



CITY COUNCIL AGENDA

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

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

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings**
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 citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.

8. **Consent Agenda**
 - A. Memo of Understanding with Adams County re Mosquito Control
 - B. Legal Services Agreement with Carlson Hammond & Paddock re Special Water Counsel Services
 - C. Policy for Metropolitan Special District Formation
 - D. Second Reading CB No. 82 re Lease with Westminster Historical Society (Dittman-Davia)
 - E. Second Reading CB No. 84 re Supplemental Approp Sale Hyland Hills (Hicks-Dixon)
 - F. Second Reading CB No. 85 re Wayne Carl Middle School Supplemental Approp (Dittman-Hicks)
 - G. Second Reading CB No. 86 re Exception to Open Containers of Alcoholic Beverages (Davia – Price)
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
 - A. Public Hearing re Walker Open Space Property 4.8 acres East of Wadsowrth Pkwy at 106th Avenue
 - B. Resolution No. 73 re Annexation Finding re Walker Open Space Property
 - C. Councillor's Bill No.87 re Annexation of Walker Open Space Property
 - D. Councillor's Bill No. 88 re CLUP Amendment re Walker Open Space Property
 - E. Councillor's Bill No. 89 re Zoning Walker Open Space Property
 - F. Public Hearing re Bott Open Space Property 1.6 acres of 1.6 acres SWC Wadsworth Blvd @ RR Tracks
 - G. Resolution No. 74 re Annexation Finding re Bott Open Space Property
 - H. Councillor's Bill No.90 re Annexation of Bott Open Space Property
 - I. Councillor's Bill No. 91 re CLUP Amendment re Bott Open Space Property
 - J. Councillor's Bill No. 92 re Zoning re Bott Open Space Property
 - K. Public Hearing re Harris Park – Site IV NWC Lowell Boulevard and 73rd Avenue
 - L. Councillor's Bill No. 93 re CLUP Amendment re Harris Park – Site IV
 - M. Councillor's Bill No. 94 re Rezoning Harris Park – Site IV
 - N. Preliminary/Official Development Plan re Harris Park – Site IV
 - O. Public Hearing re Assembly of God Subdivision 9050 Yates Street
 - P. Councillor's Bill No. 95 re CLUP Amendment re Assembly of God Subdivision
 - Q. Councillor's Bill No. 96 re Rezoning Assembly of God Subdivision
 - R. 1st Amended Preliminary and 4th Amended Official Development Plan re Assembly of God Subdivision
 - S. Resolution No. 75 re Compliance of McGuire Open Space Annexation Petition
 - T. Forest City Final Development Agreement
 - U. Conveyance of 135 acres (Caldwell/Sheltie parcel) to WEDA
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Citizen Presentations (longer than 5 minutes) and Miscellaneous Business**
 - A. City Council
13. **Adjournment**

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, DECEMBER 13, 2004 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor McNally, Mayor Pro-Tem Kauffman and Councillors Dittman, Dixon, Hicks and Price were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Michele Kelley, City Clerk, were also present. Absent none.

CONSIDERATION OF MINUTES

Councillor Hicks moved, seconded by Dixon to approve the minutes of the meeting of November 22, 2004. The motion carried unanimously.

CITY MANAGER COMMENTS

Brent McFall, City Manager, commented on the Holiday lighting ceremony and thanked the Parks employees for all the decorations they made and displayed. The City has been selected to attend the International City Management Symposium for best practices regarding performance measures.

CITY COUNCIL COMMENTS

Councillor Sam Dixon commented on the meeting with State legislature members including the two newly elected members who will be representing Westminster.

Councillor Hicks wished all a happy holiday.

Councillor Dixon commented on the City's Christmas Party that was coordinated by the IT Department.

Mayor Pro Tem Kauffman commented on his wish for a successful legislative year.

Mayor McNally commented on grand opening of the new Splitz bowling center at The Promenade.

CITIZEN COMMUNICATION:

Debbie , 11205 Wyandot voiced her concerns about the traffic on 112th Avenue and the difficulty in getting out of her subdivision.

CONSENT AGENDA

The following items were considered as part of the consent agenda: Memo of Understanding with Adams County re Mosquito Control; Legal Services Agreement with Carlson Hammond & Paddock re Special Water Counsel Services not to exceed \$250,000; Policy for Metropolitan Special District Formation; Second Reading CB No. 82 re Lease with Westminster Historical Society; Second Reading CB No. 84 re Supplemental Appropriation Sale Hyland Hills; Second Reading CB No. 85 re Wayne Carl Middle School Supplemental Appropriation; Second Reading CB No. 86 re Exception to Open Containers of Alcoholic Beverages

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

Councillor Dixon moved, seconded by Hicks to adopt the consent agenda items as presented. The motion carried unanimously.

PUBLIC HEARING RE WALKER OPEN SPACE PROPERTY:

At 7:13 p.m. a public hearing was opened to consider the annexation, comprehensive land use plan amendment and zoning of the 4.8 acres Walker Open Space Property, located east of Wadsworth Parkway at 106th Avenue. Dave Falconieri, Planner provided a power point presentation, entered copies of the agenda memorandum and other related items as exhibits. No other persons spoke. The public hearing was declared closed at 7:15 P.M.

RESOLUTION NO. 73 RE ANNEXATION FINDING RE WALKER OPEN SPACE PROPERTY

Councillor Dittman moved, seconded by Dixon to adopt Resolution No. 73 making certain findings of fact as required under Section 31-12-110 C.R.S. regarding the annexation of the Walker property. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 87 RE ANNEXATION WALKER OPEN SPACE PROPERTY

Councillor Dittman moved, seconded by Dixon to pass Councillor's Bill No. 87 on first reading annexing the Walker open space property. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 88 RE CLUP RE WALKER OPEN SPACE PROPERTY

Councillor Dittman moved, seconded by Dixon to pass Councillor's Bill No. 88 on first reading amending the Comprehensive Land Use Plan changing the designation of the Walker property from Northeast Comprehensive Development Plan to Public Open Space. This action is based on the following findings: The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and the proposed amendment is compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. . Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 89 RE ZONING WALKER OPEN SPACE PROPERTY

Councillor Dittman moved, seconded by Dixon to pass Councillor's Bill No. 89 on first reading zoning the Walker Property O-1. This action is based on the finding that the criteria enumerated in Section 11-5-3 of the Westminster Municipal Code have been met. Upon roll call vote, the motion carried unanimously.

PUBLIC HEARING RE BOTT OPEN SPACE PROPERTY

At 7:17 p.m. a public hearing was opened to consider the annexation, comprehensive land use plan amendment and zoning of the 1.6 acres Bott Open Space Property, located at the southwest corner of Wadsworth Boulevard at the railroad tracks. Dave Falconieri, Planner provided a power point presentation, entered copies of the agenda memorandum and other related items as exhibits. No other persons spoke. The public hearing was declared closed at 7:20 P.M.

RESOLUTION NO. 74 RE ANNEXATION FINDING RE BOTT OPEN SPACE PROPERTY

Mayor Pro Tem Kauffman moved, seconded by Price to adopt Resolution No. 74 making certain findings of fact as required under Section 31-12-110 C.R.S. regarding the annexation of the Bott open space property. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 90 RE ANNEXATION BOTT OPEN SPACE PROPERTY

Mayor Pro Tem Kauffman moved, seconded by Dittman to pass Councillor's Bill No. 90 on first reading annexing the Bott open space property. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 91 RE CLUP RE BOTT OPEN SPACE PROPERTY

Mayor Pro Tem Kauffman moved, seconded by Dixion to pass Councillor's Bill No. 91 on first reading amending the Comprehensive Land Use Plan changing the designation of the Bott property from Northeast Comprehensive Development Plan to Public Open Space. This action is based on the following findings: The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and the proposed amendment is compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 92 RE ZONING WALKER OPEN SPACE PROPERTY

Mayor Pro Tem Kauffman moved, seconded by Price to pass Councillor's Bill No. 92 on first reading zoning the Bott Property O-1. This action is based on the finding that the criteria enumerated in Section 11-5-3 of the Westminster Municipal Code have been met. Upon roll call vote, the motion carried unanimously.

PUBLIC HEARING RE HARRIS PARK – SITE IV:

At 7:22 p.m. a public hearing was opened to consider the comprehensive land use plan amendment and rezoning of the Harris Park – Site IV, located at the northwest corner of Lowell Boulevard and 73rd Avenue. Dave Shinneman, Planning Manager, entered copies of the agenda memorandum and other related items as exhibits. Steve Davis of Community Builders provided a power point presentation and Vi June, 7500 Wilson Court representing the Westminster Progressive Homeowners Association spoke in favor of this development. The public hearing was declared closed at 7:34 P.M.

COUNCILLOR'S BILL NO. 93 RE CLUP AMENDMENT RE HARRIS PARK – SITE IV

Councillor Hicks moved, seconded by Dittman to pass Councillor's Bill No. 93 on first reading amending the Westminster Comprehensive Land Use Plan to change the land use designation of the Harris Park – Site IV property from "R 3.5 Residential" and "Office" to "R-18 Residential" and "Retail Commercial." This action is based on the findings set forth in the Westminster Comprehensive Land Use Plan as follows: a) The proposed amendment is justified and the Plan is in need of revision as proposed; and; b) The amendment is in conformance with the overall purpose, intent, goals and policies of the Plan; and c) The proposed amendment is compatible with existing and planned surrounding land uses; and d) The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. Mayor Pro Tem Kauffman recused himself because of a potential business interest. Upon roll call vote, the motion carried with Mayor Pro Tem Kauffman abstaining.

COUNCILLOR'S BILL NO. 94 RE REZONING HARRIS PARK – SITE IV

Councillor Hicks moved, seconded by Dittman to pass Councillor's Bill No. 94 on first reading rezoning the Harris Park – Site IV property from Transitional; B-1, Business; R-4, Residential and R-2 Residential to Planned Unit Development (PUD). This recommendation is based on the findings set forth in Section 11-5-3 of the Westminster Municipal Code. Mayor Pro Tem Kauffman recused himself because of a potential business interest. Upon roll call vote, the motion carried with Mayor Pro Tem Kauffman abstaining.

PRELIMINARY/OFFICIAL DEVELOPMENT PLAN RE HARRIS PARK – SITE IV

Councillor Hicks moved, seconded by Dittman to approve the Harris Park – Site IV combined Preliminary and Official Development Plan (PDP/ODP) to allow a retail/office building and multi-family residential development. This recommendation is based on the findings set forth in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code. Mayor Pro Tem Kauffman recused himself because of a potential business interest. The motion carried with Mayor Pro Tem Kauffman abstaining.

PUBLIC HEARING RE ASSEMBLY OF GOD SUBDIVISION – 9050 YATES STREET:

At 7:35 p.m. a public hearing was opened to consider the comprehensive land use plan amendment and rezoning of the Assembly of God Subdivision, located at 9050 Yates Street. Dave Shinneman, Planning Manager, entered copies of the agenda memorandum and other related items as exhibits. John Sanders representing the applicant provided a power point presentation and Larry Dean Valente, 3755 West 81st Avenue spoke in favor of this development. The public hearing was declared closed at 7:47 P.M.

COUNCILLOR’S BILL NO 95 RE CLUP RE 9050 YATES STREET

Councillor Dixon moved, seconded by Davia to pass Councillor’s Bill No. 95 on first reading amending the Comprehensive Land Use Plan (CLUP) changing the Assembly of God property from Public/Quasi-Public to Retail Commercial. This action is based on the following findings: The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and the proposed amendment is compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems. Upon roll call vote, the motion carried unanimously.

COUNCILLOR’S BILL NO 95 RE REZONING 9050 YATES STREET

Councillor Dixon moved, seconded by Davia to pass Councillor’s Bill No. 96 on first reading rezoning the Assembly of God property from R-E (Residential Estate) to PUD (Planned Unit Development). This action is based on the finding that the criteria enumerated in Section 11-5-3 of the Westminster Municipal Code have been met. Upon roll call vote, the motion carried unanimously.

1ST AMENDED PDP AND 4TH AMENDED ODP for 9050 YATES STREET

Councillor Dixon moved, seconded by Davia to approve the combined First Amended Preliminary Development Plan (PDP) and Fourth Amended Official Development Plan (ODP) for the Assembly of God Subdivision. This recommendation is based on the findings set forth in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code. The motion carried unanimously.

RESOLUTION NO. 75 RE MC GUIRE ANNEXATION

Councillor Price moved, seconded by Dixon to adopt Resolution No. 75 accepting the annexation petition submitted by the City of Westminster and Adams County, make the findings required by State Statute on the sufficiency of the petition, and set the date of January 24, 2005, for an annexation hearing on the McGuire property located at the southwest corner of Pecos Street and 128th Avenue. Upon roll call vote, the motion carried unanimously.

FOREST CITY FINAL DEVELOPMENT AGREEMENT

Councillor Davia moved, seconded by Kauffman to authorize the City Manager to execute the Final Development Agreement (FDA) with Forest City and Westminster Economic Development Authority (WEDA) in substantially the same form as the attached agreement, which calls for the development of a regional retail facility at the northwest corner of 144th Avenue and I-25. The motion carried unanimously.

CONVEYANCE OF 135 ACRES (CALDWELL/SHELTIE PARCEL) TO WEDA

Councillor Davia moved, seconded by Dixon to authorize the conveyance by the City of the 135 acre Caldwell/Sheltie parcel to WEDA by Special Warranty Deed. The motion carried unanimously.

ADJOURNMENT:

The meeting was adjourned at 7:55 P.M.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Item 8 A

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Memorandum of Understanding for Adams County Mosquito Control

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action

Authorize the Mayor to sign the Adams County Mosquito Control Memorandum of Understanding.

Summary Statement

Staff from Adams County and the Cities of Arvada, Aurora, Bennett, Brighton, Commerce City, Federal Heights, Northglenn, Thornton and Westminster have determined that the West Nile Virus presents a serious threat to the citizens of Adams County and, through the Memorandum of Understanding (MOU), the parties agree to participate in a collaborative effort to prevent the spread of West Nile Virus in 2005.

Expenditure Required: \$ 41,850 budgeted for the Mosquito Abatement Program

Source of Funds: Parks, Recreation and Libraries 2005 Budget

SUBJECT: Memorandum of Understanding for Adams County Mosquito Control page 2

Policy Issue

Should the City Council authorize the Mayor to sign the Memorandum of Understanding and agree to uphold its provisions in an effort to better coordinate efforts to control mosquito populations resulting in improved control of the West Nile Virus in 2005?

Alternative

Do not sign the MOU, but continue the City's practice of sharing data and research with other Cities in Adams County and with the Tri-County Health Department. This MOU is a cooperative effort to deal with the very serious problem of the West Nile Virus and Staff believes the City should participate in this effort.

Background Information

The Adams County Mosquito Control Group, a task force of Tri-County Health, Adams County, and employees of the Cities of Arvada, Aurora, Bennett, Brighton, Commerce City, Federal Heights, Northglenn, Thornton and Westminster have met over the past several months to discuss the potential spread of West Nile Virus in 2005. Tri-County Health and Adams County are concerned that some communities may reduce their mosquito control efforts in 2004 in belief that any outbreak of West Nile Virus will be less than in 2004. However, Tri-County Health estimates the spread of West Nile Virus will be just as severe in 2005 and could rise to new levels if conditions are right.

The MOU for each City, which Council is being asked to support, addresses the following points:

- Implementing a mosquito control program for Westminster that includes surveying, controlling and monitoring mosquito populations
- Sharing mosquito control data with Tri-County Health and other local jurisdictions
- Committing financial resources at a level that is at least as great as City mosquito control expenditures in 2004
- Participation with the Adams County Mosquito Control Group on an as-needed basis to discuss supplemental controls if Tri-County declares West Nile Virus a county health crisis in 2005
- Participation in county-wide mosquito control group meetings in April, June and November of 2005
- This Memorandum of Understanding will expire at the end of 2005

The City of Westminster currently meets all the standards of the Memorandum of Understanding through its existing mosquito management program. For 2005, the Parks, Recreation and Libraries Department has budgeted \$41,850 (a 3% increase over 2004) for mosquito control through Colorado Mosquito Control, Inc., which has been the City's contractor since 1987.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

ADAMS COUNTY MOSQUITO CONTROL
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by the Adams County Board of County Commissioners (“Adams County”), the City of Arvada, the City of Aurora, the Town of Bennett, the City of Brighton, the City of Commerce City, the City of Federal Heights, the City of Northglenn, the City of Thornton, and the City of Westminster (collectively “the Cities”).

WHEREAS, the West Nile Virus presents a potentially serious threat to the health and well being of the citizens of Adams County; and,

WHEREAS, the Cities and Adams County are committed to reducing the spread of West Nile Virus by implementing mosquito control programs within their respective jurisdictions; and,

WHEREAS, given the migratory nature of mosquitoes and the geographic proximity of the Cities and unincorporated areas of Adams County, the success of any mosquito control program is dependant on the mosquito control efforts of neighboring jurisdictions; and,

WHEREAS, the effectiveness of the parties’ existing mosquito control programs would be enhanced by an agreement among the Cities and Adams County to communicate, cooperate, and financially commit to reducing the health threat caused by West Nile Virus; and,

WHEREAS, the Tri-County Health Department, as the official public health agency for Adams County, monitors and reports the public health dangers presented by West Nile Virus, and is in the best position to evaluate the effectiveness of the mosquito control programs implemented by the Cities and Adams County; and,

WHEREAS, the parties agree that the commitment of financial resources necessary to fund mosquito control measures within each jurisdiction is critical to preventing the further spread of West Nile Virus throughout Adams County.

NOW THEREFORE, for the consideration herein set forth, the Cities and Adams County agree as follows:

1. Each of the Cities and Adams County will be responsible for implementing a 2005 mosquito control program within its respective jurisdiction. Mosquito control programs must be consistent with CDC (Center for Disease Control) and Colorado Department of Public Health recommendations, the Colorado Department of Agriculture regulations, and Tri-County Health Department standards and regulations. In addition, each mosquito control program shall, at a minimum:

a. Survey and locate all potential mosquito breeding sites within the boundaries of the jurisdiction;

b. Monitor and control larval breeding to reduce adult mosquito populations and the accompanying need for adult control services; and,

c. Monitor and control the remaining adult mosquito populations to reduce severe annoyance and the potential for mosquito-borne disease transmission.

The parties agree to share data generated by the mosquito control programs with appropriate Tri-County Health Department officials.

2. Each of the Cities and Adams County intend to commit adequate financial resources to fund a mosquito control program for 2005. This commitment shall be at least as great as the actual expenditures, excluding capital equipment costs, by the Cities and Adams County for mosquito control efforts in 2004.

3. The parties agree that the Tri-County Health Department will act as the primary referral agency on public health issues associated with West Nile Virus. In the event the Tri-County Health Department declares that West Nile Virus is a county health crisis in 2004, the parties will reconvene at the earliest possible date to discuss supplemental controls and cooperation to respond to the health crisis.

4. To facilitate communication and coordination among the Cities and Adams County, county-wide mosquito control meetings will be held in April, July and November of 2005. The purpose of these meetings is to receive infestation projections, to share information about mosquito-control strategies, and to evaluate successes or weaknesses of mosquito control programs county-wide during the preceding season.

5. The term of this Memorandum of Understanding shall be from January 1, 2005, through December 31, 2005.

IN WITNESS WHEREOF, this Memorandum of Understanding is executed by the Cities and Adams County as of the dates indicated below.

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

Chair

Date

ATTEST:



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Legal Services Agreement with Carlson Hammond and Paddock

Prepared By: Michael Happe, Water Resources and Treatment Manager

Recommended City Council Action

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

Summary Statement

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

Expenditure Required: Not to Exceed \$250,000.

Source of Funds: 2005/2006 Utility Fund, Water Resources and Treatment Division Budget

Policy Issues

Whether to retain Carlson Hammond and Paddock as special water counsel on behalf of the City in connection with water matters for 2005 and 2006.

Alternatives

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

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 go 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 27 years and 16 years, respectively.

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

CHP has developed a very thorough knowledge of Westminster's water supply and water quality issues, and is a key player in helping develop and protect Westminster's raw water supply. The fees charged by CHP to the City are very favorable when compared with other major water suppliers in Colorado. Carlson Hammond and Paddock is proposing to increase the rate charged for its services for all partners and associates from \$145 per hour to \$155 per hour for 2005 and to \$165 per hour for 2006. This increase is relatively small and based on a survey completed three years ago of water attorney rates charged to major water suppliers in Colorado, Carlson Hammond and Paddock's rates are very competitive and still below the average.

Water Counsel Fees			
<u>Entity</u>	<u>Hourly Rate</u>	<u>Entity</u>	<u>Hourly Rate</u>
Westminster	\$155-\$165/hr	Fort Collins	\$175-210/hr
Arapahoe County	\$175/hr	Glenwood Springs	In house
Arvada	\$160-180/hr	Greeley	\$170/hr
Aurora	\$150-160/hr	Littleton	\$155-185/hr
Brighton	\$155-185/hr	Longmont	\$225/hr
Broomfield	\$150-160	Loveland	\$180-220/hr
Boulder	\$165-200/hr	Metro Wastewater Reclamation District	\$175-180/hr
Cherry Creek Valley Water and Sanitation District.	\$165/hr	Northern Colorado Water Conservancy District	\$135-170/hr
Denver Water Board	In house	Northglenn	\$155-185/hr
East Cherry Creek Valley Water and Sanitation District	\$125-275/hr	South Adams County Water and Sanitation District	\$200/hr
Englewood	\$230/hr	Southeastern Colorado Water Conservancy District	\$180/hr

Based on all the factors detailed in this memorandum, Staff did not feel it was in the best interest of the City to seek bids on the City's legal services related to water rights and water quality and that the City should retain Carlson Hammond and Paddock for 2005 and 2006.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Policy for Metropolitan Special District Formation

PREPARED BY: Mary Ann Parrot, Finance Director
John Carpenter, Community Development Director
Marty McCullough, City Attorney

Recommended City Council Action

Adopt the policy regarding formation of Metropolitan Special Districts

Summary Statement

- Metropolitan Districts also referred to as Metropolitan Special Districts (MSD) are enabled under CRS Title 32, Special District Act.
- These districts are formed by developers to finance, construct and maintain public improvements related to a proposed development. The districts have the power to levy ad valorem property taxes and to charge fees. MSD's can be used to tax-exempt finance the costs of constructing and financing the improvements they are building and the taxes they assess can be used to reimburse the developer for these costs.
- The City currently has five MSD's within its boundaries (the mill levies shown are the maximums):
 - Countrydale MSD for the Westmoor Business Park (Commercial, formed in 1998) – cap of 50 mills.
 - NBC (Circle Point Business Park – Commercial - Year 2000) – cap of 50 mills.
 - Bradburn Village (Commercial and Residential – Year 2000) – cap of 50 mills commercial, cap of 30 mills residential.
 - Huntington Trails (Residential – Year 2000) – cap of 25 mills.
 - 144th Avenue MSD (Commercial – Year 2004) – mill levy not yet established.
- City Staff has identified several issues of concern over the past four years, as a result of the City's recent experience involving these kinds of districts:
 - The City may or may not benefit from the improvements constructed, whereby the developer may benefit beyond the point of public interest of the citizens.
 - There are definite differences between commercial and residential districts, especially given the nature of the property owners – commercial tenants vs. homeowners – and the expertise each group has or does not have with regard to taxing districts.
 - Residents of metro districts, paying up to 25 mills to a metro district, often do not understand why they have to pay this tax when the vast majority of Westminster residents do not.
 - Increased tax burdens on the residents of these districts may or may not come to the attention of the residents and tenants of these districts at the time of purchase.
 - A distressed MSD could result in unreasonable mill levy burdens and/or closure of businesses.

Expenditure Required: \$0
Source of Funds: N/A

Policy Issue

Does City Council desire to adopt a formal policy concerning the creation of MSD's?

Alternatives

1. Delay or reject approval of the draft policy. This is not recommended, as Staff believes that the absence of a policy leads to ad hoc decision-making and uncertainty in the development review process.
2. Adopt a policy, which is more permissive with regard to approving districts, mill levies, etc. This is also not recommended, as Staff believes that this is not in the best interests of the City or its taxpayers.

Background Information

Staff has operated under policy direction given to Staff on a verbal basis over the past several years. Staff has reviewed policies from several other cities and drafted the attached policy, based on past policy direction from City Council and in part on the procedures used by other cities, which have proven useful and practical. A summary of the policy issues is as follows:

- In general, there can be a use for Title 32 Metropolitan Districts, especially where improvements are involved that will benefit the taxpayers and citizens of Westminster.
- Staff is recommending that City Council implement conditions, restrictions and requirements with regard to the formation and substance of these districts that go beyond what is contained in State Statute.

Objectives in establishing this policy are as follows:

1. Articulate the types of benefits that are expected to inure to the City and its citizens generally in the proposed formation of a special district
2. Avoid having indebtedness of special districts affect the credit rating of the City of Westminster
3. Preserve the financial integrity of the City and its citizens
4. Prevent the shifting of development risk to non-developers
5. Attempt to minimize and insulate the City from risks and controversies that may arise in relation to special districts
6. Attempt to minimize excessive tax burdens upon City residents in special districts
7. Prevent the costs of any such district from being shifted to citizens who are not within the geographic boundaries of the District or receiving benefit from it

In particular, the policy perspective on two types of MSD's will differ depending on whether the district is a residential district or commercial. This is primarily because residents do not typically use property taxes as a determining factor when buying a house to the extent that office and other commercial users do. And in the event that the residential taxpayer does investigate property taxes, the system is complicated and can be very confusing. In the case of office and retail, this confusion is reduced because the taxes are passed through in the leases on the spaces rented. The City has taken a more protective approach to residential citizens than those occupying commercial establishments. The policy perspective is presented below for each type of district: residential or commercial.

Residential MSD's:

In general the City is opposed to the creation of MSD's to fund capital construction of residential developments for the following reasons:

1. Virtually all existing Westminster residential development was funded without MSD's. In other words, the lack of having these districts clearly has not adversely affected Westminster residential development.
2. Creation of a residential MSD creates a differential property tax structure among similar residential developments where the MSD resident is paying significantly more property tax without any commensurate public benefit – up to 6 to 7 times the City mill levy.

3. Buyers of homes in MSD projects are generally unaware of the higher property taxes in their development but can become upset when they later discover this. Residents may be surprised to find out the price of their home did not include the price of streets and utilities in their development that they repay over a 30 or more year period through their property taxes versus the vast majority of Westminster homes where this is not the case.
4. There would be an arguable public benefit if home prices were lower in MSD projects, reflecting the developers lower capital cost. Studies have shown that this is not the case.

In summary, there is generally not a compelling public purpose and benefit to form residential districts. In very limited and unique circumstances, the City may support a residential MSD. Examples include:

1. For the purposes of annexing a highly desirable parcel into the City of Westminster.
2. For a large-scale regional retail and mixed use project that provides significant sales tax revenues to the City and includes high quality residential product integrated into the regional retail area in a new urbanism design.
3. Construction of a unique new urbanism project such as Bradburn, which incorporates a significant retail commercial area, office buildings, office and retail units over retail space and a variety of housing types including single-family detached and attached products along with significant recreational amenities (pool, clubhouse, etc.), private parks and public parks and open space.
4. As an incentive for redevelopment.
5. To ensure an operating mill levy for long-term maintenance of improvements, when there is no effective HOA in place.

The process of determination that the formation of such a district is compelling, special and unique is a two-step process described below under the section titled "Review Procedures." If and when they are considered and/or approved, the mill levy cap is proposed at 25 mills.

1. This mill levy will cover debt service and operating expenditures.
2. The debt service portion of the mill levy will disappear when the bonds are redeemed.
3. The operating portion of the mill levy will be encouraged, if not required. It will be reviewed to see if it provides for maintenance of the capital infrastructure to be maintained by the district. In addition, it will be reviewed for reasonableness regarding fees paid to the district, its consultants, or other parties. A district cannot levy this operational mill levy until after Staff reviews the uses for it, and it is approved by City Council.
4. This will be fixed mill levy, with no peel-off provision allowed and no other derivations associated with the mill levy. However, provision that allow the mill levy to decline will be permitted.

Commercial MSD's

These types of districts will be viewed differently and will be reviewed for the benefit they bring to the City. These districts can be beneficial to the City and the tenants for the following reasons:

1. They can help to attract a business park to the City. Many high quality business parks in the metropolitan Denver area have created MSD's to support a higher quality of business park amenities.
2. They may be critical to attracting an economic development project.
3. They could be used to support a redevelopment project.

The mill levy cap is proposed at 50 mills and peel off provisions for mill levies will be reviewed but not necessarily approved. (Peel off provisions allow the removal of mill levy caps in certain circumstances when the ratio of debt to assessed value reaches certain levels, or with other formulae as specified in the MSD Service Plan.)

1. This mill levy will cover debt service and operating expenditures.
2. The debt service portion of the mill levy will disappear when the bonds are redeemed.
3. The operations mill levy will be reviewed to see if it provides for maintenance of the capital infrastructure to be maintained by the district. In addition, it will be reviewed for reasonableness regarding fees paid to the district, district consultants and/or other parties.
4. The City reserves the right to impose an operating mill levy to continue past the term of the bonds.

Review procedures

Procedures are spelled out for two levels of review:

1. Criteria for deciding whether to accept a proposal for review or not. If a developer's proposal does not meet the criteria outlined above, Staff will recommend to City Council that the proposal be rejected. City Council would have the prerogative to accept the developer's proposal or reject it after Staff has given them a recommendation.
2. Criteria for review after a proposal has been accepted include required submittals such as approved PDPs and ODPs, compliance with City standards for financing in these districts, time necessary for review, etc.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

CITY OF WESTMINSTER

POLICIES AND PROCEDURES

FOR

TITLE 32 DISTRICT FORMATION

DECEMBER 2004

Table of Contents
MSD Policies and Procedures

<u>Section</u>	<u>Page Number</u>
1. Purpose of Policies and Procedures	3
2. Definitions	4
3. Service Plan Considerations	5
4. Criteria for Accepting Applications	5
5. Criteria for Reviewing Applications	6
6. Service Plan Contents	8
7. Administrative Review	9
8. Public Hearing	10
9. Annual Report Required and Reviewed	10
10. Material Modification	12
11. Amendments	12
12. Quinquennial Review	13
13. State Conservation Trust Fund/ Greater Outdoors Colorado Grant Monies	13
14. Dissolution or Consolidation	13
15. Failure to Comply with Policies and Procedures	14
16. Exemptions	14
17. Effective Date	14
18. Service Plan Outline and Table of Contents	Exhibit A
19. Improvements Matrix	Exhibit B
20. Bibliography	Exhibit C

Purpose of Policies and Procedures

Under appropriate circumstances, financing districts, including metropolitan districts organized under the Title 32 of the CRS, Special District Act ("Districts") provide an economic alternative to the development of municipal infrastructure at the expense and risk of the City. The City has previously authorized Districts within its corporate limits for the sole purpose of development of infrastructure within their respective service areas. Through its approving resolutions and intergovernmental agreements with the Districts, the City has restricted the authority and autonomy of the Districts by limiting the Districts' powers to the construction, financing and maintenance of capital infrastructure.

