal conferences and workshops, legislative and legal services, administrative agency services, sample ordinances, research and publications. CML is the main voice of municipalities at the State Legislature and has played a critical role for cities and towns in advocating and protecting municipal interests for many years.

**Expenditure Required:** \$59,253

**Source of Funds:** 2013 General Fund - Central Charges Budget

**Policy Issue**

Does City Council wish to continue the City's membership in the Colorado Municipal League?

**Alternative**

Discontinue City membership with the CML, reallocate the funds budgeted for the City membership with CML and utilize the funds for other City priorities. This is not recommended by Staff as CML provides important services, as outlined in this memorandum, that assist the City in many ways.

**Background Information**

The City of Westminster actively participates in CML meetings and workshops, and extensively utilizes the various services offered by the League. CML advocates on behalf of municipalities throughout the State, distributes numerous publications that provide information on timely topics and trends, hosts workshops and meetings on important municipal issues, and performs research as requested by member jurisdictions.

CML was founded in 1923 and currently represents more than 99 percent of the municipal population in the state. 265 cities and towns are members of CML (out of 271 total cities and towns in the state) and pay dues on an annual basis. CML's formula for arriving at a municipality's dues payment is based on a per capita charge using Department of Local Affairs population estimates, a fraction of the assessed valuation figures from the State Division of Property Taxation, and a fraction of state sales tax collections for the previous calendar year.

In recognition of the economic pressures facing Colorado cities and towns, CML froze the 2011 and 2012 membership dues at the 2010 rate (i.e., three years in a row). For 2013, the City's dues increase to \$59,253, which is a 3% increase over the 2012 rate (\$57,527). However, for the fourth consecutive year, the CML Executive Board approved an additional rebate on municipal dues if paid on or before January 31, which is why Staff is bringing this request for authorization to pay annual dues now in December. If City Council authorizes these annual dues now, Staff will get the dues paid immediately in January to ensure the additional 5% rebate (which will equal about \$2,962, bringing the annual dues below the 2010-2012 rates).

City Council action on this item addresses all five of the City's Strategic Plan goals.

Respectfully submitted,

J. Brent McFall  
City Manager



**Agenda Memorandum**

City Council Meeting  
December 10, 2012



**SUBJECT:** 2013 and 2014 Special Water Counsel Legal Services Agreement

**Prepared By:** Mary Jay Vestal, Senior Water Resources Engineer  
Josh Nims, Water Resources Engineering Coordinator

**Recommended City Council Action**

Based on the 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 subject to annual appropriation with Carlson, Hammond and Paddock, L.L.C. for special water counsel services in an amount not to exceed \$250,000 for 2013 and not to exceed \$250,000 for 2014.

**Summary Statement**

- 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.
- The City needs to stay vigilant to protect the water quality of Standley Lake and its tributary basins. This requires participation in water quality standard settings and other forums requiring legal representation.
- The attorneys at Carlson, Hammond and Paddock, L.L.C. (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 Department team that is charged with developing and protecting Westminster's water supply.
- CHP's billing rate to the City of Westminster is within the range of rates for water rights attorneys representing large Colorado water users, based on a recent survey of major Colorado water users.
- Adequate funds have been budgeted and are available in the adopted 2013/2014 Utility Fund operating and capital budgets.

**Expenditure Required:** Not to exceed \$250,000 in 2013 and \$250,000 in 2014

**Source of Funds:** 2011 and 2012 Utility Fund  
- Utilities Planning and Engineering Division Operating and Capital Budgets

**Policy Issue**

Should the City continue to retain Carlson, Hammond and Paddock, L.L.C. as special water counsel on behalf of the City in connection with legal water matters for 2013 and 2014?

**Alternatives**

The City could utilize the City Attorney's office to handle the City's water rights and water quality matters. Staff does not recommend this alternative. Based on CHP's extensive history working with the City, institutional knowledge could be lost by transferring this work.

The City could alternatively seek out new special water counsel. Staff does not recommend this alternative, based on the good work, long-term outstanding professional relationship and reasonable costs of the representation from Carlson, Hammond and Paddock, L.L.C.

**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 33 years and 22 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. 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.
3. 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.
4. 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.
5. 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.
6. Negotiation with upstream water users including Georgetown and Clear Creek County to establish limits on nutrient levels leaving their respective treatment systems.
7. Representation of the City on the recent successful water rights purchasing program including contract and closing negotiations.

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. CHP is proposing to increase the rate charged for its services for all partners and associates from \$205 per hour to \$210 per hour for 2013 (a 2.44% rate increase over 2012) and to \$215 per hour for 2014 (a 2.38% rate increase over 2013). This increase is relatively small and still compares favorably to a survey completed in October 2012 of the principal water attorney rates charged to major water suppliers in Colorado. CHP's rates are very competitive and are within the range of the water counsel fees surveyed in 2012.

**Water Counsel Fees – 2012 Survey**

| <b>Entity</b>                              | <b>Hourly Rate</b> |
|--|--------------------|
| Boulder                                    | \$205              |
| Greeley                                    | \$175-\$300        |
| Thornton                                   | \$203-\$275        |
| <b>Westminster</b><br>(Proposed 2013 rate) | <b>\$210</b>       |

Based on the factors detailed in this memorandum, Staff believes the City should retain Carlson, Hammond and Paddock, L.L.C. as a sole source for water legal counsel for 2013 and 2014. Typically, a new 2-year do-not-exceed contract is negotiated with CHP every two years to coincide with the City's budget process.

Staff has budgeted for CHP expenses in both the Operating and Capital budgets for 2013 and 2014. While historically the work requested has not exceeded \$250,000 per year, the do-not-exceed contract amount allows Staff flexibility should an issue emerge that requires significant legal effort in a strict time frame.

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,

J. Brent McFall  
City Manager

Attachment

DRAFT

**Senders' Email:**

[mhammond@chp-law.com](mailto:mhammond@chp-law.com)

[ljohnson@chp-law.com](mailto:ljohnson@chp-law.com)

October 18, 2012

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 2013 and 2014.

As in the past, in 2013 and 2014, 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 2013 calendar year, we will charge a flat rate of \$210.00 per hour for attorney time. During the 2014 calendar year, we will charge a flat rate of \$215.00 per hour. This

Mr. Brent McFall  
October 18, 2012  
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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 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 2013 is subject to an upper budget limit of \$250,000.00. We understand that our representation in calendar year 2014 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, LLC, 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 2013 will remain \$210.00 per hour and for calendar year 2014 will remain \$215.00 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 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.

Mr. Brent McFall  
October 18, 2012  
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Yours very truly,

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Mary M. Hammond  
Lee H. Johnson

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

Approved for the Year 2013 and 2014:

CITY OF WESTMINSTER

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



## Agenda Item 8 C

### Agenda Memorandum

City Council Meeting  
December 10, 2012



**SUBJECT:** 2013 and 2014 Water Resources Engineering Services Agreement

**Prepared By:** Mary Jay Vestal, Senior Water Resources Engineer  
Josh Nims, Water Resources Engineering Coordinator

### Recommended City Council Action

Based on the recommendation of the City Manager, determine that the public interest will best be served by authorizing the City Manager to execute a two-year fee agreement with Slattery & Hendrix Engineering, LLC for water resources engineering services in an amount not to exceed \$60,000 for 2013 and not to exceed \$60,000 for 2014.

### Summary Statement

- Westminster's water supply is an extremely valuable asset that requires an engineer's expertise to correctly assess and fully utilize.
- James Slattery, the founder of Slattery & Hendrix Engineering, LLC (SHE), 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.
- 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.
- SHE's billing rate to the City of Westminster is reasonable and is within the range of other water resources engineers advising large Colorado water users, based on a recent survey of major Colorado water users.
- Sufficient funds have been budgeted for this expense in the 2013 and 2014 Budgets approved by City Council.

**Expenditure Required:** Not to exceed \$60,000 in 2013 and \$60,000 in 2014

**Source of Funds:** 2013 and 2014 Utility Fund  
- Utilities Planning and Engineering Division Operating and Capital Budgets

**Policy Issue**

Should the City continue to retain Slattery & Hendrix Engineering, LLC as engineering consultant in connection with water matters for 2013 and 2014?

**Alternatives**

The City could utilize existing Staff or hire additional Staff to handle the City's engineering needs related to water rights and water planning efforts. Staff does not recommend this alternative. SHE has demonstrated an efficient and cost-effective approach to addressing the City's water-related engineering needs. Adding these engineering duties to existing Staff's responsibilities or hiring additional Staff would be expensive, time-consuming and could result in a loss of institutional knowledge.

The City could alternatively seek out new water resources engineering consultants. Staff does not recommend this alternative given the good work, long-term relationship and reasonable costs of the representation from Slattery & Hendrix Engineering, LLC.

**Background Information**

The City of Westminster has a long history of engineering consultation on water matters with James Slattery, who is currently the principal engineer consulting for the City on water matters. 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, P.C. In 2007, Mr. Slattery left Helton & Williamsen, P.C. to start his own firm, Slattery Aqua Engineering. In 2009, Mr. Slattery became partners with Randy Hendrix, also formerly of Helton & Williamsen, P.C. to form Slattery & Hendrix Engineering, LLC.

James Slattery, in his previous positions at Helton & Williamsen, P.C. and as the founder of Slattery Aqua Engineering, as well as in his current partnership at Slattery & Hendrix Engineering, LLC has played an integral part in a number of very noteworthy historical events involving the Westminster water supply. Here are a few examples:

1. Developed and subsequently managed 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.

Over the years, Slattery & Hendrix Engineering, LLC 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. By continuing to retain Mr. Slattery's professional services, the City has maintained the institutional knowledge that is valuable when performing the engineering consultation required on water supply and water planning matters.

The fees charged by SHE to the City are reasonable when compared with other major water suppliers in Colorado. Mr. Slattery is proposing to increase the rate charged for his services from \$155 per hour to \$160 per hour for 2013 (an increase of 3.23% over 2012) and \$165 per hour for 2014 (an increase of 3.13% over 2013). Mr. Hendrix's rate will increase from \$135 per hour to \$140 per hour for 2013 (an increase of 3.70% over 2012) and \$145 per hour for 2014 (an increase of 3.57% over 2013). Even with these increases, SHE's rates are competitive and compare favorably to a survey completed in October 2012 of the water resources engineering rates charged to major water suppliers in Colorado.

**Water Engineer Fees – 2012 Survey**

| <b>Entity</b>      | <b>Hourly Rate,<br/>Engineer</b> | <b>Hourly Rate,<br/>Principal</b> |
|--------------------|----------------------------------|-----------------------------------|
| Boulder            | \$195                            | \$195                             |
| Denver             | \$140                            | \$175                             |
| Greeley            | \$120                            | \$198                             |
| SACWSD             | \$115                            | \$185                             |
| Thornton           | \$133                            | \$153                             |
| Average            | \$141                            | \$182                             |
| <b>Westminster</b> | <b>\$140</b>                     | <b>\$160</b>                      |
|                    | (Proposed 2013 rate)             | (Proposed 2013 rate)              |

As detailed in this memorandum, Staff recommends that the City retain Slattery & Hendrix Engineering, LLC as a sole source for water engineering services for 2013 and 2014 based on their competitive pricing and their institutional knowledge and experience of water resources engineering and the City's water system.

Staff has budgeted adequate funds for SHE expenses in both the Operating and Capital budgets for 2013 and 2014, as engineering services may be needed in conjunction with a capital project. Historically, most work is general modeling, accomplished within the operating budget. The overall cost for these services each year will not exceed \$60,000 in 2013 and 2014.

This contract will assist in meeting the City's goals of Financially Sustainable City Government Providing Exceptional Services, Safe and Secure Community, Vibrant Neighborhoods in One Livable Community and Beautiful and Environmentally Sensitive City because it ensures efficient and cost-effective external services and secures and develops the long term water supply of the City.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 8 D

### Agenda Memorandum

City Council Meeting  
December 10, 2012



**SUBJECT:** Wandering View Tanks Repairs Construction Change Order

**Prepared By:** Dan Strietelmeier, Senior Engineer  
Steve Grooters, Senior Projects Engineer

### Recommended City Council Action

Authorize the City Manager to:

1. Increase the Wandering View Repairs Project construction contingency from \$218,577 (10%) to \$518,577 (19%), increasing the construction budget and contract limits from \$2,404,344 to \$2,704,344.
2. Authorize the execution of a change order to the Wandering View Tanks Repairs Contract with Riley Industrial Services, Inc. in an amount not to exceed \$300,000 for replacement of additional rafters in the South Water Tank.

### Summary Statement

- The Wandering View Tanks Repair project construction contract with Riley Industrial Services was approved by City Council on March 26, 2012 for \$2,185,767 plus \$218,577 (10%) in contingency.
- The project began in April 2012 with repairs on the North Tank. The project includes repairs for both tanks including modifications to overflow piping, improvements to safety and access, full recoating of the interior and exterior of each tank and replacement of several roof rafters.
- After sandblasting in the North Tank, inspections showed that a significant number of its rafters had experienced metal loss beyond surface corrosion.
- The extent of the metal loss required that all sixty of the tank's perimeter rafters be replaced. This was more than was anticipated and consumed nearly all of the contract budget for rafter replacement intended for both tanks.
- Staff would like to be prepared in case a similar corrosion pattern is found in the South Tank and would like to request authorization for sufficient funds to replace more rafters if it is found to be necessary. Staff estimates additional funds necessary at a value not to exceed \$300,000.
- Because repairs are being made sequentially, keeping one tank in service at all times, confirming the actual number of South Tank rafters to be replaced cannot occur until mid-January 2013.
- Because the project schedule is tight, Staff is preemptively seeking Council approval for funding to replace additional rafters in the South Tank.
- In addition, Staff is seeking council approval for this change order because it is possible that the change order will exceed 5% of the contract value.
- The cost to replace each rafter was bid as part of the project using a unit price approach so costs are competitive.
- The actual value of the change order will be adjusted as necessary based on field conditions and will be reported to City Council at a later date.
- Funding for this project was originally budgeted at \$3,400,000. Pricing for the project came in substantially below the budgeted amount, leaving adequate funds to cover this change order.

**Expenditure Required:** Not-to-exceed \$300,000  
**Source of Funds:** Utility Fund - Wandering View Tanks Repairs Project Account

## **Policy Issue**

Should the City increase the construction contingency for additional rafter replacement in the Wandering View South Water Tank and authorize a Contract Change Order with Riley Industrial Services, Inc.?

## **Alternatives**

1. City Council could choose to wait to authorize a change order until after the quantity of work on the South Tank is confirmed in the field. Because this will delay completion of the project, Staff recommends having City Council authorize a change order at this time.
2. City Council could choose to request bids for this work. This is not recommended as Staff believes Riley Industrial Services, Inc. provides the best value for this project. In addition, they were the low bidder for this project. They are intimately familiar with the improvements needed and provided unit costs for anticipated rafter replacement as part of the competitive bid process. Requesting bids for this work would also delay project completion.

## **Background Information**

The City currently owns and operates several treated water storage tanks located throughout the City. These tanks are a necessary part of the water distribution system and provide water required to meet short-term periods of high consumer demand, emergency storage for potential times of interrupted water supply and water to meet fire flow demands. The Public Works & Utilities Department has an extensive maintenance program in place for these tanks that includes regular tank inspections and construction of priority repairs.

Priority repairs for 2012 are currently under construction at the Wandering View Tank site. This site includes a three million gallon tank constructed in the late 1970's (North Tank) and a 5 million gallon tank (South Tank) constructed in the early 1980's. Together, these tanks represent the largest storage volume in the City water distribution system. The construction project includes five main components:

1. Replacement of corroded roof rafters
2. Installation of new larger access manways to improve maintenance access
3. Upsizing the Wandering View tanks emergency overflows to comply with current State regulations
4. Recoating of tank interiors and exteriors
5. Modify the Hydropillar tank overflow pipe to comply with current regulations

During construction, the North Tank roof rafters were sandblasted to prepare them for new coatings. After sandblasting, the roof rafters were inspected by the engineer. It was discovered that many more of the rafters in the tank had experienced significant corrosion and metal loss than the eight rafters noted during design. As such, 52 additional rafters were replaced, for a total of 60 rafters replaced.

The possibility of additional rafter replacement like this was anticipated during design and unit prices for rafter replacement were required as part of the competitive bidding process. However, replacement of the North Tank rafters consumed the majority of the contract budget for rafter replacement anticipated for use in both tanks. While inspection of the South Tank rafters is still pending, Staff would like to be prepared in case a similar corrosion pattern is found and the need to replace more rafters than was recommended during design. Staff is requesting an increase in contingency and contract limits to cover these anticipated costs. Because the project is on a tight schedule, Staff is requesting the funds now rather than after the mid-January 2013 field inspections. Approval of this work now will save 3-4 weeks of time during the irrigation season when water demands are high and use of the tanks more critical. Based on the results from the North Tank, Staff anticipates up to 130 additional rafters will need to be replaced in the larger-sized South Tank or up to \$300,000 based on the contract's unit pricing.

Staff is requesting this Change Order as a “not to exceed amount of \$300,000” and the City will only pay for rafters that are replaced. Staff will report to City Council on how much was needed for rafter replacement once the quantity is known. City Council approval is required as the Change Order may be greater than 5% of the contract amount. The additional \$300,000 will increase the project contingency from 10% to 19%. Funds are available in the Wandering View Tanks Repairs project account as construction bids came in lower than the budgeted amount, so no new source of funds is necessary. Staff requests that the existing project contingency amount of \$218,577 remain available to cover other unforeseen conditions as the project is only approximately 30% complete. Staff will return to Council once all repairs have been completed to notify Council of the final repair cost.

