



WESTMINSTER

Staff Report

TO: The Mayor and Members of the City Council

DATE: April 11, 2012

SUBJECT: Study Session Agenda for April 16, 2012

PREPARED BY: J. Brent McFall, City Manager

Please Note: Study Sessions and Post City Council meetings are open to the public, and individuals are welcome to attend and observe. However, these meetings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to next Monday night's Study Session, the following schedule has been prepared:

A light dinner will be served in the Council Family Room

6:00 P.M.

CITY COUNCIL REPORTS

1. Report from Mayor (5 minutes)
2. Reports from City Councillors (10 minutes)

PRESENTATIONS

6:30 P.M.

1. Proposed Short-term Loan for the Public Safety Center Sculpture Commissioned by the Westminster Public Safety Recognition Foundation

EXECUTIVE SESSION

1. Obtain direction from City Council re proposed redevelopment assistance agreement with Renaissance LLLP pursuant to WMC 1-11-3(C)(4) and C.R.S. 24-6-402(4)(e)

INFORMATION ONLY ITEMS

1. Update on Negotiations with RTD for Westminster Station IGA
2. Citizen Relationship Management and Mobile Access to the City's Web Site

Additional items may come up between now and Monday night. City Council will be apprised of any changes to the Study Session meeting schedule.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER

Staff Report

City Council Study Session Meeting
April 16, 2012



SUBJECT: Proposed Short-term Loan for the Public Safety Center Sculpture
Commissioned by the Westminster Public Safety Recognition Foundation

PREPARED BY: Barbara Opie, Assistant City Manager

Recommended City Council Action

Direct Staff to proceed with finalizing the short term loan document and return to City Council for formal action.

Summary Statement

The Westminster Public Safety Recognition Foundation (WPSRF) commissioned an art piece in 2010 to place in front of the Public Safety Center. The artwork is ready for installation and the Foundation has raised sufficient funds to pay for the artwork and installation prior to donating the artwork to the City. The Foundation was successful in receiving a grant award from the Adams County Open Space program in fall 2011; however, due to the reimbursement nature of the grant, the Foundation is seeking assistance from the City through a short term loan to cover up front project costs. The short term loan would be repaid by year-end 2012 from the proceeds of the grant itself.

Representatives from the Foundation will in attendance at Monday's Study Session to answer questions.

Expenditure Required: \$35,000-45,000

Source of Funds: General Capital Improvement Fund - public safety reserve project

Policy Issue

Is City Council willing to temporarily loan the WPSRF the funds needed to complete installation of the art project as proposed?

Alternative

City Council could decline assisting the Foundation with the temporary loan and direct the Foundation to pursue other venues, such as a loan with a private bank. Since the art will ultimately be an asset of the City and the fact that the art is scheduled to be installed by August 2012, Staff believes that it is important to proceed with the City loan. Pursuing other alternatives such as a bank loan may delay the project. Staff does not recommend this alternative.

Background Information

The Westminster Public Safety Recognition Foundation's (WPSRF) mission is "Recognizing the bravery, heroism, acts or services beyond the call to duty by Westminster Employees, Citizens, Businesses, or Visitors in the name of public safety." The WPSRF was established in 2002 with two objectives: (1) raise funds for and host an annual awards banquet to celebrate noted acts of public service and reflect the best of our community's character and (2) commission and raise funds for an enduring recognition of police and fire professionals. The Foundation has hosted an awards banquet annually since 2002, and is proud to be celebrating the tenth annual banquet this September 7, 2012. This year's event will again be hosted at the Westin Westminster conference center.

The efforts to commission and raise funds for the enduring recognition began in 2010, with the selection of sculptor Brian P. Hanlon of Hanlon Studio from New Jersey. Mr. Hanlon has created over 200 public art pieces since starting business in 1991; several of his pieces are located throughout the Denver metropolitan area. He was selected through a competitive process in which the Foundation received several quality proposals. Mr. Hanlon designed and sculpted an original artwork for the Foundation, unique to Westminster through many consultations with the Foundation. The bronze portion of the artwork is complete and was delivered to the Public Safety Center (PSC) on March 19, 2012.

The artwork is designed to honor current, past and future public safety employees for the heroic and day-to-day services they provide. It will be placed on the current small round landscaped area directly in front of the PSC. The project includes two life-sized bronze figures, a firefighter and a police officer placed in front of a collage of public safety images on a bronze panel mounted on a granite wall. Major donor recognition will be engraved on the granite wall panels on the side opposite of the bronze panel. There will also be brick pavers leading to the art work to include the names of smaller donors and allow the public access to all three components of the artwork. Copies of the artist rendering of the artwork and the installation plan are attached.

The Foundation has actively pursued a variety of fundraising efforts. Brick and granite wall purchases ended March 1, 2012. Ninety-seven (97) different sized bricks for a total of \$20,000 were purchased by employees, residents and businesses. Larger donations total \$197,671 (including \$40,000 from the foundation) and will be recognized on the granite wall. All brick purchases, donations and grants to date total \$213,671. The City has been a generous partner in this project. The

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City of Westminster has donated a total of \$26,500 to the Foundation for the artwork in the following amounts: \$1,000 contribution by the Westminster City Council; \$2,500 from the Neighborhood Enhancement Grant program administered by the Parks, Recreation & Libraries Advisory Board; and a \$23,000 grant from the Community Enhancement Fund art capital project. The total project, including artwork and installation, is estimated to cost \$197,000 (the artwork itself was commissioned for a total cost of \$125,000). A copy of the fundraising summary of actual payments received is attached.

The Foundation has been working with City Staff Sarah Washburn, Landscape Architect II from Design Development, and Jerry Cinkosky, Facilities Manager from BO&M, to ensure installation of the artwork pursuant to City standards and designs. Ms. Washburn has developed the site plan for the artwork and Mr. Cinkosky has worked on the associated artwork lighting plan. Both plan to participate in the actual construction/installation oversight with the Foundation's project manager, retired Fire Chief Jim Cloud.

Upon completion of installation, the Foundation will convey the art to the City and it will become a permanent asset of the City, enhancing the City's public art program. The addition of this artwork will complement existing features and will visually link the City Hall/Public Safety Center campus. When the Public Safety Center was constructed, it was planned for a future public art element to be placed on the small round landscaped area in front of the facility's entrance. When the WPSRF was established, the Foundation took ownership of commissioning public art for this facility.

The Foundation Board Members follow. Please note that several City Staff members participate on this Board, including Barbara Opie, Tim Read, Diana Allen and Bob Hose.

| | |
|---|------------------------|
| Betty Whorton, Chair/Executive Director | Stephen Donelson, Esq. |
| Tim Read, Vice Chair | Bob Hose |
| Mort Anderson | Ann Merkel |
| Diana Allen | Jodi Muser |
| Stephanie Bingham | Barbara Opie |
| J. Richard Broyles | Myron Treber |
| Tammy Camalick | John M. Vaughan, Esq. |

In addition, the Foundation's Advisory Board Members follow:

| | |
|--------------------------------------|-----------------------------------|
| Police Chief Lee Birk | City Manager Brent McFall |
| Fire Chief Doug Hall | Fire Battalion Chief Derik Minard |
| Police Investigator Trevor Materasso | |

A grant proposal was submitted on behalf of the Foundation by then WPSRF Fundraising Committee member, Herb Atchison, to Adams County Open Space in August 2011. Thanks to Mr. Atchison's work, the Foundation was awarded a grant from the Adams County Open Space program in the amount of \$55,000 and is sincerely grateful to Mr. Atchison for his efforts on this grant and with other fundraising efforts.

The Foundation is challenged with the reimbursement process utilized by the Adams County Open Space program. Rather than receiving a payment for the full \$55,000 up front, the County operates these grants on a reimbursement basis. While the Foundation has been successful in its fundraising efforts, it has not raised sufficient funds to cover the full amount without reimbursement from the

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Adams County Open Space grant. As noted previously, the Foundation has raised approximately \$214,000, which includes the \$55,000 grant, and anticipates the total project cost of \$197,000, leaving a potential balance of approximately \$17,000 in the Foundation's account at the conclusion of the project. The Foundation has utilized funds accumulated over the years from other fundraising efforts and hosting the annual banquet for the artwork.

The Foundation is formally requesting financial assistance from the City in the form of a short term loan to cover the reimbursement nature of the Adams County grant (estimated between \$35,000-45,000). The Foundation's attorney with Donelson Ciancio & Grant, P.C., has been working with City Attorney, Marty McCullough, in drafting a proposed short term lending note that would ensure the Foundation reimburses the City by the end of 2012 for the amount needed to cover the Adams County grant until the Foundation is reimbursed by the County.

The specific dollar amount of the loan requested by the Foundation will be contingent upon construction bids for the site demolition, preparation and installation of artwork. The amount may be less than \$55,000 if construction bids are better than projected. The Foundation is finalizing bid documents for installation and anticipates releasing the bid documents in April, with bids due back in May. If City Council supports assisting the Foundation with this short term loan, Staff would return to City Council with formal action to approve the loan in an amount based on the actual construction bid awarded by the Foundation in May.

Initially, preliminary discussions with two local banks were held in addition to the possibility of approaching the City in assistance with this short term loan. However, due to the truly short term nature of the loan, the limited funds the Foundation has (all funds would prefer to be spent on the actual artwork), and the fact that the final artwork would become an asset of the City, the Foundation pursued working with the City on a potential short term loan.

Jim Cloud, WPSRF project manager, and Betty Whorton, Board Chair and Foundation Executive Director, will be in attendance at Monday's Study Session to answer questions.

City Council is invited to see the bronze pieces that are being stored in the PSC prior to installation. Staff will escort those interested City Council members over to the PSC during Monday's Study Session.