Certain Districts in the Denver metropolitan area have undertaken capital development financed with District bonds exceeding the ability of the Districts to retire such indebtedness and the ability of the local unit of government to maintain and fund replacement of the facilities within the constraints of available municipal resources. It is necessary to coordinate the development of capital facilities between the City and Districts to achieve the most efficient and cost effective delivery of municipal services.

The purpose of establishing these policies are to accomplish the following objectives:

- Have the district pay for infrastructure or other public improvements that the City would normally install,
- Articulate the types of benefits that are expected to inure to the City and its citizens generally in the proposed formation of a special district,
- Avoid having indebtedness of special districts affect the credit rating of the City of Westminster,
- Preserve the financial integrity of the City and its citizens,
- Prevent the shifting of development risk to non-developers,
- Attempt to minimize and insulate the City from risks and controversies that may arise in relation to special districts,
- Attempt to minimize excessive tax burdens upon City residents in special districts,
- Disallow the costs of any such district to be shifted to citizens who are not within the geographic boundaries of the District or receiving benefit from it.

It is the intention of the City of Westminster to accomplish the following objectives if and when a Title 32 Metropolitan Special District is considered and/or approved by the City:

- Achieve improvements that would benefit the City taxpayers by enabling the City to avoid the costs of selected public improvements, whereby the district will finance these improvements either through developer-financed infrastructure or through the public sale of financing bonds. This will help to keep the high quality services high without the increased burden on the City's funds. In addition, those property owners and tenants will be the ones to share in the costs of these improvements and they are the ones benefiting directly by the improvements.
- Impose conditions, restrictions and requirements on the development by existing and future Districts. Restrictions will apply to additional capital infrastructure and the issuance and refunding of indebtedness, in order to preserve the public purpose of the district, the financial integrity of the City and the health, safety, prosperity, security and general welfare of all of the residents and citizens of the City, including the residents and citizens of the Districts. The City of Westminster takes a more protective stand toward the use of special district financing in a residential setting, than in a commercial setting. Research has shown the price of homes in high-end housing developments bears no relation to the tax burden on the residents. In other words, in this area of the Denver metropolitan area, taxpayers do not comparison-shop property taxes when buying a home. On the other hand, however, property taxes in a commercial/business environment are routinely included as a factor in the businessperson's search for competitive lease and rental rates.

The City of Westminster finds that the Special District Act and the existing intergovernmental agreements between the City and the Districts in certain respects do not adequately address the local concerns and interests of the City in regulating the Districts' development of capital facilities and incurring of debt to finance such development, both of which ultimately have a direct financial consequence to the City.

- Residential MSDs: In general the City is opposed to the creation of MSD's to fund capital construction of residential developments for the following reasons:
 1. Virtually all existing Westminster residential development was funding without MSD's. So the lack of these districts has not adversely affected Westminster residential development.
 2. Creation of a residential MSD creates a differential property tax structure among similar residential developments where the MSD resident is paying significantly more property tax without any commensurate public benefit.
 3. The higher mill levy in MSD projects may make these residents less inclined to support property tax increases.
 4. Buyers of homes in MSD projects are generally unaware of the higher property taxes in their development but can become upset when they later discover this. Residents may be surprised to find out the price of their home did not include the price of streets and utilities in their development which they repay over a 30 or more year period through their property taxes versus the vast majority of Westminster homes where this is not the case.
 5. There would be an arguable public benefit if home prices were lower in MSD projects, reflecting the developers lower capital cost. Studies have shown that this is not the case.
- In summary, there is generally not a compelling public purpose and benefit to form residential districts. In very limited and unique circumstances, the City may support a residential MSD. Examples include:
 1. For the purposes of annexing a highly desirable parcel into the City of Westminster.
 2. For a large scale regional retail and mixed use project (at least 100 acres in size) which provides significant sales tax revenues to the City and includes high quality residential product integrated into the regional retail area in a new urbanism design.
 3. Construction of a unique new urbanism project such as Bradburn which incorporates a significant retail commercial area, office buildings, office and retail units over retail space and a variety of housing types including single family detached and attached products along with significant recreational amenities (pool, clubhouse, etc.), private parks and public parks and open space.
 4. As an incentive for redevelopment.
- The process of determination of compelling, special and unique project is a two-step process described in Section 4 below. If and when they are considered and/or approved, the mill levy cap will be 25 mills. This mill levy will cover debt service and operating expenditures. The debt service portion of the mill levy will disappear when the bonds are redeemed. The operating portion of the mill levy will be encouraged, if not required. It will be reviewed to see if it provides for maintenance of the capital infrastructure to be maintained by the district. In addition, it will be reviewed for reasonableness regarding fees paid to the district, its consultants, or other parties. A district cannot levy this operational mill levy until after Staff reviews the uses for it. This will be fixed mill levy, with no peel-off provision allowed and no other derivations associated with the mill levy.
- Commercial Districts:
 - In general, the City will consider the formation of commercial districts, especially if there are demonstrated benefits to the citizens, residents in general or the City of Westminster itself.
 - The mill levy cap for commercial districts will be 50 mills for commercial and/or non-owner occupied residential, except for the "Gallergherizing" of the mill levy cap. There will be no exceptions to this cap; derivative products may or may not be considered.

In General: The City will not support such districts if the costs of establishing the district, including fees paid to consultants, either directly, or through the issuance of bonds, are outside the public purpose intent of the district formation. The City will make this determination on a case-by-case basis, and will make this decision based on the public purpose and benefit or detriment to the public purpose. Examples of these kinds of costs include but are not limited to: remuneration to developers, underwriting or financial advisory fees at the levels of \$20 per \$1,000 bond or higher. This determination will be made by the City Staff and its consultants.

The City of Westminster further determines that it is necessary and advisable to specify the events and conditions which, under the Special District Act; likely constitute material modifications to an approved District service plan, in the context of the particular business and legal relationship between the City and Districts.

The provisions of this document are also intended to provide procedures for the processing and review of proposals for formation of new Districts, and to define the restrictions and limitations which may be imposed by the City as a condition to the approval of such Districts consistent with the policy and intent of this Document.

The adoption of this document is necessary, requisite and proper for the government and administration of local and municipal matters under the City's home rule powers granted by Article XX, Section 6 of the Constitution of the State of Colorado.

1. Definitions

- A. *Board* means the Board of Directors of a Title 32 Metropolitan Special District.
- B. *District* means a special district organized under the Special District Act whose service area is located wholly or partially within the corporate limits of the City of Westminster. *MSD* will be used for the term *Metropolitan Special District*.
- C. *Petitioners* or *Applicant(s)* means any person(s) proposing a service plan or an amendment to an approved service plan.
- D. *Service Plan* is the service plan required under 32-1-202 of the Special District Act.
- E. *Special District Act* means Article 1 of Title 32, C.R.S.
- F. Certain other terms are defined in the text of this document and shall have the meaning so indicated.

2. Service Plan Considerations

The following sections shall govern the acceptance, processing, review and consideration of service plans, for new Districts. These provisions shall also apply to the consideration of service plan amendments (with the exception of Section 6 on Service Plan Contents).

4. Criteria for Accepting Applications

The City will use certain criteria in determining whether to accept a draft service plan to review for any given MSD:

- Prospective petitioners shall initiate a special district discussion by meeting with a designated City staff representative to discuss the procedures and requirements for a service plan. The City representative shall explain the administrative process, and provide information to assist petitioners in the orderly processing of the proposed service plan. The purpose of the discussion is to allow Staff the opportunity to determine whether the City would entertain the addition of a special district to the existing tax base in the City.

- The City is more concerned about residential MSDs due to the differences in levels of expertise of buyers (residential vs. office) and the practices of shopping for property taxes when shopping for residential purchase prices. Prospective homeowners do not tend to research levels of property taxes, whereas office tenants are usually careful to look at this, especially when triple-net leases are involved. There must be a compelling reason for the City staff to agree to review a residential MSD application. Applications for Residential MSDs will not be accepted unless there is a very special reason, which Staff will determine and communicate to City Council.
- The proposed development shall be in conformity to existing land use and city growth management guidelines. Prior to consideration of the Service Plan, a PDP must have been submitted and approved by the City. Prior to consideration of the Service Plan, an ODP must also have been submitted and approved by the City.
- There shall be special circumstances and benefits to the City that dictate the use of this type of district and its associated financing, as opposed to the developer using privately financed infrastructure improvements.
- Prospective petitioners shall use the Exhibits A-C to comply with the City's review process:
 1. Exhibit A: Service Plan Table of Contents and Outline. The organization of the Service Plan must include a table of contents with appropriate page numbers and must comply with this outline.
 2. Exhibit B: Improvements Matrix, completed to the best of the petitioner's ability.
- Staff shall maintain their discretion on their availability and the timing to conduct the review or time to contract and manage the review process. If time is not available due to other higher priority projects, the application shall be turned down.
- If Staff accepts an application for further review, Staff shall notify the City Manager's office of acceptance, along with the estimated time for review.
- If Staff rejects an application for further review, Staff shall notify the City Council and the City Manager's office of rejection, the reasons why. The notification shall be in the form of a Staff Report sent to the City Council in the next available packet.

5. Criteria for Reviewing Applications

If a project is accepted for review, the City will use the following guidelines in reviewing the service plan:

- Petitioners shall file a complete proposed service plan with the office of the City's Finance Director, with the clear covering statement that both PDP and ODP have been approved and the date of such approval. The proposed service plan shall substantially comply with the format of Exhibit A: Model Service Plan Outline maintained on file with the City of Westminster. A copy of the proposed petition to be filed with the district court must be included with the proposed service plan filed with the City. Five (5) copies of the proposed service plan must be submitted to the Finance Director at the time of application and distributed as follows:
 - Finance Department (1 copy)
 - Community Development (2 copies)
 - City Attorney (1 copy)
- The following timetable will be observed in submitting service plans for consideration. (A more detailed timetable is attached as Exhibit C.) Submission of modified applications may set back or re-start the review period.

The deadline for submittal of a complete service plan has been determined to be the end of May, based on the following deadlines, in reverse order:

- Ballot language must be certified in September of even numbered years.
- This requires that City Council approve the service plan in August, at the latest by the 2nd Council meeting in August (4th Monday in August).
- Staff will need a minimum of three months to review the service plan, negotiate changes and finalize the service plan with the developer
- A complete service plan must be submitted no later than mid-May for City Council approval in August.
- For even-numbered years when May elections are allowed, the calendar outlined above should be adjusted by approximately 5 months to accommodate a submittal deadline of end-December in time for the May special election.
- The service plan submitted MUST be complete. If it is not complete, it will be rejected. It may be re-submitted, but if it is beyond the deadline of mid-May for re-submittal, it will not be reviewed and will be returned to the developer for the next year's calendar.
- City Staff shall be provided at least three months to conduct the entire review once a complete application is submitted. The application outline and contents to be included are included in Exhibit A. All applications must conform to this outline.
- Fees and Remuneration to the City:
 - The application and processing fee for a service plan shall be ten thousand dollars (\$10,000). In addition the City Manager may impose additional fees to reimburse the City for reasonable direct costs related to such special review.
 - In addition to the processing fee, the Petitioners shall also pay the expenses of additional consultants hired by the City to conduct the review.
 - In addition to the fees above, if the City maintains any of the infrastructure, the City will receive an annual fee assessed as a mill levy, sufficient to allow the City to defray the cost of infrastructure maintenance and repair, either constructed by the City or constructed by the District and deeded or donated to the City.
 - Lastly, on any plan amendment or refunding review, the City will receive an administrative fee of \$5,000 and .25%, whichever is greater, of the bonds if/when refunded.

The City will review the proposed millage rate with the City with respect to its potential to jeopardize or impact City or other mill levy elections may need to have in the future. Mill levies on operations and maintenance of improvements will be favored over mill levies for capital construction. This is because of the risk described earlier: if, due to the market, a buyer is paying the same price for property with or without an MSD mill levy, this means the buyer is paying higher than normal taxes to pay for infrastructure costs the developer is passing onto the buyers.

The City wants residential buyers to be aware of the additional tax burden to be imposed. The City mandates early, written and recorded notice of the total (overlapping) tax burden, including the special district millage, along with relevant details such as the length of the debt millage. The City will review the type and timing of the disclosure, which the Petitioners are proposing. The notice shall be recorded against all property within the District prior to the District's certification of the formation of the district to the Colorado Division of Local Government.

In addition, two major reviews will be conducted using the following criteria:

1. The Planning/Engineering Guidelines are as follows:
 - a. The developer must have already submitted and had approved both a PDP and an ODP.
 - b. Detailed cost estimates shall be included along with unit prices and numbers of units in sufficient detail to enable Staff to verify estimates.
 - c. Detailed lists of all site improvements shall be included along with a designation of which improvements are to be paid for, constructed by, maintained by, dedicated to (and when conveyed) and by whom: district, developer, HOA or City.

2. The Finance Guidelines are as follows:
 - a. The IGAs and Developer Agreements will be reviewed to determine governance issues, relationships among residents/tenants and board and controls.
 - b. The City will require early, written and significant notice to be given, in writing, to prospective homeowners/tenants of the district.
 - c. Cash flows will be reviewed for all phases of the project through build-out and until debt is paid off.
 - d. Mill levies will be capped at 25-mills for owner-occupied residential, and 50-mills for commercial developments and non-owner occupied residential or retail developments.
 - e. Residential mill levy caps.
 - i. This mill levy will cover debt service and operating expenditures.
 - ii. The debt service portion of the mill levy will be eliminated when the bonds are fully retired or redeemed.
 - iii. The operating portion of the mill levy will be encouraged, if not required. It will be reviewed to see if it provides for maintenance of the capital infrastructure to be maintained by the district. In addition, it will be reviewed for reasonableness regarding fees paid to the district, its consultants or other parties. They cannot levy this operational mill levy until after Staff reviews the specific budgeted uses for it.
 - iv. This will be a fixed mill levy, with no peel-off provisions or other “derivative” provisions attached to it. Reductions in the mill levy will be eliminated where determined appropriate by the Board and the City.
 - f. Commercial mill levy caps.
 - i. This mill levy will cover debt service and operating expenditures.
 - ii. The debt service portion of the mill levy will disappear when the bonds are fully retired or redeemed.
 - iii. The operating portion of the mill levy will be encouraged, if not required. It will be reviewed to see if it provides for maintenance of the capital infrastructure to be maintained by the district. In addition, it will be reviewed for reasonableness regarding fees paid to the district, its consultants. or other parties. They cannot levy this operational mill levy until after Staff reviews the specific budgeted uses for it.
 - g. Leverage will be limited to a maximum of 50% of projected assessed value.
 - h. The cash flows will designate the breakout of expenses designated for debt service and operational costs, both in dollars and mills.
 - i. Bond sizing will be reviewed (size, annual debt service, structure and term, credit enhancement). Bond issues beyond 30 years will not be viewed favorable. In addition developer guarantees and the use of any or all components to improve the security of the district on behalf of the homeowner/tenant will be reviewed. The City will make the determination what additional credit enhancements are necessary to secure approval of the service plan. It may not be necessary to use all components, as each case is unique. Each situation will be reviewed on a case-by-case basis.
 - j. Material variations in service plan will be reviewed. The City will determine what constitutes a material modification requiring approval by the City. The following paragraphs must be included in the draft service plan:
 1. On or before September 1 of each year, the district shall submit an annual report and proposed budget, including proposed debt service and O&M levies. The annual report shall explain all major actions taken during the preceding year to implement the Financing Plan and the preliminary engineering plan set forth in the service plan, together with projections for the ensuing fiscal years and such other available information as the City may request. The District shall also file a copy of its statutorily required audit with the City.

2. The City will determine what change constitutes a “material modification” of the Service Plan. Any significant change in the Service Plan shall be submitted to the City and shall first be subject to approval by the City in accordance with the provisions of the Act. Material modifications are include, but are not limited to those items listed in Section 11 Material Modifications.
 - i. Those which add property to the district
 - ii. Other conditions as determined by the City
- k. Amendments will be viewed as necessary, not deleterious to the district, its board or its advisors. The City recognizes there will be changes to the district over time, especially in large, multi-phase developments, and the financing components may need to be adjusted accordingly. However, the City maintains the expectation that the District will work with the City on new and/or strengthened constraints to be imposed beyond the original ones contained in the service plan.

6. Service Plan Contents

The proposed service plan shall include the following:

- A. The information required by Title 32, The Special District Act.
- B. A map of the proposed District's boundaries, which shall have attached a legal description.
- C. An itemization of any costs, which petitioners expect to be assumed by the City for the construction of public improvements.
- D. Identification by names, addresses and phone numbers of those persons who the petitioners intend to be the nominees for the initial Board.
- E. Proof of ownership for all properties within the District, a list of encumbrances on all properties, in a form acceptable to the legal department of the City.
- F. A copy of any and all proposed enabling, controlling, contractual and/or operations documents, which would affect or be executed by the proposed District, including the form of any intergovernmental agreement among the District, the City and any other government, authority or district. Any enabling intergovernmental agreement shall contain the following provisions, unless waived by the City Council:
 1. The District's power and functions shall be limited to construction and financing of public infrastructure.
 2. The District shall be prohibited from ownership and maintenance of public facilities and shall convey to the City all facilities upon completion to City standards.
 3. A prohibition on the District owning, managing, adjudicating or developing water rights and water resources, and water and wastewater treatment and distribution facilities.
 4. Limitations on the mill levy, development exaction and other revenues pledged to service payment of indebtedness of the District and required credit enhancements for District debt in order to preclude the creation of undue financial risk to the District residents and taxpayers.
 5. Appropriate assurances that all facilities are developed by the District to City standards.
 6. Standards and parameters for imposition by the District of capital recovery fees and exaction.
 7. Limitations on the inclusion or exclusion of properties from the District.
 8. Requirements for dissolution of the District upon the accomplishment of the purposes and undertakings for which the District was formed, or for other reasons as reviewed by City Council. (See also Section 15 on Dissolution.)
 9. That a copy of the written notice of every regular or special meeting of the District will be delivered to the City Clerk at least three (3) days prior to such meeting.
 10. That the annual report will be submitted in a timely fashion in accordance with the provisions of these policies.

G. A capital plan including the following:

1. A description of the type of capital facilities to be developed by the District.
2. An estimate of the cost of the proposed facilities.
3. A *pro forma* capital expenditure plan correlating expenditures with development.

H. A financial plan including the following:

1. All proposed sources of revenue and projected District expenses, as well as the assumptions upon which they are based for at the term during which the bonded indebtedness remains outstanding, starting from the date of the District formation.
2. The dollar amount of any anticipated financing, including capitalized interest, costs of issuance, estimated maximum rates and discounts, and any expenses related to the organization and initial operation of the District. Bond sources and uses, amortization schedules and other relevant "bond solution" information must also accompany this portion of the submittal. A designation of the financing as "public sale", "private placement", "developer bonds", etc. must also accompany this portion of the submittal.
3. The total amount of debt issuance planned for all phases of the development period commencing with the formation of the District
4. A detailed repayment plan covering the life of any financing, including the frequency and amounts expected to be collected from all sources and containing a relatively level or flat debt service schedule after build-out.
5. The amount of any reserve fund and the expected level of annual debt service coverage, which will be maintained for any financing.
6. The provisions regarding any credit enhancement, if any, for the proposed financing, including but not limited to developers guarantees, letters of credit, sureties and insurance.
7. The total authorized debt for the District.
8. A list and written explanation of potential risks of the financing.

Exhibits shall include the following:

1. City Council Resolution of Approval
2. Legal Description
3. City of Westminster Vicinity Map
4. Boundary Map
5. Facilities Plan
6. Facilities Diagrams
7. Improvements Matrix (see Exhibit D)
8. District Election Questions
9. Underwriter Commitment Letter
10. Market Research Report and Opinion Letter (Real Estate Absorption Analysis)
11. Forecasted Statements of Sources and Uses of Cash: Full Pro-Forma Income Statements with Amounts and Mill Levies for Debt Service and Operational Costs
12. Full Bond Solutions: Sources and Uses of Bond Proceeds, Amortization Schedules including Use of Capitalized Interest, Other Statistical Information.
13. Intergovernmental Agreement between City of Westminster and District
14. Inter-District Intergovernmental Agreements
15. Such other information as may be deemed necessary or appropriate by the City Manager.

7. Administrative Review

The City has three months from the date of filing of a complete service plan (Items 6A-J) to complete its preliminary review. Such deadline may be extended for up to an additional thirty (30) days, as deemed necessary by the City Manager. Once a review has been completed, a comprehensive analysis shall be made in written Staff Report form to the City Council. The report shall evaluate the service plan and incorporate comments of the City Staff as well as consultants. The report shall set forth the recommendations made in accordance with the review criteria set forth in this Chapter.

8. Public Hearing

The City Manager upon acceptance of the Staff Report on the service plan shall schedule a public hearing at a regular City Council meeting. The Petitioners shall publish public notice in accordance with the requirements of 32-1-204(l)(1.5) of the Special District Act. The public hearing will conform to current City standards regarding procedure, protocol and content.

After the public hearing, the City Council shall take one of three actions in writing applying the criteria prescribed under Section 32-1-204.5 of the Special District Act after consideration of the service plan reports, evidence and testimony accepted or taken at the public hearing:

- A. Approve without condition,
- B. Approve conditionally (with conditions described), or
- C. Disapprove the proposed service plan or amendment.

If the service plan is approved, a resolution of approval shall be adopted.

If the service plan is conditionally approved, the amendments to be made in, or additional information relating to, the service plan, together with the reasons for such amendments, or additional information, shall also be set forth in writing. When such amendments or additional information is completed, the City will schedule a second public hearing for the review, approval or rejection of the service plan.

If the service plan is disapproved, a resolution for such disapproval shall be adopted, including the reason(s) for such disapproval. In the manner and to the extent provided in this Chapter, the City Council shall maintain continuing jurisdiction over the operations and affairs of the District, after approval of the service plan and/or amendment(s).

9. Annual Report Required and Reviewed

Not later than September 1 of each calendar year, each District shall file an annual report (the "Annual Report") with the City Clerk at the City's administrative offices. The annual report shall reflect activity and financial events of the District through the preceding December 31 (the "report year"). The annual report shall include the following:

- A. A narrative summary of the progress of the District in implementing its service plan for the report year.
- B. Except when an exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (i.e. balance sheet) as of December 31 of the report year and the statement of operations (i.e. revenues and expenditures) for the report year.
- C. Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of public facilities in the report year, as well as any capital improvements or projects proposed to be undertaken in the five (5) years following the report year.
- D. Unless disclosed within a separate schedule to the financial statements, a summary of the financial obligations of the District at the end of the report year, including the amount of outstanding indebtedness, the amount and terms of any new District indebtedness or long-term obligations issued in the report year, the amount of payment or retirement of existing indebtedness of the District in the report year, the total assessed valuation of all taxable properties within the District as of January 1 of the report year, and the current mill levy of the District pledged to debt retirement in the report year.
- E. The District's budget for the calendar year in which the annual report is submitted.
- F. A summary of residential and/or commercial development, which has occurred within the District for the report year, whichever is appropriate.
- G. A summary of all fees, charges and assessments imposed by the District as of January 1 of the report year.
- H. Certification of the Board that no action, event or condition enumerated in Section 11 of these policies has occurred in the report year.
- I. The name, business address and telephone number of each member of the Board and its chief administrative officer and general counsel, together with the date, place and time of the regular meetings of the Board.
- J. In the event the annual report is not received by the City Clerk on a timely basis, notice of such default shall be given by the City Clerk to the Board of such District, at its last known address. The failure of the District to file the annual report within thirty (30) days of the mailing of such default notice by the City Clerk shall empower the City Council to impose the sanctions authorized in Section 16 of these policies. The remedies provided for noncompliance with the filing of the annual report shall be supplemental to the remedy authorized under Section 32-1-209 of the Special District Act.

10. Material Modifications

In general, the City will determine whether a change to the Service Plan constitutes a material modification of the Service Plan. The examples listed below include, but are not limited to what constitutes a material modification. The occurrence of any of the following actions, events or conditions subsequent to the date of approval of the service plan or most recent amendment thereto are presumed to be changes of a basic or essential nature of a District, requiring a service plan amendment.

- A. Revision to mill levy beyond existing caps, increased bond authorization, increase in level of bonded indebtedness beyond bond authorization.
- B. Default in the payment of principal or interest of any District bonds, notes, certificates, debentures, contracts or other evidences of indebtedness or borrowing issued or incurred by the District when:
- C. Institution of a proceeding for debt adjustment or the confirmation of a plan for adjustment of debt under Chapter 9 of the Bankruptcy Code.
- D. Failure of the District to develop any capital facility proposed in its service plan when necessary to service approved development within the District.
- E. Failure of the District to realize at least seventy-five percent (75%) of the development revenues (including developer contributions, loans or advances) projected in the financial portion of the service plan during the three-year period ending with the report year. Development revenue is defined as fees and charges imposed by the District on residential and commercial development, excluding taxes, provided that the disparity between projected and realized revenue exceeds fifty thousand dollars (\$50,000).
- F. Refundings of any kind, including the following:
 - a. Those that extend the term of indebtedness will not be allowed.
 - b. Those which allow the reimbursement of significant fees to consultants and/or the developer, even though the mill levy is not increased will not be allowed.
 - c. Those in which the savings (present value or nominal) are not passed on to the property owners and/or tenants will not be allowed.
- G. The occurrence of any event or condition, which is defined under the service plan or intergovernmental agreement as necessitating a service plan amendment.
- H. The default by the District under any intergovernmental agreement with the City.
- I. The disconnection from the corporate limits of any property within the District's boundaries exceeding either ten percent (10%) of the service area of the District or ten (10) acres in area.
- K. Any of the events or conditions enumerated in 32-1-207(2) of the Special District Act.

In the event it is found a material modification has taken place, the District shall submit its request for an amendment in accordance with these policies. Upon a finding that no material modification has taken place, the District shall be relieved from obtaining an amendment for the events or occurrences reviewed by the City Council. The City Council shall retain the prerogative to require an amendment thereafter if the change or deviation, on a cumulative basis, subsequently becomes material. In making its determination, the City Council shall consider, among other relevant information, whether the modification will have a probable adverse financial impact on the City.

11. Amendments

Within ninety (90) days of the occurrence of an action, event or condition enumerated above in the section on Material Modification, the Board shall forward an appropriate petition to the City Council for approval requesting a service plan amendment ("amendment"). The only exception to this procedure would be wherein the City has determined that no material modification has occurred under the hearing procedure of the section above. The petition for amendment shall include the following information:

- A. Any information or documentation required under the applicable provisions of the Special District Act.
- B. Any changes since the service plan was last reviewed and approved by the City Council to any of the information, assumptions or projects furnished in conjunction with the petition for approval of organization of a District or contained in the service plan.
- C. A detailed explanation of the activity, events or conditions which resulted in the material modification to the service plan, including what action was taken or alternatives considered, if any, by the District to avoid the action, event or condition.

- D. The impact of the material modification on the District's ability to develop the capital facilities and infrastructure necessary to meet its capital development plan.
- E. The effect of the material modification on the District's ability to retire as scheduled its outstanding financial obligations and its ability to issue and market additional indebtedness to finance additional capital expenditures.
- F. A current financial plan for the District reflecting development absorption rates anticipated within the District's service area, projected annual revenues and expenditures based upon such projected absorption rates, debt issuance and amortization schedules, and a projection of anticipated capital outlays.
- G. The financial impact of the modification on existing residents of the District.
- H. An updated five-year capital improvements plan.
- I. What alternatives or options are available to the District if the requested amendment is not approved.

All of the required information shall be supported by appropriate technical analysis, reports and supporting documents of qualified professionals and consultants. The amendment shall be processed and reviewed in the same manner as prescribed by these policies for an initial service plan. Except that the submittal requirements of this Section shall be substituted for those of the section titled Service Plan Contents. The application fee shall remain at one thousand dollars (\$1,000). This Section shall not impair the right of the City to bring an action in the district court to enjoin the activities of the District pursuant to 32-1-207(3)(b) of the Special District Act.

12. Quinquennial Review

The quinquennial review required under Section 32-1-1101.5 of the Special District Act shall be subject to the following procedures:

- A. Five (5) copies of the application shall be submitted to the City Manager together with an application fee of one thousand dollars (\$1,000).
- B. Within sixty (60) days of receipt of a complete application, the City Manager shall submit a report to the City Council including a recommendation as to the statutory findings that should be made by the City Council on the application.
- C. The application shall be reviewed and considered at a regular meeting of the City Council held within sixty (60) days of the submission of the report of the City Manager.
- D. The City Council shall consider all evidence and testimony, as it deems relevant to its consideration of the application written.
- E. A written decision on the application shall be made by resolution of the City Council within twenty (20) days of conclusion of its review and consideration of the application.

13. State Conservation Trust Fund; Greater Outdoors Colorado Grant Monies

The District shall not claim any entitlement to moneys from the State Conservation Trust Fund. The District shall remit to Westminster all moneys it may receive from this Fund.

14. Dissolution or Consolidation

In the event there is reason to believe that the purposes for which the District was created have been accomplished, a public hearing shall be conducted before the City Council to determine whether the District should be dissolved. Prior written notice of such hearing shall be provided to the Board of Directors of the District. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District shall agree to file a petition in District Court for dissolution. In any event, such dissolution shall not occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations. Provided, however, that the failure of the District to provide for the payment or discharge of all or any portion of its subordinate lien bonds shall not serve as a bar to dissolution.

The District shall not file a request with the District Court to consolidate with another title 32 district without the prior written approval of Westminster.

15. Failure to Comply with Policies and Procedures

Should any District fail to request and obtain a service plan amendment when required under the terms of these policies or otherwise fail to fully and completely comply with these policies, the City Council by resolution may impose one (1) or more of the following sanctions, as it deems appropriate:

- A. Exercise any applicable remedy under the Special District Act.
- B. Withhold the issuance of any permit, authorization, acceptance or other administrative approval necessary for the District's development of public facilities or construction.
- C. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default.
- D. Exercise any other legal remedy, including seeking injunctive relief against the District, to force compliance with the provisions of this Chapter.

16. Exemption

If any District has not undertaken development of capital facilities or issued any indebtedness, it may apply to the City for an exemption from compliance with these policies. The City Council shall grant an exemption if the Board submits a resolution to the City Council stating that upon issuance of the exemption, the District's authorization under the service plan and the intergovernmental agreement with the City to undertake development of capital facilities or issue any indebtedness is suspended.

With issuance of the exemption, the District shall be excluded from compliance with these policies except that the District annually, not later than September 1, shall submit financial statements from the previous year and the budget for the current year.

Prior to any District with an exempt status undertaking capital development or issuing any indebtedness authorized under its service plan or the Special District Act other than regulatory reporting, it shall fully comply with the provisions of these policies.