The project has been going well and only a few general inquiries have been received from the area residents since the start of construction. Both tanks are scheduled to be back online by June 2013.

The Wandering View Tanks Repairs Project helps achieve the City Council’s Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services” and “Vibrant Neighborhoods In One Livable Community” by contributing to the objectives of well-maintained City infrastructure and facilities and maintaining neighborhood infrastructure.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

- Wandering View Construction Site Map
- South Tank Change Order



104th Pl

Grove St

# City of Westminster Wandering View Water Tanks Repair Project

104th Ave

Project Site



Irving Ct

Hooker St

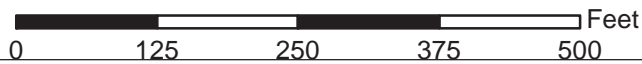
103rd Pl

Julian St

Northpark Dr

102nd Cir

City of Westminster



## CHANGE ORDER NO. 2

TO: Riley Industrial Services, Inc.

ENGINEER: Carollo Engineers, Inc.

DATE: December 11, 2012

Upon Contractor acceptance and City of Westminster (“City”) approval, the work and Contract Documents for City of Westminster Project entitled “Repairs to Wandering View Tanks” shall be adjusted to include the following:

### ADDITIONS IN CONTRACT COST

1. Riley Industrial Services, Inc. requests an increase of up to \$300,000 to the contract amount for replacing additional roof rafters in the Wandering View South Tank. This amount will be a not to exceed amount that will be added to the contract if necessary. The cost for the rafter replacement will be based on the unit cost of \$1,833 included in the contract documents and pay applications will include a schedule of values showing actual rafter replacement.

### DEDUCTIONS IN CONTRACT COST

None

### MODIFICATIONS TO CONTRACT TIME

None

### Adjustments to Contract Price and Time

The following tables summarize the adjustments to the Contract Value and completion date(s).

| Description                   | Quantity | Unit | Unit Price | Total |
|-------------------------------|----------|------|------------|-------|
| Additional South Tank Rafters | TBD      |      | \$1,833    |       |
| Misc. Items and Bonding       | TBD      | LS   |            |       |
| Amount of this Change Order   |          |      |            |       |

City of Westminster – Repairs to Wandering View Tanks  
 Change Order No. 2

| Item Description                              | Contract Dollars | Calendar Days |
|---|------------------|---------------|
| Original Contract Amount                      | 2,185,767        | 365 Days      |
| Adjustments by Change Order No. 1             | No Change        | 30 Days       |
| <b>Adjustments by this Change Order No. 2</b> | TBD              | 0 Days        |
| <b>Contract Total with all Change Orders</b>  | TBD              | 395 Days      |

Contract time expires on: May 24, 2013.

Acceptance of this Contract Change Order by the Contractor is a complete waiver and release by it; its subcontractors; and its suppliers of all direct, indirect, consequential and impact-related costs resulting from or related to this Change Order; and its effect, if any, on unchanged Work, including, but not limited to, delays, impacts and disruption as well as extended or increased jobsite and home office overhead costs that may be experienced or incurred as a result of performance of this Change Order.

This document will become a supplement to the Agreement and all of its provisions will apply hereto.

**ACCEPTED FOR CONTRACTOR**

**APPROVED FOR CITY OF WESTMINSTER**

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Attachments



**Agenda Memorandum**

City Council Meeting  
December 10, 2012



**SUBJECT:** Westminster Station—Pedestrian Tunnel Betterment Design and Construction

**Prepared By:** Stephen Baumann, Assistant City Engineer

**Recommended City Council Action**

Authorize payment of \$453,375 to the Regional Transportation District for the design and construction of a betterment of the pedestrian tunnel that will serve the Westminster Station commuter rail platform.

**Summary Statement**

- The intergovernmental agreement (IGA) between the City and the Regional Transportation District (RTD) allows the City to implement an alternative approach to RTD's base plan for commuter and bus access, parking, and pedestrian areas that will support the proposed Westminster Station commuter rail station. Through their contract with Denver Transit Partners (DTP), the concessionaire for the Eagle P3 project, RTD has retained the responsibility for certain elements of the station plan including the track work, the station platform and the pedestrian tunnel that serves it. The IGA also has procedures through which the City can request upgrades (betterments) of the RTD elements of the station at a negotiated cost with Denver Transit Partners.
- One desired upgrade of the RTD elements is the substitution of a concrete arch structure for the rectangular box culvert that would have been used for the pedestrian tunnel in RTD's base plan. The structure will link the north side of the tracks and the future transit-oriented-development with the proposed commuter rail platform on the south side of the tracks. The arch structure is an important element of the architectural character of the north plaza (see attached architectural representation) that will be the primary approach to the station platform and ultimately serve as a community assembly area. The arch structure will also provide a spacious and open experience for station users--much more so than what would be provided by the facilities in the RTD base plan.
- The City, RTD and DTP have recently concluded several months of negotiation and refinement of the City's arch structure betterment request. DTP's response to the City's request spells out that they will remove the box culvert from their plans and substitute the arch structure, perform all planning and design engineering, coordinate and secure permissions from the Burlington Northern Santa Fe Railroad, perform all construction, and maintain the arch structure for the term of their contract for a fixed fee of \$453,375. City staff believes this price is reasonable under the circumstances and is recommending approval of the expenditure.
- Funds have been appropriated for the expense in the South Westminster TOD project account.

**Expenditure Required:** \$453,375

**Source of Funds:** General Capital Improvement Fund—South Westminster TOD Project



**Policy Issue**

Should the City pay the Regional Transportation District to have their concessionaire design and construct a precast concrete arch structure as an upgrade and substitute for the box culvert pedestrian tunnel called for in the RTD base plan for Westminster Station?

**Alternative**

The alternative to the recommended action is to go forward with RTD's base plan for the pedestrian tunnel structure. While that is a completely serviceable approach to the rail crossing, that structure is a plain box culvert, with vertical walls and a flat ceiling and limited potential for architectural enhancement now or in the future. In combination with other subterranean elements of the RTD base plan, commuters and other users would have the most utilitarian experience in getting from one side of the tracks to the other. The proposed arch culvert will have walls that curve into an arched ceiling with greater width and a greater maximum height than the box culvert. The proposed arch structure is the signature architectural shape in the proposed north plaza, welcoming the Westminster Station visitor to an open and spacious walk to the platform. Because of the strong desire to create a unique sense of place at Westminster Station, reverting to the box culvert of the base plan is not recommended.

**Background Information**

In June 2012, City Council gave approval to an intergovernmental agreement (IGA) with the Regional Transportation District (RTD) that calls for RTD to pay the City what it would have spent to design and build much of the infrastructure that would have supported Westminster Station--the so-called RTD base plan, and the City would then implement alternative facilities. Under the IGA, the City will be responsible for providing bus and commuter access, utilities, parking, and a pedestrian plaza serving the station, but now will be able to do so in a form that fits with proposed transit-oriented-development and other revitalization efforts in the area. RTD and its concessionaire, Denver Transit Partners (DTP), retain responsibility for the design and construction of the commuter rail track, the station platform and the pedestrian tunnel that serves it. There are numerous interfaces between the parties' responsibilities.

For the foreseeable future, Westminster Station, which will go into service in the spring of 2016 at 70th Avenue and Irving Street, will be the terminus of rail service in the Northwest Rail Corridor of RTD's FasTracks project. The spur to Westminster Station is part of the Eagle P3 project being designed and built by Denver Transit Partners (DTP), RTD's concessionaire under a thirty-five year contract. It is hoped that the station will also be at the center of a planned transformation of south Westminster. The City has developed a vision for the station area that was not compatible with RTD's base plan. It includes the development of a unique character for the station elements that ties it to the surrounding neighborhood. These elements have taken shape in the City's design of the north plaza (see attached architectural representation), intended to be both the path for commuters who need to get to the station platform but also a place of assembly and community activities for the neighborhood. So long as they meet RTD's criteria for commuter access and use, the City can shape its station elements that are more in line with the City vision. Elements of the station that DTP will design and construct such as the pedestrian tunnel and platform can also be upgraded at the City's request and expense. These are referred to as betterments under the IGA and several are being considered.

The first betterment that has been explored with RTD is the substitution of a precast concrete arch structure for the cast-in-place concrete box culvert that was in the RTD base plan. The box culvert, in combination with enclosed stairs and ramps at both ends would have provided a completely unappealing, subterranean path from the north side of the tracks to the south side and the station platform. That culvert would have been a 20-foot wide by 12-foot high rectangular shape that is commonly used for drainage crossings. While it is completely serviceable, it is the utilitarian choice for this application and made sense for the RTD plan for stations that look and operate the same throughout their system.

However, the City has been pursuing a plan for the Westminster Station improvements that would be unique, inviting, and more importantly, be an integral part of a future TOD neighborhood. A precast concrete arch structure provides the opportunity to develop a special architectural character for the north plaza and enhance the pedestrian experience. The structure walls transition to a curved ceiling, the shape of which will greet commuters and visitors when they approach the north plaza. The arch structure is precast in sections under controlled conditions, presenting a relatively smooth interior surface and expanding the opportunity for future enhancements such as ceramic tile or mural treatments. It will be 24 feet wide with a maximum ceiling height of 12 feet-six inches, providing a more spacious and open experience for tunnel users.

The City is presently discussing a second betterment proposal with RTD and DTP for the station platform that includes a modification to the southern end of the pedestrian tunnel, opening it to Little Dry Creek drainage way and future park. Staff will return to City Council at a later date for consideration of that request once construction details and pricing is completed by RTD and DTP.

For the past several months, the City has been engaged in discussions and negotiations with RTD and Denver Transit Partners about the substitution of the arch structure. Pursuant to the City's request, DTP has replied with a proposal to remove the box culvert structure from the base plan and instead design and construct a precast concrete arch structure conforming to the City's request. DTP would be responsible for coordinating with and securing permissions from the Burlington Northern Railroad. DTP would also take on maintenance of the new structure for the duration of its contract with RTD. DTP's price for this betterment is a fixed fee of \$453,375, which will be paid to RTD and disbursed to DTP in progress payments under the terms of their contract. RTD is assessing no handling charges for its participation in the betterment.

The proposed pricing from DTP is higher than Staff hoped for but given the nature of the Eagle P3 project overall is difficult to compare with any other project. The Eagle P3 project was a competitive negotiation under RTD's request for proposals several years ago but at this point, DTP is the sole contractor. The base price for materials and labor for the arch structure are not out of line if compared to a stand-alone project for a pedestrian crossing of a railroad right-of-way. But there are layers of overhead costs and added fees for changes, and those are allowances that DTP retains under their arrangement with RTD. They cannot be negotiated away. The Eagle P3 project is huge in scope and geographical extent and DTP is under considerable pressure to complete the three corridors of their contract with RTD in a short period of time. While difficult to measure, those are all components that drive up the pricing. City staff believes that the best price possible has been negotiated for the betterment and is recommending the acceptance of the DTP proposal.

Funds for the tunnel betterment have been budgeted and are available for the expense.

The betterment request for the pedestrian tunnel at Westminster Station helps achieve the City Council's Strategic Plan Goals of a "Strong Balanced Local Economy" and "Vibrant Neighborhoods In One Livable Community" by contributing to the development of a multi-modal transportation system and the transit-oriented community that is expected to grow around the station.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment—Architectural Representation





# WESTMINSTER STATION CONCEPTUAL VISUALIZATION





Agenda Memorandum

City Council Meeting  
December 10, 2012



**SUBJECT:** 2013 Proposed Community Development Block Grant and HOME Projects, and 2013 Action Plan

**Prepared By:** Signy Mikita, Community Development Program Planner

**Recommended City Council Action**

Approve the allocation of Community Development Block Grant and Home Investment Partnership Act (HOME) funds as set forth in this agenda memorandum for 2013, and authorize Staff to submit the 2013 Action Plan to HUD incorporating the proposed allocations.

**Summary Statement**

- The City of Westminster receives an annual allocation of Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD). The funds must be used towards programs and projects benefiting low to moderate-income populations and areas. Based upon an estimated 8% cut, the City could receive roughly \$500,000 in 2013 CDBG funding. Based upon citizen input and Staff evaluation, the following CDBG projects are recommended to be funded in 2013 at the following estimated costs:
  1. Bradburn Blvd Realignment Phase II (demolition and right-of-way acquisition) – \$150,000-\$200,000
  2. Westminster Grange/Rodeo Market Community Arts Center Feasibility Study - \$10,000
  3. Rodeo Market Park Improvements – \$200,000-\$250,000
  4. CDBG Administration – Approximately \$100,000 or 20% of CDBG program
  5. 76th Avenue Pedestrian Improvements (between Lowell Boulevard and King Street in conjunction with Torii Square Park improvements) as a reserve project subject to fund balance availability – up to \$40,000

A range of funding is identified for some of these projects to address the potential for receiving lesser or greater CDBG funding.

- The Minor Home Repair Program has a remaining balance in excess of \$100,000 (from 2011 and 2012 funding) which is sufficient to support the program in 2013. Therefore, Staff recommends no additional funding in 2013.
- The City receives an annual allocation of Federal HOME funds through Adams County to be used on affordable housing projects and programs. These proceeds have previously been used to assist affordable housing development, to provide down-payment assistance to low and moderate-income homebuyers, and the housing rehabilitation program, administered by Adams County, providing low-interest loans to income-eligible households. Based upon an estimated 8% cut, the City could receive approximately \$154,000. Staff is recommending that the 2013 HOME funds be allocated as follows:

|                                     |                                 |
|-------------------------------------|---------------------------------|
| County Administration               | \$15,400 or 10% of HOME program |
| Affordable Housing Development Fund | \$138,600                       |

**Expenditure Required:** \$500,000 (CDBG)  
\$154,000 (HOME)

**Source of Funds:** HUD CDBG and HOME Programs



**Policy Issue**

Should the City allocate the CDBG and HOME funds to the recommended programs and projects?

**Alternatives**

1. The Council may choose to not accept the funds. Staff recommends that such an alternative not be considered as the CDBG and HOME funds have provided benefits to Westminster residents and needed funds for capital projects and other critical programs.
2. Council may choose to allocate the funds in a different manner. Staff believes the allocations identified in this agenda memorandum will serve Westminster residents by meeting a number of priority needs in the community.

**Background Information**

***CDBG Program***

The City of Westminster receives an annual allocation of Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD). In 2011, the City received \$523,309 in CDBG funding.

HUD has yet to indicate the actual amount the City will receive, and will not do so until late Spring, 2013. The federal Budget Control Act of 2011 requires an 8% “sequester” reduction to federal programs, including HUD’s budget, which is scheduled to go into effect on January 2, 2013 should Congress not reach agreement on a deficit reduction package. Accordingly, an 8% reduction would decrease the City’s CDBG budget to about \$500,000.

The CDBG funds are to be used for projects and programs that benefit the City’s low to moderate-income populations and address blight conditions. Eligible project activities may include economic development/redevelopment, certain public facility and infrastructure improvements, and affordable housing activities.

Previously, CDBG funds totaling \$150,000 (\$50,000 each year for 2010-2012) were approved for continued funding of the City’s Minor Home Repair Program. There is a sufficient available fund balance in excess of \$100,000 to cover this program in 2013. In order to ensure the timely expenditure of funds and free up funding for other projects, Staff recommends that the Minor Home Repair Program budget not exceed \$100,000; therefore, additional funding is not recommended for 2013.

Staff prepared a questionnaire to gather citizen input on projects to fund in 2013 with CDBG funds. The questionnaire presented eight potential projects and provided respondents the opportunity to offer other project suggestions. The questionnaire was made available on the City’s website, at City Hall, the MAC, the Irving Street Library, and the Swim and Fitness Center. It’s availability was also mentioned in the Weekly Edition. Staff also made the questionnaire available at a Progressive HOA meeting and at the Orchard Festival.

The City received 29 responses, which included ten additional suggestions and three detailed comments (see Attachment 5). Citizens rated the projects by priority as High, Medium, Low, or None. Staff tallied the Favorable Responses (High or Medium priority) as follows:

1. Westminster Grange/Rodeo Market Community Center Feasibility Study – 90%
2. Rodeo Market Park Improvements - 79%
3. Minor Home Repair Program – 79%
4. Bradburn Boulevard Realignment Phase II (Demolition and Right-of-Way Acquisition) – 62%
5. Penguin Plaza - 62%
6. Lowell Boulevard Streetscape Improvements – 45%
7. Bradburn Boulevard Streetscape Improvements – 41%
8. Torii Square Park Renovations – 34%

The results of the questionnaire were shared at the October 27, 2012 Progressive HOA meeting, where two additional suggestions were received. There was general concurrence with the results, with additional support noted for the Bradburn Boulevard realignment.