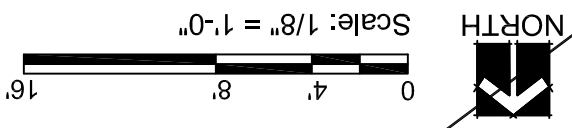
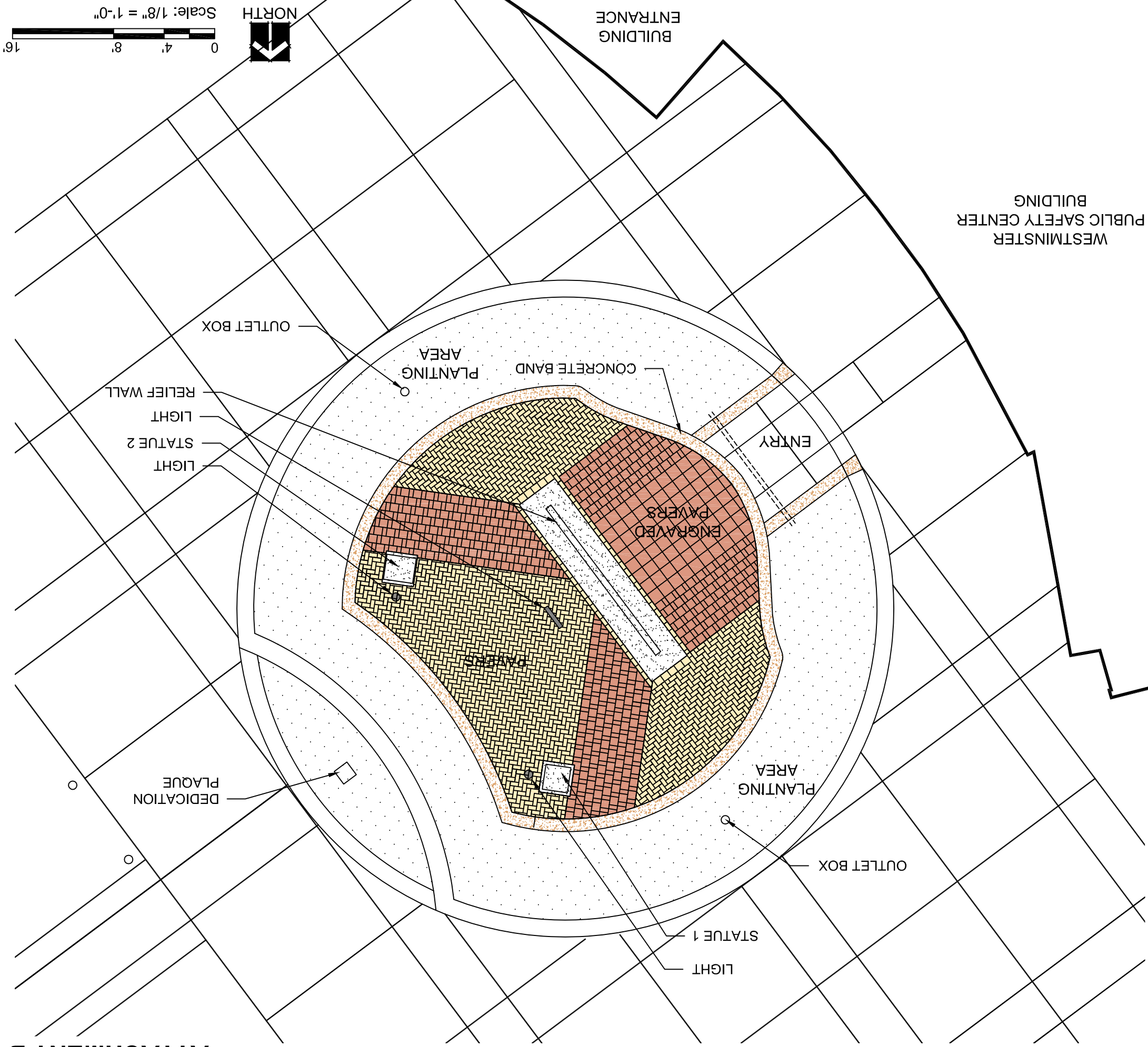
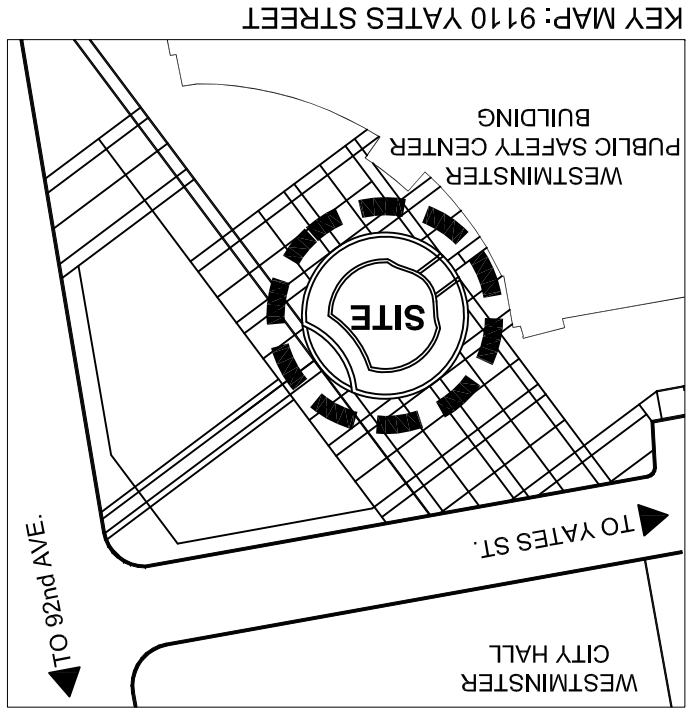
This project supports the City Council strategic plan goal of Beautiful and Environmentally Sensitive City through the promotion of the City's public art program, working to integrate art into the fabric of the overall community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments - Concept Drawing;
- Site Plan
- Project Budget





LAYOUT DIAGRAM

Owner's Representative: Jim Choud
 Owner: Westminister Public Safety Recognition Foundation, on behalf of the City of Westminister
 Date: 04/09/2012

WESTMINSTER PUBLIC SAFETY CENTER TRIBUTE PLAZA

9110 Yates Street
 Westminister, Colorado

ATTACHMENT B

Westminster Public Safety Recognition Foundation - Art Budget

| <u>Revenues</u> | <u>Amount</u> |
|--|----------------|
| Granite Wall Donations (paid as of 4/5/12): | |
| \$500 level (granite wall - 53 paid) | \$26,500 |
| \$1,000 level (granite wall - 19 paid, includes JC Penny at \$2K, WalMart at \$1,500 and B-Fitness at \$1,171) | \$20,671 |
| \$2,500 level (granite wall - 5 paid, including City of Westminster Community Enhancement Fund (CEF) Neighborhood Enhancement Grant) | \$12,500 |
| >\$5,000 (granite wall; 1 paid at \$6,000 by Westminster Legacy Foundation) | \$6,000 |
| >\$10,000 (granite wall) as follows: | |
| Adco Open Space | \$55,000 |
| St Anthony's Hospital | \$10,000 |
| WPSRF Board of Directors | \$40,000 |
| Westminster Community Enhancement Fund (CEF) Art Grant | \$23,000 |
| Brick Donations (paid as of 4/5/2012): | |
| \$150 level (68 paid) | \$10,200 |
| \$250 level (12 paid) | \$3,000 |
| \$375 level (FD/PD/COW logo on brick - 17 paid, including Legacy Foundation at \$800) | <u>\$6,800</u> |
| | Total |
| | \$213,671 |



WESTMINSTER

Staff Report

Information Only Staff Report
April 16, 2012



SUBJECT: Status Update on Negotiations with the Regional Transportation District in Finalizing the Intergovernmental Agreement related to the Construction of the Westminster FasTracks Rail Station

PREPARED BY: Barbara Opie, Assistant City Manager
Marty McCullough, City Attorney
John Carpenter, Director of Community Development

Summary Statement

This report is for City Council information only and requires no action by City Council.

City Council approved Councillor's Bill No. 42 on December 12, 2011, authorizing the City Manager to execute an Intergovernmental Agreement (IGA) with the Regional Transportation District (RTD) for the construction of the Westminster Rail Station Project. The IGA calls for the surface parking lots, access roads, bus loading and unloading facilities and stairs and ramps to the pedestrian tunnel be removed from the concessionaire's agreement by change order and allows for the City's construction of these elements of the project; as well as the payments of approximately \$10 million by RTD to the City to reflect RTD's reduced cost for land purchase and Denver Transit Partner's (DTP) reduced scope of work. The IGA also includes provisions related to the on-going responsibilities for operations and maintenance of the infrastructure, a portion of which will be the City's responsibility.

Negotiations have continued since December with RTD to finalize the IGA. Negotiations have also continued between RTD, DTP and the City to finalize the change order. A few key elements of the IGA have changed. This Staff Report is intended to provide City Council an update on those key changes.

Background Information

City Council authorized Staff to execute the draft IGA in substantially the same form as the one attached to the December, 2011, agenda memorandum and Councillor's Bill, including such changes that may be approved prior to its execution to the extent that the changes do not negatively affect the City's financial obligations. Pursuant to that original authorization, the portion of the RTD Funding attributed to the DTP change order would not fall below an estimated \$3 million, and the RTD O&M costs would not fall below an estimated \$899,830 for operation and maintenance over a 28 year period. Recognizing final negotiations between RTD, DTP and the City were continuing, City Staff was given authority by City Council to approve a final agreement with different numbers as long as these final numbers are not less than these initial estimates.

Staff believes that RTD and the City are close to finalizing the following key elements that are different from the original authorization Council approved in December 2011. A summary of those changes are noted below.

Staff Report – Status Update on Negotiations with the Regional Transportation District in Finalizing the Intergovernmental Agreement related to the Construction of the Westminster FasTracks Rail Station

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- Council previously approved the IGA on the condition that the change order would not be less than \$3.0 million. After long, arduous negotiations on many different prices of the project, Staff believes that the final change order will be closer to \$2.7 million. Once the final change order amount is known, Staff will bring the IGA back to Council for further authorization based on the final change order amount. (For these changes in the draft IGA, please see 1.2(4), 1.2(s), and 8.3(b))
- The previously approved IGA provided that RTD could acquire a certain property known as NW-10 for the project. RTD and City Staff now believe it would be best for the City or WEDA to acquire this property with RTD reimbursing the City for that cost. The revised IGA will reflect this change. (For these changes in the draft IGA, please see 2.2(b) and 9.3(a)(ii))
- The City is to acquire right-of-way for a drainage channel needed for Burlington Northern Santa Fe (BNSF) along the northern side of the railroad. This was originally excluded from the draft IGA because DTP had not accounted for the modification with the City's change order eliminating the large surface parking lot and the associated impact on the drainage in the area. Since the RTD Funding includes the cost to acquire the needed parcels that would have been used for this drainage, the City is responsible for acquiring the needed right-of-way to address the drainage. (For these changes in the draft IGA, please see 2.2(3)(ii))

The absence of an elevator at the station platform is not addressed in this draft IGA. As noted previously, RTD remains steadfast that since an elevator was not included in the original base plan for this commuter rail station, it is not a requirement for this station and therefore excluded from this IGA. City Staff is diligently pursuing other funding sources to try to have an elevator installed as part of this project, including a portion of DRCOG's second \$60 million allocation to the northwest corridor for commuter rail.

A copy of the latest draft IGA is attached for City Council's review.

Staff anticipates returning with the final IGA to City Council for approval at the April 23rd City Council meeting. Should final change order numbers be received from RTD as anticipated, Staff will include the actual figures in the IGA rather than the current language noting a change order dollar amount is to come. Staff will be requesting Council authorization via an emergency ordinance due to the specific time constraints incorporated into the IGA and the amount of time that has already passed. Staff is anxious to proceed in order to maintain the schedule and meet the key deadlines to make the commuter rail station and associated transit-oriented development in the area a reality.

City Staff's efforts to complete this IGA coincide with City Council's goal of "Vibrant Neighborhoods In One Livable Community," and specifically the Council's strategic planning objective of "Develop Transit Oriented Development Around Commuter Rail Stations."

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**CITY OF WESTMINSTER
NORTHWEST RAIL ELECTRIFIED SEGMENT
WESTMINSTER STATION
INTERGOVERNMENTAL AGREEMENT**

THIS NORTHWEST RAIL ELECTRIFIED SEGMENT WESTMINSTER STATION INTERGOVERNMENTAL AGREEMENT (this **IGA**) is made and entered into this day _____ of _____, 2012 (the **Effective Date**) by and between the **CITY OF WESTMINSTER** (the **City**), a home-rule municipal corporation of the State of Colorado organized pursuant to Article XX of the Colorado Constitution, and the **REGIONAL TRANSPORTATION DISTRICT (RTD)**, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. 32-9-101, *et seq.* The City and RTD may hereinafter be referred to individually as a **Party** and collectively as **Parties**.

RECITALS

A. RTD is statutorily authorized to develop, maintain, and operate a mass transportation system for the benefit of the inhabitants of the district.

B. The City is authorized by its Charter and RTD is authorized by its enabling statute to enter into this IGA.

C. Pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a), and C.R.S. § 29-1-201, *et seq.* the Parties may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for sharing of costs.

D. RTD is authorized to implement the multimodal public transportation expansion plan that was adopted by RTD's Board of Directors (the **Board**), approved by voters on November 2, 2004, and approved by the Denver Regional Council of Governments as per the requirements of C.R.S. § 32-9-107.7 (**FasTracks Plan**).