17. Effective Date

These policies shall take effect January 1, 2005.

Exhibit A
Service Plan Outline and Table of Contents

- I. INTRODUCTION
- II. PURPOSE OF DISTRICT
- III. PROPOSED DISTRICT BOUNDARIES/MAPS
- IV. PROPOSED LAND USE/POPULATION PROJECTIONS
- V. DESCRIPTION OF PROPOSED SERVICES
 - a. Types of Improvements
 - i. Water
 - ii. Streets
 - iii. Others
 - b. Standards of Construction/Statement of Compatibility
 - c. Facilities to Be Contracted and/or Acquired
- VI. DISSOLUTION/CONSOLIDATION
- VII. CONSERVATION TRUST FUND
- VIII. ASSESSED VALUATION
- IX. DEVELOPER REIMBURSEMENT
- X. PROPOSED AGREEMENT
- XI. ESTIMATED COSTS OF FACILITIES
- XII. OPERATION AND MAINTENANCE/ESTIMATED COSTS
- XIII. FINANCIAL PLAN/PROPOSED INDEBTEDNESS
 - a. Proposed General Obligation Indebtedness
 - b. Debt Limit
 - c. Mill Levy
 - d. Modification of Service Plan
 - e. Cost Summary and Bond Development
 - f. Economic Viability
 - g. Projections of Assessed Valuation
 - h. Operations
- XIV. FAILURE TO COMPLY WITH SERVICE PLAN
- XV. RESOLUTION OF APPROVAL
- XVI. DISCLOSURE
- XVII. ANNUAL REPORT
- XVIII. CONCLUSION

Attachments

- A. Legal Description of District Boundaries
- B. District Boundary Map
- C. Vicinity Map
- D. List of Interested Parties
- E. Description of Facilities and Costs
- F. Water Improvements
- G. Streets and Safety Protection Improvements
- H. Financial Plan
- I. Operation and Maintenance Expenses
- J. Matrix: Improvement, Built by, Donated to City of Westminster Maintained by (District, Developer, City, etc.)

Exhibit B: Improvements Matrix

Bradburn Public Improvements

Improvement	Paid for by	Constructed by	Maintained by	Dedicated to	Date of Conveyance	Estimated Maintenance Cost
Drainage Improvements	District	District	City	City	Final Plat	TBD
Landscape/Fence Improvements	District	District	District	Easement ⁽¹⁾	N/A	TBD
Community Entrances	Developer	Developer	District	District	Final Plat	TBD
Community Recreation Facilities	District	District	District	District	Completion	TBD
Private Open Space and Private Parks	District	District	District	District	Final Plat	TBD
Public Open Space and Public Parks	District	District	City	City	Final Plat	N/A
Alleys	District	District	TBD	TBD	TBD	TBD
Offsite Road Improvements	District	District	CDOT	CDOT	N/A	N/A
All Interior Streetscape	District	District	Property owner	Easement ⁽¹⁾	N/A	N/A
All Interior Streets	District	District	City	City	Completion	TBD
All Interior Storm Sewers	District	District	City	City	Completion	TBD
Sanitary Sewer Mains	District	District	City	City	Completion	TBD
Water Mains	District	District	City	City	Completion	TBD
Gas Mains	Developer	PSC	PSC	Easement	N/A	N/A
Electric Lines	Developer	PSC	PSC	Easement	N/A	N/A
Telecommunications	Developer	Developer		Easement	N/A	N/A
Detention Pond on Private Open Space	District	District	District	District	Final Plat	TBD
Detention Pond on Public Open Space	District	District	District	N/A	N/A	TBD
All Project Engineering and Construction Management including District Facilities	Developer	N/A	N/A	N/A	N/A	N/A
Over lot Grading – All	Developer	Developer	N/A	N/A	N/A	N/A

⁽¹⁾ District landscape maintenance on dedicated City right-of-way will be permitted by landscape maintenance easement from City.

Exhibit C – Bibliography

1. Douglas County – Special District Service Plans Application Submittal instructions and Review Procedures, March 2002.
2. Adams County – Special District Guidelines and Regulations, July 2000.
3. Town of Castle Rock – Title 11, Special District Oversight, October 1992.
4. City of Thornton - Chapter 66 pertaining to Powers of Metropolitan Special Districts, July 2000.
5. City of Aurora – Chapter 122 regarding Title 32 Districts, Undated but we’ve had this in the file since Fall 2000 when we started to draft these policies.
6. Town of Firestone – Title 13 regarding Formation of Special Districts, approx. June 2003.
7. City of Colorado Springs – Resolution Establishing City Financial Policy Regarding the Use of Certain Districts Authorized under Titles 31 and 32 CRS, August, 2000.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Second Reading of Councillor's Bill No. 82 re Westminster Historical Society Lease of Former District 50 Ambulance Building at 4350 West 76th Avenue

Prepared By: Vicky Bunsen, Assistant City Attorney
Matt Lutkus, Deputy City Manager for Administration

Recommended City Council Action:

Pass Councillors Bill No. 82 on second reading authorizing the Mayor to execute a one-year lease for the Westminster Historical Society to occupy approximately 1,080 square feet of the former District 50 ambulance building at 4350 West 76th Avenue.

Summary Statement

- City Council is requested to approve a lease between the City and the Westminster Historical Society (WHS) for the office portion of the City-owned property at 4350 West 76th Avenue. The WHS will use the space for offices and to store and archive museum acquisitions, photographs and documents. The lease amount is proposed to be \$1.00 per year.
- The estimated expense for the City will be approximately \$2,000 per year plus major maintenance of the building. The City will provide utilities to the building except telecommunications services.
- The lease agreement would be automatically renewed annually but may be terminated at any time with six months prior notice.
- City Council action is requested to pass the attached Councillors Bill on second reading
- This Councillor's Bill was passed on first reading on November 22, 2004.

Expenditure Required: \$2,000 ongoing annual expense for utilities

Source of Funds: General Fund Central Charges

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **82**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL
FOR AN ORDINANCE APPROVING WESTMINSTER HISTORICAL SOCIETY LEASE OF
4350 WEST 76th AVENUE

WHEREAS, the City owns property 4350 West 76th Avenue, which includes vehicle bays and about 1,080 square feet of office space; and

WHEREAS, the Westminster Historical Society (WHS) is a volunteer, non-profit organization that operates the City-owned Bowles House Museum and provides other public services to the citizens of and visitors to the City of Westminster; and

WHEREAS, the WHS has a great need for additional office, storage and work space to support its museum services and other activities,

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Mayor is hereby authorized to execute the form of lease attached hereto, or in a form substantially similar and as approved by the City Attorney's Office, leasing the office space at 4350 West 76th Avenue, containing approximately 1,080 square feet, to the Westminster Historical Society.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED THIS 22TH DAY OF NOVEMBER, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED THIS 13TH DAY OF DECEMBER, 2004

ATTEST:

Mayor

City Clerk

LEASE

This **Lease** is made between the **CITY OF WESTMINSTER**, a Colorado home-rule municipality (hereinafter called "Lessor" or "City"), and **THE WESTMINSTER HISTORICAL SOCIETY**, a Colorado nonprofit corporation (hereinafter called "Lessee").

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the Premises described in Paragraph 1 below, subject to the terms, conditions, and agreements set forth hereinbelow:

1. Premises. The Premises consist of the office and meeting room area of the former District 50 Ambulance Building located at 4350 West 76th Avenue in Westminster, Colorado, County of Adams, State of Colorado. A sketch of the leased area is attached hereto as Exhibit 1.

2. Term and Rent. Lessor demises the above Premises for a term of one year, commencing 12:00 p.m. on December 14, 2004, terminating 12:00 p.m. on November 30, 2005, or sooner as provided herein (hereinafter, the "Term"), for a nominal rent payment for the Term in the sum of One Dollar (\$1.00), and for other good and valuable consideration described below. The term shall automatically renew from year to year, unless terminated by either party upon six month's prior written notice which notice may be given at any time.

3. Use. Lessee shall use and occupy the Premises for offices, meeting space and storage for the Lessee. Such uses shall be limited to activities and functions specifically related to the purpose and mission of The Westminster Historical Society. The Premises shall be used for no other purpose. Lessor represents that the Premises may lawfully be used for such purpose.

4. Care and Maintenance of Premises.

a. Lessee's responsibilities: Lessee acknowledges and accepts the Premises in their as-is condition. Lessee shall, at its own expense and at all times during the Term of this Lease, maintain the Premises in good and safe condition, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for the routine care and maintenance of the interior of the Demised Premises of a housekeeping nature including custodial and janitorial services, normal and reasonable cleaning and the replacement of all consumable or expendable items such as light bulbs, cleaning, bathroom and office supplies and all items brought into the Demised Premises by the Lessee.

b. Lessor's responsibilities: Except as otherwise specifically provided above, the Lessor shall be responsible for the operation and maintenance of the Demised Premises, including but not limited to grounds maintenance, snow removal, and structural repair and maintenance including repair and maintenance of the building structure, all plumbing, mechanical and electrical systems within the Demised Premises, and the periodic refurbishing of the interior of the Demised Premises, including the floors, walls and ceiling thereof, as the City may deem is reasonably necessary to maintain the appearance of the Demised Premises against the effects of normal wear and tear. Any such refurbishing shall be scheduled by the agreement of the parties.

5. Alterations. Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the Premises, provided, however, that Lessee shall have the right to increase the size of its present signage subject to the provisions of the City's sign code and regulations in effect at the time that the City's approval of the increase is requested.

6. Ordinances and Statutes. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.

7. Assignment and Subletting. Lessee shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Lessor, which shall be granted or refused in Lessor's sole and unfettered discretion. Any such assignment or subletting without Lessor's consent shall be void and, at the option of the Lessor, grounds for Lessor's forthwith termination of this Lease.

8. Utilities. The City shall provide and pay for utility charges as they become due, including those for heat, electricity, water and sewer. All applications and connections for other services desired by Lessee for the Demised Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for such charges as they become due, including those for cable, Internet, alarm and telephone services.

9. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

10. Possession. If Lessor is unable to deliver possession of the Premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby.

11. Indemnification of Lessor. Lessor shall not be liable for any damage or injury to any person or property occurring on the Demised Premises during the Term of this Lease. Lessee agrees to indemnify and save and hold Lessor harmless from any claims for such damage or injury, no matter how caused, except to the extent such damage or injury was the direct and proximate result of Lessor's negligent act or omission, provided, however, that nothing herein shall be deemed or construed as a waiver by Lessor of any of the protections or limitations against liability to which Lessor may be entitled under the Colorado Governmental Immunity Act. Lessee may satisfy its obligations pursuant to this paragraph by assuming the defense of and liability, if any, for any such claim brought against the Lessor, and retaining for such defense qualified legal counsel reasonably acceptable to the City.

12. Insurance.

a. Lessee, at its expense, shall maintain comprehensive commercial liability insurance, including coverage for bodily injury and property damage, insuring Lessee and naming Lessor as an additional insured with minimum coverage as follows: \$1,000,000 per occurrence. The insurance shall include coverage for contractual liability. Additional insurance shall be obtained in the event any aggregate limitations result in per occurrence coverage of less than \$1,000,000.

b. Prior to taking possession of the Premises pursuant to this Lease, Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

13. Eminent Domain. If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the Premises, shall be taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking.

14. Destruction of Premises. In the event that the Premises or any part of the building in which the Demised Premises may be situated is damaged or destroyed by any cause to an extent that renders the Premises unsafe or unusable for Lessee's purposes, either Lessee or Lessor may terminate this Lease forthwith. In no event shall the Lessor have any obligation to repair or replace the Premises in the event of any such damage or destruction and Lessee's sole and exclusive remedy in the event of such damage to or destruction of the Premises or the building in which it is located is the termination of this Lease.

15. Lessor's Remedies on Default. If Lessee defaults in the performance of any of the covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within ten (10) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such ten (10) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this Lease on not less than twenty (20) days' notice to Lessee. On the date specified in such notice, the Term of this Lease shall terminate, and Lessee shall then quit and surrender the Premises to Lessor, without extinguishing Lessee's liability.

If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any Term shall be deemed a waiver.

16. Taxes. Lessee shall be solely responsible for the payment of any property or other taxes that may arise as a result of Lessee's use of the Premises. The Lessee covenants and warrants to Lessor that Lessee is exempt from all federal, state and local taxes and further, that Lessee shall take no action to cause the loss of its exemption from said taxes. Lessee further covenants and agrees with the Lessor that in the event Lessee shall lose its exemption from taxes for any reason, Lessee shall timely pay all and any taxes accruing as a result thereof. Lessee further covenants and agrees to indemnify and hold Lessor harmless against any claims or judgments for unpaid taxes resulting from Lessee's use of the Premises.

17. Attorneys' Fees. In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees. For any controversy or claim arising out of or relating to this Lease, or the breach thereof, the parties agree to attempt to mediate any such disputes in good faith prior to filing any action against the other.

18. Waiver. No failure of Lessor to enforce any Term hereof shall be deemed to be a waiver.

19. Heirs, Assigns, Successors. This Lease is binding upon and shall inure to the benefit of the heirs, assigns and successors in interest to the parties.

20. Subordination. This Lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

21. Entire Agreement. This Lease constitutes the entire agreement between the parties concerning the Premises and may be modified only by a written amendment signed by both parties.

22. Survival. Paragraphs 8, 11, and 15 through 20 inclusive shall survive any termination of this Lease by either Lessee or Lessor.

Signed as of this ___ day of _____, 2004.

CITY OF WESTMINSTER

THE WESTMINSTER HISTORICAL SOCIETY

By: _____
Nancy McNally, Mayor

By: _____
Printed Name: _____
Title: _____

Attest: _____
Michele Kelley, City Clerk

Attest: _____
Printed Name: _____

APPROVED BY:


APPROVED BY:

Martin R. McCullough, City Attorney

Printed Name: _____

26'

OPEN KITCHEN AREA


FIRE PREVENTION BUREAU
 FIRE REVIEW NO. 94-829
 REVIEWED BY: Mark [Signature]
 DATE APPROVED: 8.15.94
Mark [Signature] DFL
 FIRE MARSHAL
 CALL 428-3434 TO MAKE ARRANGEMENTS FOR INSPECTION

Interior Horn Strobes Required

BEST ROOM

SHOWER

16/2 F.A. CABLE

14/2 FA CABLE

14/2 F.A. CABLE

STAIRS DOWN TO GARAGE

FAP

(S)

OFFICE NOT ACCESSIBLE TO HSI

16/2 F.A. CABLE

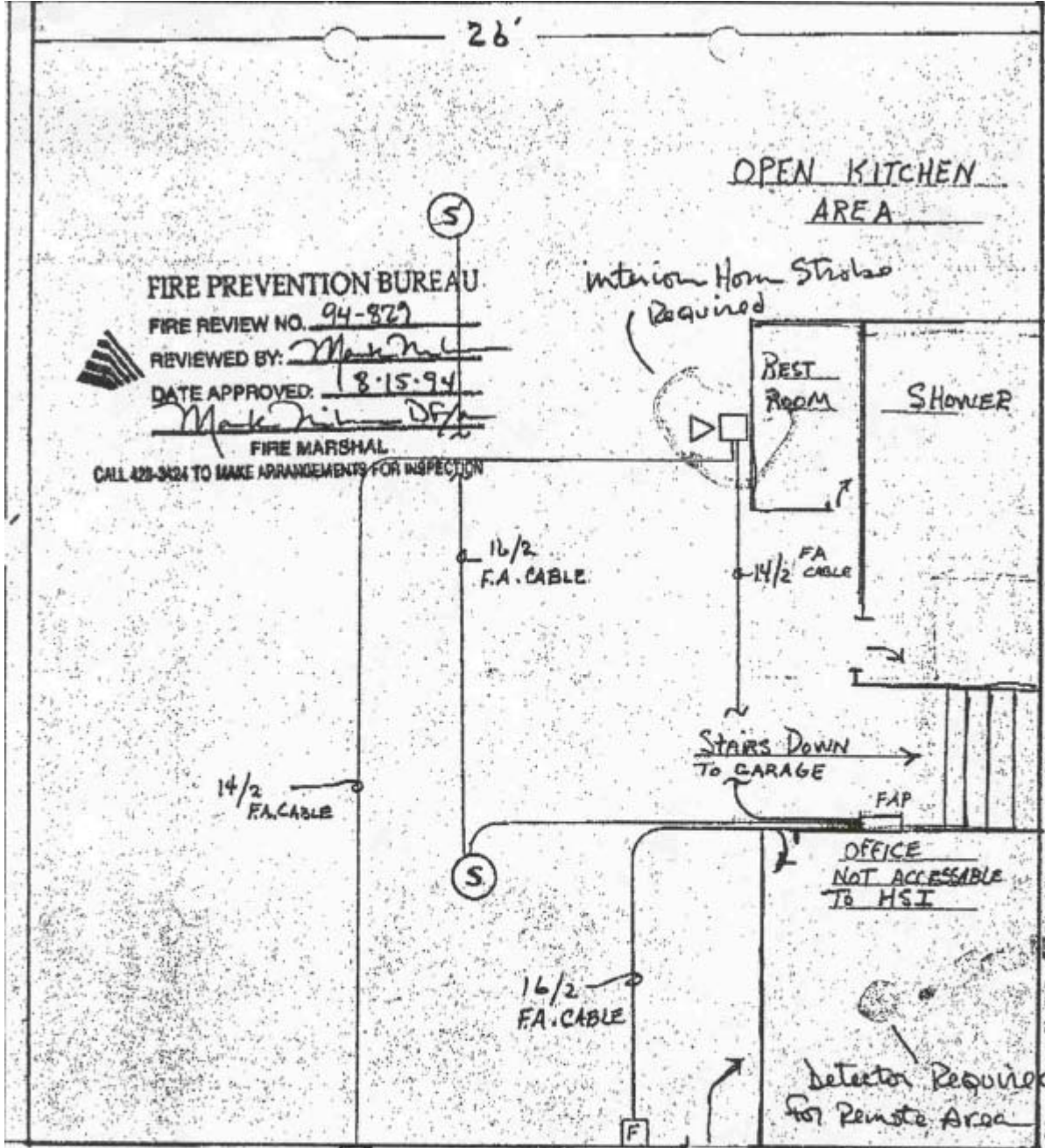
Detector Required for Remote Area

(F)

FRONT ENTRY

N

NOT TO SCALE





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Second Reading of Councillor's Bill No. 84 Sale Agreement with Hyland Hills Parks and Recreation District

Prepared By: Mike Happe, Water Resource & Treatment Manager
Bob Krugmire, Water Resources Engineer

Recommended City Council Action

Pass Councillors Bill No. 84 on second reading authorizing a supplemental appropriation to the 2004 budget of the Utility Fund in the amount of \$521,730.

Summary Statement

- This Councillor's Bill was passed on first reading on November 22, 2004.
- The City of Westminster has been in negotiations with Hyland Hills for the Sale of surplus property located directly north of I-76 and directly east of Tennyson Street. The property was originally slated for development as a water exchange reservoir. Acquisition of this property was part of a larger exchange agreement with CAMAS Colorado Inc, an aggregate materials supplies
- In prior negotiations with Hyland Hills, a purchase price for the property was proposed at \$17,000 per acre, or approximately \$0.39 per square foot. The District plans to use Great Outdoors Colorado funds to purchase the property. This price was based on market analysis work that was completed at the end of 2002.
- The City Council previously endorsed Hyland Hills GOCO grant application that resulted in the grant funds now being used by Hyland Hills for the purchase.
- Appropriation of the funds from this sale to Hyland Hills would be used to replace a portion of the relatively expensive water from Thornton with another more cost effective source.

Expenditure Required: \$521,730 in revenues to the Utility Fund

Source of Funds: Sale of assets

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **84**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2004 BUDGET OF THE UTILITY FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2004 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2004 appropriation for the Utility Fund initially appropriated by Ordinance No. 2977 in the amount of \$38,281,200 is hereby increased by \$521,730 which, when added to the fund balance as of the City Council action on November 22, 2004 will equal \$49,037,112. The actual amount in Utility Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the sale of assets.

Section 2. The \$521,730 increase in the Utility Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES		Current Budget	Amendment	Revised Budget
Description	Account Number			
Sale of Assets	2000.43040.0000	\$0	\$521,730	\$521,703
Total Change to Revenues			\$521,730	

EXPENSES		Current Budget	Amendment	Revised Budget
Description	Account Number			
Thornton Water Replacement	80420035618.80400.8888	\$578,000	\$521,730	\$1,099,703
Total Change to Expenses			\$521,730	

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 AND PUBLISHED this 22nd day of November, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of December, 2004.

ATTEST:

Mayor

City Clerk _____



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Second Reading of Councillor's Bill No. 85 re Wayne Carl Middle School Supplemental Appropriation

Prepared By: Becky Eades, Landscape Architect II

Recommended City Council Action:

Adopt Councillor's Bill No. 85 on second reading authorizing a supplemental appropriation to the 2004 budget of the General Capital Improvement Fund and the Open Space Fund in the amount of \$700,000 and \$250,000, respectively.

Summary Statement:

- This appropriation reflects the City's receipt of \$950,000 reimbursement from Jefferson County Public Schools for the acquisition of the 18-acre Brauch Open Space Parcel.
- Of the \$950,000 purchase price, \$240,000 was funded out of the Open Space Land Purchase Account and \$710,000 from the City Park Maintenance Facility Capital Improvement Project Account. The agreement with Jefferson County for the reimbursement of these funds stipulates slightly different payments, with which Staff is in agreement.
- On October 26, 2004, the City of Westminster, Jefferson County Open Space, and Jefferson County Public Schools closed on a land swap, which resulted in the Jefferson County School District obtaining a site from the City for Wayne Carl Middle School. As part of the land trade, the School District reimbursed the City for the Brauch Open Space Parcel and gave the City an 11-acre parcel of land located approximately at 107th and Simms Street.
- This item was passed by City Council on first reading on November 22, 2004.

Expenditure Required: \$950,000

Source of Funds: Sale of Brauch Open Space

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **85**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2004 BUDGET OF THE GENERAL FUND CAPITAL IMPROVEMENT FUND AND THE OPEN SPACE FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2004 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2004 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2977 in the amount of \$9,036,000 is hereby increased by \$700,000 which, when added to the fund balance as of the City Council action on November 22, 2004 will equal \$20,292,662. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of funds from Jefferson County Schools for the Brauch Open Space Parcel.

Section 2. The \$700,000 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES		Current Budget	Amendment	Revised Budget
Description	Account Number			
Sale of Assets	7501.43040.0000	\$0	<u>\$700,000</u>	\$700,000
Total Change to Revenues			<u>\$700,000</u>	

EXPENSES		Current Budget	Amendment	Revised Budget
Description	Account Number			
City Park Maintenance Facility	80175050092.80400.8888	\$2,131,225	<u>\$700,000</u>	\$2,831,225
Total Change to Expenses			<u>\$700,000</u>	

Section 3. The 2004 appropriation for the Open Space Fund initially appropriated by Ordinance No. 2977 in the amount of \$4,663,797 is hereby increased by \$250,000 which, when added to the fund balance as of the City Council action on November 22, 2004 will equal \$7,846,631. The actual amount in the Open Space Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of funds from Jefferson County Schools for the Brauch Open Space Parcel.

Section 4. The \$250,000 increase in the Open Space Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES		Current Budget	Amendment	Revised Budget
Description	Account Number			
Sale of Assets	5400.43040.0000	\$2,852,453	<u>\$250,000</u>	\$3,102,453
Total Change to Revenues			<u>\$250,000</u>	

EXPENSES Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchases	54010900.76600.0000	\$3,850,937	\$250,000	\$4,100,937
Total Change to Expenses			<u>\$250,000</u>	

Section 5. – 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 6. This ordinance shall take effect upon its passage after the second reading.

Section 7. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED AND PUBLISHED this 22nd day of November, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of December, 2004.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Second Reading of Councillor’s Bill No. 85 re: An Exception to Open Containers of Alcoholic Beverages

Prepared By: Tami Cannon, Paralegal

Recommended City Council Action

Pass Councillor’s Bill No. 85 on second reading amending the Westminster Municipal Code to make an exception to the City’s ordinance concerning open containers of alcoholic beverages to allow “corked” wine bottles as a result of recent state legislation.

Summary Statement

- Recently enacted legislation, C.R.S. section 12-47-411(3.5), allows the possession or control of one opened container of partially consumed vinous liquor purchased and removed from a liquor-licensed hotel or restaurant, so long as the original container did not contain more than 750 milliliters.
- The City’s current ordinance makes it unlawful for a person to drink, possess or control any alcoholic beverage in an open container, or in a container, the seal of which is broken, in any public place or in any vehicle in a public place.
- An ordinance amendment is needed in order to prevent a conflict between the City’s ordinance and the new state law to clarify that the City’s ordinance does not apply to containers resealed under the provisions of the state law.
- This Councillor’s Bill was passed on first reading on November 22, 2004.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3174**

COUNCILLOR'S BILL NO. **86**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

DAVIA - PRICE

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE CONCERNING
OPEN CONTAINERS OF ALCOHOLIC BEVERAGES

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 6-9-3, W.M.C., is hereby amended BY THE ADDITION OF A NEW
SUBSECTION to read as follows:

6-9-3: OPEN CONTAINERS OF ALCOHOLIC BEVERAGES:

(A) It shall be unlawful for any person to drink, possess or have under his control, any alcoholic beverage in an open container, or in a container, the seal of which is broken, in any public place within the City, or in any vehicle in a public place.

(B) It shall be unlawful for any person, while operating a vehicle in any public place within the City, to drink, possess, have under his control or allow any alcoholic beverage within the vehicle, in any open container, or in a container, the seal of which is broken.

(C) EXCEPTION: SUBSECTIONS (A) AND (B) ABOVE SHALL NOT APPLY TO THE POSSESSION OR CONTROL OF ONE OPENED CONTAINER OF VINOUS LIQUOR PURCHASED AND REMOVED FROM A LIQUOR-LICENSED HOTEL OR RESTAURANT, PURSUANT TO THE PROVISIONS OF SECTION 12-47-411(3.5), C.R.S., SO LONG AS THE ORIGINAL CONTAINER DID NOT CONTAIN MORE THAN 750 MILLILITERS.

~~(C)~~(D) Nothing in this Section shall prohibit drinking or having open containers of alcoholic beverages:

1. In public areas where authorized by a properly issued special event permit.
2. Pursuant to a permit issued by the Department of Parks, Recreation and Libraries.
3. On private property AUTHORIZED by the owner of such property or the guests of such owner.

~~(D)~~(E) Notwithstanding the foregoing provisions, drinking alcoholic beverages in any vehicle is hereby prohibited.

~~(E)~~(F) A violation of this section is a criminal offense, punishable by a fine or imprisonment, or both, as provided in Section 1-8-1 of this Code.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 22nd day of November, 2004. PASSED, ENACTED ON SECOND READING, AND
FULL TEXT ORDERED PUBLISHED this 13th day of December, 2004.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Public Hearing re Walker Open Space Property

Prepared By: David Falconieri, Planner III

Recommended City Council Action:

1. Hold a public hearing.
2. Approve Resolution No. 73 making certain findings of fact as required under Section 31-12-110 C.R.S. regarding the annexation of the Walker property.
3. Pass Councillor's Bill No. 87 on first reading annexing the Walker open space property to the City of Westminster.
4. Pass Councillor's Bill No. 88 on first reading amending the Comprehensive Land Use Plan changing the designation of the Walker property from Northeast Comprehensive Development Plan to Public Open Space. This action is based on the following findings: The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and the proposed amendment is compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
5. Pass Councillor's Bill No. 89 on first reading zoning the Walker Property O-1. This action is based on the finding that the criteria enumerated in Section 11-5-3 of the Westminster Municipal Code have been met.

Summary Statement:

- The Walker property consists of 4.8 acres located east of Wadsworth Boulevard at the 106th Avenue alignment (please refer to the attached vicinity map).
- The property was purchased earlier this year with Open Space funds to expand the Lower Church Lake Open Space area.

Expenditure Required: \$ 0

Source of Funds: NA

Planning Commission Recommendation

The Planning Commission reviewed this proposal on November 23, 2004, and voted unanimously (7-0) to recommend the City Council approve the annexation and rezoning of the Walker property from Jefferson County A-2 to O-1. This recommendation is based on the findings set forth in Section 11-5-3 of the Westminster Municipal Code. The Commission also recommended that the Walker property be designated as Public Open Space in the Comprehensive Land Use Plan.

No one spoke in favor or in opposition to this proposal.

Policy Issue

Should the Walker property open space parcel be annexed at this time? The City Council has, by previous actions, established a policy of annexing City owned land in order to provide City services to those areas.

Alternative

Make a finding that a community of interest does not currently exist for the Walker property and take no further action. If this action is taken, the property will remain unincorporated and subject to Jefferson County regulations and services.

Background Information

The Walker property was purchased to protect the southern portion of the Lower Church Lake open space area. The existing residence will eventually be removed from the property, and no new development is contemplated.

The property is governed by the provisions of the Northeast Comprehensive Development Plan, Sub-area "D." The use of the property as open space is a permitted use under the provisions of that Plan.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Vicinity Map
- Findings of Fact Resolution
- Annexation Ordinance
- Comprehensive Land Use Plan Ordinance
- Comprehensive Land Use Plan Map
- Zoning Ordinance

RESOLUTION

RESOLUTION NO **73**

INTRODUCED BY COUNCILLORS

SERIES OF 2004

A RESOLUTION PURSUANT TO SECTION 31-12-110, C.R.S., SETTING FORTH THE FINDINGS OF FACT AND CONCLUSION OF CITY COUNCIL WITH REGARD TO THE PROPOSED ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN SECTION 11, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO.

WHEREAS, pursuant to the laws of the State of Colorado, there has been filed with the City Clerk an application for the annexation of the property described in said application; and

WHEREAS, having completed the required hearing, the City Council wishes to set forth its findings of fact and conclusion regarding the proposed annexation.

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

1. The City Council finds:

- a. Not less than 1/6 of the perimeter of the area proposed to be annexed is contiguous with the City of Westminster;
- b. A community of interest exists between the area proposed to be annexed and the City;
- c. The area is urban or will be urbanized in the near future; and
- d. The area is integrated with or is capable of being integrated with the City.

2. The City Council further finds:

- a. With respect to the boundaries of the territory proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowners thereof, except to the extent such tracts or parcels are separated by dedicated street, road, or other public way; and
- b. With regard to the boundaries of the area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty (20) acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the previous year), has been included in the area being proposed for annexation without the written consent of the owners thereof, except to the extent such tract of land is situated entirely within the outer boundaries of the City immediately prior to the annexation of said property.

3. The City Council further finds:

- a. That no annexation proceedings concerning the property proposed to be annexed by the City has been commenced by another municipality;
- b. That the annexation will not result in the attachment of area from a school district;
- c. That the annexation will not result in the extension of the City's boundary more than three (3) miles in any direction;

- d. That the City of Westminster has in place a plan for the area proposed to be annexed; and
- e. That in establishing the boundaries of the area to be annexed, the entire width of any street or alley is included within the area annexed.