Staff evaluated the additional projects suggested by the respondents and noted the feasibility of each as described on Attachment 5. Although there were many good ideas, Staff does not recommend that any suggested project be considered at this time. However, several suggestions may be researched and considered in the future. Based upon Staff's analysis, the top candidates recommended for 2013 CDBG funding were:

1. Bradburn Boulevard Realignment Phase II (See Attachment 1) – \$150,000 - \$200,000  
Description: Continue the phased project to realign Bradburn Boulevard from 72<sup>nd</sup> Avenue to the BNSF railroad tracks to intersect 72<sup>nd</sup> Avenue at the existing traffic signal at Raleigh Street. This proposed phase includes demolition/clearance of the structures at 7225 Bradburn Boulevard, and acquisition of small portions of vacant land at 7215 and 7231 Bradburn Boulevard needed for the realignment.
2. Westminster Grange/Rodeo Market Community Arts Center Feasibility Study (See Attachment 2) - \$10,000  
Description: Prepare a feasibility study and business plan (operations, financing, etc.) for the development of a cultural community center that would join the Westminster Grange and Rodeo Market Arts Center into one facility.
3. Rodeo Market Park Improvements (See Attachment 3) - \$200,000 - \$250,000  
Description: Continue park improvements to the area north of the Rodeo Market for a gathering space, lawn areas, expanded art opportunity and gardens.
4. CDBG Administration – \$100,000 or 20% of CDBG program  
HUD allows grantees to utilize up to 20% of the CDBG funding for administration and planning expenses. This funding pays the salary of the full-time CDBG Technician and the part-time Community Development Program Planner. The balance of administrative funds is used towards training, supplies and consultants as necessary. The administration amount may be less than \$100,000 if the actual CDBG award is less than \$500,000.
5. 76th Avenue Pedestrian Improvements (See Attachment 4) – up to \$40,000  
Description: Staff is looking into the possibility of undergrounding the overhead utilities along 76<sup>th</sup> Avenue in conjunction with the improvements to Torii Square Park planned for 2013. The utility undergrounding would be paid for using the City's overhead utility undergrounding fund administered by Xcel Energy. Should the City proceed with the utility undergrounding, the \$40,000 in CDBG funds would be used towards constructing a new detached sidewalk and streetscape improvements along 76<sup>th</sup> Avenue immediately adjacent to the park. Since the \$40,000 needed for 76<sup>th</sup> Avenue may exceed the City's estimated 2013 budget, this project is recommended as a "reserve" project, whereby the funds would come from unspent 2013 or previous year CDBG proceeds.

### ***HOME Program***

HOME funds are distributed to eligible communities to assist in the development and provision of housing to low-income households and targeted populations (e.g. seniors, persons having disabilities, homeless, etc.) The City of Westminster alone does not meet the minimum population requirements to receive the funds directly from HUD as an entitlement. However, by having joined the HUD-authorized Adams County HOME Program Consortium, the City receives an allocation of about \$168,000 annually that provides funding for eligible affordable housing projects. Although the 2013 HOME budget is not known at this time, it is estimated that the 8% federal sequester reduction, if imposed, would decrease the City's share to \$154,000.

HOME proceeds have, in more recent years, been used to assist affordable housing development, to provide down-payment assistance to low and moderate-income homebuyers, and to fund the housing rehabilitation program administered by Adams County. Ten percent of the grant, as allowed per HUD regulations, has been provided to Adams County for program administration.

There has been limited demand for the down-payment assistance funded by HOME money. There are other types of down-payment assistance programs offered through several organizations, including the Colorado Housing and Finance Authority (CHFA), Community Resources and Housing Development Corporation (CRHDC), which is headquartered in Westminster, and Adams County Housing Authority (ACHA). As a result, it is recommended that the City not use HOME funds to offer down-payment assistance in 2013.

In 2012, the City recommended limiting the major home rehabilitation program to \$50,000, because the City also provided an annual \$50,000 to the Minor Home Repair Program. Typically, only two-three homeowners can benefit from the \$50,000 budget, as projects have cost on average of over \$19,000. Since the City needed all of its available HOME funding to provide \$500,000 for the rehabilitation of the Westminster Commons by the Volunteers of America (VOA), City Staff directed Adams County to place a hold on any additional rehabilitation projects. The City’s current HOME balance of funds remaining to be committed is \$215,833. With the anticipated 8% reduction and future affordable housing developments in the planning stages, such as Adams County Housing Authority’s redevelopment interest in the Westminster Station Transit Oriented Development (TOD) area, Staff recommends not funding the major home rehabilitation program in 2013. Staff recommends directing the City’s entire HOME allocation to future affordable housing projects, with the exception of the 10% set-aside for HOME administration, as follows:

|                                     |                                 |
|-------------------------------------|---------------------------------|
| Adams County Administration         | \$15,400 or 10% of HOME program |
| Housing Rehabilitation              | \$0                             |
| Down Payment Assistance             | \$0                             |
| Affordable Housing Development Fund | \$138,600                       |

***2013 Action Plan***

These proposed CDBG and HOME projects were presented to City Council at a Study Session on November 19, 2012 where Council directed Staff to incorporate these projects into the 2013 Action Plan. Staff presented these proposed CDBG and HOME project recommendations at a citizen public meeting on November 27, 2012 along with a draft of the Action Plan, to obtain input. The 2013 Action Plan, to be submitted to HUD by January 15, 2013, will incorporate the CDBG and HOME projects as approved by City Council. Staff recommends City Council authorize the submittal of the 2013 Action Plan to HUD.

The proposed allocation of CDBG and HOME funds and the 2013 Action Plan meet two City Strategic Plan goals: Financially Sustainable City Government Providing Exceptional Services, and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall  
City Manager

**Attachments**

- Attachment 1 – Bradburn Boulevard Realignment Phase II
- Attachment 2 – Westminster Grange/Rodeo Market Community Arts Center – Feasibility Study
- Attachment 3 – Rodeo Market Park Improvements
- Attachment 4 – 76<sup>th</sup> Avenue Pedestrian Improvements
- Attachment 5 – Results of 2013 CDBG Funds Questionnaire

ATTACHMENT 1



ATTACHMENT 2

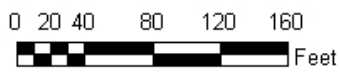




ATTACHMENT 3



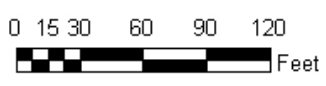
## Rodeo Market Park Improvements







# 76th Ave. Pedestrian Improvements



GIS Applet Web Client ArcGIS 10.1 Template Web Client - 11/16/10 10:50

**ATTACHMENT 5**

**Results of 2013 Community Development Block Grant (CDBG) Funds Questionnaire**

Prepared November 5, 2012 by Community Development Staff

| Prospective Project   | Estimated Cost  | Level of Priority |        | LOW | NONE | FAVORABLE RATING  |
|---|---|-------------------|--------|-----|------|---|
|   |   | HIGH              | MEDIUM |     |      |   |
| <p><b>Bradburn Blvd. Realignment Phase II</b> – Continue the phased project to realign Bradburn Blvd. from 72<sup>nd</sup> Ave. to the BNSF railroad tracks to intersect 72<sup>nd</sup> Ave. at the existing traffic signal at Raleigh Street. This proposed phase includes demolition/clearance of 7225 Bradburn, and acquisition of parts of 7215 and 7231 Bradburn that will be needed for the realignment. Note: Construction is scheduled to be funded in 2016-2017.</p> <p><i>Note: Although this rated favorably, CDBG funding will trigger a higher level of administration for federal compliance on acquisitions and demolition.</i></p>   | Demolition: \$60,000<br>Acquisition: \$200,000<br>Total = \$260,000 | 10                | 8      | 5   | 6    | High & Medium/Total<br><br>18/29 = <b>62%</b><br><br>Plus additional support from Progressive HOA members |
| <p><b>Torii Square Park Renovations</b> – Renovate the 1.7 acre neighborhood park at 7596 Lowell Blvd (southeast corner of 76<sup>th</sup> Ave. and Lowell Blvd.), constructed in 1975. The renovation will consist of a new shelter, Torii, new irrigation throughout the park, replacing areas of sidewalk, minor grading, landscaping, new picnic tables and benches. It is not anticipated at this time that any mature trees will be removed from the site.</p> <p><i>Note: Staff is looking into the possibility of undergrounding the overhead utilities along 76<sup>th</sup> Avenue in conjunction with the improvements to Torii Square Park planned for 2013. The utility undergrounding would be paid for using the City's overhead utility undergrounding fund. Should the City proceed with the utility undergrounding, the \$35,000 in CDBG funds would be used towards constructing a new detached sidewalk and streetscape improvements along 76<sup>th</sup> Avenue immediately adjacent to the park.</i></p> | TBD   | 4                 | 6      | 9   | 10   | 10/29 = <b>34%</b>  |
| <p><b>Penguin Plaza</b> - Construct a public plaza in front of the historic Penguin Building at 7265-69 Lowell Blvd., as part of the redevelopment of the general area.</p> <p><i>Note: This project would be better funded in 2014 should the proposed Venue at the Plaza project receive Official Development Plan approval from the City Council.</i></p>  | \$130,000 to \$150,000  | 9                 | 9      | 5   | 6    | 18/29 = <b>62%</b>  |
| <p><b>Westminster Grange/Rodeo Market Community Center</b> – Prepare a feasibility study and business plan (operations, financing, etc.) for the development of a cultural community center at 3915 &amp; 3935 73<sup>rd</sup> Ave.</p> <p><i>Note: This project could be funded through the City's CDBG Administrative budget or as a project.</i></p>   | \$5,000 to \$10,000   | 14                | 12     | 1   | 2    | 26/29 = <b>90%</b>  |



|   |           |    |    |   |    |                       |
|---|-----------|----|----|---|----|-----------------------|
| <p><b>Rodeo Market Park Improvements</b> - Continue improvements to the area north of the Rodeo Market (3915 73<sup>rd</sup> Ave.) for gathering space, lawn areas, expanded art opportunity, and gardens. Substantial grading work is needed to tie the two areas together.</p> <p><b>Note: This project rated high. The City may want to consider long-term cost and responsibility for maintenance.</b></p>  | \$150,000 | 13 | 10 | 5 | 1  | 23/29 =<br><b>79%</b> |
| <p><b>Lowell Blvd. Streetscape Improvements</b> – Rebuild curb/walk on both sides of Lowell from US-36 to 80<sup>th</sup> Ave. to resemble Lowell south of US-36. New detached walk, with pavers &amp; decorative street lights.</p> <p><b>Note: Did not rate high and would exceed the annual CDBG budget.</b></p>   | \$725,000 | 7  | 6  | 6 | 10 | 13/29 =<br><b>45%</b> |
| <p><b>Bradburn Blvd. Streetscape Improvements</b> – Install decorative lighting along both sides of Bradburn Blvd. from BNSF ROW to Turnpike Drive.</p> <p><b>Note: Did not rate high and would exceed the annual CDBG budget.</b></p>  | \$490,000 | 4  | 8  | 9 | 8  | 12/29 =<br><b>41%</b> |
| <p><b>Minor Home Repair Program</b> – Continue the Minor Home Repair Program administered by Brothers Redevelopment for low-income homeowners (grants up to \$5,000).</p> <p><b>Note: Rated high, but remaining available fund balance from previous years (over \$100,000 ending 2012) is sufficient to cover the program in 2013.</b></p>   | \$50,000  | 20 | 3  | 4 | 2  | 23/29 =<br><b>79%</b> |
| <p><b>Other:</b> Remove old trees on Bradburn Blvd. Bury overhead lines.</p> <p><b>Note: The City Forester has required six Bradburn Boulevard property owners to trim/remove trees in the City ROW at an estimated total cost of \$12,500-14,500. Other blocks to consider are 7200 Newton Street and 7300-7500 Lowell Boulevard. Total program costs remain to be determined based on the number of trees (\$2,000-2,500 per tree that includes stump removal).</b></p> | TBD       | 2  |    |   |    |                       |
| <p><b>Other:</b> Re-align Raleigh St. to Bradburn Blvd., rather than the other way around.</p> <p><b>NOTE: Would require construction of an additional bridge to carry Raleigh St. over Little Dry Creek nearly doubling the cost of the project, and rendering it financially infeasible.</b></p>  | TBD       | 1  |    |   |    |                       |
| <p><b>Other:</b> Renovate by installing curbs, sidewalks, and landscaping along west side of Federal Blvd. from 93<sup>rd</sup> to 96<sup>th</sup> Ave. to improve streetscape and walkability.</p> <p><b>Note: Not in an eligible Census Tract. Federal Blvd. is not eligible as it is a regional corridor.</b></p>  | TBD       | 1  |    |   |    |                       |

|  |                                      |                |  |  |  |  |
|--|--------------------------------------|----------------|--|--|--|--|
| <p><b>Other:</b> Additional signage directing to Art District is needed at 73<sup>rd</sup> Ave. and Lowell Blvd., as well as on 72<sup>nd</sup> Ave.</p> <p><b>Note:</b> <i>Although this may be a good idea, but it may not be eligible.</i></p>  | TBD                                  | 1              |  |  |  |  |
| <p><b>Other:</b> Inspections of Single Family Rental Units [in South Westminster].</p> <p><b>Note:</b> <i>Building Division noted that they could not absorb this with the existing staff (2.5 FTEs). Depending upon the scope and area, they would need an additional 1 to 1.5 FTEs.</i></p>  | TBD                                  | 1              |  |  |  |  |
| <p><b>Other:</b> Projects south of 72<sup>nd</sup> Ave. – lowest income area in the City of Westminster.</p> <p><b>Note:</b> <i>Projects related to the rail station in the TOD area are not eligible because they are a regional benefit. May be premature for other projects in TOD given redevelopment potential. Other projects planned for area south of 72<sup>nd</sup> already include new bridge over Little Dry Creek, enhanced trail access, and Little Dry Creek. The City recently reconstructed 68<sup>th</sup> Ave. and Utica St. Also, no specific projects were recommended by respondent for this area.</i></p> | TBD                                  | 1              |  |  |  |  |
| <p><b>Other:</b> Low-income homeowners in South Westminster – apply for grants to help clean up dead trees.</p> <p><b>Note:</b> <i>This is an eligible item covered in the Minor Home Repair Program if the tree is hazardous or poses a threat, as determined by the City Forester.</i></p>   | See Minor Home Repair Program (MHRP) | Count For MHRP |  |  |  |  |
| <p><b>Other:</b> Additional street lighting on the 76th block of Knox Court, between 76th Ave. and Turnpike Dr.</p> <p><b>SEE #3 BELOW FOR DETAILS – It is not cost effective to fund a few street lights with CDBG. Staff discussed options of a comprehensive South Westminster approach to improve safety street lighting. Staff recommends not pursuing until a City-hired consultant completes a street lighting standards study currently underway and due to be completed by the end of 2012.</b></p>   | \$3,000-5,000 (@ \$1,000/light)      | 1              |  |  |  |  |
| <p><b>Other (suggested at Progressive HOA meeting):</b> Designate a Code Enforcement Officer to South Westminster for pro-active enforcement.</p> <p><b>Note:</b> <i>Code Enforcement already has assigned two of its five Officers to the South Westminster area. 60-70% of the two officers' time is spent on pro-active enforcement. They inspect the area street by street, so every street is inspected on average twice a month.</i></p>   |                                      |                |  |  |  |  |
| <p><b>Other (suggested at Progressive HOA meeting):</b> Re-instate the City's large item pick-up program for appliances and furniture.</p> <p><b>Note:</b> <i>This program cost the City up to \$150,000 per year and was not widely used.</i></p>   |                                      |                |  |  |  |  |

**Additional Input Received (complete contact information in file if requested):**

1. We attended an artists' dinner at the Aar River Gallery on 73rd Ave. and the artists in attendance almost all are Westminster residents. We are excited to have any funding designated to the historic Westminster neighborhood on and around 73rd. The area has so much potential, especially with light rail, etc. nearby. We hope there might also be community development efforts for additional small businesses in this area. A cafe or coffee shop would really do well, in our opinion.
2. I appreciate the effort to gather more input from the public.  
You may recall I was the only resident who attended the Action Plan meeting last year.  
I know CDBG is a small part of the budget, but I do not see how HUD funds which are to be used to benefit a "blight area" can be used for more light poles and decorative areas. You capture it well last year - "Recommend an evaluation process for completed projects to gauge whether streetscape and other improvements have encouraged private reinvestment, such as, home rehabilitations along Lowell Boulevard".  
I see less pedestrian and bike activity on Lowell as traffic increases. No matter how many decorative street poles or fake brick crossways are installed people avoid high traffic areas. The arts area on 73rd has more potential than any more projects on Lowell. As I stated last year I do not see how moving Bradburn a block over to connect with a light improves the quality of life in South Westminster. It is a project a street planner wants done but not what CDBG money should be used for when so many other projects would have a better impact.  
As we wait for our section of the FasTrack savior to arrive, I strongly support CDBG funds be used to improve the area south of 72nd and north of Westminster High School. In general the CDBG area has a high number of single family and multi-family rental units. My understanding is the city has a required inspection for multi-family units but single-family are "supposed" to register.  
I request CDBG funds be used to study the number of rentals in the CDBG area and those rentals should be inspected.  
A question - does HUD still require 60% of a multi-family buildings be owner occupied before they would help with buy assistance programs? It was required a few years back. I ask as I wonder what percentage of the properties, including multi-family, in the CDBG area are rentals?  
I have nothing against renters, I was a renter, I have issue with owners who rent to make money and put nothing back into the property. The renter is afraid to ask for improvements for fear an increase in their rent.  
Again thanks for the questionnaire. I hope they will be done in the future and with more notice if possible.  
I would also request Westminster begin an e-mail list of those interested in the CDBG. I appreciate the information is in the City Update but as it is federally required to be an open to a public process. To facilitate that process with an e-mail list would be helpful.  
Thanks for your work on behalf of South Westminster.
3. I am writing to request additional lighting on the 76th block of Knox Court, between 76th Avenue and Turnpike Drive. Currently, this section of Knox Court has one (rather dim) street light for the entire block. Since the north end of Knox Court meets Turnpike Drive at the level of 78th Avenue, there is actually just one light for a distance equivalent to two city blocks.  
Attached please find photographs of these two blocks of Knox Court at night. {NOTE: Photographs will be available at the Study Session}. As you can see, if not for individual neighbors' porch lights, nearly the entire block would be completely dark. As autumn approaches and days grow shorter, this makes it increasingly difficult for residents such as myself to safely engage in basic activities outside of our homes. While walking my dogs or visiting with neighbors, I have to be sure that I take a flashlight or go indoors before dark (which can be as early as 6 pm once winter arrives!) in order to see where I am walking and avoid obstacles and automobile traffic. Additionally, my husband and I have noticed an increase in graffiti throughout our neighborhood, particularly appearing in areas which are less lit during the night time hours. While it would be an over-simplification to suggest that a single street light will reduce crime in our neighborhood, some evidence suggests that improving the lighting of an area increases citizen interaction and "informal surveillance," which can thereby deter crime while increasing residents' community engagement and neighborhood pride.  
Improved lighting--even a single light near the south end of Knox Court--might help to deter some property defacement, and more importantly, will allow citizens such as myself and my neighbors to safely engage in exercise and social activities that build our bodies, minds, and community.