E. RTD proposes to construct the Northwest Rail Electrified Segment (**NWES**), which consists of commuter rail transit connecting Denver Union Station in Denver with a station located near W. 70th Avenue & Irving Street in the City of Westminster that is the subject of this IGA (the **Station**), as the initial phase to the Northwest Rail Corridor identified in the FasTracks Plan and more fully described in the Final Environmental Evaluation dated May 18, 2010 (the **EE**) and the RTD FasTracks Northwest Rail (NWR) Project, Phase 1 Nationwide Permit No. 14, Department of the Army (DA) Permit # NWO-2005-80771-DEN (the **404 Permit**).

F. RTD and Denver Transit Partners, LLC (**DTP** or the **Concessionaire**) entered into a Concession and Lease Agreement on July 9, 2010 (as amended, the **Concession Agreement**), pursuant to which the Concessionaire is to design, construct, operate and maintain, among other elements of the FasTracks Plan, the Station and to construct the relocation of the City's utilities affected by implementation of the NWES.

G. The Concession Agreement requires that the Station be implemented on real property to be acquired by RTD for that purpose and requires that the Station include, at a minimum, the Permanent Bus Facilities (defined below); surface parking containing approximately 350 parking spaces implemented so as not to preclude the ability to expand to 925 spaces by the year 2030;

a pedestrian underpass (the **Pedestrian Underpass**) linking the transit plaza to the commuter rail passenger side platform (the **Platform**); a transition plaza to facilitate movement of transit patrons from the Pedestrian Underpass to surface parking, the Permanent Bus Facilities and adjacent streets; and all associated access and circulation infrastructure, all in compliance with the Concession Agreement and generally as depicted in the NWES Station Plans (defined below) (the **Base Plan**).

H. In order to foster transit-oriented development in the area, the City desires to modify the Base Plan and implement the Westminster Station Project, generally as depicted on Exhibit B, and the City has agreed to design and construct in connection therewith a parking facility comprising structured and/or surface parking areas (the **Parking Facility**); the Permanent Bus Facilities; a transition plaza, including the Retaining Wall (defined below), connecting the Parking Facility and Permanent Bus Facilities to the Pedestrian Underpass (the **North Plaza**); and all necessary associated access and circulation infrastructure, including roadways, and other necessary infrastructure associated with each of them (the **Associated Infrastructure**), all in accordance with this IGA, (collectively, the **City Project**).

I. RTD requires certain property interests in property owned or to be acquired by the City in order to implement the NWES, as further described in Section 2 of this IGA, and the City has agreed to convey such property interests to RTD in accordance with the terms of this IGA.

J. RTD has agreed to pay to the City the RTD Funding (defined below) and the RTD O&M Costs (defined below), the aggregate of which represents the capital construction, real property, and operation and maintenance costs that RTD will not incur as a result of the City implementing the City Project.

K. The City supports RTD's efforts to design and construct the NWES and RTD supports the City's efforts to design and construct the City Project and each have agreed to coordinate and cooperate to ensure the timely completion of the City Project through the terms of this IGA.

AGREEMENT

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

1. GENERAL.

1.1 Recitals. The recitals set forth above are incorporated herein by this reference.

1.2 Definitions. Capitalized terms shall have the meanings prescribed to them in this IGA. In addition, the following capitalized terms shall have the meanings set out below.

a. Betterment means any element of the NWES Drainage or Pedestrian Underpass Interface that is (i) requested by the City (whether on its behalf or on behalf of a third party) and that is (ii) not included in the Base Plan, as more specifically defined in the NWES Station Plans, and (iii) is not otherwise required by Law or by the RTD Design Requirements or City Design Requirements.

b. *Bus Facilities Transit Amenities* means five passenger shelters and benches necessary for the Permanent Bus Facilities design to comply with the RTD Bus Transit Facilities Guidelines and Criteria to be installed in the immediate vicinity of the bus bays.

c. *CDOT* means the Colorado Department of Transportation.

d. *City Design Requirements* means the City of Westminster Storm Drainage Design And Technical Criteria, the Westminster Municipal Code, and the 2009 International Building Code and the Standards and Specifications for the Design and Construction of Public Improvements, in each case as adopted by the City, and any variances thereto granted by the City.

e. *City Drainage* means the storm water, water quality collection and conveyance piping infrastructure associated with drainage for the Parking Facility, Permanent Bus Facilities, North Plaza, the Federal Boulevard grade-separated crossing, and the Drainage Project.

f. *Communications Manhole* means an underground vault to be installed in the North Plaza in which power and communication cables from the Platform are collected and disbursed in conduit to RTD Safety and Security Equipment and Fare Collection Equipment.

g. *Fare Collection Equipment* means two ticket validators, two ticket vending machines, two smartcard readers and two shelters.

h. *Force Majeure* means fire; explosion; action of the elements; strike; interruption of transportation; rationing; shortage of labor, equipment or materials; court action; illegality; unusually severe weather; act of God; act of war; terrorism; or any other cause that is beyond the control of the City (including the failure of RTD or the Concessionaire to perform any task that is prerequisite to the City performing under this IGA) so long as that cause could not have been prevented by the City while exercising reasonable diligence.

i. *Interim Bus Facilities* means four bus bays, one Type I driver relief station (as that term is defined in the RTD Design Criteria), and four pedestrian shelters, including the Bus Facilities Transit Amenities.

j. *Law* means laws, regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, including any amendment, extension or re-enactment of any of the same, and all other instruments, orders and regulations made pursuant to statute.

k. *NWES Drainage* means the storm water, water quality collection and conveyance piping infrastructure, including any necessary protective encasements, associated with drainage for the NWES and the City Project, including the BNSF Drainage (defined below), all in compliance with and in accordance with the NWES Station Plans.

l. *NWES Station Plans* means those portions of the Advanced Basic Engineering Track, Drainage, Station and Civil Design Plans (Rev. March 31, 2010) for NWES included in Book 2, Volume 3, Appendix 3-A of Attachment 19 (*Concessionaire's Proposal*) to the Concession Agreement that address the Station, attached hereto as Exhibit A.

m. Pedestrian Underpass Interface means the interface between the north end of the Pedestrian Underpass and the Retaining Wall (defined below), including an extension of the Pedestrian Underpass to interface with the Retaining Wall, and North Plaza as more particularly identified in Exhibit B-2.

n. Permanent Bus Facilities means a bus transfer facility containing six bus bays, one Type III driver relief station (as that term is defined in the RTD Design Criteria), and associated infrastructure, including the Bus Facilities Transit Amenities.

o. Plaza Transit Amenities means seven benches; five trash receptacles; the Fare Collection Equipment; ten bicycle racks; and twenty bike storage lockers to be installed in the North Plaza.

p. Retaining Wall means a retaining wall necessary to allow for the grade difference between the Burlington Northern Santa Fe (**BNSF**) right-of-way and the North Plaza, including the headwall above the Pedestrian Underpass Interface, to be built by the City within the approximate limits shown on Exhibit B-2.

q. RTD Design Requirements means the NWES Station Plans, the EE, the 404 Permit, the RTD Bus Transit Facility Guidelines and Criteria (Rev. Feb. 2006), the RTD Transit Access Guidelines (Rev. Jan. 2009), the RTD Parking Management Program (Rev. 2008), and applicable provisions of Attachment 7 (*Design, Construction and Rolling Stock Requirements*), Attachment 19 (*Concessionaire's Proposal*) to the Concession Agreement and, with respect to the Retaining Wall, any applicable design and construction requirements of BNSF.

r. RTD Funding means the aggregate of \$6,940,000 plus the capital credit amount identified in the executed Change Order plus the amount of RTD's contribution to the acquisition of the Plaza Property as determined in accordance with Section 2.2.b(i).

s. RTD O&M Costs means the aggregate of the base annual operations and maintenance costs associated with the Base Plan, identified in the executed Change Order and expressed in 2010 dollars, that would have been incurred by RTD to operate and maintain the Base Plan over the term of the operating period of the Concession Agreement, net of deductions by RTD for resultant increases in operations and maintenance costs resulting from the implementation of the City Project and (ii) indexation of the base annual costs in accordance with Section 8.3 (*Payment of RTD O&M Costs*).

t. RTD Parking means not less than 350 segregated and contiguous parking spaces reserved for transit use to be constructed in the Parking Facility, as may be expanded in accordance with Section 3.1.d, and, if applicable any temporary parking provided by the City in accordance with 3.1.c.

u. RTD Transit Elements means, collectively, the Permanent Bus Facilities (or Interim Bus Facilities, as applicable); the Communications Manhole; the Fare Collection Equipment; the Plaza Transit Amenities; the RTD Parking; the RTD Safety & Security Equipment; the Pedestrian Underpass Interface; and any other transit equipment or amenities owned or controlled by RTD and installed on the Station Property.

v. RTD Safety & Security Equipment means RTD emergency telephones and security cameras installed in the Parking Facility, Permanent Bus Facilities and/or the North Plaza in order for RTD to monitor its facilities.

w. Traffic Improvements means all traffic improvements associated with the City Project, including Traffic Mitigations, pedestrian access, vehicular traffic signalization and controls and associated vehicular access and circulation infrastructure and signage.

x. Traffic Mitigations means those traffic improvements required by CDOT and in accordance with the EE to mitigate traffic impacts attributed by the Base Plan, as described below:

i. Construction of a new signalized intersection at Federal Boulevard and the Station access (south of 70th Avenue) to serve the Station;

ii. Prohibiting the left turn from eastbound 71st Avenue to northbound Federal Boulevard; and

iii. Re-striping the existing southbound right turn lane at W. 70th Avenue and Federal Boulevard to a shared through/right turn lane to provide additional southbound through capacity and become a right turn lane at the entrance to the Station and Parking Facility.

y. URA means the RTD Eagle Project Utility Relocation Agreement executed by the Parties dated June 2, 2011.

1.3 Scope of the IGA. This IGA governs RTD's and the City's respective rights and obligations as each pertains to the implementation of the City Project and the exchange of property necessary to implement the NWES. RTD's and the City's rights and obligations with respect to the implementation of the NWES in Westminster City limits shall be governed by the Northwest Rail Electrified Segment – City of Westminster Local Agency Contribution IGA (the **Local Agency Contribution IGA**), which shall be executed by the Parties as soon as is reasonably possible following the Effective Date. Relocation of City-owned utilities, including the Sanitary Sewer relocation, shall be governed by the URA.

1.4 Order of Precedence.

a. In the event of any conflict between the terms or provisions of applicable Law, the IGA, the City Design Requirements and the RTD Design Requirements, the order of precedence (in order from highest to lowest, where the terms or provisions of a higher precedence document shall govern in the event of a conflict with a lower precedence document) shall be as follows:

- i. applicable federal and state Law;
- ii. this IGA;
- iii. applicable local and municipal Law;
- iv. the exhibits to this IGA; and
- v. the City Design Requirements and RTD Design Requirements.

b. In the event of any conflict, ambiguity or inconsistency between or among any of the terms or provisions within this IGA, or between two or more documents having the same precedence under Section 1.4a, the most stringent requirement shall take precedence.

1.5 Exhibits. The exhibits to this IGA are an integral part hereof. The provisions of this IGA shall prevail over the provisions of the exhibits to the extent of any inconsistency. The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit A – Base Plan

Exhibit B – Westminster Station – Overall 50% Construction Plans, City of Westminster (Rev. 06-20-11)

Exhibit B-1 – Interim Bus Facilities Site

Exhibit B-2 – North Plaza Retaining Wall Line of Demarcation

Exhibit C – Base Plan Right of Way Plans

Exhibit C-1 – Legal Description for NW-10

Exhibit D – Form of Special Warranty Deed

Exhibit E – Form of Temporary Construction Easement

Exhibit F – RTD Staging Area and Pedestrian Underpass TCE¹

Exhibit G – Station Design and Construction Responsibilities Matrix

Exhibit H – Westminster Station Schedule

Exhibit I – Westminster Station Operations and Maintenance Responsibilities Matrix

Exhibit IA – Snow Removal Lines of Demarcation

2. REAL PROPERTY

2.1 Platform and Parking Facility. The City owns (i) property upon which the Platform Parcels (defined below) are anticipated to be situated and (ii) the property on which the City intends to construct the Parking Facility, and if necessary, the Interim Bus Facilities (defined below) (the **Parking Facility Property**).

