WESTMINSTER

January 23, 2012
7:00 P.M.

CITY COUNCIL AGENDA

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

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

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meeting**
4. **Report of City Officials**
   A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
   A. Shen Yun Proclamation
7. **Citizen Communication (5 minutes or less)**

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

8. **Consent Agenda**
   A. Financial Report for December 2011
   B. Quarterly Insurance Claims Report – October through December 2011
   C. 2012 Deicing Salt Purchase
   D. 2012 Asphalt and Crackseal Materials Purchase
   E. Open Space Purchase re 5.12-acre Westminster Hills Elementary School Property at 4105 West 80th Avenue
   F. Federal Hazard Elimination Funding Application
   G. Spring 2012 Adams County Open Space Grant Applications
   H. Second Reading Councillor's Bill No. 1 re Right-of-Way Vacations within Semper Gardens Subdivision
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
    A. Public Hearing re Rezoning, PDP and ODP Approval re Westminster Reformed Presbyterian Church Property
    B. Councillor's Bill No. 2 re Zoning Amendment to PUD re Westminster Reformed Presbyterian Church Property
    C. PDP and ODP Approval re Westminster Reformed Presbyterian Church Property (112th Avenue and Vrain Street)
    D. Resolution No. 3 re Orchard Lakes, LongsView and West Bradburn Service Commitment Award Extensions
    E. Resolution No. 4 re Westminster Lofts on the Creek Multi-Family Project B-3 Service Commitment Award
    F. Resolution No. 5 re The Village at Westminster City Center TMUND Project B-4 Service Commitment Award
    G. Resolution No. 6 re Allocation of the Balance of 2012 HOME Funds per Adams County Agreement
    H. Resolution No. 7 re HOME Fund Allocation re Westminster Commons Acquisition and Rehabilitation by VOA
    I. Councillor's Bill No. 3 re Four Leases for the Strasburg Natural Resource Farm
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Miscellaneous Business and Executive Session**
    A. City Council
13. **Adjournment**

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

****

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

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

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

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

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

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

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

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

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

J. Final comments/rebuttal received from property owner;

K. Final comments from City Staff and Staff recommendation.

L. Public hearing is closed.

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

WESTMINSTER

Strategic Plan

2011-2016
Goals and Objectives

FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES

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

STRONG, BALANCED LOCAL ECONOMY

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

SAFE AND SECURE COMMUNITY

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

VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY

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

BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY

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

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JANUARY 9, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Atchison, to approve the minutes of the regular meeting of December 19, 2011, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that City Council would not meet on January 16 and City offices would be closed in observance of Martin Luther King Day.

Following adjournment of the Council meeting, the Westminster Economic Development Authority (WEDA) Board of Directors would meet. After that meeting, the Council would conduct a post-meeting. Then City Council and the WEDA Board would meet in executive session to discuss South Westminster redevelopment strategy, including potential property acquisitions and provide direction and instructions to the City's negotiators, as allowed by Section 1-11-3(C)(2) and (7), Westminster Municipal Code, and §24-6-402(4)(a) and (e), Colorado Revised Statutes; to discuss strategy and progress on potential acquisition of certain real property by the Westminster Economic Development Authority for the Westminster Urban Reinvestment Project pursuant to §24-6-402 (4)(a) and (e), Colorado Revised Statutes; and to discuss strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and provide instructions to the Authority's negotiators as authorized by §24-6-402 (4)(a) and (e), Colorado Revised Statutes, and to consult with the Authority's legal counsel concerning the *Sears* litigation, pursuant to §24-6-402(4)(b) and (e), Colorado Revised Statutes and Section 1-11-3 (C)(3), Westminster Municipal Code.

CITY COUNCIL COMMENTS

Councillor Atchison reported that local youth in the Westernaires were featured at the National Stock Show Rodeo. He urged residents to attend and enjoy the performance.

LENGTH OF SERVICE AWARDS

Service awards were presented to City employees in recognition and celebration of their lengthy tenure and contributions to the organization. Councillor Atchison presented certificates and pins to Bruce Black, David Carter, and Jeff Heineman for 20 years of service. Mayor McNally presented certificates, pins and stipends to Tim Carlson, Kevin Dooley, David Sagel, and Mark Van Den Abbeele for 25 years of service.