4. The City Council further finds that an election is not required and no additional terms or conditions are to be imposed upon the area to be annexed.

5. The City Council concludes that the City may proceed to annex the area proposed to be annexed by ordinance pursuant to section 31-12-111, C.R.S.

PASSED AND ADOPTED this 13th day of December, 2004.

ATTEST:

Mayor

City Clerk

Walker Annexation

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **87**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN SECTION 11, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO.

WHEREAS, pursuant to the laws of the State of Colorado, there was presented to and filed with the Council of the City of Westminster a written application for annexation to and by the City of Westminster of the hereinafter-described contiguous, unincorporated territory situate, lying and being in the County of Jefferson, State of Colorado; and

WHEREAS, City Council has been advised by the City Attorney and the City Manager that the application and accompanying maps are in substantial compliance with Section 31-12-101, et.seq., Colorado Revised Statutes, as amended; and

WHEREAS, City Council has held the required annexation hearing in conformance with all statutory requirements; and

WHEREAS, City Council has heretofore adopted Resolution No. making certain findings of fact and conclusions regarding the proposed annexation as required by Section 31-12-110, C.R.S., and now finds that the property proposed for annexation may be annexed by ordinance at this time; and

WHEREAS, the Council of the City of Westminster has satisfied itself concerning the conformance of the proposed annexation to the annexation policy of the City of Westminster.

NOW, THEREFORE, the City of Westminster ordains:

Section 1. That the annexation is hereby accomplished by and to the City of Westminster, State of Colorado, of the following described contiguous unincorporated territory situate, lying and being in the County of Jefferson, State of Colorado, to wit:

A parcel of land in the southeast quarter of Section 11, Township 2 South, Range 69 West of the Sixth Principal Meridian, in the County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the south quarter corner of said section, thence along the north/south centerline of said section on which all bearing heron are based N01°46'32"E, 1315.32 feet to the south sixteenth corner of said section; thence along the north line of the southwest quarter of the southeast quarter of said section N89°13'53"E, 40.04 feet to the true point of beginning on the apparent east line of Wadsworth Boulevard;

Thence along said east line N01°46'32"E, 446.66 feet to a point on the southerly line of lower Church Lake as described in Book 378 at Page 440 of the records of the Jefferson County Clerk and Recorder; thence along said southerly line S44°16'03"E, 504.03 feet; thence continuing along said southerly line S49°12'46"E, 121.51 feet to a point on said north line; thence along said north line N89°13'53"E, 311.78 feet to a point on the west line of the Colorado and Southern Railroad; thence along said west line S39°30'08"W, 165.01 feet; thence continuing along said line S39°30'08"W, 24.54 feet to a point on said south line of said lake; thence continuing along said west line S39°30'08"W, 12.09 feet; thence S89°13'53"W, 645.98 feet to a point on said apparent west line of Wadsworth Boulevard; thence along said west line N01°46'32"E, 154.00 feet to the true point of beginning.

Said property contains 208359 square feet or 4.7833 acres more or less.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of December, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk

Walker Annexation

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **88**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

WHEREAS, the City maintains a Comprehensive Land Use Plan that regulates land uses within the City; and

WHEREAS, the City Council has annexed new properties to the City specifically described below; and

WHEREAS, an amendment of the Plan is necessary to provide a land use designation for the annexed property and to keep the Plan up to date; and

WHEREAS, the Planning Commission has reviewed the proposed amendment and has recommended approval to the City Council.

NOW THEREFORE, the City Council hereby finds that the required procedures for amending the Comprehensive Land Use Plan as delineated in the Westminster Municipal Code have been satisfied.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council authorizes City Staff to make the necessary changes to the maps and text of the Westminster Comprehensive Land Use Plan which are necessary to alter the designation of the Walker annexation property, legally described as follows:

A parcel of land in the southeast quarter of Section 11, Township 2 South, Range 69 West of the Sixth Principal Meridian, in the County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the south quarter corner of said section, thence along the north/south centerline of said section on which all bearing heron are based N01°46'32"E, 1315.32 feet to the south sixteenth corner of said section; thence along the north line of the southwest quarter of the southeast quarter of said section N89°136'53"E, 40.04 feet to the true point of beginning on the apparent east line of Wadsworth Boulevard;

Thence along said east line N01°46'32"E, 446.66 feet to a point on the southerly line of lower Church Lake as described in Book 378 at Page 440 of the records of the Jefferson County Clerk and Recorder; thence along said southerly line S44°16'03"E, 504.03 feet; thence continuing along said southerly line S49°12'46"E, 121.51 feet to a point on said north line; thence along said north line N89°13'53"E, 311.78 feet to a point on the west line of the Colorado and Southern Railroad; thence along said west line S39°30'08"W, 165.01 feet; thence continuing along said line S39°30'08"W, 24.54 feet to a point on said south line of said lake; thence continuing along said west line S39°30'08"W, 12.09 feet; thence S89°13'53"W, 645.98 feet to a point on said apparent west line of Wadsworth Boulevard; thence along said west line N01°46'32"E, 154.00 feet to the true point of beginning.

Said property contains 208359 square feet or 4.7833 acres more or less.

The properties described above shall be changed from Northeast Comprehensive Development Plan, to Public Open Space.

Section 2. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th of December, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **89**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 11, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for the zoning of the property described below from Jefferson County A-2 to City of Westminister O-1 zoning has been submitted to the City for its approval pursuant to Westminister Municipal Code Section 11-5-1.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminister Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminister Municipal Code Section 11-5-3.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein from Jefferson County A-2 to City of Westminister O-1. A parcel of land located in Section 11, Township 2 South, Range 69 West, 6th P.M., County of Jefferson, State of Colorado, more particularly described as follows:

A parcel of land in the southeast quarter of Section 11, Township 2 South, Range 69 West of the Sixth Principal Meridian, in the County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the south quarter corner of said section, thence along the north/south centerline of said section on which all bearing heron are based N01°46'32"E, 1315.32 feet to the south sixteenth corner of said section; thence along the north line of the southwest quarter of the southeast quarter of said section N89°136'53"E, 40.04 feet to the true point of beginning on the apparent east line of Wadsworth Boulevard;

Thence along said east line N01°46'32"E, 446.66 feet to a point on the southerly line of lower Church Lake as described in Book 378 at Page 440 of the records of the Jefferson County Clerk and Recorder; thence along said southerly line S44°16'03"E, 504.03 feet; thence continuing along said southerly line S49°12'46"E, 121.51 feet to a point on said north line; thence along said north line N89°13'53"E, 311.78 feet to a point on the west line of the Colorado and Southern Railroad; thence along said west line S39°30'08"W, 165.01 feet; thence continuing along said line S39°30'08"W, 24.54 feet to a point on said south line of said lake; thence continuing along said west line S39°30'08"W, 12.09 feet; thence S89°13'53"W, 645.98 feet to a point on said apparent west line of Wadsworth Boulevard; thence along said west line N01°46'32"E, 154.00 feet to the true point of beginning.

Said property contains 208359 square feet or 4.7833 acres more or less.

Section 3. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of December, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk

Walker Zoning



WESTMINSTER
COLORADO

Agenda Item 10 F-J

City Council Meeting
December 13, 2004



SUBJECT: Public Hearing and Action on the Annexation, Comprehensive Land Use Plan Amendment and Zoning for the Bott Property Open Space

Prepared By: David Falconieri, Planner III

Recommended City Council Action:

1. Hold a public hearing
2. Adopt Resolution No. 74 making certain findings of fact as required under Section 31-12-110 C.R.S. regarding the Bott open space property.
3. Pass Councillor's Bill No. 90 on first reading annexing the Bott open space property to the City.
4. Pass Councillor's Bill No. 91 on first reading amending the Comprehensive Land Use Plan changing the Bott open space property from Northeast Comprehensive Development Plan to Public Open Space. This action is based on the following findings: The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and the proposed amendment is compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
5. Pass Councillor's Bill No. 92 on first reading rezoning the Bott open space property O-1. This action is based on the finding that the criteria enumerated in Section 11-5-3 of the Westminster Municipal Code have been met.

Summary Statement:

- The Bott property consists of 1.6 acres and is located at the southwest corner of Wadsworth Boulevard and the Burlington Northern Santa Fe railroad tracks (please refer to the attached vicinity map).
- The property was purchased by the City for open space purposes and will be used as an addition to the Walnut Creek Open Space corridor and to preserve historic features on the property.

Expenditure Required: \$ 0

Source of Funds: NA

SUBJECT: Public Hearing and Action on the Annexation, Comprehensive Land Use Plan Amendment and Zoning for the Bott Property Open Space page 2

Planning Commission Recommendation

The Planning Commission reviewed this proposal on November 23, 2004, and voted unanimously (7-0) to recommend the City Council approve the annexation and rezoning of the Bott property from Jefferson County A-2 to O-1. This recommendation is based on the findings set forth in Section 11-5-3 of the Westminster Municipal Code. The Commission also recommended that the Bott property be designated as Public Open Space in the Comprehensive Land Use Plan.

No one spoke in favor or in opposition to this proposal.

Policy Issue

Should the Bott Property be annexed at this time? The City Council has in the past established a policy of annexing City owned lands so that City services can be provided to those properties.

Alternative

Make a finding that there is no community of interest with the Bott property at this time and take no further action. If this action is taken, the City owned property will remain unincorporated and subject to County regulations.

Background Information

The Bott Property was purchased by the City earlier this year using Open Space funds. This parcel was the site of the Church's Crossing stagecoach stop and inn, which has since been demolished. The newer log style residence will be removed, a historic well located on the site will remain and an interpretive exhibit may be created in the future. The property also expands the Walnut Creek Open Space corridor and the Walnut Creek Trail will eventually be built across the property.

The property is regulated by the Northeast Comprehensive Development Plan. The use of the property as open space complies with the provisions of that plan.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Vicinity
- Findings of Fact Resolution
- Annexation Ordinance
- Comprehensive Land Use Plan Ordinance
- Comprehensive Land Use Plan Map
- Zoning Ordinance

RESOLUTION

RESOLUTION NO **74**

INTRODUCED BY COUNCILLORS

SERIES OF 2004

A RESOLUTION PURSUANT TO SECTION 31-12-110, C.R.S., SETTING FORTH THE FINDINGS OF FACT AND CONCLUSION OF CITY COUNCIL WITH REGARD TO THE PROPOSED ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO.

WHEREAS, pursuant to the laws of the State of Colorado, there has been filed with the City Clerk an application for the annexation of the property described in said application; and

WHEREAS, City Council has held a hearing concerning the proposed annexation as required by sections 31-12-108 and -109, C.R.S.; and

WHEREAS, having completed the required hearing, the City Council wishes to set forth its findings of fact and conclusion regarding the proposed annexation.

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

1. The City Council finds:

- a. Not less than 1/6 of the perimeter of the area proposed to be annexed is contiguous with the City of Westminster;
- b. A community of interest exists between the area proposed to be annexed and the City;
- c. The area is urban or will be urbanized in the near future; and
- d. The area is integrated with or is capable of being integrated with the City.

2. The City Council further finds:

- a. With respect to the boundaries of the territory proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowners thereof, except to the extent such tracts or parcels are separated by dedicated street, road, or other public way; and
- b. With regard to the boundaries of the area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty (20) acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the previous year), has been included in the area being proposed for annexation without the written consent of the owners thereof, except to the extent such tract of land is situated entirely within the outer boundaries of the City immediately prior to the annexation of said property.

3. The City Council further finds:

- a. That no annexation proceedings concerning the property proposed to be annexed by the City has been commenced by another municipality;
- b. That the annexation will not result in the attachment of area from a school district;
- c. That the annexation will not result in the extension of the City's boundary more than three (3) miles in any direction;
- d. That the City of Westminster has in place a plan for the area proposed to be annexed; and
- e. That in establishing the boundaries of the area to be annexed, the entire width of any street or alley is included within the area annexed.

4. The City Council further finds that an election is not required and no additional terms or conditions are to be imposed upon the area to be annexed.

5. The City Council concludes that the City may proceed to annex the area proposed to be annexed by ordinance pursuant to section 31-12-111, C.R.S.

PASSED AND ADOPTED this 13th day of December, 2004.

ATTEST:

Mayor

City Clerk

Bott Annexation

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **90**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO.

WHEREAS, pursuant to the laws of the State of Colorado, there was presented to and filed with the Council of the City of Westminster a written application for annexation to and by the City of Westminster of the hereinafter-described contiguous, unincorporated territory situate, lying and being in the County of Jefferson, State of Colorado; and

WHEREAS, City Council has been advised by the City Attorney and the City Manager that the application and accompanying maps are in substantial compliance with Section 31-12-101, et.seq., Colorado Revised Statutes, as amended; and

WHEREAS, City Council has held the required annexation hearing in conformance with all statutory requirements; and

WHEREAS, City Council has heretofore adopted Resolution No. making certain findings of fact and conclusions regarding the proposed annexation as required by Section 31-12-110, C.R.S., and now finds that the property proposed for annexation under the Annexation Petition may be annexed by ordinance at this time; and

WHEREAS, the Council of the City of Westminster has satisfied itself concerning the conformance of the proposed annexation to the annexation policy of the City of Westminster.

NOW, THEREFORE, the City of Westminster ordains:

Section 1. That the annexation is hereby accomplished by and to the City of Westminster, State of Colorado, of the following described contiguous unincorporated territory situate, lying and being in the County of Jefferson, State of Colorado, to wit:

A parcel of land in the north half of Section 14, Township 2 South, Range 69 West of the Sixth Principal Meridian, in the County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the north quarter corner of said section from whence the center quarter corner of said section bears S00°44'21"E, 2642.89 feet the bearing of which all bearings hereon are based; thence along the north/south centerline of said section S00°44'21"E, 170.66 feet to the true point of beginning, a point on a non-tangent curve to the right, a point on the west line of that tract of land annexed to the City of Westminster and recorded at Reception Number 88080480 of the records of the Jefferson County Clerk and Recorder;

Thence along said curve with a central angle of 19°01'25", a radius of 318.10 feet and an arc length of 105.62 feet, long chord bears S10°15'04"E, 105.13 feet; thence S89°15'39"W, 10.00 feet to a point on the west line of Wadsworth Boulevard; thence along said line S00°44'21"E, 42.76 feet; thence S88°31'05"W,

7.37 feet to a point on said north/south centerline from whence the center quarter corner of said section bears S00°44'21"E, 2325.69 feet; thence S88°31'05"W, 385.81 feet to a point on the east line of the Colorado and Southern Railroad; thence along said line N39°29'33"E, 363.14 feet to a point on the westerly line of Wadsworth Boulevard, a point on a non-tangent curve to the right; thence along said curve with a central angle of 30°53'12", a radius of 289.30 feet and an arc length of 155.95 feet, long chord bears S53°01'44"E, 154.07 feet; thence N13°11'53"E, 22.33 feet to a point on the west line of said annexation, a point on a non-tangent curve to the right; thence along said curve with a central angle of 10°30'42", a radius of 318.10 feet and an arc length of 58.36 feet, long chord bears S25°01'07"E, 58.28 feet to the true point of beginning;

Said property contains 67559 square feet or 1.5509 acres more or less.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of December, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk

Bott Annexation

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **91**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

WHEREAS, the City maintains a Comprehensive Land Use Plan that regulates land uses within the City; and

WHEREAS, the City Council has annexed new properties to the City specifically described below; and

WHEREAS, an amendment of the Plan is necessary to provide a land use designation for the annexed property and to keep the Plan up to date; and

WHEREAS, the Planning Commission has reviewed the proposed amendment and has recommended approval to the City Council.

NOW THEREFORE, the City Council hereby finds that the required procedures for amending the Comprehensive Land Use Plan as delineated in the Westminster Municipal Code have been satisfied.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council authorizes City Staff to make the necessary changes to the maps and text of the Westminster Comprehensive Land Use Plan which are necessary to alter the designation of the Bott annexation property, legally described as follows:

A parcel of land in the north half of Section 14, Township 2 South, Range 69 West of the Sixth Principal Meridian, in the County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the north quarter corner of said section from whence the center quarter corner of said section bears S00°44'21"E, 2642.89 feet the bearing of which all bearings hereon are based; thence along the north/south centerline of said section S00°44'21"E, 170.66 feet to the true point of beginning, a point on a non-tangent curve to the right, a point on the west line of that tract of land annexed to the City of Westminster and recorded at Reception Number 88080480 of the records of the Jefferson County Clerk and Recorder;

Thence along said curve with a central angle of 19°01'25", a radius of 318.10 feet and an arc length of 105.62 feet, long chord bears S10°15'04"E, 105.13 feet; thence S89°15'39"W, 10.00 feet to a point on the west line of Wadsworth Boulevard; thence along said line S00°44'21"E, 42.76 feet; thence S88°31'05"W, 7.37 feet to a point on said north/south centerline from whence the center quarter corner of said section bears S00°44'21"E, 2325.69 feet; thence S88°31'05"W, 385.81 feet to a point on the east line of the Colorado and Southern Railroad; thence along said line N39°29'33"E, 363.14 feet to a point on the westerly line of Wadsworth Boulevard, a point on a non-tangent curve to the right; thence along said curve with a central angle of 30°53'12", a radius of 289.30 feet and an arc length of 155.95 feet, long chord bears S53°01'44"E, 154.07 feet; thence N13°11'53"E, 22.33 feet to a point on the west line of said annexation, a point on a non-tangent curve to the right; thence along said curve with a central angle of

10°30'42", a radius of 318.10 feet and an arc length of 58.36 feet, long chord bears S25°01'07"E, 58.28 feet to the true point of beginning;

Said property contains 67559 square feet or 1.5509 acres more or less.

The properties described above shall be changed from Northeast Comprehensive Development Plan, to Public Open Space, as shown on the attached "Exhibit A".

Section 2. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th of December, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **92**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for the zoning of the property described below from Jefferson County A-2 to City of Westminster O-1 zoning has been submitted to the City for its approval pursuant to Westminster Municipal Code Section 11-5-1.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminster Municipal Code Section 11-5-3.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein from Jefferson County A-2 to City of Westminster O-1. A parcel of land located in Section 14, Township 2 South, Range 69 West, 6th P.M., County of Jefferson, State of Colorado, more particularly described as follows:

A parcel of land in the north half of Section 14, Township 2 South, Range 69 West of the Sixth Principal Meridian, in the County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the north quarter corner of said section from whence the center quarter corner of said section bears S00°44'21"E, 2642.89 feet the bearing of which all bearings hereon are based; thence along the north/south centerline of said section S00°44'21"E, 170.66 feet to the true point of beginning, a point on a non-tangent curve to the right, a point on the west line of that tract of land annexed to the City of Westminster and recorded at Reception Number 88080480 of the records of the Jefferson County Clerk and Recorder;

Thence along said curve with a central angle of 19°01'25", a radius of 318.10 feet and an arc length of 105.62 feet, long chord bears S10°15'04"E, 105.13 feet; thence S89°15'39"W, 10.00 feet to a point on the

west line of Wadsworth Boulevard; thence along said line S00°44'21"E, 42.76 feet; thence S88°31'05"W, 7.37 feet to a point on said north/south centerline from whence the center quarter corner of said section bears S00°44'21"E, 2325.69 feet; thence S88°31'05"W, 385.81 feet to a point on the east line of the Colorado and Southern Railroad; thence along said line N39°29'33"E, 363.14 feet to a point on the westerly line of Wadsworth Boulevard, a point on a non-tangent curve to the right; thence along said curve with a central angle of 30°53'12", a radius of 289.30 feet and an arc length of 155.95 feet, long chord bears S53°01'44"E, 154.07 feet; thence N13°11'53"E, 22.33 feet to a point on the west line of said annexation, a point on a non-tangent curve to the right; thence along said curve with a central angle of 10°30'42", a radius of 318.10 feet and an arc length of 58.36 feet, long chord bears S25°01'07"E, 58.28 feet to the true point of beginning;

Said property contains 67559 square feet or 1.5509 acres more or less.

Section 3. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of December, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk

Bott Zoning



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Public Hearing re Harris Park – Site IV

Prepared By: Max Ruppeck, Senior Project Manager

Recommended City Council Action:

1. Hold a public hearing.
2. Pass Councillor’s Bill No. 93 on first reading amending the Westminster Comprehensive Land Use Plan to change the land use designation of the Harris Park – Site IV property from “R 3.5 Residential” and “Office” to “R-18 Residential” and “Retail Commercial.” This action is based on the findings set forth in the Westminster Comprehensive Land Use Plan as follows:
 - a. The proposed amendment is justified and the Plan is in need of revision as proposed; and
 - b. The amendment is in conformance with the overall purpose, intent, goals and policies of the Plan; and
 - c. The proposed amendment is compatible with existing and planned surrounding land uses; and
 - d. The proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems.
3. Pass Councillor’s Bill No. 94 on first reading rezoning the Harris Park – Site IV property from T-1, Transitional; B-1, Business; R-4, Residential and R-2 Residential to Planned Unit Development (PUD). This recommendation is based on the findings set forth in Section 11-5-3 of the Westminster Municipal Code.
4. Approve the Harris Park – Site IV combined Preliminary and Official Development Plan (PDP/ODP) to allow a retail/office building and multi-family residential development. This recommendation is based on the findings set forth in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code.

Summary Statement:

The applicant, Community Builders, is requesting that the City:

- Amend the Comprehensive Land Use Plan designation and zoning for a 1.506-acre site located on the northwest corner of Lowell Boulevard and 73rd Avenue to allow a retail/office/residential mixed use development.
- Approve the combined PDP/ODP for Harris Park – Site IV to allow a Multi-Family Residential development comprised of twelve townhome style units, and an 11,220 square foot retail/office building.

Expenditure Required: \$ 0
Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission held a public hearing on this proposal on November 23, 2004, and voted unanimously (7-0) to recommend the City Council approve the Comprehensive Land Use Plan Amendment changing the land use designation from “R 3.5 Residential” and “Office” to “R-18 Residential” and “Retail Commercial,” a rezoning from “T-1, Transitional; B-1, Business; R-4, Residential and R-2 Residential” to “Planned Unit Development (PUD)” and the combined Preliminary and Official Development Plan for the property be approved.

No one spoke in favor or opposition to this proposal.

Policy Issue

Should the City approve a Comprehensive Land Use Plan amendment, rezoning to Planned Unit Development, and combined Preliminary and Official Development Plan to allow a twelve unit townhome style multi-family development and retail/office building for the subject property?

Alternatives

1. Deny the amendment to the Comprehensive Land Use Plan and find:
 - a. The proposed amendment is not justified; and
 - b. The proposed amendment is not consistent with the overall purpose, intent, goals and policies of the Comprehensive Land Use Plan; and
 - c. The proposed amendment is incompatible with the existing and proposed surrounding land uses.
2. Deny the combined Preliminary and Official Development Plan (PDP/ODP) if the findings set forth in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code have not been met.

Background Information

In May 2001, the Westminster Economic Development Authority and City Council instructed Staff to issue a Request for Proposal (RFP) relative to redevelopment of the area around 73rd Avenue and Lowell Boulevard. In response to the RFP, Community Builders submitted a proposal for redevelopment of the area that over time was to include townhomes, condominiums and retail commercial/office space. In November 2001, the City Council approved a pre-development agreement with Community Builders, which in part provided for the City to give support to the developer relative to land acquisition. In compliance with the pre-development agreement, Community Builders submitted and had approved combined PDP/ODP applications to construct 50 townhomes on three sites within the redevelopment area authorized by City Council per the agreement. These three sites are currently under construction or recently completed. Harris Park – Site IV is the next phase of development in this continuing redevelopment effort in South Westminster.

Applicant/Property Owner

Ann Heckler
Community Builders
7032 South Revere Parkway
Englewood, Colorado 80112

Surrounding Land Use and Comprehensive Land Use Plan Designation (CLUP)

The subject property is abutted by single-family dwellings to the north and west, an office building to the west, commercial buildings to the south (across 73rd Avenue), and the Career Enrichment Park and office uses to the east (across Lowell Boulevard). The CLUP designates the property to the south as “Retail Commercial,” the property to the east as “Public/Quasi Public and Office,” the property to the north as “R 3.5 Residential” and the property to the west “Office” and “R 3.5 Residential.”

Site Plan Information

The existing land use on the subject parcel is a vacant office building and vacant lots. The developer proposes to tear down the vacant building.

The proposed development includes twelve for sale townhome-style residential condominium units, and an 11,220 square foot retail office building. Base sale prices of the residential units will be in the \$175,000 to \$200,000 range. The townhome units will be within two six-unit buildings and range in size from 1,286 square feet to 1,366 square feet. All of the units will have two-car garages. The retail/office building will be a two story brick structure. Automobile access to the site will be from Lowell Boulevard, 73rd Avenue and Wilson Court. Pedestrian access will be provided by sidewalks along Lowell Boulevard and 73rd Street and internal walks. The townhome units will be two stories each and will have a private yard. The townhome building materials will be brick combined with vinyl or hardboard siding. Roofing will be architectural grade (high-profile) composition shingles. A six-foot high privacy fence is proposed along a portion of the west property line. The retail office building is all brick and has a flat, built-up roof.

Traffic and Transportation

Due to the very minimal impact of this project, a traffic study was not required by the Engineering Division for this project. No RTD bus service is provided in the vicinity of the project.

Service Commitment Category

Six Service Commitments reserved for South Westminster developments in Category A-3 will be required for the residential units. The Service Commitments for the retail/office building are from Category C.

Referral Agency Responses

No referral agencies expressed concerns with the proposed land use changes or development proposal.

Public Comments

A neighborhood meeting was held at the Grange Hall at 3935 W. 73rd Avenue on October 23, 2004. About 30 people attended the meeting. Citizens were generally supportive of the redevelopment project and complimented Community Builders on their Phase 1 project at 75th Avenue and Lowell Boulevard.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

- Vicinity Map
- Comprehensive Land Use Plan Ordinance
- Rezoning Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **93**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

WHEREAS, the City maintains a Comprehensive Land Use Plan ("Plan") that regulates land uses within the City; and

WHEREAS, an amendment of the Plan is necessary to provide a land use designation for the property and to keep the Plan up to date; and

WHEREAS, the Planning Commission has reviewed the proposed amendment and has recommended approval to the City Council.

NOW THEREFORE, the City Council hereby finds that the required procedures for amending the Comprehensive Land Use Plan as delineated in the Westminster Municipal Code have been satisfied.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council authorizes City Staff to make the necessary changes to the maps and text of the Westminster Comprehensive Land Use Plan which are necessary to alter the designation of the Harris Park, Site IV property, legally described as follows:

A parcel of land located in Section 31, Township 2 South, Range 68 West, 6th P.M., County of Adams, State of Colorado, more particularly described as follows:

Parcel: 1 Lots 1-5, partial of Lots 6-7 and Lots 46-49 R. Platt Subdivision Filing No. 1, County of Adams, State of Colorado. (.717 acres)

Parcel: 2 Partial of Lots 6-7, Lots 8-17 Dr. Platt Subdivision Filing No. 1, County of Adams, State of Colorado (.789 acres)

The properties described above shall be changed from "R 3.5 Residential" and "Office" to "Retail/Commercial" and "R-18 Residential" respectively as shown on the Comprehensive Land Use Plan map.

Section 2. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th of December, 2004 PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **94**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 31, TOWNSHIP 2 SOUTH, RANGE 68 WEST, 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for the zoning of the property described below from City of Westminster T-1, B-1, R-4 and R-2 to City of Westminster PUD zoning has been submitted to the City for its approval pursuant to Westminster Municipal Code Section 11-5-1.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminster Municipal Code Section 11-5-3.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein from City of Westminster T-1, B-1, R-4 and R-2 to City of Westminster PUD. A parcel of land located in Section 31, Township 2 South, Range 68 West, 6th P.M., County of Adams, State of Colorado, more particularly described as follows:

Parcel: 1 Lots 1-5, partial of Lots 6-7 and Lots 46-49 R. Platt Subdivision Filing No. 1, County of Adams, State of Colorado. (.717 acres)

Parcel: 2 Partial of Lots 6-7, Lots 8-17 Dr. Platt Subdivision Filing No. 1, County of Adams, State of Colorado (.789 acres)

Section 3. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of December, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk
Harris Park – Site IV Zoning



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Public Hearing for the Assembly of God Subdivision, 9050 Yates Street.

Prepared By: Michele McLoughlin, Planner II

Recommended City Council Action:

1. Hold a public hearing.
2. Pass Councillor's Bill No. 95 on first reading amending the Comprehensive Land Use Plan (CLUP) changing the Assembly of God property from Public/Quasi-Public to Retail Commercial. This action is based on the following findings: The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and the proposed amendment is compatible with existing and planned surrounding land uses; and the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
3. Pass Councillor's Bill No. 96 on first reading rezoning the Assembly of God property from R-E (Residential Estate) to PUD (Planned Unit Development). This action is based on the finding that the criteria enumerated in Section 11-5-3 of the Westminster Municipal Code have been met.
4. Approve the combined First Amended Preliminary Development Plan (PDP) and Fourth Amended Official Development Plan (ODP) for the Assembly of God Subdivision. This recommendation is based on the findings set forth in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code.

Summary Statement:

- The Assembly of God subdivision is located at 9050 Yates Street (please refer to attached vicinity map) and consists of approximately 5.065 acres. Previously, this site was the location of Victory Church that has relocated to 117th Avenue and Sheridan Boulevard.
- The developer is proposing to rezone the property from R-E (Residential-Estate) to Planned Unit Development (PUD) for an events center that would host weddings, business and social meetings, banquets, and trade shows.
- Site improvements include additional plant materials, fencing and buffering along the southern boundary adjacent to a few residential lots in unincorporated Adams County, and improvements to the exterior of the building.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission reviewed this proposal on November 23, 2004, and voted unanimously (7-0) to recommend the City Council approve the Comprehensive Land Use Plan amendment changing the land use designation from Public/Quasi-Public to Retail Commercial for the Assembly of God property. The Commission also recommended that the property be rezoned from Residential Estate (R-E) to Planned Unit Development (PUD) based on the findings set forth in Section 11-5-3 of the Westminster Municipal Code and that the combined Preliminary and Official Development Plan be approved, based on the findings set forth sections 11-5-14 and 11-5-15 of the Westminster Municipal Code.

Several property owners spoke at the Planning Commission meeting. Mr. Dave Fisher, of 4871 W. 89th Way asked for clarification as to what area of the facility the outside weddings would be held in. He also requested clarification on the land use and zoning changes being proposed. Mr. Bill Warhola of 4831 W. 89th Way, had questions regarding the fence, lighting along the fence and parking lot, and whether there would be repairs to the drainage. The developer indicated that a 6-foot vinyl fence with masonry columns will be built along the south side of the parking lot. Additional parking lot lights will be added in the future if necessary and improvements to the existing drainage will be made. Mr. Gordon Ballinger, the agent for Victory Church and the Tuscany Event Center, spoke in favor of the proposal.