2.2 Real Property Transactions. The Parties shall acquire land, permanent easements, and access rights that are required to implement the NWES and the City Project as follows:

¹ City (Steve B) to provide an exhibit showing new TCE area

a. Platform and Pedestrian Underpass. The City shall convey to RTD those portions of the properties identified as NW-11 and NW-12 on Exhibit C that are necessary for RTD to implement the Platform and southwestern portion of the Pedestrian Underpass (the **Platform Parcels**). RTD shall, at its sole cost, provide legal descriptions for the Platform Parcels not later than 30 days from the Effective Date². The City shall convey the Platform Parcels to RTD via special warranty deed(s), substantially in the form attached hereto as Exhibit D, not later than 60 days from the Effective Date; provided, if the City is unable to complete conveyance of a fee interest in the Platform Parcels to RTD by such date, the City shall convey a permanent and exclusive easement to RTD to be effective not later than 60 days from the Effective Date. Upon conveyance of fee interest in the Platform Parcels, RTD shall count the value of the Platform Parcels as a credit against the City's local agency contribution to the NWES, in accordance with the Local Match IGA.

b. Pedestrian Underpass and North Plaza.

- i. **Plaza Property.** The City, including by and through the Westminster Economic Development Authority (**WEDA**), shall acquire, in accordance with applicable laws, property sufficient for RTD to implement the Pedestrian Underpass Interface, the Retaining Wall and for the City to implement the Retaining Wall and the North Plaza (the **Plaza Property**). The City shall acquire the Plaza Property by April 15, 2013. The City shall convey to RTD, at no cost to RTD, not less than an easement for the Pedestrian Underpass Interface in accordance with Section 2.2g.
- ii. **RTD Funding for NW-10.** RTD shall, subject to the terms of this Section 2.2(b)(ii), reimburse the City the full acquisition costs, including appraisal costs for NW-10 and the City's reasonable attorneys' fees and relocation expenses, for NW-10, described on Exhibit C-1. The Parties shall coordinate and cooperate with one another in the exchange of information necessary to accomplish the City's acquisition of the Plaza Property in an open and transparent manner in order to determine RTD's portion of the Plaza Property acquisition costs. The City shall obtain an appraisal for NW-10³, as described on Exhibit C-1; a separate appraisal shall be obtained for any portion of the Plaza Property in excess of NW-10. RTD shall have the right to review the NW-10 appraisal report and request modifications if the appraisal fails to represent the RTD acquisition as envisaged by RTD. The Parties shall, prior to making any offer, agree the offer amounts to be communicated to the property owner and the City shall share with RTD correspondence, including owner appraisals for NW-10, between the City and the property owner (in each case to the fullest extent permitted by law). If RTD does not concur with the City's suggested final offering price for acquisition of the Plaza Property, the

² Eagle Team: Please prepare legal descriptions of the Platform Parcels. Are these durations acceptable?

³ RTD has discussed with ROW and ROW will require that a separate appraisal be obtained for NW-10. RTD is happy to pay the appraisal costs for this since the City will need to obtain a separate appraisal for anything in excess. This will make cost apportionment much simpler if a purchase is made without condemnation. ROW does not wish to attend appraisal meetings in order to avoid the appearance of undue influence upon the appraiser. RTD will aim to make technical staff available to answer technical questions.

City, including by and through WEDA, shall proceed to condemnation in accordance with applicable law, in which case RTD's funding of the Plaza Property shall be the value of the compensation established by the court for NW-10, plus a portion of the City's reasonable attorneys' fees, as agreed by the Parties.

iii. **BNSF Permissions.** The City shall be responsible to obtain from BNSF, at its sole cost and risk, any right-of-way access permits or other real property permissions, whether temporary or permanent, that BNSF may require if any portion of the North Plaza encroaches into BNSF right-of-way.

c. **Bus Facilities Property.** The City shall, acquire (i) all or part of the property identified as NW-7, and NW-9 on Exhibit C that is necessary for implementation of the Permanent Bus Facilities or (ii) sufficient alternative real property sufficient to implement the Permanent Bus Facilities (in either case, the **Bus Facilities Property**).

d. **Development Agreement.** In lieu of acquiring the Bus Facilities Property, the City shall be entitled to enter into a development agreement with a third party for development of the Bus Facilities Property, provided, however that the City shall provide RTD the opportunity to review and approve any terms of such development agreement that impact the Permanent Bus Facilities or other improvements necessary for RTD transit purposes, including design plans and specifications developed in association therewith. The development agreement shall not relieve the City of its obligations under this IGA nor be inconsistent with or cause the City to be in breach of the terms of this IGA.

e. **Sanitary Sewer and BNSF Drainage.**

i. **Sanitary Sewer.** The City shall acquire property rights, including a temporary construction easement, within the properties identified as NW-7, NW-9 and NW-13 on Exhibit C, in each case as may be necessary for relocation of the City's sanitary sewer on those parcels (the **Sanitary Sewer**). The City shall acquire the Sanitary Sewer parcels not later than 9 months following the latter of: execution by the City of the DRAL, as that term is defined in the URA, for the Sanitary Sewer relocation west of Federal Blvd and receipt by the City of legal descriptions for the Sanitary Sewer parcels based upon the Relocation Plans, as that term is defined in the URA, that were approved in connection with the above-referenced DRAL. Release of the City's existing Sanitary Sewer easement will be handled in accordance with the URA unless the Parties agree otherwise.

ii. **BNSF Drainage.** The City shall acquire an easement for drainage, grading and drainage facilities for the benefit of BNSF that includes access for construction, inspection, maintenance and reconstruction of drainage facilities within the properties identified as NW-7 and NW-9 in Exhibit C as may be necessary for implementation of drainage from the BNSF rights of way (the **BNSF Drainage**). RTD and the City shall coordinate the design of the BNSF drainage to minimize the size of the required BNSF Drainage easement. RTD shall provide legal descriptions for the BNSF Drainage easement not later than July 15, 2012. The City shall acquire such property rights not later than 12 months following receipt of legal

descriptions from RTD. The City shall coordinate the form and substance of the BNSF Drainage easement with BNSF.

f. **Station Property.** The Parking Facility Property, the Bus Facilities Property, the Plaza Property and any other property that the City acquires in order to fulfill its obligations under this IGA may collectively be referred to herein as the **Station Property**.

g. **RTD Transit Elements Easement.** The City shall enter into an easement agreement (the **RTD Easement**) with RTD to govern the RTD Transit Elements installed on the Station Property and that shall include, to the extent necessary, the right of vehicular (including RTD buses and maintenance vehicles) and pedestrian ingress and egress thereto. The RTD Easement shall not be inconsistent with the terms of this IGA and shall, among other things, address the division of RTD's and the City's rights and responsibilities with respect to ongoing maintenance and capital repair costs of the RTD Transit Elements. The Parties shall use best efforts to negotiate and agree the RTD Easement within one year of the Effective Date and the RTD Easement shall be executed by the Parties no later than the January 1, 2014 or the date upon which the first RTD Transit Element is inspected and accepted by RTD, whichever is earlier. Legal descriptions for the RTD Easement shall be prepared by RTD and be based upon an RTD survey of completed construction of each of the RTD Transit Elements and an accessible pedestrian walkway between the Pedestrian Underpass and the Parking Facility. The Parties agree legal descriptions may be appended to the RTD Easement by addendum, as and when necessary. The RTD Easement shall not be recorded until all necessary legal descriptions have been appended to the RTD Easement.

h. Temporary Construction Easements.

i. **Staging Area.** The City shall provide to the Concessionaire (or its subcontractor), at no cost to the Concessionaire, a temporary construction easement, the form of which is attached hereto as Exhibit E, on the Parking Facility Property in the location shown on Exhibit F (the **Staging Area**). The construction easement shall be executed and effective not later than 30 days after the Effective Date. To the extent that the City and the Concessionaire agree additional staging areas on City property, RTD shall credit the value of such additional staging area temporary construction easements, as agreed between the City and RTD, toward the City's local agency contribution in accordance with the Local Agency Contribution IGA.⁴

ii. **Pedestrian Underpass TCE.** The City shall provide to the Concessionaire (or its subcontractor), at no cost to the Concessionaire, a temporary construction easement, the form of which is attached hereto as Exhibit E, on the North Plaza Property in the location shown on Exhibit F (the **Pedestrian Underpass TCE**). The Pedestrian Underpass TCE shall be executed and effective no later than April 15, 2013.

iii. **BNSF Drainage TCE.** The City shall, to the extent it is not included in the BNSF Drainage easement, acquire a temporary construction easement for initial construction for the benefit of the Concessionaire within the properties identified as NW-7 and NW-9 in Exhibit C as may be necessary for implementation of the BNSF Drainage. The BNSF Drainage

⁴ I am confirming whether any edits are needed to the LAC IGA for this provision to ring true.

temporary construction easement shall be effective not later than the effective date of the BNSF Drainage easement.

i. **City Parking License.** RTD and the City shall enter into a revocable license (the **Parking License**) governing the City's use of not more than 250 spaces of the RTD Parking for parking by the general public between the hours of 6:00 p.m. and 6:00 a.m., seven days per week and at other times as the Parties may agree in the Parking License, and, if applicable, the City's use of the full amount of the RTD Parking from the date that the Parking Facility is accepted by RTD and the City until the date that NWES revenue service to the Station commences.

3. THE CITY PROJECT. The City Project shall be implemented in accordance with, and RTD, the City and the Concessionaire shall perform each of the duties assigned to them on, Exhibit G. In addition, the City Project and the Park Project, as that term is defined below, shall be implemented in accordance with the following:

3.1 The Parking Facility.

a. **Location.** The Parking Facility shall be designed and constructed in the approximate location depicted on Exhibit B.

b. **Temporary Parking.** The City shall ensure that the Parking Structure is operational and open to the public by the date established in the Station Schedule or the City shall provide, at the City's cost, temporary parking and all necessary and associated access and circulation infrastructure until the Parking Structure is operational and open to the public. Any temporary parking shall provide not less than 350 spaces for the exclusive use of RTD and its patrons, subject to Section 2.2.i of this IGA. If temporary parking is required to be implemented, each of the Parties rights and obligations with respect to the Parking Facility shall apply with full force and effect to the temporary parking.

c. **Parking Facility Expansion.** Commencing with commuter rail revenue service to the Station, RTD shall conduct monthly park-n-Ride utilization surveys for the RTD Parking and, at such time as the RTD Parking meets or exceeds 85% utilization consistently for a six month period, the Parties shall meet to determine a plan to expand the Parking Facility to increase the RTD Parking to not less than 925 transit spaces. The Parties shall jointly determine whether the Parking Facility expansion shall be in the form of additional structured parking or additional surface parking; provided, the Parties shall use best efforts to implement as structured parking substantially all of the additional RTD Parking. RTD shall provide funding for capital expenditures associated with the addition of any RTD Parking spaces and a pro rata share of funding for any common elements in connection with the Parking Facility expansion but any expansion of the Parking Facility by the City or a third party for uses not required by RTD, and attendant increases in maintenance costs, if any, shall be at the sole cost of the City or a third party. Any land necessary to expand the Parking Facility to include an additional 925 spaces, whether by the addition of structured or surface parking, shall be acquired by the City at the City's sole cost. The Parties contemplate entering into an agreement governing the design and construction of the Parking Facility expansion, and address a division between the Parties of increased maintenance responsibilities and costs resulting from the Parking Facility expansion.