I have spoken with Greg Olson, and he informs me that regular city funds are limited for this type of project until at least 2014. Living in south Westminster, however, I am aware that there are sometimes additional grant funds, such as from the Community Development Block Grant, available to promote the development and sustainability of low- and moderate-income neighborhoods. Additional lighting on Knox Court would certainly fit this objective by providing increased opportunities for residents of this and nearby streets to enjoy being outdoors after dark, improving traffic and pedestrian safety, and demonstrating an additional effort by the city of Westminster to invest in the sustainability of this neighborhood, where many residents are dependent on walking or biking to access nearby services and supports.

Thank you for your consideration of this project to benefit the south Westminster community. Please feel free to contact me regarding how I might be of assistance in seeing this project through for my neighbors and myself.



**Agenda Memorandum**

City Council Meeting  
December 10, 2012



**SUBJECT:** Tanglewood Creek Channel and Pond Improvements - Second Amendment to the Intergovernmental Agreement with the Urban Drainage and Flood Control District

**Prepared By:** John Burke, P.E., CFM, Senior Engineer

**Recommended City Council Action**

Authorize the City Manager to sign the second amendment to the intergovernmental agreement with the Urban Drainage and Flood Control District for the Tanglewood Creek Channel and Pond Improvements. Authorize the expenditure of an additional \$75,000 for the Tanglewood Creek Channel Project.

**Summary Statement**

- The Tanglewood Creek and pond improvements project is located just north of the intersection of 121<sup>st</sup> Avenue and Delaware Street. The spillway on the downstream face of the regional detention pond is failing, and the channel leading in and out of the pond is in need of repair. Additionally, there is currently inadequate maintenance access to the pond, so an eight-foot wide trail will be constructed around the pond.
- The City requested Urban Drainage and Flood Control District (UDFCD) maintenance funding in 2008 for the repair of the spillway and restoration of the channel leading into the pond. There is currently \$420,000 in the project account; however, the current estimated design and construction costs for the project are \$595,000. As such, UDFCD will be requesting authorization from their Board to add another \$100,000 into the project and has requested an additional \$75,000 from the City.
- The proposed second amendment of the intergovernmental agreement (IGA) will bring additional funding from both UDFCD 2012 maintenance budget and the City of Westminster. The original intergovernmental agreement (IGA) was signed on December 22<sup>nd</sup>, 2010 and the first amendment was signed on November 17<sup>th</sup>, 2011. These funds will remain in an interest bearing account managed by UDFCD and will be used to pay for the completion of the project in 2013.
- The City's \$75,000 share of the funding for this project is available in the Miscellaneous Stormwater Utility Fund.

**Expenditure Required:** \$75,000 (City's share)

**Source of Funds:** Miscellaneous Stormwater Utility Fund

**Policy Issue**

Should the City amend the Intergovernmental Agreement with the Urban Drainage and Flood Control District (UDFCD) for the design and construction of drainage improvements for Tanglewood Creek and Pond?

**Alternative**

Council could choose not to authorize this intergovernmental agreement at this time. Staff does not recommend this alternative because the matching funds from the UDFCD will greatly help to complete this project in a timely and cost effective manner.

**Background Information**

A portion of Tanglewood Creek and the associated regional detention pond (a/k/a Front Range Village Pond or Timberlake Pond) is owned by the City through a previous agreement with the adjacent properties - Cottonwood Villa Condominiums and Timberlake Townhomes. Under that agreement, the two homeowners associations (HOA) are to perform routine maintenance around the perimeter of the pond. The Timberlake Townhome HOA contacted City staff in 2008 to request the City perform repair work at the pond spillway and channel that had suffered from ongoing erosion among other problems. Since this work would not logically be classified as routine maintenance, staff requested and was successful in securing major maintenance funding from the Urban Drainage and Flood Control District (UDFCD) in late 2009.

UDFCD contracted with one of their on-call engineering firms and started preliminary design efforts in 2009. Over the course of this design effort, various alternatives for cost savings and environmental permitting issues were evaluated. The current engineering design for the repairs has had to balance project costs with safety considerations, flood control needs, environmental-related components of the project and specific requests from the Timberlake Townhome HOA.

The project will install a new outlet structure and 12-foot by 3-foot box culvert to convey the 100-year flows to the open channel located on the Canyon Chase apartment complex property to the north. This will allow the City to remove the existing concrete spillway. A series of 3-foot boulders will also be used to line the perimeter of the pond to help with grading and vegetation. Additionally, to make the pond safe and more easily maintained, an 8-foot wide trail will be constructed around the pond and connected to 121<sup>st</sup> Avenue on the south and an ADA accessible connection north into the apartment complex. This trail will also be part of the future Tanglewood Creek trail system.

There is currently \$420,000 available for this project. However, the estimated design and construction costs are \$595,000. This proposed second amended IGA will encumber the \$100,000 of UDFCD funding and \$75,000 from the City's Stormwater Utility fund.

This project supports the Council's Strategic Plan Goals of creating a Safe and Secure Community by protecting people, homes and buildings from flooding through an effective stormwater management program and Creating a Beautiful and Environmentally Sensitive City by improving the physical appearance of the lake.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachments – Vicinity Map & IGA



# Tanglewood Creek & Pond



200 0 200 Feet



1 inch = 200 feet



AMENDMENT TO  
 AGREEMENT REGARDING  
 FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION  
 OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR  
 TANGLEWOOD CREEK CHANNEL AND POND IMPROVEMENTS

Agreement No. 10-10.14B

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for Tanglewood Creek Channel and Pond Improvements" (Agreement No. 10-10.14) dated December 22, 2010, as amended; and

WHEREAS, PARTIES now desire to construct drainage and flood control improvements; and

WHEREAS, PARTIES desire to increase the level of funding by \$175,000; and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Delineation, description and acquisition of required rights-of-way/ easements;
3. Construction of improvements;
4. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$595,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

| <u>ITEM</u>     | <u>AS AMENDED</u> | <u>PREVIOUSLY<br/>AMENDED</u> |
|-----------------|-------------------|-------------------------------|
| 1. Final Design | \$ 30,000         | \$30,000                      |
| 2. Right-of-way | -0-               | -0-                           |
| 3. Construction | 550,000           | 380,000                       |
| 4. Contingency  | 15,000            | 10,000                        |
| Grand Total     | \$595,000         | \$420,000                     |



This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

|          | <u>Percentage Share</u> | <u>Previously Contributed</u> | <u>Additional Contribution</u> | <u>Maximum Contribution</u> |
|----------|-------------------------|-------------------------------|--------------------------------|-----------------------------|
| DISTRICT | 70.59%                  | \$320,000                     | \$100,000                      | \$420,000                   |
| CITY     | 29.41%                  | \$100,000                     | \$ 75,000                      | \$175,000                   |
| TOTAL    | 100.00%                 | \$420,000                     | \$175,000                      | \$595,000                   |

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval.

Payment of each party's full share (CITY - \$175,000; DISTRICT - \$420,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

3. All other terms and conditions of Agreement No. 10-10.14 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND  
FLOOD CONTROL DISTRICT

(SEAL)

By \_\_\_\_\_

ATTEST:

Title Executive Director

\_\_\_\_\_

Date \_\_\_\_\_

CITY OF WESTMINSTER

(SEAL)

By \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



## Agenda Item 8 H

### Agenda Memorandum

City Council Meeting  
December 10, 2012



**SUBJECT:** Little Dry Creek Regional Detention Pond - Second Amended Intergovernmental Agreement with the Urban Drainage and Flood Control District and Adams County

**Prepared By:** John Burke, P.E., CFM, Senior Engineer

### Recommended City Council Action

Authorize the City Manager to sign the amended intergovernmental agreement with the Urban Drainage and Flood Control District and Adams County to provide additional funding in the amount of \$275,000 for the Little Dry Creek Regional Detention Pond and related channel improvements.

### Summary Statement

- This is the second amendment to the intergovernmental agreement (IGA) with the Urban Drainage and Flood Control District (UDFCD) for the Little Dry Creek drainage project, which was originally approved by City Council on February 9, 2009. This amendment will encumber money available from UDFCD and Adams County in 2012.
- Progress continues to be made on this regionally significant project. The first actual construction work is proposed to begin in January 2013 with the boring of three pipes through the Federal Boulevard embankment near Little Dry Creek. The first pipe to be bored will be for the City's proposed 36-inch diameter sanitary sewer. The second will be for the 8-inch Crestview sanitary sewer line and the third will be the 108-inch diameter storm drainage culvert.
- This amended IGA will add \$275,000 from UDFCD, \$100,000 from Adams County and \$275,000 from the City of Westminster into this project budget in preparation for construction in the year 2013. The City's share of the funding, \$275,000, is budgeted and available.
- The IGA contains provisions for amending the document to allocate additional funding in future budget years. Significant future funding from the City's Storm Water Utility and the UDFCD is anticipated that will allow this project to be fully funded within the next two years.

**Expenditure Required:** \$275,000 (City's share)

**Source of Funds:** Stormwater Utility Fund - Little Dry Creek Regional Detention Project

**Policy Issue**

Should the City amend the Intergovernmental Agreement with the Urban Drainage and Flood Control District and Adams County for the design and construction of drainage and flood control improvements for Little Dry Creek from Lowell Boulevard to Federal Boulevard?

**Alternative**

Council could choose not to authorize this amended intergovernmental agreement at this time. Staff does not recommend this alternative because the matching funds from the UDFCD and Adams County will help complete this project in a cost effective manner. If Council chooses not to approve this IGA, it would take longer to complete the project without UDFCD and Adams County funds, thus delaying the drainage improvements necessary for the proposed transit-oriented development in the vicinity of Westminster Station.

**Background Information**

The original IGA for this project was authorized by City Council on February 9, 2009. At that time, the UDFCD contributed \$100,000, Adams County contributed \$150,000 and the City contributed \$150,000 to the project budget. The first amendment to the IGA, authorized by Council on October 25, 2010, added UDFCD funding in the amount of \$600,000 and City funding in the amount of \$500,000 to the budget. The proposed action on this second amendment to the IGA will bring the total funding for the project to \$2,150,000.

The regional detention pond envisioned in the Little Dry Creek Park Master Plan will facilitate the redevelopment of the area located south of 72<sup>nd</sup> Avenue between Federal Boulevard and Lowell Boulevard by allowing the individual lots to be developed without the need for on-site storm water detention ponds. Additionally, this project will complete much of the earth moving activity within the Little Dry Creek Park Master Plan boundaries, thus allowing future park and roadway improvements to occur with minimal disturbance to the surrounding area. This project will also lower the 100-year floodplain by four feet, thus removing the floodplain from overtopping the railroad tracks that Regional Transportation District (RTD) commuter trains and the Burlington Northern Santa Fe railroad will use.

2013 will be an exciting year with a variety of actual construction projects beginning. The first will be the boring of the utility lines through the Federal Boulevard embankment. The City's Department of Public Works and Utilities will be constructing a 36-inch sanitary sewer main from Lowell Boulevard to Federal Boulevard that carries approximately 30% of the City's wastewater toward the downstream Denver Metro Wastewater treatment facility. Additionally, an 8-inch diameter Crestview sanitary sewer main and a 108-inch diameter storm sewer pipe will be bored through the Federal Boulevard embankment. At the same time, staff will contract for the demolition of the City owned Barnum Publishing Company building and work on the Voluntary Cleanup Program through the Colorado Department of Public Health and Environment due to some contaminated soils below the building.

In addition to the above work, Denver Transit Partners is expected to begin working on some of the grading and utility work on the north side of the existing Burlington Northern/Santa Fe railroad track during the summer of 2013. During the fall, the City will begin the larger earthwork operations required to relocate Little Dry Creek and commence the construction of the detention pond and water quality facilities.

Through implementation of the regional detention pond project and the proposed lowering of the 100-year floodplain, this project will advance the City of Westminster's Strategic Plan Goal of a Safe and Secure Community by protecting people, homes and buildings from flooding through an effective stormwater management program.

Additionally, this project will greatly enhance this area with unique open space and active recreational uses as identified in the Little Dry Creek Park Master Plan. This also assists the City's Strategic Plan Goal of creating a Beautiful and Environmentally Sensitive City by increasing green space consistent with defined goals.

The current amount of funding that is being administered through UDFCD is as follows:

|              | Percentage Share | Previously Contributed | Additional Contribution | Maximum Contribution |
|--------------|------------------|------------------------|-------------------------|----------------------|
| DISTRICT     | 45.4%            | \$700,000              | \$275,000               | \$975,000            |
| COUNTY       | 11.6%            | \$150,000              | \$100,000               | \$250,000            |
| CITY         | 43.0%            | \$650,000              | \$275,000               | \$925,000            |
| <b>TOTAL</b> | <b>100.0%</b>    | <b>\$1,500,000</b>     | <b>\$650,000</b>        | <b>\$2,150,000</b>   |

Westminster's share of the funding for this project (\$275,000) is available from the Little Dry Creek Regional Detention Project of the Stormwater Capital Improvements Fund.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – IGA Second Amendment

SECOND AMENDMENT TO  
AGREEMENT REGARDING  
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION  
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR  
LITTE DRY CREEK FROM LOWELL BOULEVARD TO FEDERAL BOULEVARD

Agreement No. 08-09.09B

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY OF WESTMINSTER (hereinafter called "CITY") and ADAMS COUNTY (hereinafter called "COUNTY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for Little Dry Creek from Lowell Boulevard to Federal Boulevard" (Agreement No. 08-09.09) dated August 19, 2009, as amended, and

WHEREAS, PARTIES now desire to continue to fund final design, right-of-way acquisition and construction; and

WHEREAS, PARTIES desire to increase the level of funding by \$650,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 12, Series of 2010, Resolution No. 43, Series of 2010, and Resolution No. 21, Series of 2012); and

WHEREAS, the City Council of CITY, the County Commissioners of COUNTY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:
  4. PROJECT COSTS AND ALLOCATION OF COSTS
    - A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:
      1. Final design services;
      2. Delineation, description and acquisition of required rights-of-way/ easements;
      3. Construction of improvements;
      4. Contingencies mutually agreeable to PARTIES.
    - B. It is understood that PROJECT costs as defined above are not to exceed \$2,150,000 without amendment to this Agreement.  
PROJECT costs for the various elements of the effort are estimated as follows:

| <u>ITEM</u>     | <u>AS AMENDED</u> | <u>PREVIOUSLY AMENDED</u> |
|-----------------|-------------------|---------------------------|
| 1. Final Design | \$ 650,000        | \$450,000                 |
| 2. Right-of-way | 200,000           | \$200,000                 |
| 3. Construction | 1,200,000         | \$750,000                 |
| 4. Contingency  | 100,000           | 100,000                   |
| Grand Total     | \$2,150,000       | \$1,500,000               |

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

|          | <u>Percentage Share</u> | <u>Previously Contributed</u> | <u>Additional Contribution</u> | <u>Maximum Contribution</u> |
|----------|-------------------------|-------------------------------|--------------------------------|-----------------------------|
| DISTRICT | 45.4%                   | \$700,000                     | \$275,000                      | \$ 975,000                  |
| COUNTY   | 11.6%                   | \$150,000                     | \$100,000                      | \$ 250,000                  |
| CITY     | 43.0%                   | \$650,000                     | \$275,000                      | \$ 925,000                  |
| TOTAL    | 100.00%                 | \$1,500,000                   | \$650,000                      | \$2,150,000                 |

3. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval.