Policy Issues

Should the CLUP be amended at this time to change the land use designation from Residential to Retail Commercial and should the property be rezoned from R-E (Residential Estate) to Planned Unit Development for an events center?

Alternatives

City Council could determine that the CLUP should not be amended at this time and the property not be rezoned. This determination would need to be based upon a finding that the proposed amendment is not compatible with existing and planned land uses in the area.

Background Information

The Assembly of God subdivision is zoned R-E (Residential Estate). Previously, Victory Church had obtained a Special Use Permit to operate a church in a residential zone district.

John and Gloria Sanders are requesting a CLUP Amendment to change the land use from Public/Quasi Public to Retail Commercial and a rezoning to PUD, along with an amended PDP and amended ODP in order to operate an events center in the existing building.

The proposed events center would be a facility that would be used for hosting events including weddings, business and social meetings, banquets and trade shows.

Applicant/Property Owner

John and Gloria Sanders
11912 W. 77th Drive
Arvada, Colorado 80233

Surrounding Land Use and Comprehensive Land Use Plan Designation

The current CLUP designation for this property is Public/Quasi Public. The property is bordered on the west by Westminster Restaurant Park (Sweet Tomatoes and Joe's Crab Shack), which has a CLUP designation of Retail Commercial. To the south is a vacant portion of the Sheridan Park Business Park designated as Office/Residential on the CLUP and single family lots in unincorporated Adams County. To the north is the City of Westminster Public Safety Center with a CLUP designation of Public/Quasi Public. To the east are City of Westminster water tanks and the Trinity Broadcasting facility, both with CLUP designations of Public/Quasi Public.

Site Plan Information

The property consists of an existing 22,000+ square foot building that contains an assembly hall and associated offices and classrooms on a 5.065 acre lot. The developer is proposing to clean up the site, re-asphalt the parking lot where necessary, add additional landscaping and fencing, and make some architectural changes to the building.

Traffic and Transportation

Access to the site is via Yates Street. There is currently a left turn into the property from Yates Street and two right-in/right-out access points.

Service Commitment Category

Not applicable. Service to the site is already in place.

Referral Agency Responses

No referral responses were received.

Public Comments

At the neighborhood meeting there were several residents in attendance from homes in unincorporated Adams County to the south of the site. The major concerns were potential noise from weddings/events, the serving of alcohol, and vehicle headlights shining into the homes. The developer has done sound level measurements (attached) and the information indicates minimal impacts at 100 feet from the building in the south parking area. The facility will enforce sound level limitations both inside and outside. Curfews for all outdoor events for 10 p.m. weekdays and 11 p.m. on weekends have been included within the PDP/ODP document. A 6-foot vinyl fence with masonry columns and intense landscaping is proposed along the southern parking area to buffer noise and headlights.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Vicinity Map
- Comprehensive Land Use Plan Amendment Ordinance
- Comprehensive Land Use Plan Amendment Map
- Rezoning Ordinance
- Sound Level Measurements
- Preliminary and Official Development Plan

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **95**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

WHEREAS, the City maintains a Comprehensive Land Use Plan("Plan") that regulates land uses within the City; and

WHEREAS, an amendment of the Plan is necessary to change the land use designation for the property described below and to keep the Plan up to date; and

WHEREAS, the Planning Commission has reviewed the proposed amendment and has recommended approval to the City Council.

NOW THEREFORE, the City Council hereby finds that the required procedures for amending the Comprehensive Land Use Plan as delineated in the Westminster Municipal Code have been satisfied.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council authorizes City Staff to make the necessary changes to the maps and text of the Westminster Comprehensive Land Use Plan which are necessary to alter the designation of the Assembly of God property, legally described as follows:

Lot 1, Block 1, Assembly of God Subdivision, recorded January 30, 1978 in File 314, Map # 378, except the easterly 200 feet thereof as conveyed in the deed recorded September 1, 1983 in Book 2786 at Page 321, and excepting any portion thereof lying within the right-of-way dedication recorded January 30, 1978 in Book 2209 at Page 869, and except any portion of the subject property lying within the right-of-way dedication recorded September 25, 1987 in Book 3372 at Page 76, County of Adams, State of Colorado, containing 5.065 acres, more or less. The properties described above shall be changed from "Public/Quasi-Public," to "Retail Commercial."

Section 2. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th of December, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk

Assembly of God CLUP Amendment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **96**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 19, TOWNSHIP 2 SOUTH, RANGE 68 WEST, 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for the zoning of the property described below from City of Westminster R-E to City of Westminster P.U.D. zoning has been submitted to the City for its approval pursuant to Westminster Municipal Code Section 11-5-1.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminster Municipal Code Section 11-5-3.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein from City of Westminster R-E to City of Westminster P.U.D. A parcel of land located in Section 19, Township 2 South, Range 68 West, 6th P.M., County of Adams, State of Colorado, more particularly described as follows:

Lot 1, Block 1, Assembly of God Subdivision, recorded January 30, 1978 in File #14, Map #378, except the easterly 200 feet thereof as conveyed in the deed recorded September 1, 1983 in Book 2786 at Page 321, and excepting any portion thereof lying within the right-of-way dedication recorded January 30, 1978 in Book 2209 at Page 869, and except any portion of the subject property lying within the right-of-way dedication recorded September 25, 1987 in Book 3372 at Page 76, County of Adams, State of Colorado, containing 5.065 acres, more or less.

Section 3. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of December, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 20th day of December, 2004.

ATTEST:

Mayor

City Clerk
Assembly of God Rezoning

Sound Level Measurements – 9050 Yates – September, 2004

Instrumentation Used:

EXTECH Digital Sound Level Meter, Model 407727. Meter was set to the SLOW A mode, which responds as the human ear does and is prescribed for OSHA regulatory testing. The MAX HOLD feature was used to display the highest DB level at each measured location. The meter has a range of 40db to 130db, rated resolution of 0.1db, and accuracy of 2db (at 94db sound level).

Sound Source:

A CD player with large dual speakers (each approx 18” square by 30’ high) – such as would be used by a DJ playing at an event. This source was tested in four locations:

1. Center front of Sanctuary – with direct sound path to the front entrance. This represented a worst-case scenario meant to help determine the max sound volume limits to be imposed at any event.
2. Left side of Sanctuary – one of two places where DJs or bands would be allowed to set up during an event; speakers angled for max room coverage
3. Right side of Sanctuary – the second prescribed location; same speaker array.
4. Wedding Garden – East-center location, speakers facing toward the building.

Comparative Sound Levels:

Documentation furnished with the EXTECH meter showed the following sound levels:

50HP Siren (100’)	135db	Speech (1’)	68db
Jet Takeoff (200’)	120db	Large Store	62db
Riveting Machine	110db	Large Office	58db
Chain Saw	100db	Residence	48db
Subway (20’)	90db	Night Residential Area	42db
Freight Train (100’)	80db	Whisper (5’)	32db
Vacuum Cleaner (10’)	72db	Sound Studio	24db

Measurement Results:

Location 1, front and center of main room – Sound level set at **106db**, measured 1foot from the source. This is the max rated output of the CD Player/Speaker system used and is higher than would be allowed for any events. Measured Sept 27, 2004.

- ❑ At the inner portal to the room (doors open) – 88db
- ❑ At the outer portal to the room (no existing doors, inner doors open) – 79db
- ❑ At the Lobby entry (all doors open) – 70db
- ❑ Under Portico at Lobby entry (inner doors closed, outer doors open) – 65 db
- ❑ Under Portico at Lobby entry (inner and outer doors closed) – 56db
- ❑ Perimeter hallway measurements were also taken in all quadrants, with inner doors open and closed. At the South, Southeast, and Southwest “side doors”, measurements were repeated with both inner and outer doors open – all were below the levels observed for the main entry.
- ❑ South parking area, approx 100 feet from Lobby doors – 50db to 55db (not measurably higher than ambient).
- ❑ Ambient sound level (measured in early afternoon at the South driveway) – 50db to 55db (largely due to traffic on nearby roadways and breezy conditions).

Location 2, left side of main room – Sound level set at **105db**, measured 1 foot from the source
Measured Sept 27, 2004

- ❑ At the inner portal to the room (doors open) – 70db
- ❑ At the Lobby entry (all doors open) – 61db
- ❑ At Lobby entry (inner doors closed, outer doors open) – 53 db
- ❑ Under Portico at Lobby entry (inner and outer doors closed) – 52db
- ❑ South parking area, approx 100 feet from Lobby doors – 50db to 55db.
- ❑ Ambient sound level (measured in early afternoon at the South driveway) – 50db to 55db (largely due to traffic on nearby roadways).

Location 3, right side of main room – Sound level set at **101db**, measured 1 foot from the source.
Measured Sept 29, 2004 in the presence of Michele McLoughlin of the Westminster Planning Dept.
Ambient sound level (measured in late morning at the Portico driveway) – approx. 50db

- ❑ At the Sanctuary entry (doors open) – 80db
- ❑ At the outer portal to the room (no existing doors, inner doors open) – 70db
- ❑ At the Lobby entry (all doors open) – 65db
- ❑ At Lobby entry (inner doors closed, outer doors open) – 56 db
- ❑ Under Portico at Lobby entry (inner and outer doors closed) – 50db (not measurably higher than ambient).

Location 4, Wedding Garden – Sound level set at **96db**, measured 1 foot from the source. Measured Sept 27, 2004 with speakers pointed toward the building from near the existing wrought iron fence.

- ❑ At the South entry to the Wedding Garden – 79db
- ❑ East parking lot, approx 40 feet behind source – 74db
- ❑ Near the Lobby entry (under the Portico) – 65db
- ❑ South parking area, approx 100 feet from source – 50db to 55db (not measurably higher than ambient).

Measurement Methodology and Participants

Selection of the EXTECH meter and the approach for measuring sound levels were based on information in the OSHA and EPA web sites regarding noise pollution. This included review of the EPA “model” municipal Noise Ordinance (in the absence of an applicable Westminster ordinance).

The principal designer of the measurement methodology was John Sanders – who holds a degree in electrical engineering and has two decades of experience in test design of FAA systems critical to air traffic control safety. These include tests for environmental factors that might impact system reliability. Tim Moore participated; he holds a degree in control engineering. Michele McLoughlin served as an impartial witness.

Conclusions for Sound Level Control:

1. The existing building (before renovation improvements) has very good acoustic containment properties. Planned improvements will further enhance these properties. For example, the main lobby will have a 6 foot diameter fountain in its center – that is expected to intercept significant sound that might otherwise have a direct line to the Portico when people are entering/exiting an event. It is also expected that furnishings and people at events will absorb significant sound, but there was no practical way to simulate and measure this condition.
2. The facility should (and will) enforce sound level limitations of **95db** inside and **85db** outside, along with curfew hours as outlined in the latest Site Plan submittal. These limits will be stated in the standard rental agreement and enforced employing the same EXTECH meter used for the foregoing measurements.
3. DJs or bands will be required to set up only at the right or left sides of the Main Room (never front, facing the main entryway). Music sources in the Wedding Garden must face the building or Gazebo, never to the East or South. These restrictions will also be spelled out in the standard rental agreement.
4. The planned vinyl/masonry fence and landscaping on the South side of the property will further reduce sound levels perceptible to the nearby residents. These will also help buffer sounds from the Police parking area (such as siren tests at shift change) as well as from vehicle traffic to/from the Tuscan parking lot and even on Yates avenue north of the south parking lot exit.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: Resolution No. 75 re Compliance for McGuire Open Space Property Annexation Petition

Prepared By: David Falconieri, Planner III

Recommended City Council Action:

Adopt Resolution No. 75 accepting the annexation petition submitted by the City of Westminster and Adams County, make the findings required by State Statute on the sufficiency of the petition, and set the date of January 24, 2005, for an annexation hearing on the McGuire property located at the southwest corner of Pecos Street and 128th Avenue.

Summary Statement:

- The McGuire property is located at the southwest corner of Pecos Street and 128th Avenue and consists of 2.9 acres. The property was purchased earlier this year as open space.
- Staff is adding the unincorporated portion of Pecos Street to this annexation since only one lot will remain unincorporated once the McGuire property is annexed. The Adams County Commissioners have signed the annexation petition in support of that action.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Is the petition as submitted in compliance with State Statutes?

Alternatives

If the petition is in compliance with State Statutes the City Council is required to set a hearing date to review the request. If the petition is not in compliance, no further action is needed and the annexation action would be terminated.

Background Information

Upon receiving a petition for annexation, the City Council is required by State Statute to make a finding of whether or not said petition is in compliance with Section 31-12-107 (1) C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

1. An allegation that the annexation is desirable and necessary.
2. An allegation that the requirements of Section 31-12-104 and 31-12-105 C.R.S have been met. (These sections are to be reviewed by the Council at the formal public hearing.)
3. Signatures and mailing addresses of at least 50% of the landowners of the land to be annexed. (In this case, the City of Westminster and Adams County, signers of the petition, own 100% of the property.)
4. The legal description of the land to be annexed.
5. The date of each signature.
6. An attached map showing the boundaries of the area.

Planning Staff has reviewed the petition and has determined that it complies with the above requirements.

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date at which time the Council will review the merits of the proposed annexation.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

- Vicinity Map
- Resolution

SERIES OF 2004

WHEREAS, there has been filed with the City Clerk of the City of Westminster, a petition, copies of which are attached hereto and incorporated by reference, for the annexation of certain territory therein-described to the City;

WHEREAS, the City Council has been advised by the City Attorney and the City Manager that the petition and accompanying map are in substantial compliance with Sections 31-12-101, et.seq., Colorado Revised Statutes, as amended;

NOW, THEREFORE, be it resolved that by City Council of the City of Westminster that:

1. City Council finds the said petition and annexation map to be in substantial compliance with all state statutory requirements, including C.R.S. Section 31-12-107 (1).
2. City Council hereby establishes January 24, 2005, 7:00 PM at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by C.R.S. Section 31-12-108 (1).
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with C.R.S. Section 31-12-108 (2).

Passed and adopted this 13th day of December, 2004.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 13, 2004



SUBJECT: "The Orchard at Westminster" Final Development Agreement

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Actions

- Authorize the City Manager to execute the Final Development Agreement (FDA) with Forest City and Westminster Economic Development Authority (WEDA) in substantially the same form as the attached agreement, which calls for the development of a regional retail facility at the northwest corner of 144th Avenue and I-25.
- Authorize the conveyance by the City of the 135 acre Caldwell/Sheltie parcel to WEDA by Special Warranty Deed.

Summary Statement

- Agreement has been reached between City Staff and Forest City on all of the major deal points for the 215-acre project, at the northwest corner of 144th Avenue and I-25, to be called "The Orchard at Westminster."
- The 215-acre parcel consists of 80 acres owned by WEDA and 135 acres owned by the City.
- To assist with the transaction, the City needs to convey the 135 acre parcel to WEDA. WEDA will in turn combine the 2 parcels and convey the entire 215 acres to Forest City.
- The FDA will be a 3-party agreement between Forest City, WEDA, and the City.
- WEDA involvement is necessitated because the project is in the Urban Renewal Area, and because of the financing tools facilitated by WEDA.
- Forest City agrees to construct a regional retail center anticipated to generate \$150 million in gross annual sales in phase I.

Expenditure Required: Up to \$74 million in WEDA bonds and up to \$17 million in Certificates of Participation will be issued to cover road improvements, construction of the 144th Avenue interchange, and other public improvements.

Source of Funds: WEDA bond proceeds and City of Westminster Certificates of Participation

Policy Issues

- Should the City enter into an agreement with WEDA and Forest City Commercial Group for the development of approximately 215 acres and issue bonds?
- Should City Council authorize the conveyance to WEDA, by Special Warranty Deed, of the 135 acre Caldwell/Sheltie property?

Alternatives

Do not enter into Final Development Agreement with Forest City Commercial Group and do not proceed with the project.

This is not recommended for the following reasons:

1. If the project does not proceed at this time it is likely that the anchor stores will be lost to other potential developments on I-25.
2. Forest City was selected because they have been determined to be a very qualified development company capable of achieving the project goals.
3. If the project does not proceed at this time, it is highly likely that the City will lose the opportunity to develop this project as envisioned.

Background Information

Under Council direction, City Staff has been pursuing development of a regional retail center at 144th Avenue and I-25 since spring 2002. The Forest City Company was selected in September 2003 for the development of this project because of its innovativeness in retail development and their financial capability to complete the project. The recent highly successful opening of Victoria Gardens in Rancho Cucamongo, California speaks well of Forest City’s capabilities.

In the past year, staff and Forest City representatives have determined the project financing, the site plan, and development objectives. The attached FDA addresses these points and is being recommended by Staff for City Council approval. The FDA obligates the City/WEDA and Forest City to take certain actions. The following are the key obligations of the parties:

City/WEDA Obligations

Land Transfer: WEDA will transfer 215 acres of land to Forest City for \$4 million.

Off-Site Infrastructure Improvements: WEDA will issue revenue bonds and the City will issue Certificates of Participation (COP) to cover, in addition to a variety of other expenditures, the cost of building the following infrastructure:

- a.) 144th Avenue interchange on I-25
- b.) 144th Avenue improvements from I-25 to just west of the Cheyenne Ridge subdivision
- c.) Reclaimed water line to the Forest City site, when feasible
- d.) A vehicular tunnel under I-25 at the 149th Avenue alignment, when feasible
- e.) Huron Street improvements north of 140th Avenue to approximately 150th Avenue

SUBJECT:

“The Orchard at Westminster” Final Development Agreement

Page 3

Repayment of the bonds and COP's will be funded with Sales and Property Tax Revenue from the project; as well as by reimbursement according to the City of Thornton and City Westminster 144th Avenue Interchange Intergovernmental Agreement.

Business Assistance: \$20 million dollars in assistance funded from bond proceeds will be provided to Forest City as development occurs. The funds will be used for on-site infrastructure improvements. The first \$10 million will be provided on a dollar for dollar matching basis. Additional funds, beyond the first \$10 million, will be provided based on square footage and sales generation thresholds.

Metro District: City allowed for the establishment of a Metro District to aid Forest City with the cost of on-site improvements for the residential portion of the project.

Forest City Obligations

Project Development: Forest City will build a 1.1 million square foot retail center in phases over the next three to five years. The project will be designed as a first class regional retail center and mixed-use development, including 45 acres of various types of residential products. The first phase of the project will be completed in the fall of 2006. The second phase will be completed by fall 2007 and incremental additions will occur in the years following.

On-Site Infrastructure: Forest City will construct all roads and utilities on-site and will maintain this infrastructure.

Creation of a General Improvement District (GID): Forest City allowed for the formation of a GID over the commercial portion of the site. Funds from the GID will be used by the City to offset infrastructure costs.

\$4 Million in Escrow: Following the signing of the FDA in December 2004, Forest City will put \$4 million in escrow, which will go toward the purchase of the City property, which is anticipated to close in April 2005. If closing does not occur by April 15, 2005, \$1 million of the funds will not be refundable.

The City aggressively pursued a partner for the development of a major retail center. The Forest City project provides the northern anchor to the North I-25 development area. It also funds the 144th Avenue Interchange. It should be noted that the bulk of the bond and COP revenue is for infrastructure improvements. These improvements, though initiated because of the Forest City project, will have benefit to many more individuals and developer than just Forest City. With the 144th Avenue and 136th Avenue interchanges, this area is north area is primed for additional retail and future office development.

Most important to the City is revenue production. Once the project reaches stabilization, it will generate \$14 million in tax revenue annually. Less the City's obligation to the City of Thornton (re: the sales tax sharing IGA), Westminster will have \$9 million in new tax revenue each year. “The Orchard at Westminster” will set the stage for the City's future, both in terms of tax receipts and job growth.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

FINAL DEVELOPMENT AGREEMENT

This FINAL DEVELOPMENT AGREEMENT (this “**Agreement**”) is dated as of the ____ day of December, 2004 (the “**Effective Date**”), and is entered into by and among the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city, with offices at 4800 West 92nd Avenue, Westminster, Colorado, 80031 (the “**City**”), the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority, with offices at 4800 West 92nd Avenue, Westminster, Colorado, 80031 (“**Authority**”) and FOREST CITY COMMERCIAL GROUP, INC. (“**Developer**”), located at 1100 Terminal Tower, 50 Public Square, Cleveland, Ohio, 44113, upon the terms and conditions set forth below. The City, the Authority and Developer each are sometimes referred to herein as a “**Party**” and collectively as the “**Parties.**”

Recitals

Capitalized terms used in these Recitals have the meanings set forth in Section 1.2 of this Agreement. This Agreement is made with respect to the following facts:

- A. The Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to the Act. In January 2004, the City Council approved the Plan for the Redevelopment Area. Among other things, the Plan authorizes the Authority to acquire (by eminent domain, if necessary), and to redevelop property within the Redevelopment Area.

- B. WEDA is or will soon be the owner of certain real property within the Redevelopment Area consisting of approximately 215 acres bounded by approximately the 150th Avenue alignment, West 144th Avenue, Huron Street and I-25, in Westminster, Colorado (the “**Site**”). The Site is legally described on Exhibit A hereto and made a part hereof and depicted on the “**Site Map**,” attached as Exhibit B hereto and made a part hereof.

- C. The City and the Authority, for the public purposes of constructing public infrastructure, eliminating blight factors that have prevented the development of this region of the City, promoting economic development and a diverse revenue base for support of stable City services, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activity in the State of Colorado, Adams County and the surrounding areas of the metro Denver-Boulder area, as well as the City, desire to cooperate with Developer in developing the Site and the Project. The Project will include, in Phase I, a minimum of 326,000 square feet of retail space.

- D. The City and the Developer previously entered into the ENA to explore on a preliminary basis the feasibility of the Project. Pursuant to the ENA, the Parties entered into the Pre-Development Agreement to permit continued negotiations among them to determine if they could agree on mutually acceptable terms and conditions for a Final Development Agreement which would specify the rights, obligations, and method of participation of the Parties with respect to the development of the Project upon the Site. The Pre-Development Agreement was amended by the First Amendment.

E. The City and the Authority have entered into an intergovernmental agreement with the City of Thornton (“Thornton”) and the Thornton Development Authority (“TDA”) entitled the “Interstate 25 Growth Area Intergovernmental Agreement” dated November 24, 2004, incorporated herein by reference, which addresses revenue sharing. The City and Thornton have also entered into an intergovernmental agreement entitled “Intergovernmental Agreement Between the City of Thornton and the City of Westminster for the Design and Construction of the 144th Avenue and Interstate 25 Interchange” dated November 10, 2004, incorporated herein by reference, which addresses administration, design, construction and funding for the Interchange. The City has also entered into an intergovernmental agreement with the Colorado Department of Transportation (“CDOT”) entitled “Intergovernmental Agreement” dated November 24, 2004, incorporated herein by reference, which addresses the funding, design, construction and maintenance of the Interchange. All environmental review work necessary for CDOT’s 1601 process has been submitted to CDOT and the final environmental review is anticipated to be completed in February, 2005.

F. The Parties now desire to enter into this Agreement to set forth the rights, obligations and method of participation of the Parties with respect to the development of the Project on the Site.

Agreement

NOW THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1 DEFINITIONS AND GENERAL PROVISIONS.

Section 1.1 Internal References. Unless otherwise stated, references in this Agreement to Sections, subsections, or Exhibits are to this Agreement.

Section 1.2 Definitions. As used in this Agreement, the following terms will have the following meanings:

“**Act**” means the Colorado Urban Renewal Law, constituting sections 31-25-101, *et seq.*, C.R.S.

“**Affiliate**” means any entity of which Developer has the majority of equity or majority of voting interest or is the managing member or managing partner.

“**Agreement**” has the meaning set forth in the first paragraph of this Agreement.

“Approved Uses” means those land use entitlements, improvements and uses thereof which are approved under the PDP and the ODP, as amended in accordance with the terms and conditions of this Agreement and the Municipal Code, including but not limited to, the entitlement to construct and develop in accordance with the terms and conditions of the Development Plan approximately 1.2 million square feet of mixed use retail, commercial, office, restaurant, entertainment and residential uses.

“Authority” has the meaning set forth in the first paragraph of this Agreement.

“Authority’s Bonds” or **“Bonds”** means the Authority’s Series 2005 Bonds to be issued prior to development of Phase I, as described in this Agreement, and which will be in an amount sufficient, when combined with the net proceeds of the COP’s, to fund the Off-Site Infrastructure on the schedule as set forth herein.

“Bond Requirements” means principal, redemption or purchase prices, premium, if any, interest, reserves, Bond Trustee fees, fees and reimbursement to any credit enhancers, and other amounts required to be paid from time to time pursuant to the Public Financing Documents with respect to the Bonds. Bond Requirements may include, by way of example and without limitation, amounts required to be paid or retained by the Bond Trustee from time to time for purposes of satisfying any principal and interest payments, coverage ratio requirements, debt service reserve requirements, and redemption reserve requirements.

“Bond Trustee” means the trustee or trustees for the holders of the Bonds appointed pursuant to the Public Financing Plan.

“CDOT” means the Colorado Department of Transportation.

“City” has the meaning set forth in the first paragraph of this Agreement.

“City Council” means the city council for the City of Westminster.

“Commencement of Construction” means, with respect to any phase of the Project or portion thereof, Developer’s commencement of physical construction, including significant site grading or preparation, of the Improvements to be constructed by Developer in such phase or portion thereof with the intention to continue the work until such Improvements are completed.

“Committed Revenues” means the aggregate amount of all Incremental Property Taxes and all Incremental Sales Taxes that from time to time is either (i) required pursuant to the Public Financing Documents to be Pledged to, and held by, the Bond Trustee for payment of the Bond Requirements; or (ii) required pursuant to this Agreement to be Pledged.

“Completion of Construction” means with respect to each phase of the Project or portion thereof, the completion of all or substantially all of the Improvements to be constructed or performed by Developer in such phase of the Project or portion thereof in accordance with this Agreement, and when applicable, the receipt of a temporary certificate of occupancy or a certificate of occupancy (whichever is earlier), from the City.

“Contingent Net Bond Proceeds” means the remaining Ten Million (\$10,000,000) of Net Bond Proceeds from the Authority’s Bonds, which proceeds will be held by the Bond Trustee in a special subaccount pending satisfaction of the conditions precedent described in

Section 5.4, and which thereafter will be available for expenditure by the Developer as provided in this Agreement.

“COP’s” means the certificates of participation in the amount of approximately Seventeen Million Dollars (\$17,000,000) to be issued by the City prior to Final Closing, as described in this Agreement which represent an assignment of revenues paid pursuant to a lease purchase agreement entered into by the City.

“County” means the County of Adams, State of Colorado.

“Developer” means Forest City Commercial Group, Inc. or any Affiliate thereof.

“Developer’s Financing” means the financing described in Section 6.1, any refinancing thereof from time to time, and any other financing obtained by Developer from time to time to finance the construction of Improvements.

“Development Plan” means, collectively (i) this Agreement, (ii) the Site Plan attached hereto as Exhibit D; (iii) Developer’s narrative for the development of the Site attached hereto as Exhibit C; (iv) the PDP; and (v) the ODP.

“District Court” means the District Court in and for the County.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Eminent Domain Proceeding” means the eminent domain action to acquire the mineral interests for all or any portion of the Site pursuant to sections 38-1-101 *et seq.*, C.R.S., and/or sections 38-7-101 *et seq.*, C.R.S.

“ENA” means the Exclusive Negotiation Agreement between the City and the Developer dated October 6, 2003.

“Environmental Laws” means all federal, state and local environmental, health and safety statutes, as may from time to time be in effect, including but not limited to the Resource Conservation and Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), 42 U.S.C. § 6901, *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. § 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300h, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; all applicable state counterparts to such federal legislation and any regulations, guidelines, directives or other interpretations of any such enactment, all as amended from time to time, or any other applicable State or Federal environmental protection law or regulation.

“Escrow Agreement” means the escrow agreement to be entered into among the Parties and the Title Company, the form of which is attached here to as Exhibit G.

“Escrow Delivery” means the events described in Sections 4.5 of this Agreement.

“Escrow Delivery Date” means December 31, 2004, or such later or earlier date to which Developer and the Authority may agree in writing, or as extended pursuant to Section 4.4 of this Agreement.

“Escrow Delivery Conditions” means the conditions for Escrow Delivery set forth in Section 4.3 of this Agreement.

“Event of Default” means any event which with the giving of notice or the lapse of time, or both, would constitute a default under Section 13.

“Final Closing” means the events described in Sections 4.9 of this Agreement.

“Final Closing Conditions” means the conditions for Final Closing set forth in Section 4.6 of this Agreement.

“Final Closing Date” means April 15, 2005, or such later or earlier date to which Developer and the Authority may agree in writing, or as extended pursuant to Section 4.8 of this Agreement.

“First Amendment” means the First Amendment to the Pre-Development Agreement dated as of July 15, 2004.

“Fiscal Year” means the Authority’s fiscal year, which currently begins on January 1 of each year and ends on December 31 of the same year.

“GID” means the general improvement district formed by the City on August 30, 2004, by Ordinance No. 3146 in accordance with sections 31-25-601, *et seq.*, C.R.S. and the Municipal Code for the purpose of levying and collecting taxes and appropriating revenues for expenditure in accordance to Section 7.1.

“Hard Costs” means costs and expenses actually paid and incurred by Developer for labor, materials or equipment, including but not limited to, environmental remediation on the Site; demolishing and removing existing improvements on or about the Site, excavating, grading, landscaping, constructing and installing On-Site Improvements, including providing reports, testing or inspecting in connection therewith; and similar costs and expenses as contemplated by this Agreement and the Development Plan. By way of example, Hard Costs will include, without limitation, (i) the gross cost of any general or On-Site Improvements which is reduced to writing, and the additional charges for change orders, discharge of mechanic’s liens, and other similar extras contemplated by or resulting from such contract; and (ii) any utility tap or other hook-up fees actually incurred by Developer and not otherwise waived by the City; provided that any costs or expenses included in the computation of Soft Costs will not be included in Hard Costs.

“Holder” means the owner of the Mortgage.

“Improvements” means all of the improvements that Developer intends to construct or cause to be constructed under this Agreement, as generally described in the Development Plan.

“Incremental Property Taxes” means, for each Fiscal Year or portion thereof during the period of time specified in the Public Financing Documents, the portion of the Property Taxes derived from the Site that is in excess of the Property Tax Base Amount, less an administrative fee retained by the Authority equal to one percent of such excess; provided however that property taxes imposed by the GID and the Special Districts shall be excluded from Incremental Property Taxes..

“Incremental Sales Taxes” means, for each Fiscal Year or portion thereof during the period of time specified in the Public Financing Documents, the portion of the Sales Taxes derived from the Site that is in excess of the Sales Tax Base Amount, less an administrative fee retained by the Authority equal to one percent of such excess.

“Initial Net Bond Proceeds” means the initial Ten Million (\$10,000,000) of Net Proceeds from the Authority’s Bonds, which proceeds will be available for expenditure by Developer as provided in this Agreement immediately upon sale of the Authority’s Bonds.