3.2 The Bus Facilities.

a. Location. The City shall design and construct the Permanent Bus Facilities in the approximate location depicted on Exhibit B.

b. Interim Bus Facilities. The City shall have the option of implementing the Interim Bus Facilities in the approximate location shown on Exhibit B-1 in lieu of the Permanent Bus Facilities, **provided** (i) the Permanent Bus Facilities shall be fully constructed and operational in the location shown on Exhibit B by the date on which commuter rail revenue service for the Northwest Rail Corridor commences; (ii) costs associated with subsequently implementing the Permanent Bus Facilities and removing the Interim Bus Facilities shall be borne by the City and (iii) the City shall reimburse RTD for any increase in costs incurred in operating and maintaining the Permanent Bus Facilities in lieu of the Interim Bus Facilities. The City shall notify RTD in writing of its decision to implement either the Permanent Bus Facilities or the Interim Bus Facilities by July 1, 2013. If the City elects to implement the Interim Bus Facilities, each reference in this IGA to the Permanent Bus Facilities shall be deemed to refer to the Interim Bus Facilities, unless the context clearly requires otherwise.

3.3 The North Plaza.

The City shall design and construct the North Plaza in the approximate location depicted on Exhibit B.

3.4 Associated Infrastructure.

a. NWES Drainage. RTD shall implement NWES Drainage to interface with the City Drainage at the northerly BNSF right of way line and the southerly BNSF right of way line. Any change from the NWES Station Plans to the NWES Drainage that is requested by the City and that is not required by federal, state or local Law shall be considered a Betterment and handled in accordance with Section 5.4 (*Betterments*).

b. Little Dry Creek Storm Water Drainage Project. The City is responsible for the costs associated with the Drainage Project (as that term is defined in the Local Agency Contribution IGA); **provided**, the City shall be entitled to a credit against its local agency contribution in accordance with the Local Agency Contribution IGA. The City shall interface the City Drainage with the NWES Drainage at the southerly BNSF right of way line.

4. COORDINATION.

4.1 Schedule.

a. The City Project shall be implemented in accordance with, and the Parties agree to use best efforts to adhere to all dates and durations identified in Exhibit H.

b. Following conveyance of the Pedestrian Underpass TCE, RTD shall relocate the Sanitary Sewer, demolish the building installed upon the Plaza Property, relocate utilities in the

Plaza Property that are in conflict with the Pedestrian Underpass Interface⁵ and otherwise perform work necessary for RTD and the City to construct the Pedestrian Underpass and Retaining Wall. RTD shall provide the City 30 days' advance written notice of the date that the Plaza Property will be made available to the City for purposes of constructing the Retaining Wall and the City shall have 5⁶ months from the date that RTD makes access available to complete the Retaining Wall (the **Retaining Wall Completion Date**). The Parties shall use all reasonable efforts to coordinate construction schedules so as to perform work concurrently on the Plaza Property with the intent of maintaining the final completion date for the structural elements of the Retaining Wall. If, despite the reasonable efforts of all Parties and diligent prosecution of the Work by the City in compliance with this IGA, the City fails to complete and obtain acceptance by DTP and BNSF (as applicable) of the structural elements of the Retaining Wall by the Retaining Wall Completion Date and such failure is a result of RTD's failure to provide access to the Plaza Property by [July 1, 2014]⁷, the City shall be relieved of its obligation to pay liquidated damages under Section 9.3(a)(i) for each day beyond the Retaining Wall Completion Date that the City requires to complete the structural elements of the Retaining Wall, but in no case shall the City be entitled to relief from the payment of liquidated damages for any number of days in excess of the number of days by which RTD delayed in providing access to the Plaza Property.⁸

4.2 Coordination among the Parties and with Contractors. The City agrees to coordinate and cooperate with, and to contractually require the City's consultants, contractors and subcontractors and each of their respective consultants, contractors and subcontractors that are engaged in the City Project work (collectively, **City Contractors**) to coordinate and cooperate with, RTD and the Concessionaire and any other RTD consultants, contractors and subcontractors and each of their respective consultants, contractors and subcontractors engaged in the NWES work (collectively, **RTD Contractors**) concerning the performance of RTD's obligations hereunder. RTD agrees to coordinate and cooperate with, and to contractually require the RTD Contractors to coordinate and cooperate with the City and the City Contractors concerning the performance of the City's obligations.

4.3 Coordination Meetings. The Parties, and, as appropriate, the City Contractors and RTD Contractors, shall have design coordination meetings not less than once every two weeks (or at such intervals as the Parties may deem appropriate) until completion of design of the Parking Facility, the Permanent Bus Facilities, the North Plaza, the City Drainage, the NWES Drainage, the Pedestrian Underpass Interface, the Retaining Wall and the Traffic Improvements. The Parties, and, as appropriate, the City Contractors and RTD Contractors, shall have construction meetings not less than once per week or as needed. Authorized

⁵ Steve & Co.: RTD is no longer relocating utilities in the plaza unless they are in conflict with the Pedestrian Underpass Interface. The City is receiving a credit for any work of this nature that may be required for the Plaza.

⁶ See Note 6. Does this duration increase if CoW does not have exclusive use of the property?

⁷ We are working with DTP to confirm this date. There must be a date to trigger this provision. A duration just doesn't work.

⁸ Steve & Co.: RTD is unsure that it will be able to give exclusive use of the Plaza Property as you have described. This would mean that DTP would not only need to install the basic structure of the underpass, but finalize all finishes, etc., because if the TCE to the property expires, it has no way to get to the Underpass to complete the work. This seems like inefficient phasing. Also, it is likely that DTP will need to do additional work-excavation, shoring, etc., to install an underpass without the benefit of a wall being installed concurrently to retain the slope of the BNSF property. Even if this worked, DTP would need a new TCE after the wall is finished to finish NWES. If access can be given on the south, DTP may be able to accommodate 5 months of exclusive use of the property. We are checking with them.

representatives of the Parties shall be present at coordination meetings. The City shall provide minutes for coordination meetings within five calendar days of the meeting.

4.4 Design and Construction Interface. The City shall coordinate with RTD and the Concessionaire to integrate the City Project and Drainage Project throughout design and construction of NWES as described in Exhibit G. The Parties shall exchange schedule progress updates on a monthly basis in a Primavera P6 (.xer file) format. RTD and the City shall closely coordinate design of the City Drainage and the NWES Drainage in an effort to ensure that neither Party's designs will, if implemented, preclude the implementation of the other Party's designs. In accordance with Section 5.2, the Parties shall closely coordinate design of the Pedestrian Underpass Interface with the Retaining Wall and North Plaza and the City Drainage with the NWES Drainage and the BNSF Drainage.

4.5 Concessionaire Duties. The City acknowledges that the Concessionaire will be contractually obligated to perform each of RTD's obligations under this IGA, except for the following: to acquire any real property or provide legal descriptions under Section 2 (*Real Property*); to perform monthly park-n-Ride utilization surveys or participate in the Parking Facility expansion under Section 3 (*The City Project*); to perform any duties specifically assigned to RTD in Exhibit G; to review and approve City Project designs except as specifically assigned in Exhibit G; to perform any duties specifically assigned to RTD in Exhibit I; to credit Local Match or make payments to the City under Section 8 (*Local Agency Contribution and RTD Contribution to the City Project*); to procure and maintain insurance under Section 16 (*Insurance*); to participate in the resolution of disputes between RTD and the City, provided that the Concessionaire shall assist and cooperate with RTD in the resolution of any such dispute in accordance with the Concession Agreement. RTD shall not be relieved of its obligations or responsibilities under this IGA by reason of its obligations being carried out by the Concessionaire nor will the City be in any way liable to the Concessionaire or be in any way bound by the terms of the Concession Agreement.

4.6 Concession Agreement Change Order. RTD and the Concessionaire will execute a change order to the Concession Agreement (the **Change Order**), incorporated herein by this reference, removing from and/or modifying the Concessionaire's scope of work responsibility for design, construction, operation and maintenance (each, as applicable) of those elements of the Base Plan that the City by this IGA has elected to undertake and, if applicable, adding to the Concessionaire's scope of work any Betterments, in each case, as more specifically defined in the Change Order. RTD shall provide the City with a copy of the executed Change Order within 30 days of execution. The City specifically acknowledges and agrees that if the City undertakes changes to Exhibit B that result in increased costs to the Concessionaire such change will be treated as a Betterment and the RTD Funding and/or the RTD O&M Costs shall be adjusted accordingly.

4.7 Project Liaisons. The project liaisons for the City and RTD, respectively, are identified in Section 10 (*Notices*). The City's project liaison shall coordinate the exchange of documentation, plan review and approval, construction inspection and any other similar activities with the City required under this IGA. RTD's project liaison may coordinate the exchange of documentation, plan review and approval, construction inspection and any other similar activities with RTD required under this IGA although the Concessionaire and the City

may directly coordinate such activities, provided that RTD's project liaison is copied on all correspondence between the City and the Concessionaire.

5. DESIGN REQUIREMENTS.

5.1 Design Criteria. The City shall ensure that the Parking Facility, Permanent Bus Facilities, North Plaza, Retaining Wall and Associated Infrastructure to be implemented by the City and identified in Exhibit G are designed in accordance with (i) applicable federal, state and local Laws, (ii) the City Design Requirements, (iii) the RTD Design Requirements, and (iv) the terms of this IGA. RTD shall ensure that the NWES Drainage and the Pedestrian Underpass Interface are designed in accordance with (i) applicable federal, state and local Laws, (ii) the NWES Station Plans, (iii) the City Design Requirements, including variances granted therefor, and (iv) the terms of this IGA.

5.2 Design Plan Review and Approval. The Parties shall review and approve design plans as follows:

a. City Design Plans. The City shall, to the extent it has not already done so, provide RTD with City Project design plans (in AutoCAD or Microstation) and specifications (in .pdf format) at the 30%, 50% and 100% design level. The City shall ensure that any design criteria necessary for RTD to implement the RTD Parking Management Program and the Bus Transit Facilities Guidelines are incorporated into the Parking Facility design by no later than the time that 50% design therefor is completed. RTD shall have the right to review and approve the City Project design plans and specifications for compliance with the RTD Design Requirements and the terms of this IGA. The Concessionaire shall have the right to comment on design plans and specifications for any elements of the City Project that the Concessionaire is responsible to maintain under Exhibit I and I-A; **provided**, the City shall have no obligation to incorporate Concessionaire comments that are unrelated to the Concessionaire's operation and maintenance responsibilities.

b. RTD Design Plans. RTD shall, to the extent it has not already done so, provide the City with design plans (in AutoCAD or Microstation) and specifications (in pdf format) at the 60% and 100% design level for the NWES Drainage, the Communications Manhole, the Pedestrian Underpass Interface and other plans and specifications that may be necessary for the City to carry out its obligations under this IGA. The City shall have the right to review and approve the NWES Drainage plans for compliance with the NWES Station Plans and Laws. The City shall have the right to review and approve the design plans and specifications for the Pedestrian Underpass Interface for compliance with (i) the requirement that the alignment of the Pedestrian Underpass match the center line of the Hooker Street extension identified on Exhibit B and (ii) with City Design Requirements.

c. Review Time. Each Party shall have twenty calendar days to submit comments or approvals, if applicable, to design plans and specifications provided by the other Party.

d. Plan Approvals. Design plan approvals shall not be unreasonably withheld, conditioned or delayed by either Party.

e. Other NWES Plans. City review and approval of other NWES project design plans and specifications shall be governed under the Local Agency Contribution IGA.

f. Utility Relocations. The City's review of design plans for utility relocations, including the Sanitary Sewer relocation, shall be governed by the URA.

g. Design Review Disputes. If either Party alleges that a design submittal does not comply with the requirements of this IGA or alleges that the other Party (including its Contractors) is unreasonably withholding design approval despite compliance with the requirements of this IGA, the alleging Party shall dispute such allegation, and such dispute shall be resolved, in accordance with Section 11 (*Disputes*) of this IGA. RTD shall require the Concessionaire to assist and cooperate with RTD and the City in the resolution of any such dispute.