Payment of each party's full share (CITY - \$925,000; COUNTY - \$250,000; DISTRICT - \$975,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special interest bearing account to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY and COUNTY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

5. All other terms and conditions of Agreement No. 08-09.09 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND  
FLOOD CONTROL DISTRICT

(SEAL)

By \_\_\_\_\_

ATTEST:

Title Executive Director

\_\_\_\_\_

Date \_\_\_\_\_



ADAMS COUNTY

(SEAL)

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

County Attorney

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

CITY OF WESTMINSTER

(SEAL)

By \_\_\_\_\_

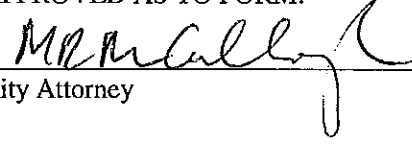
ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney



Agenda Memorandum

City Council Meeting  
December 10, 2012



**SUBJECT:** Second Reading of Councillor’s Bill No. 48 re 2012 3<sup>rd</sup> Quarter Budget Supplemental Appropriation

**Prepared By:** Karen Barlow, Accountant

**Recommended City Council Action**

Pass Councillor’s Bill No. 48 on second reading, providing for a supplemental appropriation of funds to the 2012 budget of the General, Water, Storm Drainage, General Capital Outlay Replacement, and General Capital Improvement Funds.

**Summary Statement**

- City Council action is requested to adopt the attached Councillor’s Bill on second reading, authorizing a supplemental appropriation to the 2012 Budget of the General, Water, Storm Drainage, General Capital Outlay Replacement, and General Capital Improvement Funds.
  - General Fund amendments total: \$ 96,517
  - Water Fund amendments total: \$ 9,959
  - Storm Drainage Fund amendments total: \$ 1,475
  - General Capital Outlay Replacement Fund amendments total: \$ 9,165
  - General Capital Improvement Fund amendments: \$6,807,800
- This Councillor’s Bill was approved on first reading on November 26, 2012.

**Expenditure Required:** \$6,924,916

**Source of Funds:** The funding sources for these budgetary adjustments include reimbursements, contributions, grants, and transfers.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **48**

SERIES OF 2012

INTRODUCED BY COUNCILLORS  
**Kaiser - Major**

**A BILL**

**FOR AN ORDINANCE AMENDING THE 2012 BUDGETS OF THE GENERAL, WATER, STORM DRAINAGE, GENERAL CAPITAL OUTLAY REPLACEMENT, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2012 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2012 appropriation for the General, Water, Storm Drainage, General Capital Outlay Replacement, and General Capital Improvement Funds initially appropriated by Ordinance No. 3550 is hereby increased in aggregate by \$6,924,916. This appropriation is due to the receipt of funds from reimbursements, contributions, grants, and transfers.

Section 2. The \$6,924,916 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item # 10 C dated November 26, 2012 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

|   |                    |
|---|--------------------|
| General Fund                            | \$96,517           |
| Water Fund                              | 9,959              |
| Storm Drainage                          | 1,475              |
| General Capital Outlay Replacement Fund | 9,165              |
| General Capital Improvement Fund        | <u>6,807,800</u>   |
| Total                                   | <u>\$6,924,916</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 26<sup>th</sup> day of November, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10<sup>th</sup> day of December, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

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



**Agenda Memorandum**

City Council Meeting  
December 10, 2012



**SUBJECT:** Second Reading of Councillor's Bill No. 49 re Amendments to the Westminster Municipal Code Concerning Storm Water Quality

**Prepared By:** Andrew Hawthorn, Senior Civil Engineer

**Recommended City Council Action**

Pass Councillor's Bill No. 49 on second reading authorizing revisions to Sections 8-11-3 through 8-11-8, 8-11-10, 8-11-11 and 11-6-5 and repealing Section 11-7-7 of the Westminster Municipal Code, all concerning storm water quality matters.

**Summary Statement**

- In 2003, the City was required by the Federal Environmental Protection Agency (EPA) to apply for a National Pollutant Discharge Elimination System (NPDES) storm water permit through the Colorado Department of Public Health and Environment (CDPHE) Water Quality Control Division. In 2013, the City will begin its second renewal of the NPDES storm water permit, each having a 5-year cycle.
- The City is required by the storm water permit to minimize the amount of pollutants that enter into its channels, streams and lakes.
- On October 15, 2012, City staff responded to a mandatory Storm Water Targeted Permit Questionnaire from the CDPHE Water Quality Control Division. Findings from this questionnaire showed that the City must update its Municipal Code to reflect more specifically the requirements of the storm water permit and water quality regulations.
- Most of the proposed revisions are related to the addition or modification of the existing code language to bring it in line with current storm water regulations. One new addition to the City Code will be a prohibition of the storage of construction and landscape materials within the public right-of-way. Another new addition is a provision for Post Construction Best Management Practices (BMP) installation and maintenance.
- The proposed ordinance will provide mechanisms to protect and enhance the quality of water discharged into the City of Westminster's storm drainage system. The code revisions discussed here must be adopted by the City Council before December 31, 2012 in order to meet mandatory permit requirements.
- Councillor's Bill No. 49 was passed on first reading on November 26, 2012.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **49**

SERIES OF 2012

INTRODUCED BY COUNCILLORS  
**Winter - Atchison**

**A BILL**

**FOR AN ORDINANCE AMENDING SECTIONS 8-11-3, 8-11-4, 8-11-5,  
8-11-6, 8-11-7, 8-11-8, 8-11-10, 8-11-11 AND 11-6-5 AND REPEALING SECTION 11-7-7 OF THE  
WESTMINSTER MUNICIPAL CODE CONCERNING STORMWATER QUALITY**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-11-3, W.M.C., is hereby AMENDED as follows:

**8-11-3: DEFINITIONS:** (3391) ~~The following words, terms and phrases, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Chapter, shall have the following meanings:~~

(A) "Applicant" ~~shall~~ means a landowner or agent of a landowner who has filed an application for a grading and erosion control permit.

(B) "Best Management Practices (BMPs)" ~~means~~ shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the municipal separate storm sewer system (MS4). BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage of leaks, sludge or waste disposal, or drainage from raw material storage.

(C) "Builder" ~~means~~ shall mean a person who undertakes construction activities.

(D) "Business Owner" ~~means~~ shall mean a person who owns title to a commercial property.

(E) "City Inspector" ~~means~~ shall mean the person or person(s) authorized by the City Manager to inspect a site for the purpose of determining compliance with the provisions of this Chapter.

(F) "City Manager" ~~shall mean as used in this ordinance refers to~~ the City Manager of the City of Westminster or the Manager's ~~appointed~~ designee.

(G) "Compliance Date" ~~means~~ shall mean the final deadline by which a user is required to correct a violation of a prohibition or limitation or to meet a stormwater quality standard or requirement as specified in a compliance schedule, industrial discharge permit or federal, state or local regulation adopting an applicable stormwater quality standard.

(H) "Compliance Order" ~~means~~ shall mean an administrative order that directs a user to comply with the provisions of this Chapter, or of a permit or administrative order issued hereunder, by a specific date. The order may include a compliance schedule involving specific actions to be completed within specific time periods.

(I) "Compliance Schedule or Schedule of Compliance" ~~means~~ shall mean an enforceable schedule specifying a date or dates by which user must comply with a stormwater quality standard, a stormwater quality requirement or a prohibition or limitation and which may include increments of progress to achieve such compliance.

(J) "Construction Activities" ~~means~~ shall mean clearing, grading, excavation, and other ground disturbance activities. Construction does not include routine maintenance performed by public agencies, or their agents to maintain original line grade, hydraulic capacity, or original purpose of facility.



“Construction materials” shall mean any material intended for or used in the construction of structures or buildings, including, without limitation, concrete, concrete block, brick, cement, plastic, glass, asphalt, timber, lumber, wood, plywood, fiberboard, shingles, pipe, cable, wire, conduit, duct, insulation, drywall, tile, cabinetry, appliances, fixtures, or like materials.

~~(K)~~“Construction Site Operator” meansshall mean a person who has been designated by the developer to perform routine inspections of BMPs and who is responsible for ensuring that the structural integrity of the BMPs are maintained and that the BMPs perform as designed.

~~(L)~~“Critical BMPs” meansshall mean those BMPs such as, but not limited to, sediment ponds and dewatering structures, silt fence, wattles, vehicle tracking pads, inlet filters, that are installed to keep sediment and pollutants from leaving a construction site and discharging into receiving waters of the United States.

~~(M)~~“Developer” meansshall mean a person who undertakes land disturbance activities.

~~(N)~~“Development” meansshall mean any activity, excavation or fill, alteration, subdivision, change in land use, or practice, undertaken by private or public entities that affect the discharge of stormwater runoff. The term “development” does not include the maintenance of stormwater runoff facilities.

~~(O)~~“Disturbed Area” meansshall mean that area of the land’s surface disturbed by any work activity upon the property by means including but not limited to grading; excavating; stockpiling soil, fill or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned agricultural or the tillage of a parcel zoned PUD (planned unit development) within the area identified for agricultural uses.

~~(P)~~“Drainageway (Waterway)” meansshall mean a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

~~(Q)~~“Final Stabilization” is reached when all ground surface disturbing activities at the site have been completed, and uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.

~~(R)~~“Homeowners Association (HOA)” meansshall mean the entity responsible for management and maintenance of those elements of a residential subdivision owned in common by its homeowners.

~~(S)~~“Illicit Discharge” meansshall mean any discharge to a municipal separate storm sewer system (MS4) that is not composed entirely of stormwater runoff, or the exceptions listed in section 8-11-8(A) of this Code.

~~(T)~~“Land Disturbance Activity” meansshall mean any activity, which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

~~(U)~~“Landowner” ~~means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.~~

~~(V)~~“Land Disturbance Permit” meansshall mean a permit issued by the City to conduct any land disturbance activity equal to or greater than one acre, earthwork involving moving more than two hundred (200) cubic yards or if grading occurs on a property that has a slope in excess of eight percent (8%).

“Landowner” shall mean the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land. This term includes

banks or lending institutions that have obtained control of land as a result of foreclosure, receivership, bankruptcy or like actions.

“Landscape Materials” shall mean any material used in or derived from the landscape or improvements to the landscape of real property, including, without limitation, trees, branches, shrubs, plants, vegetation, brush, yard trimmings, leaves, side, dead plant material, soil, or dirt, sand, gravel, rock, stone, boulders, mulch, fencing, paving materials, or like materials.

~~(W)~~“MS4” meansshall mean a municipal separate storm sewer system.

~~(X)~~“Municipal Separate Storm Sewer System” meansshall mean a conveyance or system of conveyances (including but not limited to, roads with drainage system, municipal streets, inlets/catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(1) Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to sState waters;

(2) Designed or used for collecting or conveying stormwater;

(3) Which is not a combined sewer; and

(4) Which is not part of a Publicly Owned Treatment Works (POTW).

~~(Y)~~“Non-critical BMPs” meansshall mean those BMPs such as, but not limited to, silt fence, wattles, diversions, vehicle tracking pads, or inlet filters, that are installed to minimize the impacts of construction by nonstructural and structural devices within the subject construction site.

~~(Z)~~“Official Development Plan (ODP)” meansshall mean the planning document, approved by the Westminster City Council, that identifies improvements and other responsibilities associated with the development and/or redevelopment of parcel(s) of land.

~~(AA)~~“Permanent BMPs” meansshall mean those BMPs such as, but not limited to, a vegetated swale, wetland, water quality structure, to be installed and regularly maintained in order to ensure long term water quality benefits.

“Post Construction BMP” shall mean any structural or non-structural permanent BMP that maintains or restores hydraulic conditions to minimize the discharge of pollutants.

“Public Property”shall mean any public street, right-of-way, road, highway, place, alley, sidewalk, easement, park, square, median, parkway, boulevard or plaza within the City limits that is dedicated to public use, or owned or maintained by the City.

~~(BB)~~“Receiving Waters” meansshall mean a river, lake, stream, drainage ditch or other watercourse.

~~(CC)~~“Sediment/Erosion Control Plan” meansshall mean a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

~~(DD)~~“Stop Work Order” meansshall mean an order issued by the City which requires that all construction activity on a site be stopped.

~~(EE)~~“Stormwater” meansshall mean precipitation-induced surface runoff.

~~(FF)~~“Stormwater Construction Permit” meansshall mean a permit issued by the Colorado Department of Public Health & Environment Water Quality Control Division. This program is referred to as the Colorado Discharge Permit System, or CDPS, and regulates stormwater discharges from construction

activities under the CDPS general permit for stormwater discharges associated with construction activities.

~~(GG)~~ “Stormwater Runoff” ~~means~~shall mean that part of snowfall, rainfall or other precipitation that is not absorbed, transpired, evaporated, or left in surface depressions, and which then flows controlled or uncontrolled into a watercourse or body of water.

~~(HH)~~ “Surety” ~~means~~shall mean a Letter of Credit or cash in the amount of 115% of the cost of constructing or installing all items associated with the Land Disturbance Permit. The surety will guarantee the completion of all terms and conditions of the Land Disturbance Permit as well as payment of any fines and interest assessed due to non-compliance with any section of the Land Disturbance Permit or this ordinance.

~~(II)~~ “Temporary BMPs” ~~means~~shall mean those temporary BMPs such as, but not limited to, silt fence, wattles, vehicle tracking pads, inlet filters, diversions, sediment ponds and dewatering structures, to be installed and regularly maintained until the site is sufficiently stabilized.

~~(JJ)~~ “Urban Drainage and Flood Control District” or “UDFCD” ~~means~~shall mean the District created by ~~s~~Section 32-11-101, et seq., C.R.S.

“Vegetative Cover” ~~means~~shall mean grasses, shrubs, bushes, trees, ground cover and other plants.

“Watercourse” shall mean the natural or human-made channel, ditch, conveyance, or the standing body of water into which stormwater is discharged.

Section 2. Section 8-11-4, W.M.C., is hereby AMENDED as follows:

**8-11-4: ADOPTION OF STORMWATER QUALITY GUIDELINES:** (2335 3391) The City hereby requires the implementation of structural or non-structural measures to reduce or maintain the quality of stormwater on a temporary or permanent basis. Such measures will be designed and installed based on guidelines presented in VOLUME 3 - BEST MANAGEMENT PRACTICES, URBAN STORM DRAINAGE CRITERIA manual, most recent addition, published by the Urban Drainage and Flood Control District.

Section 3. Section 8-11-5, W.M.C., is hereby AMENDED as follows:

**8-11-5: LAND DISTURBANCE PERMIT REQUIREMENTS:** (3391 3564)

(A) A Land Disturbance Permit shall be required prior to conducting any land disturbance activity that:

(1) Covers an area equal to or greater than one (1) acre, or;

(2) Covers an area less than an acre if the site is part of a larger common plan of development, or

(3) Involves earthwork affecting~~involving~~ more than two hundred (200) cubic yards of material, or

(4) Involves environmentally sensitive areas, as determined by the City Manager, or

(5) Involves grading on any property that possesses physical characteristics or features that increase the potential for erosion, such as highly erodible soils, natural drainage channels or swales, or has a slope in excess of eight percent (8%).

(B) The Land Disturbance Permit application and the specific criteria therefor are available from the Engineering Division in the Department of Community Development. ~~See Section 11-7-7 of the~~

~~Westminster Municipal Code for specific regulations. Applicants shall file a complete application and pay the application fee specified in Section 11-1-6, W.M.C., which fee is non-refundable.~~

~~(C) If the permit is granted, prior to its issuance the landowner shall enter into a land disturbance agreement with the City and provide a financial guarantee, unless one or both of these requirements is waived by the City Engineer for good cause.~~

~~–Surety must also be provided before a Land Disturbance Permit will be issued.~~

Section 4. Section 8-11-6, W.M.C., is hereby AMENDED as follows:

**8-11-6: STORMWATER MANAGEMENT PLAN:** (2335 3391)

(A) Every development, redevelopment or construction project that receives~~requires~~ a land disturbance permit requires the preparation of a stormwater management plan (SWMP) to include temporary and permanent Best Management Practices (BMP<sup>2</sup>s) designed to reduce the pollutant loading on the stormwater system. Any stormwater management plan prepared for a property in the City pursuant to the laws and regulations of the State of Colorado shall be prepared in accordance with the standards and specifications contained in the City of Westminster Storm Drainage Design and Technical Criteria Manual and submitted to the City for its review and approval.

(B) Upon approval of a SWMP, the landowner, or its agent designated in writing, is responsible for performing all inspections in compliance with the regulations of the State of Colorado Water Quality Control Division.

(C) Both during and after completion of every development, redevelopment or construction project that has received approval of a SWMP, the landowner, its successors, heirs or assigns shall be responsible for maintaining and repairing any and all temporary and permanent drainage improvements provided for in the approved SWMP and as provided below in Section 8-11-7.

Section 5. Section 8-11-7, W.M.C., is hereby AMENDED as follows:

**8-11-7: MAINTENANCE REQUIREMENTS:** (3391 3564) Developers, builders, business owners, homeowners' associations and landowners, respectively, shall be responsible for ensuring that all Best Management Practices (BMP) identified on a project's~~the~~ approved construction drawings, its Official Development Plan, ~~and its~~ the Land Disturbance Permit and its Stormwater Management Plan (SWMP) application are properly installed, repaired, perpetually maintained and are in good working order as hereafter provided.

(A) Landowners and/or their d~~D~~ developers shall be responsible for ensuring that:

(1) Any temporary and/or permanent post-construction BMPs that were installed are being properly maintained and are in good working order;

(2) The site is fully developed and final stabilization has been reached;

(3) Any deficiencies noted by the City prior to the expiration of the warranty period for public improvements have been corrected;

(4) When individual lots have been sold to a b~~B~~ builder, the landowner and/or d~~D~~ developer shall disclose and explain, if necessary, the stormwater runoff quality requirements of the SWMP with the b~~B~~ builder prior to or at time of closing.