“Interchange” means the freeway interchange on I-25 at the 144th Avenue alignment as generally approved by the Transportation Commission of Colorado, referred to by CDOT as CDOT Project STU M286-011 (14594) and as depicted on the diagram attached hereto as Exhibit I.

“LOI” means a letter of intent from a retailer describing its intent to locate at the Site.

“Mortgage” means any mortgage or deed of trust conveying an interest in the Site for the purpose of securing a debt or other obligation.

“Municipal Code” means, collectively, the Westminster Code and the City’s home rule Charter, as in effect from time to time.

“Net Bond Proceeds” means, with respect to any issuance of Bonds, the gross proceeds from such issuance less the costs of such issuance and less the amount of any required reserves and/or capitalized interest.

“Notice Address” means the address for notice set forth below, as amended from time to time:

Authority: Westminster Economic Development Authority
4800 West 92nd Avenue
Westminster, CO 80031
Attention: J. Brent McFall, Executive Director

City: City of Westminster
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: J. Brent McFall, City Manager

Developer: Forest City Commercial Group, Inc.
C/O Forest City Enterprises, Inc.
50 Public Square, Terminal Tower, Suite 1360
Cleveland, Ohio 44113-2203
Attention: General Counsel

With a copy to: Forest City Development California, Inc.
949 S. Hope Street, Suite 200
Los Angeles, California 90015
Attention: Mr. Brian Jones and Mr. Colm Macken

“ODP” means one or more official development plan(s) (individually or collectively) for the Site to be approved by the City, as amended in accordance with the Municipal Code and the

terms and conditions of this Agreement, which, together with the PDP, will establish the development parcels, land use entitlements for the uses, density and intensity of development, building footprints and elevations, design standards, and other development terms and conditions for the Project.

“Off-Site Improvements” means the following off-site improvements to be constructed by the City or the Authority as set forth in this Agreement and on the schedule in Exhibit F:

- (i) The west half of the interchange at 144th and I-25, to be funded from Net Bond Proceeds;
- (ii) The east half of the interchange at 144th from I-25, to be funded from the COP’s;
- (ii) 144th Avenue to Huron Street, to be funded from Net Bond Proceeds;
- (iii) Huron Street between 140th and 150th Avenues, to be funded from Net Bond Proceeds; and
- (vi) Extension of water, sewer and reclaimed water lines stubbed to the Site and all utilities necessary or required to begin construction, all of which the City will fund through its Utility Fund or other available funds; provided however that if the City delays construction of the reclaimed water lines it will arrange for water to be provided to the Site at rates equivalent to those for reclaimed water.

“On-Site Improvements” means, with respect to any phase of the Project, those Improvements that Developer will construct on the Site with Net Bond Proceeds and other funds as set forth in the matrix attached hereto as Exhibit E, which comprise improvement costs which may lawfully be paid for by the Authority.

“Pad Sites” means those free standing retail sites within the Site as generally depicted in the Site Plan and as approved in the ODP.

“PDP” means the Preliminary Development Plan for the Project as approved or amended by the City on or before the Escrow Delivery Date and recorded in the County’s real property records in accordance with the Municipal Code.

“Permitted Exceptions” means the permitted exceptions to title that are listed on Exhibit K attached hereto and made a part hereof.

“Phase I” means the first phase of the Project, which will consist of 326,000 square feet of retail space, as depicted in Exhibits C and D hereto.

“Phase II” the second phase of the Project, which will consist of approximately 220,000 sq. ft. of retail space, such that Phase I and Phase II combined will total at least 546,000 sq. ft. of retail space, as depicted in Exhibits C and D hereto.

“Plan” means the urban renewal plan, designated as the North Huron Urban Renewal Plan and duly adopted by City Council on January 26, 2004 by Resolution No. 5, Series of 2004,

pursuant to which the Authority is authorized to pursue urban renewal projects under the Act, as from time to time amended in accordance with the Act.

“Pledge” means any assignment, conveyance, pledge, remittance or other transfer as may be customary and necessary or appropriate to make any tax or other revenue source fully available for payment of the Bond Requirements in accordance with the terms and conditions of this Agreement or the Public Financing Documents.

“Pre-Development Agreement” means the Pre-Development Agreement entered into among Developer, the City and the Authority as of April 15, 2004, to permit continued negotiations among them to determine if they could agree on mutually acceptable terms and conditions for a final development agreement, as amended.

“Project” means the development project generally described in Exhibits C and D hereto, and including the Off-Site Improvements to be provided by the City and the Authority, which Project more particularly and fully described in the Development Plan. It is anticipated, but not guaranteed, that when built out, the Project will generate gross annual sales of \$180 million. The Project shall be of a first class design, and constructed of first class, high quality materials and finishes. The Parties intend the Project to be a first-class, regional retail, mixed-use development (including approximately 1.0 million square feet of regional retail space) with main street retail, anchor tenants (at least one department store and cinema), power center tenants, pad users, residential and office components of the town center and a single family residential component.

“Property Taxes” means the real and personal property taxes produced by the levy at the rate fixed each year by the governing bodies of the various taxing jurisdictions within or overlapping the Site.

“Property Tax Base Amount” means the total valuation assessment of all taxable property within the Site in the calendar year 2003 as certified by the County Assessor, as adjusted from time to time pursuant to Section 31-25-107(9)(e), C.R.S.

“Public Financing” means, with respect to the Authority, the sale of bonds or any other acquisitions of funds effected to finance any improvements or services that the Authority may provide pursuant to its statutory authority including, without limitation, any eminent domain costs and the design and construction costs of certain of the On-Site Improvements and Off-Site Improvements, all as described in or contemplated by this Agreement, and with respect to the City, the issuance of COP’s to finance the design and construction costs of certain of the Off-Site Improvements, and in particular the east half of the interchange at 144th and I-25, all as described in or contemplated by this Agreement.

“Public Financing Documents” means any documents executed or delivered in connection with the closing of any Public Financing.

“Purchase Price” means Four Million Dollars (\$4,000,000), which WEDA determines to be the fair value of the Site, taking into account Developer’s agreement to undertake the obligations set forth in this Agreement, as determined by the Authority in accordance with the Act.

“Redevelopment Area” means the real property included within and covered by the Plan.

“Sales Tax Base Amount” means the amount derived from the levy of Sales Taxes within the Site in twelve months preceding the adoption of the Plan, as certified by the City Manager.

“Sales Taxes” means all or any portion (as set forth in the Public Financing Documents) of the City’s tax on retail sales occurring within the Redevelopment Site at the rate upon the terms and conditions set forth in the Municipal Code.

“Site” means the real property described in the Recitals hereto.

“Site Map” means the map of the Site attached as Exhibit B hereto and made a part hereof.

“Site Plan” means the conceptual site plan attached hereto as Exhibit D, which is intended to illustrate the general pattern of development contemplated for the Project. When the City has approved the ODP for Phase I and Subsequent Phases, and the applicable legal challenge periods (if any) have passed with respect to each such approval without a legal challenge having been successfully asserted, each of the approved ODPs (as modified from time to time with the approval of Developer and the City) will supercede the Site Plan for purposes of this Agreement with respect to the portion of the Site covered by the ODP.

“Site Work” means the site preparation work within the Site that is necessary to enable the construction and operation of the Project which includes but is not limited to all rough and finish grading (including compaction), surveys, testing and inspections, temporary facilities and staging, wet and dry utilities (water, sanitary sewer, storm sewer, electrical distribution, lighting, telephone, natural gas, cable TV), paving, curbs, striping and signage, public amenities, wetland and drainage work, graphics and monumentation and environmental work.

“Soft Costs” means the costs paid or incurred by Developer with respect to any matter for which Hard Costs may be paid or incurred, including but not limited to reasonable fees and expenses or architects, surveyors, engineers, accountants, attorneys, construction managers and other professional consultants; direct salary and overhead expenses; development, administration and overhead charges; permit charges, commissions, interest charges, loan fees, development fees and other amounts payable to the Authority or the City pursuant to this Agreement of the Municipal Code; provided that any costs or expenses included in the computation of Hard Costs, will not be included in Soft Costs.

“Special Districts” means the 144th Avenue Metropolitan District No. 1 and the 144th Avenue Metropolitan District No. 2 created pursuant to Title 32 of the Colorado Revised Statutes on certain areas of the Site identified for residential development with the power to assess property taxes, to borrow money and to issue bonds for the construction of certain On-Site Improvements, and other improvements, and to enter into the intergovernmental agreements, to the extent necessary, to support the construction, operation and maintenance of said On-Site Improvements on the residential portion of the Site, including roads. The mill levy for the Special District will be limited to an amount mutually agreed upon by the City and Developer, but is estimated to not exceed 35 mills. It is contemplated that the Special District will issue bonds in 2005 based upon a finance plan to be approved by the City for public infrastructure for the Project.

“Subsequent Phases” means subsequent phases of the Project after Phase I, which may be one or more phases or subphases, as described in Exhibits C and D.

“**Survey**” means the survey for the Site to be provided by Authority to Developer on or before the Escrow Delivery Date, as further described in Section 4.11 below.

“**Title**” means fee simple title to and possession of the Site, free and clear of all liens, defects, encumbrances and other matters of record, except the Permitted Exceptions.

“**Title Commitment**” means a current ALTA owner’s title insurance commitment for the Site issued by the Title Company.

“**Title Company**” means First American Heritage Title Company.

“**Tunnel**” means the Tunnel under I-25 at approximately 149th Avenue that connects Huron Street to Washington Street.

Section 1.3 Exhibits.

<u>Exhibit A</u>	Legal Description of the Site
<u>Exhibit B</u>	Site Map
<u>Exhibit C</u>	Development Plan Narrative
Exhibit C-1	Commercial Phasing Plan
<u>Exhibit D</u>	Site Plan
<u>Exhibit E</u>	Matrix Regarding On-Site Improvements
<u>Exhibit F</u>	Schedule of Construction of Off-Site Improvements
<u>Exhibit G</u>	Escrow Agreement
<u>Exhibit H</u>	Permitted Exceptions
<u>Exhibit I</u>	<u>Interchange Diagram</u>
Exhibit J	Environmental Disclosure

SECTION 2 DESCRIPTION OF THE PROJECT

Section 2.1 Selection and Engagement. The Authority hereby selects and designates Developer as the developer of the Site and the Project (except for the Off-Site Improvements), and engages Developer to develop, construct and implement the Project, or cause the same to occur, including the construction of specified On-Site Improvements on behalf of and at the expense of the Authority.

Section 2.2 Description of the Project. The Project will consist of a first class, regional retail, mixed use development (including approximately 1 millions square feet of regional retail space) with main street retail, anchor tenants (at least one department store and one cinema), power center tenants, pad users, residential and office components of the town center and a single family residential component, all as shown more particularly on the Site Plan. The Project will be developed in accordance with the Development Plan. Subject to satisfaction of the Final Closing Conditions, Developer will purchase and the Authority will sell the Site. After the closing of such purchase and sale, Developer will employ commercially reasonable efforts to develop the Site by constructing or causing to be constructed the Improvements in accordance with the Site Plan, and in accordance with applicable laws and regulations (including, without limitation, the Municipal Code and the Environmental Laws), and the City and WEDA will employ all reasonable efforts to complete the construction of the Interchange and the other Off-Site Improvements as set forth herein.

Section 2.3. Construction of Improvements. As of the date of this Agreement, Developer intends that Commencement of Construction for the Site Work will occur during the first half of 2005, that Completion of Construction of Phase I will occur by October 31, 2006, and Completion of Construction of Phase II by October 31, 2007. Developer intends to commence and complete Subsequent Phases as market conditions dictate, and such phases may be developed as a single phase or in sub-phases.

Section 2.4 Development Terms. The PDP and the ODP will govern and control with respect to the Approved Uses for the Site. In connection with its approval of this Agreement, the City will promptly act on the PDP and on the ODP for Phase I. As market conditions dictate, Developer intends in good faith to submit in the future one or more applications for approval of ODPs for the Subsequent Phases. When Developer submits one or more subsequent applications for approval of the ODP(s) for Subsequent Phases, the City will promptly process and take final action on the application(s) in accordance with the Municipal Code and terms and conditions of this Agreement.

Section 2.5 Vested Property Rights. The City acknowledges that the PDP constitutes a Site Specific Development Plan under Section 11-5-18 of the Municipal Code and that Developer has the vested right to develop the Site in accordance with the PDP for a period of three years. In addition, pursuant to Section 11-5-18(I)(3) of the Municipal Code, Developer and the Authority will reasonably cooperate in submitting to the City the requisite applications to enter into a development agreement for approval of vested property rights for the Site for a longer period of 8 years to develop the Project in accordance with the Approved Uses, provided Developer meets certain milestones as set forth herein. The City will promptly process and take final action on the development agreement application.

Section 2.6 Public Water Storage Facility. Developer's plans shall include a site, at no cost to the City or the Authority, for a public water storage facility at a location to be mutually determined by the City and the Developer, and including all appurtenant easements for access and operation of the facility. The site for a public water storage facility will be delivered to the City at approximately the finished grade specified by the City at the time of the Final Closing. The City will consult with the Developer on the external design of the public water storage facility, and said design shall be included as part of the PDP or the ODP for Phase 1. The construction, operation and maintenance of such facility shall be solely the responsibility of the City and shall be done solely at the expense of the City, and the Developer shall have no financial or other responsibility for such construction, operation and maintenance.

SECTION 3 AUTHORITY'S ACQUISITION OF THE DEVELOPMENT SITE

Section 3.1 Authority's Acquisition Efforts. The Parties acknowledge that, except as provided in Section 3.2 below, the Authority owns all of the real property comprising the Site.

Section 3.2 Eminent Domain Proceedings. The Parties acknowledge that there are unknown parties that might hold title to mineral interests on a portion of the Site. The Parties further acknowledge that the Authority will commence eminent domain proceedings with regard to such mineral interests. The Authority will use good faith efforts to prosecute such proceedings to completion and to obtain an order vesting title to such mineral interests in the Authority prior to the Final Closing Date. Developer will not be liable to the Authority for any costs, expenses, judgments or damages arising from the Eminent Domain Proceeding.

Section 3.3 Grant of License. The Authority hereby grants Developer (together with its contractors, sub-contractors, and other design and/or construction professionals), at no cost to Developer, a license to enter upon, and to occupy any portion of the real property comprising the Site for the purpose of accomplishing timely Commencement of Construction of the Site Work, including but not limited to performing any inspections, tests, grading, construction and other activities reasonably necessary for Commencement of Construction.

SECTION 4 DEVELOPER'S PURCHASE OF THE DEVELOPMENT SITE

Section 4.1 Escrow Delivery; Final Closing. Subject to satisfaction of the Escrow Delivery Conditions set forth in Section 4.3 below, the Authority and Developer agree to close into escrow on the Escrow Delivery Date on the terms and conditions set forth in this Agreement. If the Escrow Delivery Conditions are satisfied and the Authority and Developer close into escrow in accordance with Section 4.5 below, the Authority and the Developer agree that, subject to the satisfaction of the Final Closing Conditions set forth in Section 4.6 below, Authority will sell the Site and Developer will purchase the Site on the Final Closing Date.

1. **Section 4.2** Purchase Price. The "Purchase Price" for the Site shall be Four Million Dollars (\$4,000,000.00). The Purchase Price shall be payable as set forth in Section 4.5 below, in immediately available funds, subject to the adjustments to be made at the Final Closing to allocate closing costs and fees, which adjustments shall be set forth in written instructions from the Parties to the Title Company.

Section 4.3 Escrow Delivery Conditions. The Authority and Developer will be obligated to close into escrow only upon satisfaction or written waiver by the benefited party of the following Escrow Delivery Conditions on or before the Escrow Delivery Date:

- (a) The City shall have granted final approval of the PDP.
- (b) The Authority shall have filed the Petition in Condemnation in the Eminent Domain Proceeding in the District Court.
- (c) Developer shall have provided to the City and the Authority an LOI from at least two anchor tenants that will be operating at the Site in Phase I.
- (d) The City and the Authority shall have consulted with Developer with regard to the plan for the Public Financing, which shall be reasonably satisfactory to the Developer.
- (e) Developer shall have determined in its sole discretion that no condition of any portion of the Site is unsatisfactory to Developer.
- (f) Developer shall have determined, in its sole discretion, that no changes in zoning or other land use and building provisions directly or indirectly affecting the Site (including, without limitation, any local or statewide moratorium or other restriction on construction or issuance of water or sewer taps) have occurred or are pending that would materially diminish Developer's ability to timely development the Site in accordance with the Site Plan.
- (g) The City shall have provided assurance to the Developer that water, sewer, and other utilities provided by or through the City will be available for construction and opening of Phase I and Phase II, respectively.

(h) Developer shall have determined, in its sole discretion that it will obtain financing in amounts sufficient, together with the Authority's payment of its share of the costs of the On-Site Improvements, to acquire the Site, perform the Site Work and construct the Phase I and Phase II On-Site Improvements and otherwise perform its obligations under this Agreement.

Section 4.4 Parties' Option to Extend Escrow Delivery or to Terminate. If the Escrow Delivery Conditions are not satisfied on or before the Escrow Delivery Date by one or more of the Parties, then any Party having satisfied the Escrow Delivery Conditions may, at its option, either terminate this Agreement or extend the Escrow Delivery Date for a period not to exceed thirty (30) days by notice to the other Parties.

Section 4.5 Escrow Delivery. If the Escrow Delivery Conditions are satisfied, and if no Default has then occurred or is continuing the Escrow Delivery will take place on _____ at the offices of the Title Company. At the Escrow Delivery, the Parties and the Title Company shall deliver into escrow the following documents:

- (a) The Authority shall deliver a special warranty deed executed and acknowledged as required by law, conveying Title to Developer or Developer's assignee subject only to the Permitted Exceptions;
- (b) Developer shall deliver the Purchase Price;
- (c) The Parties shall execute settlement sheets and other such agreements and documents (with customary prorations in accordance with local practice for commercial Site transactions) as may be required to implement and carry out the intent of this Agreement;
- (d) The Parties shall execute an Escrow Agreement with the Title Company that sets forth the Title Company's obligations during the period of Escrow and at the Final Closing; and
- (e) The Title Company shall deliver the Title Commitment.

Section 4.6 Final Closing Conditions. The Authority and Developer will be obligated to close hereunder only upon satisfaction or written waiver by the benefited Party of the following Final Closing Conditions on or before the Final Closing Date:

- (a) Developer has provided to the Authority LOIs from at least three anchor tenants, for retail space totaling at least 326,000 sq. ft.
- (b) The City shall have granted final approval of the ODP for the Site.
- (c) The City has completed and obtained all necessary approvals from the CDOT and the Federal Highway Administration for the design and construction of the Interchange, including approval pursuant to CDOT's 1601 process and any required environmental approvals and access permits, and the City has issued a contract for final engineering design of the Interchange such that it can be completed and open for use by October 1, 2006. [use language from City letter]
- (d) The City has provided an updated schedule establishing to Developer's reasonable satisfaction that the Off-Site Improvements will be completed in accordance with the

schedule set forth in Exhibit H, and in particular, is consistent with the completion date of October 1, 2006.

(e) The Authority has completed the Eminent Domain Proceeding such that the Authority is in a position to convey to Developer on the Final Closing Date full encumbered fee title acceptable to the Developer to both the surface interests and the mineral interests of the Site.

(f) The Authority's Bonds and the COPs have been issued in accordance with Section 5.4 below, and the Authority and the City have provided evidence to the reasonable satisfaction of the Developer that there are sufficient funds available and dedicated to constructing the Off-Site Improvements in accordance with the schedule in Exhibit H.

(g) The Developer has provided evidence of financial commitment, which may be in the form of a construction loan commitment, for the construction of Phase I, reasonably satisfactory to the City and the Authority.

Section 4.7. Preparation for Final Closing. Fourteen days prior to the Final Closing Date, the Parties shall generally have completed all Final Closing Conditions or indicate reasonable expectation of completing them by the Final Closing Date.

Section 4.8. Parties' Option to Extend Final Closing or to Terminate.

(a) If the Final Closing Conditions are not satisfied on or before the Final Closing Date, then any Party having satisfied its Final Closing Conditions may, at its option, either terminate this Agreement or extend the Final Closing Date for thirty (30) days.

(b) In addition, Forest City may obtain a one year extension of the Final Closing Date, and all performance and obligation dates hereunder including but not limited to the dates for Completion of Construction for Phases I and II, by providing written notice to the City and the Authority, in accordance with Section 15.3, on or before April 1, 2005, and by providing notice to the Title Company to deliver to the Authority on or before April 15, 2005, the non-refundable amount of one million dollars (\$1,000,000) from the Purchase Price. Such amount shall be credited toward the Purchase Price at the time of Final Closing or, if there is no Final Closing, with such amount shall be retained by the City with Developer having no further rights in such amount. The one year extension in this Section 4.8 shall be available to Developer only if Developer encounters problems beyond its commercially reasonable control in meeting the Conditions of Final Closing, and is diligently pursuing steps to meet the Conditions of Final Closing.

Section 4.9. Final Closing. On the Final Closing Date, the Parties shall jointly notify the Title Company in accordance with the procedures set forth in the Escrow Agreement and the Title Company shall proceed to record the special warranty deed and deliver the Purchase Price to the Authority in accordance with the Escrow Agreement.

Section 4.10. Title. Developer acknowledges that the Authority has provided to Developer the Title Commitment, together with copies of all documents referred to therein and will deliver a current certificate of taxes and assessments due for the Site issued by the treasurer or assessor of the County. The Title Commitment shall be in an amount equal to the Purchase Price and will commit the Title Company to issue its standard Owners Title Policy subject only to the Permitted Exceptions, and together with the endorsements also listed on Exhibit H. On the

Final Closing Date, the Title Company shall issue the Owners Title Policy (the Authority will pay the premium therefor) to Developer in accordance with the Escrow Agreement.

2. **Section 4.11 Survey.** On the Escrow Delivery Date, Authority shall provide to Developer, at Authority's expense, an ALTA survey (the "Survey") of the Site setting forth an accurate legal description of the Site and showing the location of the precise boundaries thereof, together with all structures, utilities and any other improvements on the Site and all easements, encroachments, rights-of-way and other matters affecting or appurtenant to the Site, whether recorded, visible or otherwise known to exist. The Survey shall be prepared by a licensed engineer (the "Engineer") acceptable to Developer and shall be certified to Developer and Title Company. The Engineer shall note on the Survey the acreage of the Site. If the legal description of the Site as shown on the Survey differs from the legal description set forth in Exhibit A attached hereto, then such legal description shown on the Survey shall constitute the legal description of the Site for all purposes under this Agreement and such legal description shall be deemed substituted for the legal description attached hereto as Exhibit A. The Parties acknowledge that once the PDP is completed, the legal description may need to be revised in a manner satisfactory to all Parties.

SECTION 5 PUBLIC FINANCING

Section 5.1 Public Financing. Development of the Project will require the design and construction of the On-Site Improvements and the Off-Site Improvements. The costs of designing and constructing the On-Site Improvements and the Off-Site Improvements will be financed generally in accordance with the provisions of this Agreement. The Authority and the City agree to issue bonds and COP's, respectively, in amounts sufficient to fund the Off-Site Improvements such that they can be completed in accordance with the schedule in Exhibit H. The Developer will not be required or expected to provide a letter of credit, any collateral or any credit enhancement, directly or indirectly, for the Public Financing. The Developer will not be required or expected to provide any funding for the Off-Site Improvements.

Section 5.2 Resolution Authorizing Issuance of the Authority's Bonds. Provided that the Escrow Delivery has occurred on or before the Escrow Delivery Date, (a) the Authority will adopt a resolution authorizing issuance of the Authority's Bonds pursuant to section 31-25-109(8) of the Act, and subject to satisfaction of the conditions precedent set forth in this Agreement, and (b) the City will adopt a resolution authorizing the issuance of the COP's subject to satisfaction of the conditions precedent set forth in this Agreement. The authorizing resolutions will constitute the Authority's and the City's binding commitments to issue the Authority's Bonds and the COP's subject to the terms and conditions of Section 5.3 and any additional terms and conditions set forth in the applicable Public Financing Documents.

Section 5.3 Pledge of Incremental Property and Sales Tax Revenues. Pursuant to Section 31-25-107(9) of the Act, the Authority will Pledge so much of the Incremental Property Taxes and Incremental Sales Taxes as is necessary to accomplish repayment of the Authority's Bonds in accordance with the terms and conditions of the Public Financing Documents.

Section 5.4 Sale of Authority's Bonds, Issuance of COP's and Delivery of Net and Contingent Bond Proceeds

(a) The Authority will use commercially reasonable efforts to issue the Authority's Bonds and the City will use commercially reasonable efforts to cause to be issued the COP's, respectively, on or before April 15, 2005, and to thereafter make the Initial Net Bond Proceeds available for expenditure by the Developer as provided in this Agreement, subject to satisfaction of the following conditions precedent:

(i) Developer has provided to the Authority LOIs from at least three anchor tenants, for retail space totaling at least 326,000 sq. ft.

(ii) The City has granted final approval of the ODP for the Site.

(iii) The City has completed and obtained all necessary approvals from the CDOT and the Federal Highway Administration for the design and construction of the Interchange, including approval pursuant to CDOT's 1601 process and any required environmental approvals and access permits, and the City has issued a contract for final engineering design of the Interchange such that it can be completed and open for use by October 1, 2006;

(iv) The City has provided an updated schedule establishing to Developer's reasonable satisfaction that the Off-Site Improvements will be completed in accordance with the schedule set forth in Exhibit H, and, in particular, the completion date of October 1, 2006..

(v) The Authority has completed the Eminent Domain Proceeding such that the Authority is in a position to convey to Developer on the Closing Date set forth in the Purchase Agreement full encumbered fee title acceptable to the Developer to both the surface interests and the mineral interests of the Site.

(vi) Developer has provided evidence of financial commitment, which may be in the form of a construction loan commitment, for the construction of Phase 1, reasonably satisfactory to the City and the Authority.

(vii) The Developer has provided notice to the Parties of its intent to purchase the Site.

(b) The Parties have agreed that for every dollar of Initial Net Bond Proceeds to be paid to the Developer for On-Site Improvements, the Developer shall be required to fund a dollar of costs related to the Project, including but not limited to land acquisition, pre-development costs, Soft Costs and Hard Costs. The Initial Net Bond Proceeds may be used to pay Soft Costs, Hard Costs, and other costs as permitted in this Agreement for which the Developer is not otherwise seeking payment or reimbursement hereunder, and shall be paid by the Bond Trustee monthly on the following basis: Developer shall submit monthly pay applications for costs of On-Site Improvements as set forth in Section 5.5 below, and for every dollar of costs for On-Site Improvements for which the Developer seeks payment from Initial Bond Proceeds, Developer must submit documentation that it has also paid a dollar for costs related to the Project. The Parties agree that the Trust Indenture for the Authority's Bonds shall direct the Bond Trustee to disperse the Initial Net Bond Proceeds in accordance with this Agreement.

(c) The City and the Authority acknowledge that Developer has incurred, and will continue to incur, significant Soft Costs prior to Commencement of Construction. The City and the Authority agree that said Soft Costs may be paid to Developer out of the Initial Net Bond Proceeds and Contingent Net Bond Proceeds; provided however that with regard to use of the Initial Net Bond Proceeds only, the payment of Soft Costs to Developer shall be limited, for any given pay application, to a maximum of thirty percent (30%) of the Hard Costs for which payment is sought in that pay application.

(d) Five Million Dollars (\$5,000,000) of the Contingent Net Bond Proceeds will be released and the Authority will thereafter make such amount available for expenditure as provided in this Agreement upon Forest City's delivery to the Authority of (i) either signed leases or the City's approval of building permits from tenants representing an additional amount of retail space such that the aggregate, total square footage of retail space to be used for transactions or activities subject to City tax will be at least 700,000 square feet (including original and new tenants); or (ii) a total, when combined with the then-existing retail tenants, of \$100 million in aggregate, estimated gross sales that are subject to City tax as calculated in accordance with the ICSC industry standard methodology. Upon said release, Developer shall submit monthly pay applications for payment of Hard and Soft Costs, and the Bond Trustee shall make such payments, as set forth in Section 5.5 below.

(e) The final Five Million Dollars (\$5,000,000) of the Contingent Net Bond Proceeds will be released and the Authority will thereafter make the Third Bond Proceeds available for expenditure as provided in this Agreement upon Forest City's delivery to the Authority of (i) either signed leases or the City's approval of building permits from tenants representing an additional amount of retail space such that the aggregate, total square footage of retail space to be used for transactions or activity subject to City tax will be at least 1,000,000 square feet of retail space (including all current tenants and new tenants), or (ii) a total, when combined with the then-existing retail tenants, of \$180 million in aggregate, estimated gross sales that are subject to City tax as calculated in accordance with the ICSC industry standard methodology. Upon said release, Developer shall submit monthly pay applications for payment of Hard and Soft Costs, and the Bond Trustee shall make such payments, as set forth in Section 5.5 below. The final Five Million dollars (\$5 million) of Contingent Bond Proceeds shall be made available and released on a pro-rata basis such that One Million Dollars (\$1,000,000) shall be released and made available to Developer for every Sixteen Million Dollars (\$16,000,000) of additional aggregate, estimated gross sales that are subject to City tax above \$100 million.

Section 5.5 Construction of On-Site Improvements. The Developer shall be responsible for constructing the On-Site Improvements, and shall submit monthly pay applications on a mutually agreed upon AIA form, and will be responsible for lien waivers. This \$20 million in Initial Net Bond Proceeds and Contingent Net Bond Proceeds may be used by Developer for the construction of the On-Site Improvements and the acquisition of right-of-way or other land parcels needed for the On-Site Improvements on the portion of the Site planned for commercial development. The City and the Authority will not be required or expected to provide any financial assistance to the Developer or its tenants other than as set forth in this Agreement. Further, the Parties acknowledge that public monies are to be spent on On-Site Improvements consistent with the requirements of Federal and State law for the expenditure of proceeds from a tax-exempt bond issue, and that the matrix attached as Exhibit E hereto and made a part hereof, is intended to provide guidance on what improvements are considered by the City and the Authority to be permissible expenditures by identifying certain types of improvements, and whether they are eligible to be paid for with bond proceeds or mill levy funds, or whether they must be paid for by the Developer. The responsibility for the maintenance, repair and replacement of On-Site Improvements shall be as indicated on Exhibit E, and Developer shall have no responsibility for the maintenance, repair or replacement of any of the Off-Site Improvements.

SECTION 6 DEVELOPER'S FINANCING

Section 6.1 Developer's Financing. On or before April 1, 2005, Developer will deliver to the Authority and the City evidence of the Developer's financial ability to complete the Phase I Improvements, including the On-Site Improvements in order to enable the Authority

and the City to confirm that the proceeds of Developer's Financing will be reasonably sufficient to fund the design and construction of all Phase I On-Site Improvements when added to the Authority's payments to Developer pursuant to Section 5.4, reasonably anticipated proceeds from Developer's sale of Pad Sites, and Developer's equity investment.