5.3 Design Changes. Any material change to RTD-approved City Project design plans and specifications shall be submitted to RTD, clearly indicating the nature of and reason for the change, for RTD's review and approval. RTD shall have ten calendar days to submit approval or rejection of any such post-approval design changes.

5.4 Betterments.

a. Evaluation. Before agreeing to construct a Betterment, RTD will evaluate the Betterment to determine whether its implementation is technically feasible and has no adverse impact to the Project with respect to schedule, budget and safety and security. If RTD determines that there is such an adverse impact, RTD may, in its sole discretion, deny the City's request for the Betterment. Upon the City's request, RTD shall require the Concessionaire to provide a cost estimate for any Betterment requested by the City; provided that if the City determines not to proceed with such Betterment, the City shall pay to RTD an amount equal to the costs incurred by the Concessionaire in preparing the cost estimate.

b. Payment. The City (or any third party that has agreed with the City in advance to be responsible for payment) shall pay all expenses incurred, including without limitation, incremental design, sales or use taxes associated with the construction of the Betterment, delay and/or maintenance costs to RTD of the Betterment. If RTD agrees to implement a Betterment, RTD shall, at the City's direction, either deduct the estimated capital cost of the Betterment from the RTD Funding or the City shall deposit the total capital cost of the Betterment work with RTD prior to commencement of work. If the negotiated price is on an actual cost basis, RTD shall notify the City whenever the capital cost of such Betterment work reaches 80% of the estimated cost specified for the Betterment. If the actual costs exceed the estimated cost, RTD will not proceed unless the increase in cost is agreed by the City and paid by the City to RTD prior to progressing with the work.

6. CONSTRUCTION REQUIREMENTS.

6.1 Compliance. The City Project, the NWES Drainage and the Pedestrian Underpass Interface shall be constructed in accordance with the 100% approved design plans and specifications and with the EE, the 404 and applicable federal, state and local Laws. The Parties

shall not commence construction on any element identified in Exhibit G until plans therefor have been reviewed and approved (as applicable) by the other Party.

6.2 City Project Construction Contracts. The City's contract(s) for the construction of the City Project shall include indemnification as required by Section 15 (*Indemnification*), insurance coverage as required by Section 16 (*Insurance*), and payment and performance bonds equal to not less than the greater of 100% of the value of the City's construction contracts for the City Project or such value as is required to comply with C.R.S. § 38-26-101, et seq. RTD shall be named an obligee on each payment and performance bond procured in favor of the City for the City Project.

6.3 Permitting. The City shall apply and pay for applicable permits necessary for construction, operation and maintenance (as applicable) of the City Project. Permits to be acquired by the Concessionaire to implement the NWES shall be acquired in accordance with the Local Agency Contribution IGA. Utility relocation permits shall be obtained in accordance with the URA.

6.4 Sales and Use Taxes. The RTD Contractors shall not be exempt from the requirement to pay applicable City sales and use taxes as may be required by Section 4-2-2 of the Westminster Municipal Code; **however**, in accordance with the Local Agency Contribution IGA, the City shall rebate to RTD the City's 3% general sales and use taxes required to be paid by RTD Contractors under Section 4-2-2 of the Westminster Municipal Code.

6.5 Start Work. Each Party shall notify the other Party in writing of the date for the start of work for any portion of its part of the NWES or City Project, as applicable. Each Party shall invite the other Party to pre-construction conferences.

6.6 Final Inspection and Acceptance.

a. RTD shall inform the City when each of the NWES Drainage, the Pedestrian Underpass Interface and any Betterments have been completed and are ready for final inspection. Final inspections shall be attended by RTD, the City, and the Concessionaire. The City shall be responsible for directing DTP to perform corrective work relating to deficiencies, provided the City shall give such direction in writing and shall provide a copy to RTD. Once corrective work is complete, RTD shall notify the City and the City shall have fourteen calendar days to give written notice of acceptance or rejection of the applicable work. If the City does not accept or reject the corrective work within such fourteen day period, such work shall be deemed accepted by the City.

b. Construction and final inspection of the NWES will be governed by the Local Agency Contribution IGA.

c. Utility relocations shall be constructed, inspected and warranted in accordance with the URA.

d. The City shall notify RTD when all or a portion of the RTD Transit Elements to be implemented by the City are complete and ready for inspection. Final inspection of these RTD Transit Elements shall be attended by RTD, the City, and the Concessionaire, as appropriate.

The City shall be responsible for directing any corrective work relating to deficiencies with respect to these RTD Transit Elements. Once corrective work is complete, the City shall notify RTD and RTD shall have fourteen calendar days to give written notice of acceptance or rejection of the applicable work. If RTD does not accept or reject the corrective work within such fourteen day period, such work shall be deemed accepted by RTD.

6.7 As-Built Drawings. The City shall provide RTD as-built drawings for the Parking Facility, the Permanent Bus Facilities, the North Plaza and Associated Infrastructure built by the City. RTD shall provide the City as-built drawings for the NWES Drainage, the Pedestrian Underpass Interface and any Betterments. RTD shall provide as-built drawings for the utility relocations in accordance with the URA.

6.8 Warranty. The City shall warranty those RTD Transit Elements identified as being constructed by the City on Exhibit G for a period of not less than one year from date of acceptance by RTD. RTD shall warranty the NWES Drainage and any Betterments for a period of not less than one year from date of acceptance by the City.

6.9 Construction Acceptance Disputes. If either Party alleges that a completed construction does not comply with the requirements of this IGA or alleges that the other Party (including its Contractors) is unreasonably withholding construction approval despite compliance with the requirements of this IGA, the alleging Party shall dispute such allegation, and such dispute shall be resolved, in accordance with Section 11 (*Disputes*) of this IGA. RTD shall require the Concessionaire to assist and cooperate with RTD and the City in the resolution of any such dispute.

7. OWNERSHIP, OPERATIONS AND MAINTENANCE.

7.1 Responsibilities. Except as otherwise provided in this IGA, the City Project shall be operated and maintained in accordance with, and RTD and the City shall perform each of the duties assigned to each of them on, Exhibit I and Exhibit I-A. RTD shall ensure that the Concessionaire performs each of the duties assigned to it on Exhibit I and Exhibit I-A.

7.2 Third Party Agreements. Nothing herein shall preclude the City from entering into a development agreement with a third party that provides for such third party to own and maintain the Parking Facility and/or the property upon which the Permanent Bus Facilities are installed, in each case subject to RTD's prior approval of the development agreement.

7.3 Operations and Maintenance following the Concession Agreement Expiration or Termination.

a. Not later than January 31, 2044, RTD and the City shall meet to negotiate an IGA to govern the Parties' rights and obligations with respect to the performance of, and/or payment for, the operation, maintenance and capital repair of the Parking Facility, Permanent Bus Facilities, North Plaza and Pedestrian Underpass Interface following the expiration of the Concession Agreement (the **O&M IGA**). The Parties currently anticipate that the performance of operation and maintenance responsibilities shall remain substantially unchanged, but that reimbursement between the Parties for costs incurred in performing such activities shall be renegotiated to more accurately reflect costs anticipated to be incurred in 2045 and subsequent

years. The Parties shall exchange then-current documentation, including maintenance plans and actual costs incurred therefor, necessary to establish each Party's costs eligible for reimbursement from the other Party. The Parties shall make best efforts to execute the O&M IGA, which shall be effective as of January 1, 2045, prior to completion of the budget authorization process of each of the Parties.

b. In the event of early termination of the Concession Agreement, RTD and the City shall amend this IGA either to identify a substitute Concessionaire or to remove the Concessionaire and require RTD to assume all delegated Concessionaire duties identified in Section 4.5 (*Concessionaire Duties*); **provided** all other rights and obligations of the Parties, including obligations to make payment to the other Party, shall remain unchanged unless mutually agreed by the Parties. For the avoidance of doubt, the amount of RTD Funding and RTD O&M Costs required to be paid by RTD to the City under this IGA in the event of an early termination of the Concession Agreement shall remain unchanged.

8. LOCAL AGENCY CONTRIBUTION AND RTD CONTRIBUTION TO THE CITY PROJECT.

8.1 Local Agency Contribution. As consideration for the conveyance of the Platform Parcels to RTD, RTD shall, in accordance with the provisions of the Local Agency Contribution IGA, credit toward the City's NWES local agency contribution \$4.50 per each square foot conveyed to RTD, which amount represents the agreed fair market value of the Platform Parcels.

8.2 Right of Way and Capital Expenditures.

a. RTD Funding Payment. Subject to Section 4.6 (*Concessionaire Change Order*) and as consideration for the City's performance of certain of RTD's obligations to implement the Station and to provide property for the Project under the Concession Agreement and to provide to RTD property interests as described herein, RTD agrees to pay to the City the RTD Funding in accordance with Section 8.2.d.

b. Capital Improvement Program Account. The City shall create a separate account (the **Capital Improvement Program Account**) and shall deposit funds appropriated by the City for the purposes of this IGA and shall track all City expenditures and RTD Funding payments associated with the City Project.

c. Invoicing. No more than monthly, the City shall submit to RTD an invoice evidencing the City's costs incurred since the previous invoice period for design and construction costs associated with implementation of the RTD Transit Elements to be built by the City, the Retaining Wall and the North Plaza. The invoice shall include a monthly progress report indicating the percentage of work completed on each element of the City Project, a Capital Improvement Program Account report evidencing deposits and expenditures since the previous report, supporting documentation and a certified statement from the City's prime construction contractor that its subcontractors have been paid for all time and materials invoiced to the City for the City Project.

d. Payment. Within 30 days of receipt of the City's invoice, RTD shall pay undisputed amounts claimed in the City's invoice until such time as RTD has paid the RTD

Funding; **provided**, RTD shall retain 5% of the RTD Funding until such time as the RTD Transit Elements to be built by the City, the Retaining Wall and the North Plaza are inspected and accepted by RTD. Within 30 days of final inspection and acceptance by RTD of the RTD Transit Elements to be built by the City, the Retaining Wall and the North Plaza, RTD shall pay to the City the remainder of the RTD Funding.

8.3 Payment of RTD O&M Costs.

a. RTD O&M Costs. As compensation to the City for costs incurred in maintaining, and performing capital maintenance of, the RTD Parking, the Permanent Bus Facilities, the Retaining Wall and the North Plaza, RTD shall make monthly payments to the City, the aggregate of which shall equal the RTD O&M Costs.

b. Indexation. Each calendar year, commencing on January 1, 2017, RTD shall index the base annual RTD O&M Costs in accordance with Section 1 of Part G of Attachment 11 (*Service Payments*) to the Concession Agreement, where:

- i. $BASP_n$ equals the aggregate RTD O&M Costs (including indexation) in calendar year n ;
- ii. $BAISP_{NWESbase}$ equals $1/28^{th}$ of the aggregate RTD O&M Costs; and
- iii. each of $BAISP_{ECbase}$, $BAISP_{GLbase}$, and $ABANISP_n$ equal \$0.

c. Invoicing and Payment. RTD shall notify the City of the aggregate RTD O&M Costs to be paid to the City in that calendar year. In each calendar year from January 31, 2017 until January 1, 2045, the City shall become entitled to payment of the RTD O&M Costs calculated in accordance with this Section 8.3 (*Payment of RTD O&M Costs*) for that calendar year. Within 30 days following the last date of each calendar month, the City shall submit to RTD an invoice for the RTD O&M Costs, and, within 30 days of receipt of the City's invoice, RTD shall pay undisputed amounts claimed until such time as RTD has paid the RTD O&M Costs due in that calendar year.