(B) Builders shall be responsible for ensuring that:

(1) Any temporary and/or permanent post-construction BMPs that were installed prior to lot purchase from developer and/or landowner are being properly maintained and are in good working order;

(2) Final stabilization as completed by the ~~d~~Developer is maintained or repaired if damaged by the ~~b~~Builder;

(3) Any temporary and/or permanent post-construction BMPs necessary for the building site(s) have been properly installed, maintained and remain in good working order up to and until the property has been sold, unless builder has a signed agreement with the landowner wherein the landowner accepts the complete maintenance responsibility until the land is sold ~~to a business, land or landowner~~; and

(4) Stormwater runoff quality requirements of the SWMP for ~~of~~ individual site(s) are disclosed and explained to the purchaser at time of closing, unless builder has a signed agreement with the landowner wherein the landowner accepts this disclosure responsibility.

(C) Business owners, homeowners' associations and landowners shall be responsible for ensuring that:

(1) Any temporary BMPs installed prior to lot purchase from developer, owner, and/or builder are properly maintained and remain in good working order until the lot is stabilized;

(2) Final stabilization has been achieved and maintained;

(3) If not installed prior to individual lot purchase, temporary and/or permanent BMPs will be installed within ten (10) days from date of purchase at the base of all gutter downspouts and around the perimeter of the site where needed to prevent sediment from moving off-site and maintained until final stabilization has been achieved on the property; and

(4) Permanent post-construction stormwater runoff quality measures constructed or installed on their property as shown on the approved SWMP, the Official Development Plan and/or construction plans are properly maintained in perpetuity.

(D) All temporary stormwater runoff quality control measures shall be removed within fourteen (14) calendar days after final stabilization has been achieved and the temporary measures are no longer needed.

(E) Should any developer, builder, business owner, homeowners' association or landowner fail to adequately maintain the permanent post-construction stormwater runoff quality control measures or fail to remove the temporary measures, the City Manager or his representative may summarily cause the necessary work to be performed at the expense of such responsible party, and the cost of such abatement shall be a first and prior lien on the property as provided by Title I, Chapter 31 of this Code, and may be assessed and collected pursuant to Section 8-4-5 of this Code.

(F) Every person owning property through which a watercourse passes, and ~~or~~ such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

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Section 86. Section 8-11-8, W.M.C., is hereby AMENDED as follows:

**8-11-8: ILLICIT DISCHARGES:** (3391 3564)

(A) Prohibition of Illegal Discharges **ROHIBITION OF ILLEGAL DISCHARGES:** It is unlawful and constitutes a public nuisance for any person to discharge or cause to be discharged or spilled any substance other than naturally occurring stormwater runoff into the City's stormwater drainage system, except for: return flows from irrigation, de-chlorinated water from swimming pools, water from fire hydrants including water used for fire fighting, discharges from potable water sources, air conditioning

~~condensation, uncontaminated groundwater and other water determined by the City Manager or designee to be non-contaminated and acceptable for return to the storm drainage system and receiving waters.~~

(1) Discharges from the following activities will not be considered a source of pollutants to the stormwater system and to waters of the United States when properly managed to ensure that no potential pollutants are present; and, therefore, they shall not be considered illegal discharges unless determined to cause a violation of the Clean Water Act or this Chapter:

- (a) Potable water line flushing;
- (b) Uncontaminated pumped groundwater and other discharges from potable water sources;
- (c) Landscape irrigation and lawn watering;
- (d) Diverted stream flows;
- (e) Rising groundwater;
- (f) Groundwater infiltration to the stormwater drain system;
- (g) Uncontaminated foundation and footing drains;
- (h) Uncontaminated water from crawlspace pumps;
- (i) Air conditioning condensation;
- (j) Natural springs;
- (k) Individual residential car washing;
- (l) Flows from naturally existing riparian habitats and wetlands;
- (m) Dechlorinated swimming pool discharges;
- (n) Water incidental to street sweeping (including associated sidewalks and medians) not associated with construction; and
- (o) Discharges necessary to protect public health and safety such as flows from emergency firefighting activities.

(2) Waiver: The City Manager may exempt occasional, incidental non-stormwater discharges that the Manager determines to be uncontaminated and acceptable for return to the stormwater drain system and the receiving waters.

(3) This prohibition shall not apply to any non-stormwater discharge permitted under an NPDES or CDPS permit or under a CDPHE-issued low risk discharge policy or guidance letter, provided that the discharge is in full compliance with all requirements of the permit, waiver, order and/or other applicable laws and regulations.

~~(A)(B)~~ Nothing contained herein shall be construed to relieve any person discharging or causing to be discharged or allowing to be discharged water into the storm drainage system from any liability for damage caused by the volume or quality of water thus discharged.

~~(B)(C) Prohibition of Illicit Connections~~ ROHIBITION OF ILLICIT CONNECTIONS:

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(D) It shall be unlawful for any person to place, store, maintain, allow to accumulate, or permit any other person to place, store, maintain, or allow to accumulate on any public property or right-of-way any stockpile, pile, storage, accumulation of construction materials and/or landscape materials, or any roll-off dumpster, unless such person is an employee, official, or contractor of the City acting within the scope of his or her municipal functions.



~~(C)~~ (E) Enforcement **ENFORCEMENT**: In addition to any other remedies provided in this Chapter, should any person discharge or cause to be discharged or spilled or maintain a condition upon any property that may result in the discharge of any substance other than naturally occurring stormwater runoff into the City's stormwater drainage system, except for the exceptions listed in section 8-11-8 (A) above, the City Manager ~~or his representative~~ may enjoin the illicit discharge immediately and summarily cause ~~all~~ the necessary cleanup work to be performed at the expense of such responsible party, and the cost of such abatement shall be a first and prior lien on the property as provided by Title I, Chapter 31 of this Code, and may be assessed and collected pursuant to Section 8-4-5 of this Code. Alternatively, the City may make a demand on the surety to pay for these expenses.

Section 407. Section 8-11-10, W.M.C., is hereby AMENDED as follows:

**8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES: (3391)**

(A) ~~Notification of Violation~~ **NOTIFICATION OF VIOLATION**: When the City Manager finds that a user has violated, or continues to violate, any provision of this Chapter ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may serve upon that user a written or electronic Notice of Violation. The Notice of Violation may include specific required actions and may require the user to submit an explanation of the violation and a plan for the satisfactory correction and prevention thereof. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Where the violation is an illicit discharge, the discharge must be immediately corrected. Nothing in this Section shall limit the authority of the City Manager to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(B) ~~Consent Orders~~ **CONSENT ORDERS**: The City Manager may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8-11-10(D) and 8-11-10(E) of this ordinance and shall be judicially enforceable.

(C) ~~Show Cause Hearing~~ **SHOW CAUSE HEARING**: The City Manager may order a user who has violated, or continues to violate, any provision of this Chapter ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, to appear before the City Manager or designated representative and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fourteen (14) days prior to the hearing. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(D) ~~Compliance Orders~~ **COMPLIANCE ORDERS**: When The City Manager finds that a user has violated, or continues to violate, any provision of this Chapter ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may issue an order to the user responsible for the discharge, directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, storm sewer service may be discontinued unless adequate Best Management Practices are installed and properly maintained. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and best management practices designed to minimize the amount of pollutants discharged to the storm sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(E) ~~Cease and Desist Orders~~ **CEASE AND DESIST ORDERS**: When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, or that the user's past

violations are likely to recur, the City Manager may issue an order, including a stop work order, to the user directing it to cease and desist all such violations and directing the user to:

(1) Immediately comply with all requirements; and

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(F) ~~Administrative Fines~~ ADMINISTRATIVE FINES:

(1) When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may fine such user in an amount not to exceed \$1000.00 per violation per day.

(2) Unpaid charges, fines, and penalties shall be assessed and accrue interest in accordance with the provisions of Chapter 8 of Title I, Westminster Municipal Code, entitled "Penalties and Interest," as it may be amended from time to time. The City may also collect unpaid fines and interest by placing a demand on the surety provided with the Land Disturbance Permit.

(3) Users desiring to dispute such fines must file a written request for the City Manager to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the City Manager may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The City Manager may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(4) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(G) ~~Emergency Suspensions~~ EMERGENCY SUSPENSIONS: The City Manager may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons, or which presents, or may present, an endangerment to the environment.

(1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City Manager may take such steps as deemed necessary, including immediate severance of the storm sewer connection, to prevent or minimize damage to the receiving waters, or endangerment to any individuals. The City Manager may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City Manager that the period of endangerment has passed.

(2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the City Manager prior to the date of any show cause or termination hearing under Sections 8-11-10(C) of this ~~Chapter~~ code.

(H) Nothing in this Section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this Section.

Section 448. Section 8-11-11, subsections (A) and (B) W.M.C., are hereby AMENDED as follows:

**8-11-11: JUDICIAL ENFORCEMENT REMEDIES:** (3391 3564)

(A) INJUNCTIVE RELIEF: When the City Manager finds that a user has violated, or continues to violate, any provision of this ~~Chapter ordinance~~, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may petition the District Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the land disturbance permit, order, or other requirement imposed by this ordinance on activities of the user. The City Manager may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(B) CIVIL PENALTIES:

(1) A user who has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall be liable to the City for a maximum civil penalty of \$1000 per violation, per day. In the case of an illicit discharge or a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(2) The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

(3) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

(4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

Section 9. Section 11-6-5, subsections (A), (B) and (E), W.M.C., are hereby AMENDED to read as follows:

(A) STANDARDS:- The City Manager ~~or his designee~~ is hereby authorized and directed to develop, promulgate, and determine the applicability of, enforce, and from time to time to amend the following design and construction standards: Standards and Specifications for the Design and Construction of Public Improvements (Standards and Specifications), the City of Westminster ~~Drainage Criteria Manual~~ Storm Drainage Design and Technical Criteria Manual (SDDTCM), and the City of Westminster Landscape Regulations ~~Sitework Specifications (Sitework Specifications)~~ for public and private landscaping.

(B) PREPARATION AND APPROVAL OF PLANS FOR PUBLIC IMPROVEMENTS:-

(1) All construction plans, specifications, and associated engineering reports required pursuant to this Code shall be prepared by, or under the direct supervision of, a professional engineer duly registered and licensed to practice engineering in the State of Colorado and shall bear the seal of said engineer.

(2) All construction plans, specifications, and associated engineering reports required pursuant to this Code shall be prepared in compliance with the City of Westminster Standards and Specifications for the Design and Construction of Public Improvements ~~and;~~ the City of Westminster ~~Drainage Criteria Manual~~ Storm Drainage Design and Technical Criteria Manual (SDDTCM), ~~and the City of Westminster Sitework Specifications.~~

(3) The approval by the City of any construction plan, specification, or report shall indicate only that the plan, specification, or report appears to be in conformance with the City's submittal requirements and that standard engineering principles and practices appear to have been followed. Any such approval shall not be deemed as an indication that any assumption, calculation, or conclusion

contained therein has been verified by the City. The professional engineer submitting the plans, specifications, and reports shall, at all times, be solely responsible for their accuracy and validity. If during the construction process, or at any time within one year following the acceptance by the City of the completed improvements, any deficiencies or errors are discovered in the plans, specifications, reports, or in the actual improvements as built, the City shall have the right to require any and all corrections which may be deemed necessary by the City. The costs associated with any such corrections shall be the sole responsibility of the developer.

(4) If the review and approval of any construction plan, specification, or report by the City has occurred more than twelve (12) months prior to execution of the public improvements agreement or commencement of construction activities, or if construction activities have been abandoned for a period of 12 months and the improvements are not substantially complete, the City shall have the right to require the submittal of such new or supplemental plans, specifications, and reports to insure compliance with the City's current standards and design criteria.

(5) If, after approval of the construction drawings by the City but prior to substantial completion of the public improvements, a court order, change in Colorado of federal law, or similar legal requirement occurs requiring the previously approved design to be changed, the City shall have the right to re-evaluate the plans and require that any such change be completed. The cost for such change shall be the sole responsibility of the developer.

...  
(E) CONSTRUCTION OF IMPROVEMENTS:

(1) No construction of any public improvement shall commence until the City has issued a written notice to proceed.

(2) The construction of all public and private improvements in areas of common ownership shall be completed in accordance with the approved construction drawings and specifications, the City of Westminster Standards and Specifications for the Design and Construction of Public Improvements, the City of Westminster ~~Drainage Criteria Manual~~ Storm Drainage Design and Technical Criteria Manual (SDDTCM), and the City of Westminster Landscape Regulations ~~and the City of Westminster Sitework Specifications~~.

Section 10. Section 11-7-7, W.M.C. "Soil Erosion and Sediment Control Regulations" is hereby REPEALED IN ITS ENTIRETY.

Section 11. This ordinance shall take effect upon its passage after second reading.

Section 12. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 26th day of November, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10<sup>th</sup> day of December, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office



# Agenda Item 10 A

## Agenda Memorandum

City Council Meeting  
December 10, 2012



**SUBJECT:** Resolution No. 39 re Intergovernmental Agreement with the City of Federal Heights concerning the 92<sup>nd</sup> Avenue and Federal Boulevard Intersection Improvement Project

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

### Recommended City Council Action

Approve Resolution No. 39 authorizing the City Manager to execute an Intergovernmental Agreement with the City of Federal Heights regarding the funding, design, contract administration and construction of intersection improvements at the intersection of 92<sup>nd</sup> Avenue and Federal Boulevard.

### Summary Statement:

- The City of Federal Heights recently entered into an Intergovernmental Agreement (IGA) with the Colorado Department of Transportation (CDOT) for the design and construction of improvements to the intersection of 92<sup>nd</sup> Avenue and Federal Boulevard. The design will begin upon approval of this IGA with construction of this project scheduled to start in early 2014.
- Improvements include double left turn lanes in all directions, combination right-turn/ through lanes for north-bound and south-bound Federal Boulevard, drainage improvements to remove the existing cross pan on 92<sup>nd</sup> Avenue, new sidewalks, a new mast-arm traffic signal and undergrounding of the overhead utilities.
- The proposed IGA between Westminster and Federal Heights provides that the two cities are responsible for an equal share of the local match to improve the intersection. The total estimated cost for this intersection improvement project is \$5.67M.
- The City of Federal Heights will be responsible for making the local match payment (\$1,201,000) to CDOT with Westminster reimbursing Federal Heights its share of the total local match of \$600,500.
- A portion of the funds (\$181,000) for the City's share of the local match (\$600,500) were appropriated by Councillor's Bill No. 23 approved by Council on July 9, 2012. The remaining additional funds (\$96,500 in 2013 and \$323,000 in 2014) were proposed through the City's 2013/2014 Budget process and will not be due to Federal Heights until these specified timeframes.
- The cities desire to enter into an agreement whereby the City of Federal Heights is reimbursed by Westminster for its share of the local match costs (\$600,500).
- The City of Federal Heights City Council passed and adopted a resolution approving the Intergovernmental Agreement at its regular meeting on November 20, 2012.

**Expenditure Required:** \$181,000 (appropriated in July 2012)  
\$419,500 (2013/ 2014 budget appropriation)

**Source of Funds:** General Capital Improvement Fund  
- Federal Boulevard Intersection Improvement Project

## **Policy Issue**

Should the City continue with the effort to provide improvements to the intersection of 92<sup>nd</sup> Avenue and Federal Boulevard and enter into an intergovernmental agreement with the City of Federal Heights so the project can proceed to construction?

## **Alternative**

This project has been a desire of both cities for many years. Since federal funds were secured by Federal Heights in its application to the Denver Regional Council of Governments, it is recommended that City Council approve this IGA with Federal Heights so the significant federal funds being contributed to this project are not lost.

## **Background Information**

The City of Federal Heights applied for and has been awarded Transportation Improvement Project (“TIP” or “Project”) federal funding from the Denver Regional Council of Governments (DRCOG) for the design, rights-of-way acquisition, and construction of intersection improvements at 92<sup>nd</sup> Avenue and Federal Boulevard. Westminster and Federal Heights have been interested in this project for many years. When the opportunity to obtain federal funding for the project was available, both cities agreed that Federal Heights would be the preferred applicant since DRCOG was looking for smaller communities in which to grant federal funds. Federal Heights has entered into an IGA with CDOT that requires it to make the local match payment for the project. The proposed IGA obligates Westminster to reimburse Federal Heights for one-half of the local match.

The total cost of the project is estimated to be \$5,671,000, which is made up of \$3,970,000 of federal funds, \$500,000 of CDOT funds and \$1,201,000 of local match funds. Westminster will be responsible for \$600,500 or one-half of the local match funds.

Project elements include the installation of double left turn lanes on all four legs of the intersection; combination right-turn/ through lanes for north-bound and south-bound Federal Boulevard; right turn lanes for 92<sup>nd</sup> Avenue in both directions; pedestrian walkways at all approaches, drainage improvements that will allow for the removal of the cross pan on 92<sup>nd</sup> Avenue; new mast arm traffic signals and the undergrounding of all overhead utility lines. The selection of a design consultant has been completed by the project sponsors (Westminster, Federal Heights and CDOT) with Muller Engineering winning this contract. Muller will begin design immediately upon Council’s approval of the attached IGA with Federal Heights. Construction of this project is scheduled for early 2014 and should be completed by the end of 2014.

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

Respectfully submitted,

J. Brent McFall  
City Manager

## **Attachments**

- IGA with Federal Heights
- Resolution
- Project Map



**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF WESTMINSTER AND THE CITY OF FEDERAL  
HEIGHTS REGARDING ADMINISTRATION OF THE 92<sup>ND</sup> AVENUE AND FEDERAL  
BOULEVARD (US 287) IMPROVEMENT PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this 10th day of December, 2012, by and between the City of Westminster, a home rule municipal corporation ("Westminster") and the City of Federal Heights, a home rule municipal corporation ("Federal Heights"), or collectively referred as the "Cities").