Section 6.2 Holder Not Obligated to Construct. Notwithstanding the provision of this Agreement, a Holder (including a Holder or other person or entity who obtains title to all of a part of the Site as a result of foreclosure proceedings, or deed in lieu thereof, and including any other party who thereafter obtains title to all of any part of the Site from or through the Holder or other person or entity) will not be obligated by this Agreement to construct or complete the Improvements, or any of them, or to guarantee the construction or completion of the Improvements. A Holder and any other persons specified above and their successors in interest may, at their option, construct the Improvements required under this Agreement in accordance with Section 6.4.

Section 6.3 Copy of Notice of Default to Holder. If the Authority delivers to Developer a demand or notice of any claimed Event of Default by Developer under this Agreement, the Authority will at the same time transmit a copy of the demand or notice to each Holder at the last address of the Holder shown in the Authority's records. All notices under this Section 6.3 will be given in accordance with the provision of Section 15.3.

Section 6.4 Holder's Option to Cure Defaults. Any Holder will have the right, at its option to cure or remedy or to commence to cure or remedy, any claimed Default (to the extent that it relates to the part of the Site covered by its Mortgage) within thirty (30) days after the period for cure set forth in Section ___ after receipt of the notice required by Section ___ (or so long as cure has been commenced within such period, for so long as the Holder is diligently and continuously prosecuting such cure), and to add the cost thereof to the indebtedness secured by the Mortgage provided, however that the Holder undertakes the cure or remedy in accordance with the terms and provisions of this Section 6.4. Nothing contained in this Agreement will be deemed to permit or authorize a Holder to undertake or continue the construction of the Improvements, except to the extent the Holder reasonably deems the same necessary to conserve or protect the Improvements or construction already made, without first having expressly assumed Developer's obligations with respect to the portion of the Site and Improvements which Holder elects to construct by written agreement reasonably satisfactory to the Authority. In that event, the Holder must agree to complete the portion of the Improvements which the Holder has elected to construct, in the manner provided in this Agreement, and submit evidence satisfactory to the Authority that it has the qualifications and financial responsibility necessary to perform such obligations.

Section 6.5 Rights of Lenders and Interested Parties. Financing for acquisition, development and/or construction of the Improvements may be provided, in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, and purchasers or developers of portions of the Site. The City and the Authority will recognize the rights of such interested parties and will otherwise permit such interested parties to assume all of the rights and obligations of Developer under this Agreement. The City and the Authority will have the right to approve such interested parties, and such approval shall not unreasonably be withheld. The City and the Authority will, at any time upon reasonable request by Developer, provide to any interested party an estoppel certificate or other document evidencing that this Agreement is in full force and effect. Upon request from an interested party, the City and the Authority will enter into a separate assumption of similar agreement with such interested party, consistent with the provisions of this Section 6.5.

SECTION 7 SPECIFIC CITY AND/OR AUTHORITY OBLIGATIONS

Section 7.1 General Improvement District. The Parties acknowledge that the City has created a General Improvement District ("GID") on the commercial portion of the Site, in order to generate funds to be used for improvements related to this Site, the Project and the surrounding area. The GID shall not impose a mill levy that exceeds 20 mills. The Developer and the City will have subsequent discussion on the projects on which these funds will be spent, but the City agrees that such projects may include the 144th Avenue connector referred to in Section 7.5 below and the Tunnel. The Parties agree that the GID may issue bonds. The Parties further agree that the Developer shall not be obligated in any way to, and will not guarantee the repayment of such bonds, or provide any credit enhancement or security for the repayment of such bonds

Section 7.2 Construction of Off-Site Improvements. The City and the Authority shall complete construction of the Off-Site Improvements in accordance with the schedule attached hereto as Exhibit F and made a part hereof.

Section 7.3 Reimbursement for Negotiation Period Costs Paid by Developer. At Final Closing, the City and/or the Authority shall make payment to Developer for reimbursement of costs incurred by Developer pursuant to the Pre-Development Agreement: any costs incurred or advanced by Developer for 1) Interchange design costs, 2) CDOT's expedited design review costs, and 3) Interest Carry Agreement costs for the White Parcel; and \$75,000 for earnest money for the White Parcel purchase. Developer shall submit a list of such reimbursable costs to the City and the Authority fifteen (15) days before Final Closing. These reimbursable costs shall be paid by the City and/or the Authority out of funds other than the Initial Net Bond Proceeds.

Section 7.4 Construction of Tunnel. The Authority acknowledges that the Project requires the Tunnel under I-25 at approximately 149th Avenue that connects Huron Street to Washington Street and that it intends to fund and construct the Tunnel. Developer acknowledges that in order for the Tunnel to be constructed, approvals are necessary from several entities including the CDOT, the Federal Highway Administration and the City of Thornton. The Authority and the City will use their best efforts to obtain all necessary approvals for, fund and construct the Tunnel. The Parties agree that the Developer shall not be required or obligated to fund the Tunnel in whole or in part.

Section 7.5 144th Avenue Connector. The Authority and the Developer acknowledge that the Off-Site Improvements will result in construction of an approximately 700 foot extension of the western portion of 144th Avenue as part of intersection improvements. The Authority agrees that if the City of Broomfield widens or otherwise improves the connecting portion of 144th Avenue in Broomfield, the Authority and the City will use its best efforts to make similar improvements on the western portion of 144th Avenue, beyond the initial 700 feet, in Westminster. Developer acknowledges that funding for such improvements is not included in the Public Financing. However, the Authority and the City agree that the City and/or the Authority shall be responsible for funding such improvements, and Developer shall not be required or obligated to fund in whole or in part any such improvements, or fund in whole or in part the maintenance, repair or replacement of such connector.

Section 7.6 Water and Sewer Service Commitments. The City shall provide Developer with water and sewer commitments for the residential development estimated as follows and to be finalized according to the ODP: 1) 100 service commitments for 2005; 2) 300 service commitments for 2006; and 3) 200 service commitments for 2007. It is anticipated that such

service commitments shall be available and may be used beginning in March of each respective year.

SECTION 8 SPECIFIC DEVELOPER OBLIGATIONS

Section 8.1 Monthly Reports. Throughout the term of this Agreement, the Developer shall submit to the City and the Authority monthly progress reports which shall describe the steps that Developer has taken in furtherance of the Project, including leasing status of retail tenants for the Project. The City and the Authority shall provide monthly status reports to the Developer which shall describe the status of the construction of the Off-Site Improvements.

Section 8.2 Development Plan Design Standards. Developer shall design and develop the Project in accordance with the Development Plan, subject to compliance with all applicable ordinances, requirements, rules, regulations, and policies of the City including, without limitation, applicable zoning ordinances, requirements, rules, regulations, and policies. The Parties acknowledge that the Development Plan includes design standards that meet or exceed site planning and design criteria of the City and that have been mutually agreed to by the Parties during the City's planning and permitting process.

Section 8.3 Contacting Retailers. In recognition of the significant public investment of the City and the Authority, and in recognition of the substantial financial commitment of Developer, the Parties will cooperate in good faith to accomplish the expeditious and optimal utilization of the retail space in the Project. Developer will pursue tenants that are appropriate for the retail trade area of the Project. Developer shall also contact all retailers at its Rancho Cucamonga and Simi Valley projects with regard to their interest in locating at the Site in light of the Parties' intent to build and maintain a first class mixed-use development.

Section 8.4 Plans, Reports, Studies and Investigations. The Developer shall regularly provide the City and the Authority, without cost or expense to the City and the Authority, copies of all final plans, reports, studies, and investigations (collectively, the "Plans") prepared by or on behalf of the Developer with respect to the Site and the Project. To the extent the Plans are proprietary in nature or represent confidential commercial and financial information, they shall be deemed confidential and shall not be available as public records under the Colorado Public Records Act, CRS 24-72-201 et seq. All Plans shall be prepared at the Developer's sole cost and expense, shall be owned by Developer, and may not be used by the City, the Authority, or any other entity or person without the Developer's express written permission.

Section 8.5 Commencement and Completion of Construction

- (a) Developer will undertake Commencement of Construction of Phase I of the Project within one hundred fifty (150) days of Final Closing.
- (b) Developer will achieve Completion of Construction of Phase I by October 1, 2006.
- (c) Developer will achieve Completion of Construction of Phase II by October 1, 2007.
- (d) If Developer has not exercised its right to the pre-Closing extension described in Section 4.8(b), Developer shall be entitled to a one-year extension to October 31, 2007, of the date for the Completion of Construction of Phase I, under the following conditions:

if Developer 1) encounters problems beyond its reasonable commercial control in meeting the date for Completion of Construction of Phase I; 2) is diligently pursuing steps to meet the Completion of Construction of Phase I; and 3) has provided written notice in accordance with Section 15.3 on or before thirty days (30) prior to October 1, 2005 or such later date as the City and/or WEDA begin construction of the Interchange. Such one year extension shall in turn automatically extend the date for the Completion of Construction for Phase II until October 31, 2008. The Developer will not be obligated to make any payment for said extension, and Developer will not be considered in default hereunder, and in particular under Section 13, for exercising its rights to a one year extension.

(e) If Developer has not exercised its right to the pre-Closing extension described in Section 4.8(b) and has not exercised its right to a one-year extension described in Section 8.5(d), Developer shall be entitled to a one-year extension to October 31, 2008, of the date for the Completion of Construction of Phase II, under the following conditions: if Developer 1) encounters problems in meeting the date for Completion of Construction of Phase II; 2) is diligently pursuing steps to meet the Completion of Construction of Phase II; 3) has encountered problems such as in leasing or in obtaining a loan commitment beyond Developer's reasonable control (by way of example only); and 4) has provided written notice in accordance with Section 15.3 on or before thirty days (30) prior to October 31, 2008. Such one year extension shall in turn automatically extend the date for the Completion of Construction for Phase II until October 31, 2008. The Developer will not be obligated to make any payment for said extension, and Developer will not be considered in default hereunder, and in particular under Section 13, for exercising its rights to a one year extension.

(f) If Developer obtains an extension pursuant to Section 4.7(b), all dates in this Section 8 shall be extended by one additional year.

SECTION 9 REPRESENTATIONS AND WARRANTIES

Section 9.1 Developer's Representations and Warranties. Developer represents and warrants that:

(a) Developer is a corporation duly organized and validly existing under the laws of the State of Ohio, is registered to conduct business in the State of Colorado, is not in violation of any provisions of its organizational or operating agreements or the laws of the State of Colorado, has power and legal right to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action.

(b) The consummation of the transactions contemplated by this Agreement will not violate any provisions of the governing documents of Developer or constitute a default or result in the breach of any term or provision of any contract or agreement to which Developer is a party or by which it is bound.

(c) Developer will cooperate with the Authority and the City, at the Authority's and/or the City's expense, with respect to any litigation brought by a third party concerning the Plan, the Project, the Site, the Improvements, or this Agreement.

(d) There is no litigation, proceeding or investigation contesting the power or authority of Developer or its officers with respect to the Project, this Agreement, Developer's Financing, or the Improvements, and Developer is unaware of any such litigation, proceeding, or investigation that has been threatened.

Section 9.2 Authority's Representations and Warranties. The Authority represents and warrants that:

(a) The Authority is an urban renewal authority duly organized and validly existing under the laws of the State of Colorado.

(b) The Authority has the power to enter into and carry out its obligations under this Agreement and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder, including compliance with the publication requirements of Section 31-25-106(2) of the Act.

3. (c) Litigation and Proceedings. There are no (i) claims, actions, suits, condemnation actions, or other proceedings pending or, to the knowledge of Authority, threatened by any entity with respect to the Site or any use thereof, (ii) approvals, permits, easements, rights-of-way, zoning changes, uses or rights that have been denied, or to the knowledge of Authority, may be denied, by any governmental department or agency, or (iii) violations of any law, statute, government regulation or requirement, that in any manner or to any extent may materially and adversely affect the Site, or the value of the Site, or the likely eventual use of the Site, or Developer's right, title or interest in and to the Site.

4. (d) Tax Protest. There is no pending application or proceeding for the reduction of the assessed valuation of the Site or the property tax assessed against the Site for any tax year.

5. (e) Hazardous Materials. Except as set forth in Exhibit J attached hereto and made a part hereof, the Authority has no knowledge of or reason to believe that there exists or has existed, and the Authority itself has not caused, any generation, production, location, transportation, storage, treatment, discharge, disposal, use, release, threatened release or other disposition upon or under the Site of, (i) any toxic or hazardous substance, or material, pollutant or waste subject to regulation under the Resource Conservation and Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300h, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; all applicable state counterparts to such federal legislation and any regulations, guidelines, directives or other interpretations of any such enactment, all as amended from time to time or any other applicable State or Federal environmental protection law or regulation; (ii) asbestos and asbestos-containing materials, special wastes, polychlorinated biphenols (PCBs), used oil or any petroleum products, natural gas, radioactive material, pesticides or methane in soil gas or (iii) any product, material or substance in any manner inconsistent with the regulations issued by, or so as to require a permit or approval from, the State of Colorado or the County or municipality in which the Site is located, or in a manner that might cause the any such authority to inspect the Site or issue an order pursuant to any applicable health code. Other than as set forth in Exhibit J, the Authority has no knowledge of or reason to believe that there exist or have existed on the Site any storage tanks (either above or below the ground) or septic tanks or that there has been prepared any inspection report addressing any of the issues referenced in this Section 9.2. Other than as set forth in Exhibit J, the Authority has no knowledge of or reason to believe that there exist on the Site any archeological or historic resources, any endangered or threatened species, or any wetlands.

6. (f) Other Rights. Other than Developer pursuant to this Agreement, no person or entity has any right or option to purchase or otherwise acquire the Site or any portion thereof or interest therein.

7. (g) Assessments. Other than the GID and the Special Districts, no portion of the Site is subject to or affected by any assessments for improvements, whether or not a lien thereon, and neither the Authority or the City has any knowledge of any assessments proposed on account of any such improvements or of any work proposed, commenced or completed which could give rise to any such assessment.

8. (h) Encroachments. Except as shown on the Survey and the Title Commitment, there exist no adverse claims by any person or entity (including but not limited to adjoining Site owners) concerning, and no encroachments with respect to, the Site, and all fences located on the Site are within the Site boundaries.

9. (i) Utilities. Adequate public water, sewer, storm drainage, telephone, cable television, natural gas and electric lines, conduits or facilities are located on the Site or in streets or alleys immediately adjoining the Site and are available for use on the Site without additional cost to Developer other than normal connection charges. There are in effect no moratoria or other restrictions affecting such utilities or their availability to the Site.

10. (j) Access. The Site fronts on, and has direct and unobstructed full-turn access to, the following public highways or streets: Huron Street and 144th Avenue.

11.

12. (k) Subdivision. As of the Final Closing Date, the Site will (i) appear in the public records as a separate lot or lots, alienable without any further requirement of any law, rule or regulation affecting the subdivision of real Site, and (ii) comprise a separate tax lot or lots for the levy of real property taxes in the jurisdiction where the Site is located.

13. (l) Zoning. The Site currently is zoned PUD under the City Zoning Code. Seller has no knowledge of any fact or matter that would materially limit or in any manner materially interfere with the development of the Project, including retail, office, hotel, entertainment and residential uses, in accordance with standard PUD zoning requirements. Except as expressly permitted under this Agreement, the Authority shall not take any action or, to the extent the Authority has control, permit any action which would interfere with the development of the Site in accordance with standard PUD zoning requirements.

14. (m) Documents. The documents delivered to Developer by the Authority, including, without limitation, the "Reports," as hereinafter defined, will be all of the instruments, documents and agreements binding upon the Authority or the Site pertaining to the title, condition, use or operation of the Site and the expenses to which it is subject, will be true and complete copies, and unless otherwise indicated, will be in full force and effect in accordance with the terms thereof.

15. (n) Not Misleading. No representation or warranty made by the Authority in this Agreement, or in any statement or certificate already furnished or to be furnished by the Authority in connection with the transaction contemplated herein, contains or will contain any untrue statement or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

16.

17. **Section 9.3** Indemnification. To the extent permitted by law and on a basis which is subordinate to the Bond Requirements, the Authority shall indemnify and

hold Developer harmless from any loss, cost, claim or expense, including, without limitation, attorneys' fees, arising out of any breach of any of the foregoing representations and warranties. The indemnity obligations of the Authority under this Section shall survive the Final Closing and continue in force and effect thereafter. The issue of indemnification related to the operating gas well on the northern portion of the Site shall be addressed as part of the ODP process.

18.

19. **Section 9.4** Certificate at Closing. The Authority shall deliver to Developer at the Final Closing a certificate stating that all of the representations and warranties of the City and the Authority made in this Agreement are true and correct as of the Final Closing Date as if made on the Final Closing Date (the "Authority Certificate"). If the Authority fails to deliver the Authority Certificate or if the Authority Certificate contains any exceptions or other limitations to any representation or warranty of the Authority or the City made in this Agreement, the Authority shall be deemed to be in default under this Agreement and Developer shall be entitled to exercise its remedies as hereinafter provided, or Developer may, at its option, waive this default and proceed to purchase the Site, in which case Authority's representations and warranties made in this Agreement shall be deemed to be amended as set forth in the Authority Certificate.

Section 9.5 Cooperation. The Authority will cooperate with the Developer and the City, at the Authority's and/or the City's expense, with respect to any litigation brought by a third party concerning the Plan, the Project, the Site, the Improvements, or this Agreement.

Section 9.6 City Representations and Warranties. The City represents and warrants that:

(a) The City is a home rule municipal corporation duly organized and validly existing under the State of Colorado.

(b) The City has the power to enter into and carry out its obligations under this Agreement and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder, and to authorize the Authority to carry out its obligations under this Agreement, including compliance with the requirements of Sections 31-25-105(1)(e) and 31-25-107 of the Act;

20. (c) Litigation and Proceedings. There are no (i) claims, actions, suits, condemnation actions, or other proceedings pending or, to the knowledge of City, threatened by any entity with respect to the Site or any use thereof, (ii) approvals, permits, easements, rights-of-way, zoning changes, uses or rights that have been denied, or to the knowledge of City, may be denied, by any governmental department or agency, or (iii) violations of any law, statute, government regulation or requirement, that in any manner or to any extent may materially and adversely affect the Site, or the value of the Site, or the likely eventual use of the Site, or Developer's right, title or interest in and to the Site.

21. (d) Tax Protest. There is no pending application or proceeding for the reduction of the assessed valuation of the Site or the property tax assessed against the Site for any tax year.

22. (e) Hazardous Materials. Except as set forth in Exhibit J, the City has no knowledge of or reason to believe that there exists or has existed, and the City itself has not caused, any generation, production, location, transportation, storage, treatment, discharge, disposal, use, release, threatened release or other disposition upon or under the Site of, (i) any toxic or hazardous substance, or material, pollutant or waste subject to regulation under

the Resource Conservation and Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300h, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; all applicable state counterparts to such federal legislation and any regulations, guidelines, directives or other interpretations of any such enactment, all as amended from time to time or any other applicable State or Federal environmental protection law or regulation; (ii) asbestos and asbestos-containing materials, special wastes, polychlorinated biphenols (PCBs), used oil or any petroleum products, natural gas, radioactive material, pesticides or methane in soil gas or (iii) any product, material or substance in any manner inconsistent with the regulations issued by, or so as to require a permit or approval from, the State of Colorado or the County or municipality in which the Site is located, or in a manner that might cause the any such City to inspect the Site or issue an order pursuant to any applicable health code. Other than as set forth in Exhibit J, the City has no knowledge of or reason to believe that there exist or have existed on the Site any storage tanks (either above or below the ground) or septic tanks or that there has been prepared any inspection report addressing any of the issues referenced in this Section 9.6. Other than as set forth in Exhibit J, the City has no knowledge of or reason to believe that there exist on the Site any archeological or historic resources, any endangered or threatened species, or any wetlands.

23. (f) Other Rights. Other than Developer pursuant to this Agreement, no person or entity has any right or option to purchase or otherwise acquire the Site or any portion thereof or interest therein.

24. (g) Assessments. Other than the GID and the Special Districts, no portion of the Site is subject to or affected by any assessments for improvements, whether or not a lien thereon, and the City has any knowledge of any assessments proposed on account of any such improvements or of any work proposed, commenced or completed which could give rise to any such assessment.

25. (h) Encroachments. Except as shown on the Survey and the Title Commitment, there exist no adverse claims by any person or entity (including but not limited to adjoining Site owners) concerning, and no encroachments with respect to, the Site, and all fences located on the Site are within the Site boundaries.

26. (i) Utilities. Adequate public water, sewer, storm drainage, telephone, cable television, natural gas and electric lines, conduits or facilities are located on the Site or in streets or alleys immediately adjoining the Site and are available for use on the Site without additional cost to Developer other than normal connection charges. There are in effect no moratoria or other restrictions affecting such utilities or their availability to the Site.

27. (j) Access. The Site fronts on, and has direct and unobstructed full-turn access to, the following public highways or streets: Huron Street, and 144th Avenue.

28. (k) Subdivision. As of the Final Closing Date, the Site will (i) appear in the public records as a separate lot or lots, alienable without any further requirement of any law, rule or regulation affecting the subdivision of real Site, and (ii) comprise a separate tax lot or lots for the levy of real property taxes in the jurisdiction where the Site is located.

29. (l) Zoning. The Site currently is zoned PUD under the City Zoning Code. City has no knowledge of any fact or matter that would materially limit or in any manner materially interfere with the development of the Project, including retail, office, hotel, entertainment and residential uses, in accordance with standard PUD zoning requirements. Except as expressly permitted under this Agreement, the City shall not take any action or, to the extent the City has control, permit any action which would interfere with the development of the Site in accordance with standard PUD zoning requirements.

30. (m) Documents. The documents delivered to Developer by the City, including, without limitation, the "Reports," as hereinafter defined, will be all of the instruments, documents and agreements binding upon the City or the Site pertaining to the title, condition, use or operation of the Site and the expenses to which it is subject, will be true and complete copies, and unless otherwise indicated, will be in full force and effect in accordance with the terms thereof.

31. (n) Not Misleading. No representation or warranty made by the City in this Agreement, or in any statement or certificate already furnished or to be furnished by the City in connection with the transaction contemplated herein, contains or will contain any untrue statement or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

32.

33. **Section 9.7** Indemnification. To the extent permitted by law, the City shall indemnify and hold Developer harmless from any loss, cost, claim or expense, including, without limitation, attorneys' fees, arising out of any breach of any of the foregoing representations and warranties. The indemnity obligations of the City under this Section shall survive the Final Closing and continue in force and effect thereafter.

34.

35. **Section 9.8** Certificate at Closing. The City shall deliver to Developer at the Final Closing a certificate stating that all of the representations and warranties of the City and the City made in this Agreement are true and correct as of the Final Closing Date as if made on the Final Closing Date (the "City Certificate"). If the City fails to deliver the City Certificate or if the City Certificate contains any exceptions or other limitations to any representation or warranty of the City or the City made in this Agreement, the City shall be deemed to be in default under this Agreement and Developer shall be entitled to exercise its remedies as hereinafter provided, or Developer may, at its option, waive this default and proceed to purchase the Site, in which case City's representations and warranties made in this Agreement shall be deemed to be amended as set forth in the City Certificate.

Section 9.9 Cooperation. The City will cooperate with the Developer and the Authority, at the City's and/or the City's expense, with respect to any litigation brought by a third party concerning the Plan, the Project, the Site, the Improvements, or this Agreement.

SECTION 10 GENERAL COVENANTS.

Section 10.1 General Insurance Provisions.

(a) From the date the license granted in Section 3.3 becomes effective until Completion of Construction, Developer will provide the Authority with certificates of insurance as follows:

(i) The property insurance described in Section 10.2;

(ii) Commercial general liability insurance with X, C & U exclusions deleted (including completed operations, operations of subcontractors, blanket contractual liability insurance, owned, non-owned and hired motor vehicle liability, personal injury liability) with combined single limits against bodily injury and property damage of not less than \$1,000,000 and with excess umbrella coverage raising the total coverage to not less than \$5,000,000; and

(iii) Worker's compensation insurance, with statutory coverage.

(b) Developer will provide certified copies of all policies of insurance required under this Section 10.1, to the Authority upon request. For the property insurance required to be carried by Developer under Section 10.2, Developer will cause its insurer(s) to provide the Authority and its commissioners, directors, officers, employees and agents with waivers of subrogation. Developer will not obtain any property insurance that prohibits the insured from waiving subrogation. The Authority agrees to seek waivers of subrogation for the benefit of Developer as to any property insurance it carries from time to time.

(c) Insurance coverage specified herein constitutes the minimum requirements, and said requirements will in no way lessen or limit the liability of Developer under the terms of this Agreement. Developer will procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that, in its judgment, may be necessary for its proper protection in the completion of the Improvements.

Section 10.2 Site Insurance.

(a) From the date the license granted in Section 3.3 becomes effective until Completion of Construction, Developer will purchase and maintain in the name of Developer for the benefit of Developer, the Authority and the City and all prime contractors, subcontractors and suppliers, the following insurance upon the Improvements to the full insurable value thereof.

(i) With respect to all Improvements under construction, from the Commencement of Construction until the Completion of Construction, "Builder's Special Form 100% Completed Value Non-Reporting" or "Course of Construction" insurance; and

(ii) With respect to all new Improvements constructed pursuant to this Agreement, from the Completion of Construction, special form risk property insurance.

(b) Site coverage will include the Improvements themselves, all materials and supplies of any nature included in the Improvements, and with respect to builder's risk coverage, all materials and supplies of any nature whatsoever to be used on completion of the Improvements, whether any or all of the foregoing are located at the site, in transit, or while temporarily stored off-site. The coverage will be for "special Perils" and, subject to reasonable commercial availability, will include coverage for losses caused by fire; collapse; faulty workmanship, except the cost of correcting faulty workmanship (builder's risk only); flood insurance if applicable; glass breakage; and freezing.

Section 10.3 Cooperation with Developer. The City and the Authority agree to reasonably cooperate with Developer and to provide Developer with reasonable assistance with respect to (i) securing the City's commitment of its moral obligation to perform any City obligations under the Public Financing Plan that are subject to the City's limitations under article X, section 20 of the Colorado Constitution, (ii) applications of the Developer and any tenants or

owners of Pad Sites for building and other permits and approvals from the City, and any permits or approvals required from any governmental Authority, whenever reasonably requested to do so; provided, however, that all applications for such permits and approvals are in compliance with the applicable ordinances and regulations, approved plans and specifications, and all applicable codes, (iii) obtaining the City's approval of Developer's application for the ODP, and (iv) securing any construction and permanent financing that Developer may reasonably require in connection with the performance of its obligations under this Agreement.

Section 10.4 Anti-Discrimination in Employment. In any activities undertaken under this Agreement, Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, handicap, ancestry or national origin.

Section 10.5 Construction of the Project. Construction of the Project, and the contemplated uses and occupancies thereof, will comply with all applicable federal, state and City laws, rules and regulations, including, but not limited to, building, zoning, and other applicable land use codes, subject to modifications approved by the City pursuant to the planning, subdivision, zoning, environmental and other developmental ordinances and regulations.

Section 10.6 Vacation and Dedication of Rights of Way and On-Site Improvements. Developer will designate in writing any street rights of way determined to be necessary or desirable in order to implement the Development Plan, and the City will promptly commence and diligently pursue to completion the vacation of the existing street rights of way within the Site in accordance with the procedures set forth in the Municipal Code. After Developer completes construction of any discrete segment of the re-configured public street system or any discrete Improvement within the Site, Developer will dedicate and the City will accept the rights of way, related street improvements, and/or other Improvement in accordance with the applicable Municipal Code and ODP provisions. With respect to those On-Site Improvements for which the Authority is financially responsible under the terms and conditions of this Agreement, Developer will have no obligation to dedicate any On-Site Improvements as set forth in Exhibit G unless and until the Developer or the District has been paid from Initial Bond Proceeds or Contingent Bond Proceeds, as set forth herein, the Hard Costs, Soft Costs, and construction management fees as provided for in this Agreement.

SECTION 11 INDEMNITY AND RESPONSIBILITY.

Section 11.1 Developer's Indemnification. Developer will indemnify and defend the Authority and the City and their officers and employees against all claims or suits for and damages to property and injuries to persons, including accidental death, to the extent caused by Developer's negligence in performing activities under this Agreement, whether such activities are undertaken by Developer or anyone employed by Developer.

Section 11.2 Authority's Responsibility. The Authority will be responsible for, and to the extent permitted by law will reimburse Developer for, all costs and expenses incurred by Developer as a result of, all claims or suits for and damages to property and injuries to persons, including accidental death, to the extent caused by the Authority's negligence in performing activities under this Agreement, whether such activities are undertaken by the Authority or anyone directly or indirectly employed or under contract to the Authority.

Section 11.3 City's Responsibility. The City will be responsible for, and to the extent permitted by law will reimburse Developer for, all costs and expenses incurred by Developer as a

result of, all claims or suits for any damages to property and injuries to persons, including accidental death, to the extent caused by the City's negligence in performing activities under this Agreement, whether such activities are undertaken by the City or anyone directly or indirectly employed or under contract to the City.

Section 11.4 Notification of Claim. Each Party shall give the other Parties prompt written notice of any claim or action covered by the indemnities set forth above in this Section, provided, however, that the failure of one Party to notify the other Parties shall in no way prejudice the rights of said Party under this Agreement unless the other Party or Parties shall be prejudiced by such failure and then only to the extent of such prejudice; and the other Party or Parties shall have the right, but not the obligation, at its own expense, to participate in the defense of any such claim or action with counsel of its choice.

Section 11.5 No Waiver of Governmental Immunity. No provision of this Agreement shall act or be deemed to be a waiver by the City or the Authority of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq.

SECTION 12 RESTRICTIONS ON ASSIGNMENT AND TRANSFER.

Section 12.1 Representations as to Development. Developer's purchase of the Site and its undertakings under this Agreement are for the purpose of development of the Site and not for land holding or speculation. Developer acknowledges that:

- (a) The development of the Site is important to the general welfare of the Authority and the City, and is consistent with the Plan;
- (b) The Authority and the City intend to make available substantial financing and other aids to make the development possible; and
- (c) It is because of the qualifications and identity of Developer that the Authority and the City are entering into this Agreement with Developer, and are willing to accept and rely on the obligations of Developer for the faithful performance of all of its undertakings and covenants under this Agreement.