8.4 Condition Precedent to Payment of RTD Funding and RTD O&M Costs. The effectiveness of this Section 8 (*Local Agency Contribution and RTD Funding Contribution to the City Project*) shall be subject to the fulfillment of the following conditions: (i) the Board shall have approved and appropriated funds for the NWES; (ii) RTD and the City shall have duly authorized and executed the Local Agency Contribution IGA; and (iii) the Concessionaire shall have obtained a conditional letter of map revision from the Federal Emergency Management Agency and a flood plain development permit from Adams County and/or the City (as applicable) for the NWES. Until such time as each of these conditions has been fulfilled, costs that a Party incurs with respect to this IGA are at that Party's sole risk and expense.

9. DELAYS; LIQUIDATED DAMAGES.

9.1 City Delays. The City shall notify RTD of any potential failure to reach the milestone dates or durations identified in Exhibit H and the City shall specify the circumstances resulting in such a delay in performance and whether the delay is caused by Force Majeure. The City shall

work to mitigate any potential delays or claims as a result of any such potential or actual failure to reach said milestones. If a City delay that would otherwise trigger RTD's step-in rights under Section 9.2 or require the payment by the City of liquidated damages under Section 9.3 is caused by Force Majeure, RTD shall provide a day-for-day extension of agreed milestone dates or durations, provided that the City (a) makes best efforts to mitigate such Force Majeure and (b) continues to diligently perform its obligations under this IGA in an attempt to meet each milestone date required by Exhibit H.

9.2 RTD Step-In Rights. Subject to Section 9.1, if the City fails to meet any of the milestone dates or durations identified in Exhibit H and RTD determines that the City will thereafter be unable to complete the Parking Facility, the Interim Bus Facilities and/or Permanent Bus Facilities (excluding the Bus Facilities Transit Amenities), the North Plaza and/or the Associated Infrastructure for which the City is responsible by the later of the applicable completion date identified in Exhibit H or March 31, 2016, RTD will be entitled to carry out, or arrange to have carried out, the work necessary either to implement the Base Plan or to complete the City Project (in RTD's sole discretion), including acceleration and delay costs (each as applicable), at the cost and expense of the City. In such event, RTD shall notify the City that it intends to exercise its right under this Section 9.2 and shall provide the City with 60 days to cure or provide a plan to cure the breach or breaches identified in the RTD step-in notice. If after the 60-day cure period has elapsed, the City shall have failed to cure or provide a plan that, in RTD's sole discretion, is adequate to cure, RTD shall exercise its step-in rights and shall thereafter have no obligation to make payments toward the RTD Funding for work performed after the date of the final step-in notice. The City shall, to the extent it has not already done so, immediately grant to RTD the RTD Easement and any other temporary construction easements necessary for RTD to complete the Base Plan or the City Project on the Station Property. RTD shall be entitled to draw and retain the full amount of the City's payment and performance bond as full or partial payment therefor. The right of RTD to retain the unpaid balance of the RTD Funding and draw upon the payment and performance bond is not intended to constitute a penalty, but is intended to be, and shall constitute, liquidated damages to compensate RTD for the cost of procuring and paying for the work and for other costs incurred by RTD in reliance upon the City's agreement to enter into the transactions contemplated hereby. The Parties acknowledge that it is difficult to ascertain the amount of actual damages that would be incurred by RTD in such circumstances, and that such liquidated damages are a reasonable estimate of the presumed actual damages that would be incurred by RTD. RTD agrees that if it exercises its step-in rights under this Section 9.2, that the City shall have no obligation to pay liquidated damages under Section 9.3.

9.3 Liquidated Damages.

a. Recognizing that time is of the essence in completing the City Project, that completion of certain elements of the City Project are necessary for commencement of revenue service of the NWES, and that in the event of failure to complete those elements of the City Project it would be difficult to determine the exact amount of the loss suffered by RTD due to the City's failure to complete such work, if:

- i. the City shall fail to obtain final inspection and acceptance by RTD, the Concessionaire and BNSF, as applicable, of the Retaining Wall by the Retaining Wall Completion Date and such failure, despite the exercise of best

efforts on the part of the Concessionaire to minimize and mitigate the effects of such failure in accordance with the Concession Agreement, prevents the Concessionaire from commencing revenue service to the Station on March 31, 2016, subject to Section 4.1b of this IGA; or

- ii. the City shall fail to acquire the North Plaza Property and provide access thereto to the Concessionaire by April 15, 2013 and such failure, despite the exercise of best efforts on the part of the Concessionaire to minimize and mitigate the effects of such failure in accordance with the Concession Agreement, prevents the Concessionaire from commencing revenue service to the Station on March 31, 2016; or
- iii. the City shall fail to obtain final inspection and acceptance by RTD of all pedestrian connections between the Pedestrian Underpass and adjacent public rights of way that are necessary for RTD patrons to reach the Pedestrian Underpass on or before the later of March 31, 2016 and the date that the Concessionaire is certified and ready to commence revenue service to the Station and RTD, as a result of the City's failure, directs DTP to postpone commencement of revenue service to the Station,

the City shall pay to RTD as liquidated damages and not as penalty an amount for each and every day of delay calculated by reference to the amount of revenue service payments due and payable to the Concessionaire for delivery of such service, to wit, an amount equal to \$ 8,965.00 per day; provided further that, other than as provided for in this IGA, any failure to perform will not be considered excusable.

b. The obligations of the City under this Section 9.3 are not intended to constitute a penalty, but are intended to be, and shall constitute, liquidated damages to compensate RTD for the cost of delay in completion of the City Project incurred by RTD in reliance upon the City's agreement to perform such work in accordance with the terms herein.

9.4 The City shall assign to RTD liquidated damages that the City contractually requires the City Contractors to pay to the City on terms and conditions similar to the liquidated damage obligations to which the City is obligated under this Section 9 (*Delays; Liquidated Damages*).

9.5 RTD reserves the right to deduct liquidated damages from amounts due the City under this IGA or, at RTD's option, to collect liquidated damages directly from the City.

9.6 Nothing in this Section 9 (*Delays; Liquidated Damages*) shall be interpreted as limiting, in any way, RTD's right to proceed against the City for actual losses incurred by RTD due to the City's failure to perform any obligations identified in this IGA that are not governed by Section 9.3.

10. NOTICES. The Parties shall, whenever feasible, utilize Aconex for correspondence and exchange of documentation related to this IGA. Communications required by this IGA shall also be effective if made in writing, via U.S. First Class Post, e-mail or facsimile, to the following

individuals (or their delegates), who shall be the project liaisons for their respective organizations:

To the City: City of Westminster
City Engineer
4800 West 92nd Avenue
Westminster, CO 80031

Copies to: City of Westminster
Deputy City Manager
4800 West 92nd Avenue
Westminster, CO 80031

City of Westminster
Director of Community Development
4800 West 92nd Avenue
Westminster, CO 80031

To RTD: Greg Straight
Eagle Project Design/Build Manager
1670 Broadway, Suite 2700
Denver, Colorado 80202
Phone: 303-299-6906
Fax: 303-831-9249
e-mail: Greg.Straight@rtd-fastracks.com

Project liaisons may be changed or additions made at the discretion of each Party by written notice to the other Party.

11. DISPUTES. Disputes shall be initially resolved between the project liaisons. If the project liaisons are unable to resolve the dispute, they shall document the basis for the dispute, either independently or collectively, and forward such information to their senior management in accordance with the following escalation priorities: (i) Eagle Project Director and the City's Director of Community Development, (ii) RTD's Assistant General Manager for Capital Programs and the City's Deputy City Manager, and (iii) RTD's General Manager and Westminster's City Manager. Prior to the filing of any legal action in Adams County District Court, the Parties shall attempt to resolve the dispute through non-binding mediation before an objective third party to be selected by mutual agreement of the Parties.

12. APPROVAL BY CITY COUNCIL. This IGA is expressly subject to, and shall not be or become effective or binding on the City or RTD until approved by the Westminster City Council (**City Council**).

13. APPROPRIATION BY CITY COUNCIL AND THE BOARD. This IGA does not commit any present funding by the City for the City Project or by RTD for operations and maintenance costs. Implementation of this IGA implies future financial commitments by both Parties subject to approval by the Board and the City Council and subject to each entity's legally required budgeting, authorization, and appropriation process. Any and all obligations of the City and

RTD under and pursuant to this IGA which require funding are subject to prior annual appropriations of funds expressly made by the City Council and the Board, respectively, for the purposes of this IGA. Nothing herein shall be construed by either Party as a multiple fiscal year obligation as described by Article X, Section 20 of the Colorado Constitution.

14. LIABILITY. As between the Parties, and without either the City or RTD waiving any of the rights and protections provided under the Colorado Governmental Immunity Act, sections 24-10-101 to 120, C.R.S., each Party hereto shall be responsible for its own negligence and that of its agents and employees in the performance of this IGA. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this IGA or the design or construction of the NWES, it agrees to give the other Party prompt written notice of such claim or suit. Nothing in this IGA shall be deemed or construed as a waiver by either Party of its rights and protections under the Colorado Governmental Immunity Act, as amended.

15. INDEMNIFICATION.

15.1 Indemnification by the City Contractors.

a. To the fullest extent permitted by law, the City shall contractually require the City's construction contractor(s) to indemnify, defend and hold the City, including its agents and employees, RTD, including its directors, employees, the RTD Contractors and each of their agents and employees, (collectively, the **Indemnitees**) harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the work described in this IGA, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the indemnifying City contractor, any of its subcontractors or sub-subcontractors, suppliers of equipment or materials, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 15.1a.

b. In any and all claims against the Indemnitees, the indemnification obligation under Section 15.1a shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the indemnifying City contractor or its subcontractors, sub-subcontractors, or suppliers of equipment or materials under the workers' compensation act, disability benefit acts or other employee benefit acts.

15.2 The Contractor's indemnification hereunder shall apply without regard to whether acts or omissions of one or more of the Indemnified Parties hereunder would otherwise have made them jointly or derivatively negligent or liable for such damage or injury, excepting only that the indemnifying City contractor shall not be obligated to so protect, defend, indemnify, and save harmless if such damage or injury is due to the sole negligence of one or more of the Indemnitees.

15.3 By RTD's Contractors.

a. With respect to Concessionaire activities undertaken in connection with City utility relocations, the City shall be indemnified in accordance with Article 22 (*Indemnification*) of the URA.

b. With respect to Concessionaire activities undertaken in connection with the implementation of the NWES within City limits, RTD shall require the Concessionaire to indemnify, save, and hold harmless the City, its directors, employees, the City Contractors, and agents against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Concessionaire, or its employees, agents, subcontractors, or assignees, and arising out of the terms of this IGA to the same extent and limits to which the Concessionaire indemnifies RTD; **provided**, the Concessionaire's indemnification obligations shall not extend to damage to City property in connection with the Concessionaire's snow removal activities where such damage can be attributed to normal wear-and-tear or is caused in whole or in part by the acts or omissions of the City or its contractors in installing, maintaining, and/or replacing the City property.

c. RTD shall require any other RTD Contractors that perform NWES construction within City limits to indemnify, save, and hold harmless the City, its directors, employees, the City Contractors, and agents against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Concessionaire, or its employees, agents, subcontractors, or assignees, and arising out of the terms of this IGA to the same extent and limits to which the relevant RTD Contractor indemnifies RTD.

16. INSURANCE.

16.1 RTD shall obtain and maintain an Owner Controlled Insurance Program (OCIP) (where RTD is **Owner**) for the construction phase of the NWES. The OCIP provides coverage for RTD, the Concessionaire and certain of its subcontractors for: General Liability with limits of liability of no less than \$2,000,000 per occurrence and aggregate; Workers Compensation as required by statute; Employers Liability; and an excess or Umbrella policy. RTD shall also procure coverage for Builder's Risk, Pollution Liability and, if necessary, Railroad Protective Liability, each with limits of liability not less than \$1,000,000 per occurrence and aggregate. The City, its officers and employees shall be named an additional insured on the OCIP General Liability policy to cover the RTD Contractors whenever present upon property owned or controlled by the City. OCIP insurance coverage shall satisfy any insurances required under the Sanitary Sewer or Staging Areas temporary construction easements. RTD shall provide certificates of insurance to the City prior to commencement of construction on NWES within City limits.