WITNESSETH

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, et seq., and 29-20-105 of the Colorado Revised Statutes and the Cities' respective Home Rule Charters authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, Federal Heights has been awarded Transportation Improvement Project ("TIP") federal funding from the Denver Regional Council of Governments for the design and construction of improvement of the intersection of 92<sup>nd</sup> Avenue and Federal Boulevard (the "Intersection"); and

WHEREAS, Federal Boulevard (US 287) is a state highway controlled by the Colorado Department of Transportation, which is also responsible for the traffic signal facilities located at the intersection; and

WHEREAS, TIP provides for the disbursement of federal funds to Federal Heights pursuant to the Colorado Department of Transportation's Stewardship Agreement with the Federal Highway Authority; and

WHEREAS, in accordance with the federal requirements Federal Heights serves as the "Local Agency" and is responsible for the local 30% match with the remainder 70% of the funds to come from the Federal Highway Authority; and

WHEREAS, as the Cities share common boundaries to the intersection of both Federal Boulevard (US 287) and 92nd Avenue, both will benefit from the project; and

WHEREAS, the Cities therefore agree to be equal contributors to the 30% local project match for the TIP; and

WHEREAS, the Cities desire to act cooperatively in carrying out the design and construction duties required to complete the project as described in the Scope of Work set forth in Exhibit A attached hereto (the "Project" or "Work"); and

WHEREAS, in conjunction with the Project, Federal Heights desires to relocate overhead utilities and replace water mains , which are located adjacent to but outside of the area subject to the Project's federal funding; and

WHEREAS, Federal Heights acknowledges that the proposed overhead utility and water main replacement work is not included in the Project's federal funding and agrees that it shall be solely responsible for the cost of such improvements and separately document all costs and activities associated with such work.

NOW THEREFORE in consideration of the promises and conditions contained herein, the Cities hereto agree as follows:

**1. ADMINISTRATION OF DESIGN CONSULTANTS.**

- A. Federal Heights shall prepare a Project scope of work and Request for Proposals for design services with assistance from Westminster staff.
- B. Westminster shall have authority to provide comment on the Project scope of work and Request for Proposals for design services.
- C. The Project shall be designed in accordance with Colorado Department of Transportation specifications unless otherwise stated in the Project scope of work and design contract.
- D. Upon finalization of a request for proposal for design services, Federal Heights shall advertise the Request for Proposals. Upon receipt of the proposals, Federal Heights shall select the design consultant based on consultant qualifications. Westminster shall have authority to review and provide input on the proposers. Federal Heights shall award and execute the contract for design services.
- E. Westminster shall have authority to attend all project design meetings and provide input on all decisions.
- F. Federal Heights shall execute all change orders to the design contract, however, Westminster and Federal Heights shall first jointly agree to any change orders.
- G. Federal Heights shall designate a Design Project Manager to conduct design review and coordination duties for the Project. Westminster shall designate a Design Project Manager to be involved with coordination with Federal Heights and to fulfill the responsibilities of this agreement. Each City's designated Design Project Manager shall remain current on all events impacting the Project and shall promptly respond to all issues.

## **2. ACQUISITION OF RIGHTS-OF-WAY AND EASEMENTS.**

- A. The design of the improvements shall determine the needs of the Cities to acquire rights-of-way and easements for locations of improvements and construction of improvements.
- B. Federal Heights shall have responsibility to negotiate and acquire any rights-of-way and easements necessary for the Project, however should negotiations fail concerning property located within Westminster then Westminster shall exercise its powers of eminent domain to acquire the necessary property interest.
- C. The Cities shall share information about the status of acquisition negotiations upon request by the other Party and agree to keep shared information confidential to the extent that state and local laws and regulations allow.

## **3. ADMINISTRATION OF CONSTRUCTION CONTRACTORS.**

- A. Federal Heights shall prepare Project bid documents with assistance from Westminster staff.
- B. Westminster shall have authority to provide comment on the Project bid documents.
- C. The Cities agree that the Project shall be constructed in accordance with Colorado Department of Transportation specifications and supplemented by each City's standard specifications, unless otherwise stated in the Project bid documents. The Cities agree that should either parties' use of the supplemental specifications result in additional costs the City requesting such work shall be responsible for any additional costs.
- D. Upon finalization of a request for bid documents, Federal Heights shall advertise for the selection of a general contractor. Upon receipt of the bids, Federal Heights shall select the general contractor based on contractor qualifications and bid price. Westminster shall have authority to review and provide input on the bidders. Federal Heights shall award and execute the construction contract.
- E. Westminster shall have authority to attend all construction coordination meetings and provide input on all decisions.
- F. Federal Heights shall execute all change orders to the construction contract, however, Westminster and Federal Heights shall first jointly agree to any change orders.

- G. Federal Heights shall designate a Construction Project Manager to conduct construction administration duties for the Project. Westminster shall designate a Construction Project Manager to be involved with coordination with Federal Heights and to fulfill the responsibilities of this Agreement. Each City's designated Construction Project Manager shall remain current on all events impacting the Project and shall promptly respond to all issues.

**4. ADDITIONAL WORK.**

The Cities may agree to add additional duties to the scopes of work and authorize change orders which include work not set forth in the TIP funding on the condition that the City requesting the change order agrees to be solely responsible for all additional costs and duties and separately documents all costs and activities associated with such work. In accordance with such requirements, the Cities agree to Federal Heights request that the scopes of work include the relocation of overhead utilities and replacement of water mains that are adjacent to but outside of the Project's federally funded scope(s) of work.

**5. PROJECT FUNDING.**

- A. The Cities agree that all costs attributable to the 30% local match for the TIP shall be shared equally between Federal Heights and Westminster.
- B. Federal Heights shall reimburse all project costs to contractors and consultants. Westminster shall reimburse Federal Heights within 30 calendar days of receipt of a payment request. Westminster's total share of the project costs shall not exceed \$600,500 without amendment to this Intergovernmental Agreement.
- C. Prior to the submittal by Federal Heights for any requests for reimbursement, the Cities shall work cooperatively and agree to the form and submittal requirements for a reimbursement request.
- D. Any costs for change orders agreed to by the Cities which are within the scope of the TIP Work shall be borne equally by both Cities.
- E. Any provisions of the scopes of work or related change orders subject to the terms of Section 4: ADDITIONAL WORK shall be borne solely by the responsible party.

F. All payments to contractors subject to the terms of t Section 4: ADDITIONAL WORK shall be invoiced and recorded separately from TIP payment requests.

**6. TERM / APPROPRIATION.**

This Agreement shall terminate upon completion of the Project. The Parties will use their best efforts to complete the Project tasks according to the following schedule:

|  |                    |
|--|--------------------|
| Design and Environmental Clearances:   | February 28, 2013  |
| Easement and Right-of-Way Acquisition: | September 30, 2013 |
| Construction:                          | September 30, 2014 |

This Agreement may be terminated in writing by either of the Cities, but only if (1) there are no outstanding appropriated contract obligations and (2) the consultant or contractor's final price for the Project exceeds the appropriated amount of Project funds. All costs associated with the cancellation, of any Project contracts thereof, shall be paid by the Party responsible for the cancellation of the Project contract. If both Parties agree to cause the cancellation of any Project contract, all costs associated with the cancellation will be shared equally by the Cities.

Notwithstanding any provision of this Agreement the Cities agree that any obligation of either party payable after the current fiscal year is contingent upon the funds for such purpose being appropriated and otherwise made available by the Cities' respective Councils and that nothing herein shall be deemed to constitute a multiple year obligation of the Cities as set forth in Article X Section 20 of the Colorado Constitution.

**7. DISPUTE RESOLUTION.**

In the event of any disagreement associated with the Project and prior to the commencement of any formal proceedings, the Parties shall continue performance as set forth in this Agreement and the Project Managers in good faith shall attempt to resolve the dispute. In the event the Project Managers are unable to reach agreement and one of the Project Managers concludes that a good faith amicable resolution through continued negotiation of the matter at issue does not appear likely, such Project Manager shall notify the other Party in writing. In that event, the Project Managers shall refer such dispute to the City Manager of each jurisdiction to resolve such dispute.

In the event the City Managers reach such an impasse relating to a decision or issue that threatens to significantly delay or stop construction of the Project, the City Managers shall refer the dispute to a mutually acceptable Independent Decision-maker to make an interim decision and /or determination that will allow

construction of the Project to proceed according to the Project's schedule. The Parties agree to share equally the fees of the Independent Decision-maker.

While each Party agrees to abide by said interim decision until the Project has been substantially completed, it shall do so under a complete reservation of its rights and without prejudice to any claims it may have against the other Party or others.

**8. NOTICE.**

Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally served or sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other party or Cities. Such notice shall be deemed to have been given when deposited in the United States Mail.

City of Westminster  
Brent McFall, City Manager  
4800 W. 92nd Avenue  
Westminster, CO 80031

City of Federal Heights  
Dave Blanchard, City Manager  
2380 W. 90<sup>th</sup> Avenue  
Federal Heights, CO 80260

**9. LITIGATION.**

Each Party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions.

**10. INTEGRATION AND AMENDMENT.**

This Agreement represents the entire Agreement between the Cities and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Cities.

**11. TERMINATION OF AGREEMENT.**

This Agreement may be terminated in writing by either of the Cities, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of the Cities and only upon the cancellation of all contingent,



outstanding contracts, or portion thereof. All costs associated with the cancellation, of any contingent contracts, shall be paid equally by the Cities.

**12. VENUE.**

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

**13. SEVERABILITY.**

If any article, section, paragraph, sentence, clause or phrase of this Agreement 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 Agreement.

**14. WAIVER OF BREACH.**

A waiver by any party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**15. PARAGRAPH CAPTIONS.**

The captions of the paragraphs are set forth only for the convenience and reference of the Cities and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

**16. GOVERNMENTAL IMMUNITY.**

The Cities acknowledge that each Party, their officers, and employees, are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as it is from time to time amended, or otherwise available to the Cities, their officers, or employees.

IN WITNESS WHEREOF, the Parties here have executed this Agreement to be effective as of the date first above written.

**CITY OF WESTMINSTER, COLORADO**

\_\_\_\_\_  
Nancy McNally, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Martin McCullough, City Attorney

**CITY OF FEDERAL HEIGHTS, COLORADO**

\_\_\_\_\_  
Joyce Thomas, Mayor

ATTEST:

\_\_\_\_\_  
Patti K. Lowell , City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William Hayashi, City Attorney

RESOLUTION

RESOLUTION NO. 39

INTRODUCED BY COUNCILLORS

SERIES OF 2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTMINSTER, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FEDERAL HEIGHTS AND THE CITY OF WESTMINSTER FOR THE DESIGN, RIGHTS-OF-WAY ACQUISITION AND CONSTRUCTION OF INTERSECTION IMPROVEMENTS AT 92<sup>ND</sup> AVENUE AND FEDERAL BOULEVARD**

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, *et seq.*, and 29-20-105 of the Colorado Revised Statutes and the City of Federal Heights ("Federal Heights") and the City of Westminster ("Westminster") Home Rule Charters authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, Federal Heights has been awarded Transportation Improvement Project ("TIP" or "Project") federal funding from the Denver Regional Council of Governments for the design, rights-of-way acquisition, and construction of intersection improvements at 92<sup>nd</sup> Avenue and Federal Boulevard.

WHEREAS, Federal Boulevard (US 287) is a state highway controlled by the Colorado Department of Transportation ("CDOT"); and

WHEREAS, TIP provides for the disbursement of federal funds to Federal Heights pursuant to CDOT's Stewardship Agreement with the Federal Highway Authority; and

WHEREAS, in accordance with the federal requirements, Federal Heights shall serve as the "Local Agency" and is responsible for the local 30% match with the remainder 70% of the funds to come from the Federal Highway Authority; and

WHEREAS, to fulfill its obligations as the Local Agency and ensure compliance with the Stewardship Agreement the City has entered into an intergovernmental agreement with CDOT; and

WHEREAS, as Federal Heights shares common boundaries to the intersection of both Federal Boulevard (US 287) and 92<sup>nd</sup> Avenue with the City of Westminster, both will benefit from the Project; and each has agreed to be equal contributors to the local 30% match and to work cooperatively on the Project in accordance with the terms and conditions set forth in a forthcoming intergovernmental agreement; and

WHEREAS, the Parties agree that the Project's improvements to the intersection will ease traffic congestion and improve air quality, as well as driver and pedestrian access and safety.

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

The Intergovernmental Agreement between the City of Federal Heights and the City of Westminster for the design, acquisition of rights-of-way, and construction of intersection improvements at 92<sup>nd</sup> Avenue and Federal Boulevard, is approved in substantially the same form as the copy attached hereto and made a part of this resolution, and the Mayor is authorized to execute such agreement on behalf of the City.

PASSED AND ADOPTED this 10th day of December 2012.

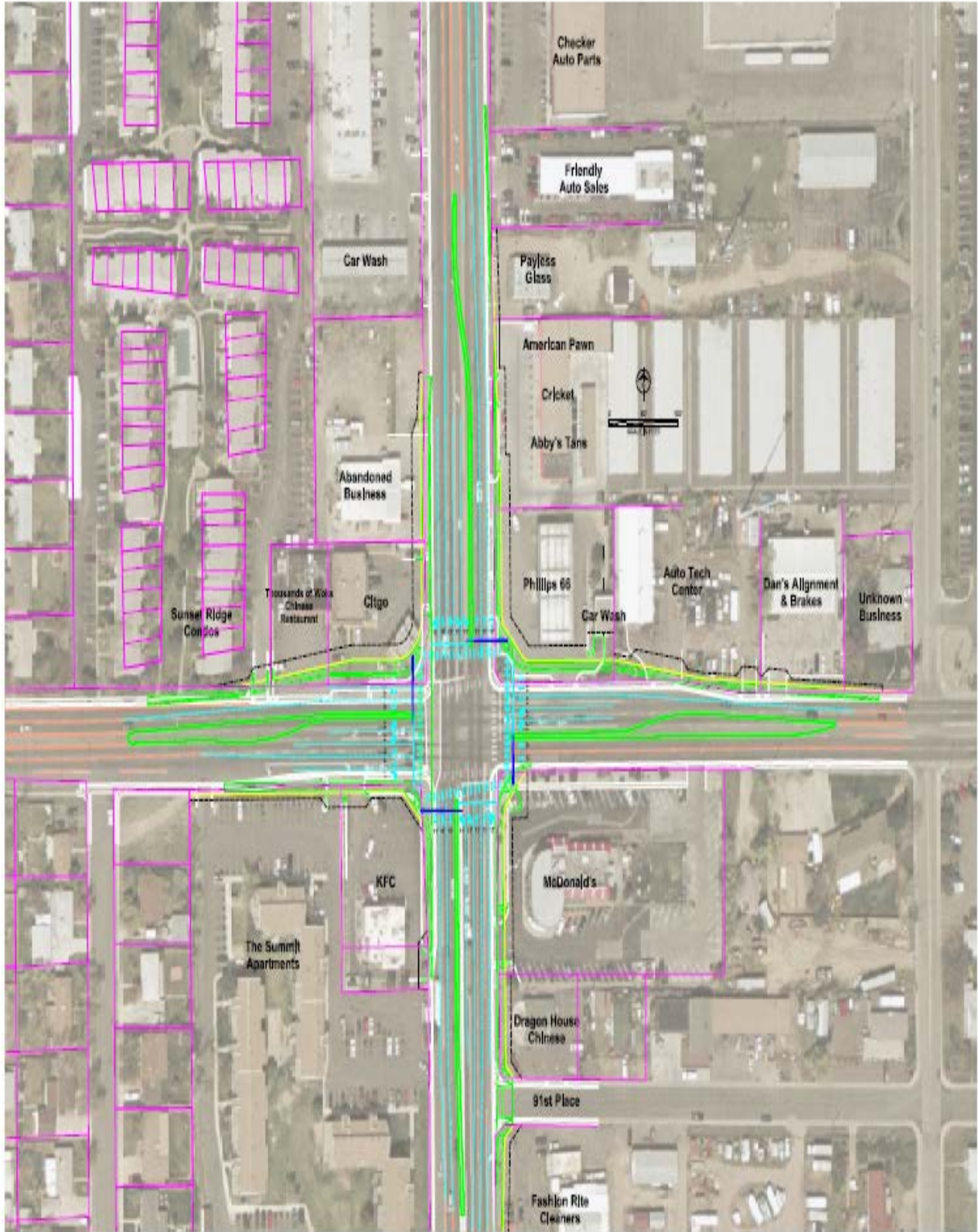
ATTEST:

\_\_\_\_\_  
Nancy McNally, Mayor

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
Marty McCullough, City Attorney



**92<sup>nd</sup> Avenue and Federal Boulevard Intersection Improvement Project**

# **AGENDA**

## **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING**

**MONDAY, December 10, 2012**

**AT 7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (October 8, 2012)
- 3. Purpose of Special WEDA Meeting is to consider**
  - A. Westminster Center Urban Reinvestment Project Consultant Contracts
  - B. Westminster Center Urban Reinvestment Project Special Legal Counsel
- 4. Adjournment**



CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, OCTOBER 8, 2012, AT 7:50 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter, and Board Members Atchison, Briggs, Kaiser, Lindsey, and Major. Also present were Stephen P. Smithers, Acting Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Lindsey, to approve the minutes of the meeting of September 24, 2012, as written. The motion carried unanimously.