Section 12.2 Limitation on Assignment. Except as otherwise provided in this Section 12.2, prior to Completion of Construction of Phase I, Developer will not assign its rights or delegate its duties and obligations under this Agreement without the prior written consent of the Authority, not to be unreasonably withheld, delayed or conditioned. Any purported assignment without consent of the Authority will be null and void. As a condition to the Authority granting consent, an assignee will expressly assume in writing the obligations of Developer hereunder. For purposes of this Section 12.2, any sale, transfer, assignment, pledge or hypothecation of an interest in Developer (other than to an Affiliate of Developer) that results in a change in management control of Developer will constitute an assignment of this Agreement. Notwithstanding the foregoing:

- (a) At such time as Developer has Completed Construction of Phase II, Developer may freely convey the Site, assign its rights, and delegate its duties and obligations under this Agreement without the Authority's consent.
- (b) Developer may at any time without the Authority's consent convey the Site, assign its rights, and delegate its duties and obligations under this Agreement to an Affiliate. [include language to address the appropriate 1031 entity]

(c) No consent will be required under this Section 12.2 for any pledge or assignment of this Agreement as collateral security for Developer's Financing.

(d) No consent will be required under this Section 12.2 for any sale or lease of a Pad Site for the construction thereon of Improvements to be used by the purchaser or lessee of the Pad Site or its affiliate or borrower (such as the sale, lease, or transfer of a retail building site for the construction and operation thereon of an Approved Use).

SECTION 13 EVENTS OF DEFAULT, REMEDIES

Section 13.1 Events of Default After Purchase of the Site By Developer.

Each of the following occurrences after the purchase of the Site by Developer which remains uncured after the expiration of all applicable cure periods shall constitute an event of default ("Event of Default") under this Agreement:

(a) Prior to the Completion of Construction of Phase I, Developer shall file a petition in bankruptcy or other petition for creditors' relief shall have been filed against Developer and shall not be dismissed within sixty (60) days, or any material written representation by Developer as to its financial condition shall have been false;

(b) Developer, the City or the Authority shall be in default of any or its material, respective duties or obligations hereunder, including but not limited to complying with Section 8.5, as pertains to the Developer, and Sections 7.2, 7.3, 7.4, 7.5, and 7.6, as pertains to the City and/or the Authority. The Parties agree that with regard to the Developer's obligation to Complete Construction of Phase I with a minimum of three anchor tenants and 326,000 sq. ft. of retail space, Developer shall not be deemed to be in default under this Agreement if said obligation is not met if one or more anchor tenants that purchased or leased its pad site fails to complete construction of its retail space by October 31, 2006 (or October 21, 2007 if extended).

Section 13.2 Default Notice. If a default occurs under this Agreement, one or both of the non-defaulting Parties shall deliver notice ("Default Notice") to the Party or Parties in default, specifying the nature of the alleged Event of Default, and in accordance with Section 15.3 below. The non-defaulting Party or Parties shall have no right to exercise any remedy for such default without delivering the Default Notice as provided herein.

The non-defaulting Party or Parties shall have not the right to exercise a remedy hereunder after delivery of a Default Notice if the default is commenced to be cured by the defaulting Party within thirty (30) days and thereafter is diligently pursued to completion of cure within a reasonable time; except for Developer's termination right due to the Authority's failure to tender conveyance of title, for which the Authority shall have only ten (10) days to cure from delivery of the Default Notice.

Section 13.3 Authority's Option to Repurchase, Reenter and Repossess Portions of the Site After Purchase of the Site.

(a) Subject to the rights of holders of security interests as set forth in Section [], the Authority shall have the right, after the purchase of the Site by Developer and prior to the Completion of Construction of Phase II, at its option to repurchase, reenter and repossess certain portions of the Site if Developer shall for any reason not the fault of the Authority or the City:

(i) Fail to Commence Construction of Phase I in accordance with Section 8.4 (a) and (d) hereof;

(ii) Fail to Complete Construction of Phase I in accordance with Section 8.4 (b) and (d) hereof; or

(iii) Fail to Complete Construction of Phase II in accordance with Section 8.4 (c) and (d) hereof.

(b) The Authority agrees that the foregoing described right to repurchase, reenter and repossess certain portions of the Site shall apply only to portions of the Site that meet all of the following criteria: (i) have not been sold or ground-leased to third parties by Developer at the time the City or the Authority delivers notice or exercise of the right to Developer; and (ii) are not developed with buildings that are completed or are under construction (excluding tenant improvements) prior to the expiration or all applicable cure periods. The Authority and the City further agree that the foregoing described right to repurchase, reenter and repossess certain portions of the Site does not apply to any portions of the Site identified in the ODP as areas of residential development.

(c) In addition, the Authority's rights under this Section 13.3 shall be subordinate and subject to and be limited by and shall not defeat, render invalid, limit or otherwise affect:

(i) Any mortgage, deed of trust or other security instrument or sale, lease-back or other conveyance for financing permitted by this Agreement; or

(ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deed of trust or other security instruments, the lessor under a sale and lease-back or the grantee under such conveyance for financing.

(d) To exercise its right to repurchase, reenter and repossess any portion of the Site under this Section 13.3, the Authority shall give written notice to Developer of its election to retake identified portions of the Site ("Reverter Notice"), and in accordance with Section 15.3 below. [In addition, prior to retaking any portion of the Site, the Authority shall pay in full any deed of trust or mortgage that is a lien on the property being recaptured.]

(e) The Authority's right to repurchase, reenter and repossess any portion of the Site under this Section 13.3 shall be the City's and the Authority's sole and exclusive remedy for an Event of Default, other than termination of this Agreement pursuant to Section 14 below. The Authority's exercise of its rights under this Section 13.3 shall operate as a full and final release of Developer, its successors and assigns under this Agreement, and the Authority and the City shall have no other rights or remedies under this Agreement, other than termination of this Agreement pursuant to Section 14 below. If the Authority does not elect to exercise its right of repurchase and reentry under this Section 13.3, then the Authority and the City shall have no other remedies for an Event of Default, other than termination of this Agreement pursuant to Section 14 below, and the City and the Authority hereby waive all other rights and remedies, including but not limited to monetary damages.

(f) Upon the revesting in the Authority of title to any portion of the Site as provided in this Section 13.3, the Authority shall, pursuant to its responsibilities under Colorado law, use its best efforts to resell the same as soon and such manner as the Authority shall find feasible and consistent with the objectives of such law and to a qualified and responsible party or parties (as reasonably determined by the Authority) who will assume the obligations of making or completing improvements, or such other improvements in their stead as shall be reasonably satisfactory to the Authority and in accordance with the uses specified therefore in the Plan. Upon such resale, the proceeds thereof shall be applied as follows:

(i) First, to reimburse the Authority, on its own behalf, for all costs and expenses incurred by the Authority to third party consultants, including attorneys, in connection with the recapture, management and resale of the Site, less any income or gain derived by the Authority therefrom or the improvements thereon in connection with such management, recapture or sale; all taxes, assessments and water or sewer charges with respect thereto which Developer has not paid; any payments made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts or Developer, its successors, assigns or transferees; and any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereon on the Site;

(ii) Second, to reimburse Developer or its successors, assigns or transferees (if applicable), up to the amount equal to the costs incurred for the development of the Site and for the Improvements existing thereon at the time of reentry and repossession, less any gains or income withdrawn or made by Developer therefrom for the Improvements thereon; and

(iii) Third, any balance remaining after such reimbursements shall be retained by the Authority as its property.

(g) Any development and operation of any portion of the Site by the Authority or any successor thereto following a reverter shall be in accordance with the ODP.

(h) Also notwithstanding any other provision of this Agreement, the Authority's right of reverter under this Section 13.3 and any proceedings hereunder shall terminate and be of no further force or effect upon Completion of Construction of Phase II, and the Authority shall have no further right of reverter.

(i) The rights established in this Section 13.3 are to be interpreted in light of the fact that the Site is being conveyed to Developer for development, and not for speculation in undeveloped land.

(j) The obligation of the City and/or the Authority to pay Developer for any sums owed pursuant to Section 7.4 shall survive any exercise of the right of reverter under this Agreement.

Section 13.4 Termination by the City or the Authority Prior to Purchase by the Developer.

(a) Upon such termination of this Agreement by the City or the Authority prior to the purchase of the Site by the Developer, all monies or documents, if any, deposited by Developer into a then unclosed escrow for the Site shall be returned to Developer; provided however that if Developer has exercised its right under 8.4(e), the one million payment provided

thereunder shall not be returned to the Developer. Developer shall pay all attendant escrow cancellation provisions.

(b) The right of termination set forth in this Section 13.4 shall be the City's and the Authority's sole and exclusive remedy for a default by Developer prior to purchase of the Site by the Developer. In no event shall the City or the Authority be entitled to damages, including but not limited to monetary damages, of any kind or specific performance prior to such purchase.

Section 13.5 Right of Termination by Developer Prior to Purchase.

(a) Upon such termination of this Agreement by the Developer prior to its purchase of the Site and upon an Event of Default by City or the Authority, the Authority and/or the City shall pay to Developer liquidated damages in the amount of Developer's predevelopment and development costs incurred through the date of termination, as documented by an accounting submitted by the Developer, together with interest thereon from date incurred to the date paid at two hundred (200) basis points over the Bank of America prime rate. THE PARTIES AGREE THAT DEVELOPER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY THE CITY OR THE AUTHORITY ARE DIFFICULT TO DETERMINE AND THE FOREGOING AMOUNT OF LIQUIDATED DAMAGES REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES THAT DEVELOPER WOULD SUFFER UPON SUCH A DEFAULT.

(b) As an alternative to the foregoing remedy and liquidated damages, following a default by the Authority prior to the purchase of the Site by the Developer which is not cured within any cure period applicable in this Agreement, Developer may obtain a court order compelling the Authority to specifically perform the Authority's and the City's obligations hereunder. Specific performance, or termination and liquidated damages, shall be Developer's sole and exclusive remedy for an uncured default by the Authority and/or the City prior to the Developer's purchase of the Site.

SECTION 14 TERMINATION; EFFECTS OF TERMINATION.

Section 14.1 Developer's Option to Terminate. Without limitation upon any other termination right set forth herein, Developer will have the right to terminate this Agreement if:

(a) the Escrow Delivery has not occurred on or before the Escrow Delivery Date; or, if the Escrow Delivery has occurred, the Final Closing has not occurred on or before the Final Closing Date;

(b) the Authority fails to issue the Authority's Bonds or the City fails to issue the COP's on or before the Final Closing Date; or

(c) an Event of Default by the City or the Authority occurs and is continuing.

(d) any applicable cure period for the Event of Default has expired.

Section 14.2 Authority's and City's Option to Terminate. The Authority and the City will have the right to terminate this Agreement if an Event of Default by Developer occurs, and was not cured during any applicable cure period hereunder.

Section 14.3 Action to Terminate. Notice of termination of this Agreement must be accomplished by written notification delivered to the other parties hereto in accordance with Section 15.3 below. Termination will be effective on the date specified in such notice. .

Section 14.4 Effect of Termination. If this Agreement is terminated pursuant to Section 14.1 or Section 14.2, then this Agreement will be null and void and of no further effect, and no action, claim or demand may be based on any term or provision of this Agreement; provided, however, that once the closing of any Public Financing has occurred, the parties' obligations under any Public Financing Documents with respect to such Public Financing will survive any termination of this Agreement pursuant to Section 14.1 or Section 14.2. As set forth herein, the only provisions of this Agreement that survive termination are those that expressly include survival of termination language.

Section 14.5 Scheduled Termination. If not otherwise terminated earlier as provided herein, this Agreement will terminate:

(a) with respect to each phase of the Project and all of the Parties' obligations hereunder in connection with such phase (other than obligations with respect to any Public Financing for such phase that has been closed), upon the Completion of Construction of such phase; and

(b) with respect to all other matters, upon the earlier to occur of (i) repayment of the Bonds; or (ii) April 15, 2010.

Section 14.8 Survival After Termination. The Authority's obligation to pay Developer for any sums owed pursuant to Section 7.4 shall survive any termination of this Agreement.

SECTION 15 MISCELLANEOUS.

Section 15.1 Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may not be amended or terminated except by mutual consent in writing of Developer, and, as applicable, the Authority, and/or the City, following the public notice and public hearing procedures required for approval of the PDP, the ODPs, or this Agreement, as applicable.

Section 15.2 No Implied Waiver. No provision of this Agreement will be construed as an implied waiver by Developer of its right to any payment, reimbursement, tax or fee waiver, or reimbursement to which it is otherwise entitled by law or as an implied waiver or acquiescence in the impairment of any of its substantive or procedural rights under the Local Government Land Use Control Enabling Act of 1974, sections 29-20-104.5 and 29-20-201 through 204, C.R.S., as amended, or as an implied agreement by Developer to be responsible for more than its proportionate share of any regional public infrastructure improvements or to be responsible for the costs of improvements that are not roughly proportional to the direct impacts of the development of the Capital Project.

Section 15.3 Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, or dispatched by telegram or telecopy (if

confirmed promptly telephonically), addressed to the appropriate Notice Address or at such other address or addresses as any party thereto designates in writing to the other party hereto.

Section 15.4 Waiver. No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, will constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either party by giving notice to the other party may, but will not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver will affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

Section 15.5 Attorneys' Fees. In any proceeding brought to enforce the provisions of this Agreement, the court will award the prevailing party (whether by judgment or out of court settlement) therein reasonable attorneys' fees, actual court costs and other expenses incurred.

Section 15.6 Conflicts of Interest. The Authority and the City will not allow, and except as disclosed in writing to the Authority and the City, Developer will not knowingly permit, any of the following persons to have any interest, direct or indirect, in this Agreement: A member of the governing body of the Authority or of the City; an employee of the Authority or of the City who exercises responsibility concerning the Project, or an individual or firm retained by the City of the Authority who has performed consulting or other professional services in connection with the Project. The Authority will not allow and Developer will not knowingly permit any of the above persons or entities to participate in any decision relating to this Agreement that affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

Section 15.7 Titles of Sections. Any titles of the several parts and Sections of this Agreement are inserted for convenience and reference only and will be disregarded in construing or interpreting any of its provisions.

Section 15.8 Authority and City Not a Partner; Developer Not Authority's or City's Agent. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, neither the Authority nor the City will be deemed or construed to be a partner or joint venturer of Developer, Developer will not be the agent of the Authority or the City, and the Authority and the City will not be responsible for any debt or liability of Developer.

Section 15.9 Applicable Law; Venue. The laws of the State of Colorado will govern the interpretation and enforcement of this Agreement. Venue for any action arising under this Agreement or any amendment or renewal hereof shall be in the District Court of Adams County, Colorado.

Section 15.10 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties hereto, and their successors and assigns, subject to the limitations on assignment of this Agreement by Developer set forth in Section 12.2.

Section 15.11 Further Assurances. The parties hereto agree to execute such documents, and take such actions, as will be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

Section 15.12 Time of Essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 15.13 Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity will not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, any provisions, covenants, agreements and portions of this Agreement and declared to be severable.

Section 15.14 Good Faith; Consent or Approval. In performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold or delay any approval required by this Agreement; provided, however, that the City or the Authority need not act reasonably in considering a requested extension of time that would extend a time period set forth in this Agreement for the performance of an obligation by Developer by more than three years from the original end of such period as set forth in this Agreement, except as otherwise provided herein.. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed. Developer agrees and acknowledges that in each instance in this Agreement or elsewhere where the Authority is required or has the right to review or give its approval or consent, no such review, approval or consent will imply or be deemed to constitute an opinion by the Authority, nor impose upon the Authority, any responsibility for the design or construction of building elements, including, but not limited to, the structural integrity or life/safety requirements or adequacy of budgets or financing or compliance with any applicable federal or state law, or local ordinance or regulation, including the Environmental Laws. All reviews, approval and consents by the Authority under the terms of this Agreement are for the sole and exclusive benefit of Developer and no other person or party will have the right to rely thereon.

Section 15.15 Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 15.16 Non-Liability of Authority Officials and Employees. No council member, commissioner, board member, official, employee, agent of consultant of the Authority or the City will be personally liable to Developer in the event of a Default by the Authority or for any amount that may become due to Developer under the terms of this Agreement.

Section 15.17 Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

Section 15.18 Jointly Drafted; Rules of Construction. The Parties hereto agree that this Agreement was jointly drafted, and, therefore, waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

Section 15.19 Brokers. Developer shall not be responsible for the cost of any real estate broker's commissions under the transaction contemplated under this Agreement, including, without limitation, brokerage commissions due to The Laramie Company, LLC, acting as a limited agent of the City. Developer shall have no responsibility for payment of any real estate broker's commissions to any real estate broker acting as an agent on behalf of the City related to

the Site. Developer shall indemnify and hold the City harmless from any claim, liability, loss or damage arising from any claim or assertion for a brokerage commission or fee from any individual or entity claiming by, through or under Developer.

Section 15.20 Covenant Against Discrimination. The Developer hereby covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, age, or handicap, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the Developer or any person claiming under or through the Developer, establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees of the Site.

IN WITNESS WHEREOF, the Authority and the City each have caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Developer has caused these presents to be executed by its duly authorized officer, as of the date first above written.

CITY:

DEVELOPER:

CITY OF WESTMINSTER, COLORADO

FOREST CITY COMMERCIAL GROUP, INC.

By: _____
J. Brent McFall, City Manager

By: _____
Title: _____

ATTEST:

ATTEST:

By: _____
Michele Kelley, City Clerk

By: _____

AUTHORITY:

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

J. Brent McFall, Executive Director

ATTEST:

By: _____

Michele Kelley, Authority Secretary

Exhibit A

Legal Description of the Site

Exhibit B

Site Map

Exhibit C

Development plan Narrative

Exhibit C-1

Commercial Phasing Plan

Exhibit D

Site Plan

Exhibit E

**Commercial Portion of Site
WEDA - Forest City On-Site Improvements**

<i>Item</i>	<i>Paid for by</i>	<i>Constructed by</i>	<i>Maintained by</i>	<i>Dedicated to</i>	<i>Date of Conveyance</i>	<i>Estimated Maintenance</i>
Improvements	WEDA ^[1]	Developer	City	City	Final Plat	TH
Fence Improvements	WEDA	Developer	Developer	Easement ^[2]	N/A	TH
Entrances	WEDA	Developer	Developer	N/A	N/A	N
Recreation Facilities	N/A	N/A	N/A	N/A	N/A	N
Open Space and Private Parks	WEDA	Developer	Developer	N/A	N/A	N
Open Space and Public Parks	N/A	N/A	N/A	N/A	N/A	N
Lighting	WEDA	Developer	Developer	TBD	TBD	TH
Signage Improvements	WEDA	Developer	CDOT	CDOT	N/A	N
Streetscape	WEDA	Developer	Property Owner	Easement ^[3]	N/A	N
Streets	WEDA	Developer	Developer	N/A	N/A	TH
Storm Sewers	WEDA	Developer	City	City	Completion	TH
Water Mains	WEDA	Developer	City	City	Completion	TH
Utilities	WEDA	Developer	City	City	Completion	TH
Signage	Developer	PSC	PSC	Easement	N/A	N
Utilities	Developer	PSC	PSC	Easement	N/A	N
Communications	Developer	Developer		Easement	N/A	N
Bond on Private Open Space	WEDA	Developer	Developer	N/A	N/A	TH
Bond on Public Open Space	WEDA	Developer	Developer	N/A	N/A	TH
Engineering and Construction Cost including District Facilities	WEDA	N/A	N/A	N/A	N/A	N
Grading – All (not grading for building)	WEDA	Developer	N/A	N/A	N/A	N
Landscaping, Streetscaping (not signs)	WEDA	Developer				
Signage, Including Lighting	WEDA	Developer				
Signage	WEDA	District				
Signage	WEDA	District				
Cameras	WEDA	District				

^[1] Where WEDA is indicated as the entity responsible for payment, the funding is anticipated to come from \$20 million in bond proceeds from a WEDA bond issue.

^[2] Developer landscape maintenance on dedicated City right-of-way will be permitted by landscape maintenance easement from City

^[3] Developer landscape maintenance on dedicated City right-of-way will be permitted by landscape maintenance easement from City

**Residential Portion – Metro District
Westminster - Forest City Improvements**

<i>Item</i>	<i>Paid for by</i>	<i>Constructed by</i>	<i>Maintained by</i>	<i>Dedicated to</i>	<i>Date of Conveyance</i>	<i>Estimated Maintenance</i>
Improvements	District ^[4]	Developer/District	City	City	Final Plat	TH
Fence Improvements	District	Developer/District	District	Easement ^[5]	N/A	TH
Entrances	Developer	Developer	District	District	Final Plat	TH
Recreation Facilities	District	Developer/District	District	District	Completion	TH
Open Space and Private Parks	District	Developer/District	District	District	Final Plat	TH
Open Space and Public Parks	District	Developer/District	City	City	Final Plat	N
	District	Developer/District	TBD	TBD	TBD	TH
Light Improvements	WEDA	Developer/District	CDOT	CDOT	N/A	N
Streetscape	District	Developer/District	Property Owner	Easement ^[6]	N/A	N
Streets	District	Developer/District	City	City	Completion	TH
Storm Sewers	WEDA	Developer/District	City	City	Completion	TH
Water Mains	WEDA	Developer/District	City	City	Completion	TH
Gas	WEDA	Developer/District	City	City	Completion	TH
	Developer	PSC	PSC	Easement	N/A	N
Electric	Developer	PSC	PSC	Easement	N/A	N
Communications	Developer	Developer		Easement	N/A	N
Bond on Private Open Space	District	Developer/District	N/A	District	Final Plat	TH
Bond on Public Open Space	District	Developer/District	N/A	N/A	N/A	TH
Engineering and Construction Cost including District Facilities	District	N/A	N/A	N/A	N/A	N
Grading – All (not grading for building)	District	Developer/District	N/A	N/A	N/A	N
Landscaping, Streetscaping (not signs)	District	Developer/District				
Signs, Including Lighting	N/A	N/A				
Security	District	District/Developer				
Security	District	District/Developer				
Cameras	District	District/Developer				

^[4] District-funded improvements are expected to be funded from a District-issued bond financing.

^[5] District landscape maintenance on dedicated City right-of-way will be permitted by landscape maintenance easement from City

^[6] District landscape maintenance on dedicated City right-of-way will be permitted by landscape maintenance easement from City

Exhibit F

Exhibit G

Matrix Regarding On-Site Improvements

Exhibit H

Schedule of Construction of Off-Site Improvements

Exhibit I

Escrow Agreement

Exhibit J

Exhibit K

Permitted Exceptions

Exhibit L

Interchange Diagram



Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, December 13, 2004. . Mayor McNally, Councillors Davia, Dittman, Dixon, Hicks, Kauffman, and Price were present at roll call.

The minutes of the November 22, 2004 meeting were approved.

Council approved the following: Memo of Understanding with Adams County re Mosquito Control; Legal Services Agreement with Carlson Hammond & Paddock re Special Water Counsel Services; Policy for Metropolitan Special District Formation; Preliminary/Official Development Plan re Harris Park – Site IV; 1st Amended Preliminary and 4th Amended Official Development Plan re Assembly of God Subdivision ; Forest City Final Development Agreement and Conveyance of 135 acres (Caldwell/Sheltie parcel) to WEDA

The following public hearings were held: Public Hearing re Walker Open Space Property 4.8 acres East of Wadsworth Pkwy at 106th Ave; Public Hearing re Bott Open Space Property 1.6 acres of 1.6 acres SWC Wadsworth Blvd @ RR Tracks; Public Hearing re Harris Park – Site IV NWC Lowell Boulevard and 73rd Ave and Public Hearing re Assembly of God Subdivision, 9050 Yates Street.

The following Councillor's Bills were passed on first reading:

A BILL FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN SECTION 11, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO. Purpose: Annexation of Walker Open Space Property

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN Purpose: CLUP Amendment of Walker Open Space Property

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 11, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO Purpose: Zoning to Open Space for Walker Property

A BILL FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO Purpose: Annexation of Bott Open Space Property

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN Purpose: CLUP Amendment of Bott Open Space Property

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO Purpose: Zoning for Bott Open Space Property

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN Purpose: CLUP Amendment for Harris Park – Site IV

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 31, TOWNSHIP 2 SOUTH, RANGE 68 WEST, 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO Purpose: Rezoning for Harris Park – Site IV

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN Purpose: CLUP Amendment re Assembly of God Subdivision

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 19, TOWNSHIP 2 SOUTH, RANGE 68 WEST, 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO Purpose: Rezoning for Assembly of God Subdivision

The following Councillor's Bills were adopted on second reading:

A BILL FOR AN ORDINANCE APPROVING WESTMINSTER HISTORICAL SOCIETY LEASE OF 4350 WEST 76th AVENUE

A BILL FOR AN ORDINANCE AMENDING THE 2004 BUDGET OF THE UTILITY FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2004 ESTIMATED REVENUES IN THE FUND.

A BILL FOR AN ORDINANCE AMENDING THE 2004 BUDGET OF THE GENERAL FUND CAPITAL IMPROVEMENT FUND AND THE OPEN SPACE FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2004 ESTIMATED REVENUES IN THE FUND.

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE CONCERNING OPEN CONTAINERS OF ALCOHOLIC BEVERAGES

The following Resolutions were adopted:

Resolution No. 73 re Annexation Finding re Walker Open Space Property

Resolution No. 74 re Annexation Finding re re Bott Open Space Property

Resolution No. 75 re Compliance of McGuire Open Space Annexation Petition

At 7:55 p.m. the meeting was adjourned

By order of the Westminster City Council

Michele Kelley, CMC, City Clerk

Published in the Westminster Window on December 16, 2004

ORDINANCE NO. **3171**
SERIES OF 2004

COUNCILLOR'S BILL NO. **82**
INTRODUCED BY COUNCILLORS
Dittman – Davia

A BILL
FOR AN ORDINANCE APPROVING WESTMINSTER HISTORICAL SOCIETY LEASE OF
4350 WEST 76th AVENUE

WHEREAS, the City owns property 4350 West 76th Avenue, which includes vehicle bays and about 1,080 square feet of office space; and

WHEREAS, the Westminster Historical Society (WHS) is a volunteer, non-profit organization that operates the City-owned Bowles House Museum and provides other public services to the citizens of and visitors to the City of Westminster; and

WHEREAS, the WHS has a great need for additional office, storage and work space to support its museum services and other activities,

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Mayor is hereby authorized to execute the form of lease attached hereto, or in a form substantially similar and as approved by the City Attorney's Office, leasing the office space at 4350 West 76th Avenue, containing approximately 1,080 square feet, to the Westminster Historical Society.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED THIS 22TH DAY OF NOVEMBER, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED THIS 13TH DAY OF DECEMBER, 2004

A BILL

FOR AN ORDINANCE AMENDING THE 2004 BUDGET OF THE UTILITY FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2004 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2004 appropriation for the Utility Fund initially appropriated by Ordinance No. 2977 in the amount of \$38,281,200 is hereby increased by \$521,730 which, when added to the fund balance as of the City Council action on November 22, 2004 will equal \$49,037,112. The actual amount in Utility Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the sale of assets.

Section 2. The \$521,730 increase in the Utility Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES		Current		Revised
Description	Account Number	Budget	Amendment	Budget
Sale of Assets	2000.43040.0000	\$0	<u>\$521,703</u>	\$521,703
Total Change to Revenues			<u>\$521,703</u>	

EXPENSES		Current		Revised
Description	Account Number	Budget	Amendment	Budget
Thornton Water Replacement	80420035618.80400.8888	\$578,000	<u>\$521,703</u>	\$1,099,703
Total Change to Expenses			<u>\$521,703</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 AND PUBLISHED this 22nd day of November, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of December, 2004.

A BILL

FOR AN ORDINANCE AMENDING THE 2004 BUDGET OF THE GENERAL FUND CAPITAL IMPROVEMENT FUND AND THE OPEN SPACE FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2004 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2004 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2977 in the amount of \$9,036,000 is hereby increased by \$700,000 which, when added to the fund balance as of the City Council action on November 22, 2004 will equal \$20,292,662. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of funds from Jefferson County Schools for the Brauch Open Space Parcel.

Section 2. The \$700,000 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES				
Description	Account Number	Current Budget	Amendment	Revised Budget
Sale of Assets	7501.43040.0000	\$0	<u>\$700,000</u>	\$700,000
Total Change to Revenues			<u>\$700,000</u>	

EXPENSES				
Description	Account Number	Current Budget	Amendment	Revised Budget
City Park Maintenance Facility	80175050092.80400.8888	\$2,131,225	<u>\$700,000</u>	\$2,831,225
Total Change to Expenses			<u>\$700,000</u>	

Section 3. The 2004 appropriation for the Open Space Fund initially appropriated by Ordinance No. 2977 in the amount of \$4,663,797 is hereby increased by \$250,000 which, when added to the fund balance as of the City Council action on November 22, 2004 will equal \$7,846,631. The actual amount in the Open Space Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of funds from Jefferson County Schools for the Brauch Open Space Parcel.

Section 4. The \$250,000 increase in the Open Space Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES				
Description	Account Number	Current Budget	Amendment	Revised Budget
Sale of Assets	5400.43040.0000	\$2,852,453	<u>\$250,000</u>	\$3,102,453
Total Change to Revenues			<u>\$250,000</u>	

EXPENSES				
Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchases	54010900.76600.0000	\$3,850,937	<u>\$250,000</u>	\$4,100,937
Total Change to Expenses			<u>\$250,000</u>	

Section 5. – 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 6. This ordinance shall take effect upon its passage after the second reading.

Section 7. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED AND PUBLISHED this 22nd day of November, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of December, 2004.

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE CONCERNING OPEN CONTAINERS OF ALCOHOLIC BEVERAGES

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 6-9-3, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION to read as follows:

6-9-3: OPEN CONTAINERS OF ALCOHOLIC BEVERAGES:

(A) It shall be unlawful for any person to drink, possess or have under his control, any alcoholic beverage in an open container, or in a container, the seal of which is broken, in any public place within the City, or in any vehicle in a public place.

(B) It shall be unlawful for any person, while operating a vehicle in any public place within the City, to drink, possess, have under his control or allow any alcoholic beverage within the vehicle, in any open container, or in a container, the seal of which is broken.

(C) EXCEPTION: SUBSECTIONS (A) AND (B) ABOVE SHALL NOT APPLY TO THE POSSESSION OR CONTROL OF ONE OPENED CONTAINER OF VINOUS LIQUOR PURCHASED AND REMOVED FROM A LIQUOR-LICENSED HOTEL OR RESTAURANT, PURSUANT TO THE PROVISIONS OF SECTION 12-47-411(3.5), C.R.S., SO LONG AS THE ORIGINAL CONTAINER DID NOT CONTAIN MORE THAN 750 MILLILITERS.

~~(C)~~(D) Nothing in this Section shall prohibit drinking or having open containers of alcoholic beverages:

1. In public areas where authorized by a properly issued special event permit.
2. Pursuant to a permit issued by the Department of Parks, Recreation and Libraries.
3. On private property AUTHORIZED by the owner of such property or the guests of such owner.

~~(D)~~(E) Notwithstanding the foregoing provisions, drinking alcoholic beverages in any vehicle is hereby prohibited.

~~(E)~~(F) A violation of this section is a criminal offense, punishable by a fine or imprisonment, or both, as provided in Section 1-8-1 of this Code.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 22nd day of November, 2004. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of December, 2004.