16.2 City Insurance.

a. The City shall maintain (and/or require any City Contractors performing construction activities hereunder to maintain): (a) Commercial General Liability (Bodily Injury and Property Damage) insurance with limits of liability of not less than \$1,000,000 per occurrence and aggregate, including Product and Completed Operations Liability Insurance (or the equivalent, if in a policy form reasonably acceptable to RTD); (b) automobile liability insurance covering owned, non-owned and hired automobiles in an amount not less than

\$1,000,000; and (c) Workers' Compensation insurance as required by Law. The City shall cause RTD, its governing body, and its respective officers, employees and authorized agents to be named as additional insured on the general liability insurance.

b. The City shall also maintain (and/or cause any City Contractors performing design activities to maintain) professional liability coverage for design professionals in a form reasonably acceptable to RTD and with limits of liability not less than \$1,000,000 per occurrence and aggregate.

c. Where the City or the City Contractors are required to obtain insurance under (a) and (b) of Section 16.2 of this IGA, Owner shall cause a certificate (or certificates) evidencing the insurance required to be delivered to RTD as a condition precedent to commencement of work on the City Project by the City and by every party required to provide such insurance, and shall cause such insurance to be maintained in full force and effect until the City Project is completed. Each certificate shall be endorsed to provide RTD with 60 days' prior written notice of cancellation of the insurance coverage relating thereto. If requested by RTD from time to time, the City shall provide RTD with verification by a properly qualified representative of the insurer that the City's and/or the City's Contractors' insurance complies with this paragraph and shall cause all other parties required to provide insurance pursuant to this paragraph to do the same. All City Contractors shall be required to have commercial insurance from a provider with a Best's A- rating.

d. Without in any way limiting any applicable indemnification under Article 16, the City shall have the right to comply with and satisfy any or all of its insurance obligations under this IGA in lieu of obtaining the applicable insurance policy(ies) by notifying RTD of the City's election to be self-insured as to the applicable insurance coverage. The same coverages and limitations prescribed by Section 16.2 shall apply. If requested by RTD at any time, the City shall provide RTD with a letter of such self-insurance in a form reasonably acceptable to RTD.

17. MISCELLANEOUS.

17.1 Merger. This IGA represents the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements, understandings or negotiations with respect to the subject matter of this IGA shall be deemed merged herein. No representations, warranties, promises or agreements, express or implied, shall exist between the Parties, except as stated herein.

17.2 Amendment. No amendment to this IGA shall be made or deemed to have been made unless in writing duly executed and delivered by the Party to be bound thereby.

17.3 Governing Law. This IGA shall be interpreted and enforced according to the Laws of the State of Colorado, the ordinances of the City, the applicable provisions of federal Law, and the applicable rules and regulations promulgated under any of them. Venue for any action hereunder shall be in Adams County District Court, Brighton, Colorado.

17.4 Term and Termination. This IGA shall commence on the Effective Date and shall remain in effect until terminated (a) in writing by the Parties, (b) by court order, or (c)

automatically on December 31, 2044. All provisions of this IGA that provide rights or create responsibilities for the Parties after termination shall survive termination of this IGA.

17.5 Authority. The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable Law to legally authorize the undersigned signatories to execute this IGA on behalf of the Parties.

17.6 Severability. To the extent that this IGA may be executed and performance of the obligations of the Parties may be accomplished within the intent of the IGA, the terms of the IGA are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other terms or provision hereof.

17.7 Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon a subsequent breach.

17.8 No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person under this IGA. It is the express intention of the Parties to this IGA that any person or entity other than the Parties receiving services or benefits under this IGA be deemed an incidental beneficiary only.

17.9 Changes in Law. This IGA is subject to such modifications as may be required by changes in city, state or federal Law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this IGA on the effective date of such change as if fully set forth herein.

17.10 Independent Contractors. The Parties hereto are independent contractors and not partners or joint venturers of one another.

17.11 Charges and Penalties. The City shall not pay or be liable for any claimed interest, late charges, fees, or penalties of any nature, except as required by this IGA.

17.12 Paragraph Headings. The captions and headings set forth in this IGA are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.

17.13 Counterparts. This IGA may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

(signature page to follow)

IN WITNESS WHEREOF, the City and RTD have executed, through their respective lawfully empowered representatives, this IGA as of the day and year above written.

ATTEST:

CITY OF WESTMINSTER

By: _____
City Clerk

By: _____
J. Brent McFall
City Manager, City of Westminster

APPROVED AS TO LEGAL FORM FOR
WESTMINSTER:

By: _____
Martin R. McCullough
City Attorney

APPROVED AS TO LEGAL FORM FOR RTD: **REGIONAL TRANSPORTATION DISTRICT**

By: _____
Jenny C. Barket
Associate General Counsel

By: _____
Phillip A. Washington
General Manager



Staff Report

Information Only Staff Report
April 16, 2012



SUBJECT: Citizen Relationship Management and Mobile Access to the City's Web Site

PREPARED BY: David Puntteney, Information Technology Director
Barbara Opie, Assistant City Manager
Joe Reid, Public Information Officer

Summary Statement

This report is for City Council information only and requires no action by City Council.

At the December 10, 2011, New City Council Member Workshop, Council members requested Staff investigate the feasibility of enhancing City services by offering citizens a streamlined process for submitting service requests to the City via a smartphone device. After considering three different approaches to meeting this objective, Staff determined the best and most cost effective solution is to move forward with the Citizen Relationship Management (CRM) System from Government Outreach. During this investigation period, Staff was also working on creating a mobile version of the City's web site to offer citizens, businesses and visitors with the ability to easily access City web content and services from mobile devices. The background section of this memo provides more details on both of these initiatives.

Background Information

Customer service has been a long standing value for the City of Westminster. Tracking and responding to citizen requests traditionally has been handled within individual City departments in a more decentralized manner. While the City has had success with this approach, it has limited the City in providing a consistent request process for citizens. In 2002, the City Manager's Office created a small centralized database with the goal of better tracking citizen requests, but that approach did not succeed in streamlining operations and we later abandoned the database. In 2008, IT Staff did a brief review of a cloud based CRM system from a company called Government Outreach. At that time, the potential value for Westminster was limited, and the mobile application was limited to only iPhones which at that time were only available on the AT&T network. Due to the limitations identified, Staff did not see enough value gained and continued with the existing decentralized department tracking and responding to citizen requests process.

At the December 10, 2011, New City Council Member Workshop, City Council members requested Staff evaluate options to provide a more streamlined approach for citizens to submit service requests, particularly through smartphone devices. Staff identified specific objectives and three possible approaches to meeting those objectives. Those approaches included: 1) developing an in house system and application; 2) purchasing an application from a third party vendor and installing/supporting that application internally; or 3) using a cloud based service provider CRM system. Following the evaluation, Staff concluded that using a cloud based service provider, where

the vendor hosts all of the application software, hardware and databases was the best solution. The selected vendor, Government Outreach, has been in business since 2003 and has a track record of providing a fully featured, reliable and proven solution for cities across the country. The potential benefits gained from using a CRM system in Westminster have increased and Government Outreach’s capabilities have expanded since the City’s previous review in 2008. Today, their mobile application, titled GoRequest Mobile, is available not just for the iPhone, but also for the Android phone market.

With the Government Outreach GoRequest CRM system, residents can ask questions, make service requests and offer suggestions from the comfort of their home, office or mobile device such as the iPhone or Android, thus reducing the need to call or visit City Hall. Plus, residents can check the City website or their mobile device for the status of their requests and are automatically notified when the request is resolved. Even more significantly, the CRM system offers customers a robust knowledge base/FAQ section that allows them to find answers to their questions without having to submit a service request or make a phone call, thus improving service while reducing demand on staff resources. Data from the Government Outreach CRM used by the City of Arvada, for example, shows that since 2007, the system has handled more than 184,200 inquiries with only about 5,300 visits resulting in an actual service request being filed by the customer. In other words, the CRM resolved 97 percent of customer questions via the knowledge base/FAQ without involving the action of a City employee. Other benefits for the City include the ability to receive instant updates on requests, prevent duplication of efforts (such as when an email may have been blind copied to multiple Council and staff members) and better coordinate resources. Supervisors can measure productivity and how often service goals are met and officials have a better understanding of the community’s needs and priorities. (CRMs provide the ability to set the number of days specific issues should be resolved or at least responded to; red flags begin escalating issues to line staff, supervisors, Division Managers and Department Heads as key dates are passed. This ensures timely responses to residents, thus improving customer service.) While this application can significantly enhance customer experience and streamline Staff workload, it does not prohibit or eliminate the ability of residents to call the City to ask questions, make requests and/or suggestions. It simply provides an additional convenient avenue for residents to access their local government.

GORequest, a CRM product specifically targeted toward government agencies, has been successfully implemented by a number of public agencies throughout the country, including the neighboring cities of Arvada and Thornton. This CRM has won national awards for its high quality customer service experience. Research with staff from Arvada and Thornton yielded unequivocal support for this CRM.

A few benefits of the Government Outreach GoRequest CRM solution include:

- An interactive knowledge base to help residents find answers quickly.
- Centralized processing of all service requests.
- Residents get immediate responses acknowledging their request.
- Residents receive regular progress status updates.
- Supervisors may easily view workloads to manage their operations more effectively.
- Requests are automatically escalated if not completed within a certain timeframe.
- Email notifications of tasks and deadlines.
- Easy to use report writing and scheduling tools.
- Citizens may continue to submit service requests in person or by phone, but now will have expanded options to submit via smartphones, email or web with all requests logged to a centralized database for staff assignment and tracking.

- Smartphone service request submittals can include GPS coordinates and photo.
- The City gains a more clear understanding of the volume and types of citizen requests.
- Citizen surveys can be automatically generated to gauge how the City is doing in meeting citizen expectations.

Cost for this solution includes \$11,500 for implementation and startup plus \$850 per month (\$10,200/year) which includes all services, support and future software updates and enhancements. Fees for services are tiered based on population size, not number of users or requests.

Staff is planning to begin implementation and setup in May, with a third quarter go-live date. Prior to go-live, Staff will schedule a time at a future City Council Study Session to provide a brief overview of the CRM capabilities, demonstrate the mobile application interface and address any questions.

City Web Site Mobile Access Update – With the ever increasing growth in the number of individuals using smartphone and other types of mobile devices, Staff recognizes the need to provide these users with a streamlined and efficient interface when accessing the City of Westminster’s web site to view key information or conduct business. While mobile users can currently use the City web site, information and online service on some pages are difficult to view or use. In January 2012, Staff began incorporating enhancements to the City’s development web site to automatically recognize the type of device/browser accessing the site and provide mobile users the option to use screens and on-line service pages specifically designed and streamlined for their type of mobile device.

This work continues on the development web site, where key issues such as how to handle news pages and calendar information, which are seen as essential to mobile users, are still being examined. Once solutions are achieved, the new mobile website will need to be built page by page to provide an easy-to-use mobile interface.

After the mobile site is built, updates to the regular City website will automatically appear on the mobile content pages. Additionally, the URL for the standard and the mobile based formatted pages will be the same so users will not be using or bookmarking a different link when using the mobile site.

Staff is planning to go live with the new “mobile version” of the City’s web site by the third quarter of 2012.

These projects enhance services to our citizens and support the City Council strategic plan goal of financially sustainable City government providing exceptional services by investing in the tools, training, and technology to increase organizational productivity and efficiency.

Respectfully submitted,

J. Brent McFall
City Manager