PUBLIC HEARING TO AMEND 2012 BUDGET

At 7:51 p.m., the Chairperson opened a public hearing to consider the 2013/2014 proposed budget. Staff was in attendance to respond to any questions from the Board. There were no questions, and when the Chairperson opened the floor for public comment, no one wished to speak. At 7:52 p.m., Chairperson McNally closed the hearing.

RESOLUTION NO. 147 ADOPTING THE 2013 AND 2014 BUDGET

It was moved by Councillor Briggs, seconded by Councillor Major, to adopt Resolution No. 147 adopting the 2013 and 2014 proposed budget for the Westminster Economic Development Authority as presented, including the appropriation of funds as set forth. The motion carried unanimously on roll call vote.

ADJOURNMENT

There was no further business for the Authority's consideration, and it was moved by Atchison, seconded by Major, to adjourn. The motion passed and the meeting adjourned at 7:53 p.m.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

# WEDA Agenda Item 3 A

## Agenda Memorandum

Westminster Economic Development Authority  
December 10, 2012



**SUBJECT:** Westminster Center Urban Reinvestment Project Consultant Contracts

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

### Recommended Board Action

Authorize the Executive Director to enter into one-year agreements with the Laramie Company and John M Mullins and Associates, Inc. to provide consultant services regarding the redevelopment of the Westminster Mall property.

### Summary Statement

- The Westminster Mall redevelopment project is gaining significant momentum.
- Consultants were brought on board to help facilitate the project.
- WEDA 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 \$290,200

**Source of Funds:** WEDA – Westminster Center Urban Reinvestment Project

**Policy Issue**

Should the City continue to work with highly respected consultants to assist with moving forward on the redevelopment of the Westminster Mall property?

**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**

Over the past few years, staff, along with the consultant team has moved the WURP forward significantly. Highlights include:

- Acquisition of the majority of the WURP property at or below anticipated costs.
- Demolition of the former mall.
- Actively moved the project forward with a national developer.
- Transitioned the former mall to close down all but the remaining five tenants.

The outside team assembled for the Westminster Center Urban Reinvestment Project is the same group that WEDA Staff worked with on The Orchard:

- John Mullins, Mullins & Associates, Inc., provides commercial financing expertise, assists with the development of business terms, as well as strategic assistance.
- Mary Beth Jenkins, The Laramie Company, provides retail expertise, guidance on the appropriate tenant mix, review and feedback concerning sales projections and costs, and provides market data as needed.

Contracts with Mullins and Associates, Inc. and The Laramie Company need WEDA authorization since the amount of both contracts exceed the Executive Director's approval authority. The work of these individuals will be critical to achieving the broad vision WEDA has for the former Westminster Mall site.

Respectfully submitted,

J. Brent McFall  
Executive Director

**Attachments**

- Agreement with The Laramie Company
- Agreement with John M. Mullins and Associates, Inc.

**AGREEMENT WITH THE LARAMIE COMPANY TO FURNISH SERVICES  
TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR  
REDEVELOPMENT OF THE WESTMINSTER MALL PROPERTY**

THIS AGREEMENT, made and entered into this 10th day of December, 2012, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the "WEDA," and The Laramie Company, a limited Liability Company organized pursuant to the laws of the State of Colorado hereinafter called the "Consultant," is as follows:

WHEREAS, the WEDA wishes to redevelop the Westminster Mall area; and

WHEREAS, the WEDA desires to engage the Consultant to render the professional retail consulting 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.

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

This Agreement is expressly contingent upon the approval of the WEDA of all the terms set forth herein. In the event this Agreement is not approved in its entirety by WEDA, neither Party shall be bound to the terms of this Agreement.

**I. THE PROJECT**

The project consists of providing retail consulting services to City of Westminster staff to support redevelopment of the Westminster Mall site.

**II. CONSULTANT'S SERVICES AND RESPONSIBILITIES**

The Consultant shall provide general retail consulting services, including:

- Assisting with negotiation for the pre-development and final development agreements
- Providing competitive market data and retail demographic information

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 necessary to complete the Project.

**III. ADDITIONAL SERVICES**

When authorized in writing by the WEDA, the Consultant agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written

agreement between the WEDA and Consultant as to additional compensation for additional services.

#### IV. CONSULTANT'S FEE

Monthly Retainer. As compensation for the basic services described in this Agreement, the Consultant shall be paid a lump sum monthly fee of ten thousand five hundred dollars (\$10,500).

Preliminary Finance Agreement Bonus. Immediately following approval of the Preliminary Finance Agreement by both WEDA and the developer, the WEDA shall pay consultant a fee equal to Twenty-Five Thousand Dollars (\$25,000). The timing to pay this bonus may be extended by WEDA.

Final Development Agreement Bonus. Immediately following execution of a Final Development Agreement (or such similar agreement), the WEDA shall pay Consultant a fee equal to Twenty-five Thousand Dollars (\$25,000). The timing to pay this bonus may be extended by the WEDA.

Said fees shall constitute full and complete payment for services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

#### V. COMMENCEMENT & COMPLETION OF PROJECT

Consultant understands and agrees that time is an essential requirement of this Agreement. The Project shall be completed as soon as good practice and due diligence will permit. Service begins effective January 1, 2013, and shall be completed by December 31, 2013, exclusive of time lost or due to delays beyond the control of the Consultant.

#### VI. TERMINATION

This Agreement shall terminate at the date of December 31, 2013 or the execution of the Final Development Agreement, unless agreed otherwise by the parties. This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon the WEDA providing Consultant with seven (7) days advance written notices, whichever occurs first. In the event the Agreement is terminated by the WEDA's issuance of said written notice of intent to terminate, the WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services the WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

#### VII. INSURANCE

During the course of the Project, 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 WEDA shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by the WEDA, 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 WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the WEDA in writing within two days of the cancellation of or substantive change to any of the insurance policies set out herein, and failure to do so shall constitute a breach of this Agreement.

#### 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 WEDA 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 Project, the Consultant shall act as an independent contractor and not as agent of the WEDA except to the extent the Consultant is specifically authorized to act as agent of the WEDA.

B. Books and Records. The Consultant's books and records with respect to the Project and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the WEDA'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 Project.

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of the WEDA and Consultant. Upon completion of the Project, or at such other time as the WEDA may require, the Consultant shall deliver to the WEDA a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to the WEDA and such additional copies thereof as the WEDA may request, corrected as of the date of completion of the Project.

#### D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to the WEDA for any loss, damages or costs incurred

by the WEDA for the repair, replacement or correction of any part of the Project that 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 WEDA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Project, 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 WEDA may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the WEDA on account of such injuries.

In any and all claims against the WEDA 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.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of the WEDA and the Consultant.

**Project Representative for WEDA:**

Name: Susan Grafton  
Address: 4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80031  
Phone: 303-658-2113  
email: sgrafton@cityofwestminster.us

**Project Representative for Consultant:**

Name: Mary Beth Jenkins  
Address: 730 17<sup>th</sup> Street, Ste. 840  
Denver, CO 80202  
Phone: 303-573-4811  
email: mb@laramiecompany.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of the WEDA and the Consultant or shall be sent via registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. When sent via registered mail, notices 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 WEDA; 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 Project 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 Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Consultant may not employ additional subcontractors to perform work on the Project without the WEDA'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 either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

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.

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

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

Consultant 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).

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO CITY MANAGERS OFFICE, ATTENTION: \_SUSAN GRAFTON.

REMAINDER OF PAGE INTENTIONALLY BLANK.  
SIGNATURE PAGE FOLLOWS.

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

THE LARAMIE COMPANY

WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Mary Beth Jenkins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Address:

Address:

730 Seventeenth St., Ste. 840  
Denver, CO 80202

4800 West 92nd Avenue  
Westminster, Colorado 80031

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Secretary

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By: \_\_\_\_\_

Authority Attorney

Rev. 3/12

**AGREEMENT WITH JOHN M. MULLINS AND ASSOCIATES, INC. TO FURNISH SERVICES  
TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR  
REDEVELOPMENT OF THE WESTMINSTER MALL PROPERTY**

THIS AGREEMENT, made and entered into this 10th day of December, 2012, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the "WEDA," and **JOHN M. MULLINS & ASSOCIATES, INC.**, a corporation organized pursuant to the laws of the State of Colorado hereinafter called the "Consultant," is as follows:

WHEREAS, the WEDA wishes to redevelop the Westminster Mall area; and

WHEREAS, the WEDA desires to engage the Consultant to render the professional retail consulting 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.

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

This Agreement is expressly contingent upon the approval of the WEDA of all the terms set forth herein. In the event this Agreement is not approved in its entirety by WEDA, neither Party shall be bound to the terms of this Agreement.

**I. THE PROJECT**

The project consists of providing retail consulting services to City of Westminster staff to support redevelopment of the Westminster Mall site.

**II. CONSULTANT'S SERVICES AND RESPONSIBILITIES**

The Consultant shall provide general retail consulting services, including:

- Assisting with negotiation for the pre-development and final development agreements
- Providing competitive market data and retail demographic information

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 necessary to complete the Project.

**III. ADDITIONAL SERVICES**

When authorized in writing by the WEDA, the Consultant agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written

agreement between the WEDA and Consultant as to additional compensation for additional services.

#### IV. CONSULTANT'S FEE

Monthly Retainer. As compensation for the basic services described in this Agreement, the Consultant shall be paid a lump sum monthly fee of five thousand three hundred fifty dollars (\$5,350).

Preliminary Finance Agreement Bonus. Immediately following approval of the Preliminary Finance Agreement by both WEDA and the developer, the WEDA shall pay consultant a fee equal to Twenty-five Thousand Dollars (\$25,000). The timing to pay this bonus may be extended by WEDA.

Final Development Agreement Bonus. Immediately following execution of a Final Development Agreement (or such similar agreement), the WEDA shall pay Consultant a fee equal to Twenty-five Thousand Dollars (\$25,000). The timing to pay this bonus may be extended by the WEDA.

Said fees shall constitute full and complete payment for services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

#### V. COMMENCEMENT & COMPLETION OF PROJECT

Consultant understands and agrees that time is an essential requirement of this Agreement. The Project shall be completed as soon as good practice and due diligence will permit. Service begins effective January 1, 2013, and shall be completed by December 31, 2013, exclusive of time lost or due to delays beyond the control of the Consultant.

#### VI. TERMINATION

This Agreement shall terminate at the date of December 31, 2013 or the execution of the Final Development Agreement, unless agreed otherwise by the parties. This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon the WEDA providing Consultant with seven (7) days advance written notices, whichever occurs first. In the event the Agreement is terminated by the WEDA's issuance of said written notice of intent to terminate, the WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services the WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

#### VII. INSURANCE

During the course of the Project, 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 WEDA shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by the WEDA, 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 WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the WEDA in writing within two days of the cancellation of or substantive change to any of the insurance policies set out herein, and failure to do so shall constitute a breach of this Agreement.

#### 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 WEDA 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 Project, the Consultant shall act as an independent contractor and not as agent of the WEDA except to the extent the Consultant is specifically authorized to act as agent of the WEDA.

B. Books and Records. The Consultant's books and records with respect to the Project and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the WEDA'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 Project.

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of the WEDA and Consultant. Upon completion of the Project, or at such other time as the WEDA may require, the Consultant shall deliver to the WEDA a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to the WEDA and such additional copies thereof as the WEDA may request, corrected as of the date of completion of the Project.

#### D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to the WEDA for any loss, damages or costs incurred

by the WEDA for the repair, replacement or correction of any part of the Project that 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 WEDA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Project, 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.

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 WEDA may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the WEDA on account of such injuries.

In any and all claims against the WEDA 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.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of the WEDA and the Consultant.

**Project Representative for WEDA:**

Name: Susan Grafton  
Address: 4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80031  
Phone: 303-658-2113  
email: sgrafton@cityofwestminster.us

**Project Representative for Consultant:**

Name: John M. Mullins  
Address: 1988 E. Ross Lane  
Highlands Ranch, CO 80126  
Phone: 303-683-9382  
email: jmmwurd@aol.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of the WEDA and the Consultant or shall be sent via registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. When sent via registered mail, notices 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 WEDA; 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 Project 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 Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Consultant may not employ additional subcontractors to perform work on the Project without the WEDA'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 either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

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.

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

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

Consultant 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).

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO CITY MANAGERS OFFICE, ATTENTION: SUSAN GRAFTON.

REMAINDER OF PAGE INTENTIONALLY BLANK.  
SIGNATURE PAGE FOLLOWS.

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

JOHN M MULLINS & ASSOCIATES, INC.

WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: John M. Mullins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Address:

Address:

1988 E. Ross Lane  
Highlands Ranch, CO 80126

4800 West 92nd Avenue  
Westminster, Colorado 80031

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Secretary

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By: \_\_\_\_\_  
Authority Attorney

Rev. 3/12

# WEDA Agenda Item 3 B

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
December 10, 2012



**SUBJECT:** Westminster Center Urban Reinvestment Project Special Legal Counsel

**Prepared By:** Susan Grafton, Economic Development Manager  
Marty McCullough, City Attorney

### Recommended Board Action

Authorize the Executive Director to enter into an agreement with Murray Dahl Kuechenmeister & Renaud, LLP for legal representation related to the Westminster Center Urban Reinvestment Project and general urban renewal and eminent domain matters in an amount not to exceed \$125,000.

### Summary Statement

- Malcolm Murray has served as special legal counsel in the past in connection with the Westminster Center Urban Reinvestment Project, and the City's various other urban renewal projects, including Mandalay and Orchard Town Center Urban Renewal Projects.
- City Council and the Authority have previously found merit in approving special legal counsel to assist the City Attorney's Office as needed, rather than expanding staff.
- Funds for this expense were budgeted and are available as part of the Westminster Center Urban Reinvestment Project (WURP) CIP account.

**Expenditure Required:** Not to exceed \$125,000

**Source of Funds:** WEDA Budget - Westminster Center Urban Reinvestment Project

**Policy Issue**

Should the Westminster Economic Development Authority (WEDA) retain special legal counsel to assist the City and WEDA in connection with the Westminster Center Urban Reinvestment Project and general urban renewal and eminent domain issues as needed?

**Alternative**

Do not retain this type of special legal counsel assistance or seek such assistance from another source. This alternative is not recommended given the need for specialized legal services in urban renewal law and potential eminent domain matters related to the redevelopment of the Westminster Mall site and other City and WEDA projects. Mr. Murray’s proposed fee of \$250 per hour is well within the Denver area market for such services.

**Background Information**

Malcolm Murray is a partner in the firm of Murray Dahl Kuechenmeister & Renaud LLP. His practice specializes in urban renewal and land use matters and eminent domain litigation for both public and private entities. In addition to WEDA, he currently advises the Denver Urban Renewal Authority, the Lakewood Reinvestment Authority, the Steamboat Springs Redevelopment Authority, and the Parker Authority for Reinvestment on urban renewal matters. Mr. Murray is a graduate of the University of Denver College of Law and has a M.A. in Government from Georgetown University and a B.S. from the United States Military Academy at West Point.

Mr. Murray’s expertise is in redevelopment projects pursuant to the Colorado urban renewal law. Mr. Murray has been providing a significant amount of legal work to the City and WEDA related to the negotiation and drafting of agreements with the WURP redeveloper. In addition Mr. Murray has been providing special legal counsel services related to the South Westminster Transit Oriented Development Project and assisting as needed staff in other urban renewal and eminent domain matters.

Action on this item addresses the following Strategic Plan goals: Strong Balanced Local Economy, Financially Sustainable City Government Providing Exceptional Services, and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment – Contract

## CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this \_\_\_\_ day of December, 2012, by and between MURRAY DAHL KUECHENMEISTER & RENAUD LLP, Attorneys at Law (the "Firm") and the THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY ("WEDA").

### RECITALS

1. The City is desirous of contracting with the Firm for legal services.
2. The Firm and its attorneys are authorized to practice law in the State of Colorado.

### AGREEMENT

1. The Firm shall furnish special legal services to WEDA in connection with the Westminster Center Urban Reinvestment and general urban renewal and eminent domain matters (the "Services").
2. Malcolm M. Murray of the Firm shall be principally responsible for the Services.
3. The Firm is acting as an independent contractor; therefore, WEDA will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.
4. WEDA shall pay for the Services at the rate not to exceed \$250 per hour.
5. This Contract may be terminated by WEDA with or without cause.
6. No payments to the Firm shall be made prior to the approval of this Contract by the Westminster Economic Development Authority.
7. Payments pursuant to this Contract shall not exceed \$125,000 without further written authorization by WEDA.
8. WEDA authorized this contract on December 10, 2012.
9. 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: The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, the Firm 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. If the Firm obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Firm shall notify the subcontractor and WEDA within three (3) days that the Firm has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, the Firm 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 the Firm 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.

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

Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

The Firm 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).

To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Firm certifies that at the time of bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that the Firm will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**MURRAY DAHL KUECHENMEISTER & RENAUD LLP**

By \_\_\_\_\_  
Malcolm M. Murray

**WESTMINSTER ECONOMIC DEVELOPMENT  
AUTHORITY**

By \_\_\_\_\_  
J. Brent McFall  
Executive Director

Approved as to legal form:

\_\_\_\_\_  
City Attorney's Office