CONSENT AGENDA

The following actions were submitted for Council's consideration on the consent agenda: designate the bulletin board in the lobby of City Hall and the City of Westminster website as the locations for posting public notices of official meetings of the City Council, the Westminster Housing Authority, the Westminster Economic Development Authority, Special and General Improvement Districts, and the City's Boards and Commissions pursuant to §24-6-402 (2)(c), Colorado Revised Statutes, of the Colorado Open Meetings Act; authorize the City Manager to execute

a contract for the 2012 Asphalt Pavement Crackseal Project with the low bidder, A-1 Chipseal Company, in the amount of $142,680 and authorize a contingency of $2,320 for a total project budget of $145,000; final passage of Councillor's Bill No. 43 on second reading amending Title V, Chapter 14, of the Westminster Municipal Code concerning special event permits and optional premise licenses; and final passage of Councillor's Bill No. 44 on second reading authorizing the City Manager to modify the start of construction date for the Hyatt Place Hotel from October 1, 2012 to October 1, 2014.

There were no items removed from the consent agenda and Councillor Major moved to approve the consent agenda as presented. Mayor Pro Tem Winter seconded the motion, and it carried.

2012 APPOINTMENTS TO THE ROCKY FLATS STEWARDSHIP COUNCIL

Councillor Briggs moved, seconded by Mayor Pro Tem Winter, to reappoint Councillor Bob Briggs as the City's representative and Water Quality Administrator Mary Fabisiack as alternate representative to the Rocky Flats Stewardship Council. The motion passed unanimously.

APPEAL OF PLANNING COMMISSION DECISION

It was moved by Councillor Atchison, seconded by Councillor Lindsey, to find that requirements had been met for perfecting an appeal of the Planning Commission decision to deny the Second Amended Official Development Plan for the Westcliff Subdivision Filing Nos. 1-5 and that public notice was adequate. Mr. McCullough reported that his office had reviewed the notice provided by the applicant to property owners within 300 feet, which had been corrected and was subsequently determined to be adequate. The motion passed unanimously.

HEARING ON APPEAL OF 2ND AMENDED ODP FOR WESTCLIFF SUBDIVISION FILING NOS. 1-5

At 7:25 P.M., Mayor McNally opened a public hearing to consider an appeal of the Planning Commission's denial of the Second Amended Official Development Plan (ODP) for Westcliff Subdivision Filing Nos. 1-5 to allow a setback reduction from 20 to 15.2 feet for the property located at 6567 West 96th Drive. Mac Cummins, Planning Manager, entered the agenda memorandum and attachments into the record, including a January 4, 2012 letter from the Westcliff Home Owner's Association. Public notice had been published in the *Westminster Window*, posted on the property, and mailed to property owners within 300 feet. The appeal had been filed by Bluesky Sunrooms on behalf of Jacqueline Churchill, who was seeking the setback reduction in order to build an indoor swimming spa prescribed by her doctor to combat obesity. Staff recommended denial of the setback reduction because criteria in Section 11-5-15 of the Westminster Municipal Code had not been satisfied, the existence of a disability had not been proved, and reasonable accommodation was not required under Federal law.

Richard Craven and Tom Wiles of Bluesky Sunrooms, 3400 Industrial Lane in Broomfield, read letters from the Westcliff Home Owner's Association, the Chairman of the Westcliff Architectural Control Committee, and Jacqueline Churchill. Additionally, they provided a letter of medical necessity from Ms. Churchill's physician. The letters indicated there was no objection to the setback reduction or Ms. Churchill's plans to build an indoor exercise pool. Messrs. Craven and Wiles disagreed with the Staff analysis of the Code's criteria and provided responses to defend their positions.

In conclusion, Mr. Cummins said that the Planning Commission's denial of this request occurred at its meeting of November 29, 2010.

The Mayor closed the hearing at 7:55 P.M. after all of Council's questions had been answered.

2ND AMENDED ODP FOR WESTCLIFF SUBDIVISION FILING NOS. 1-5 APPROVED

It was moved by Councillor Atchison and seconded by Councillor Kaiser to deny the Second Amended Official Development Plan for Westcliff Subdivision filing Nos. 1-5 allowing setback reduction from 20 to 15.2 feet for the property located at 6567 West 96th Drive based on a finding that criteria 1 through 6, 8 or 9 of Section 11-5-15 of

the Westminster Municipal Code had not been met, the existence of a disability had not been proven and reasonable accommodation was not required under Federal law. The motion failed by a 3:4 margin with Councillors Briggs, Lindsey, Major and Mayor Pro Tem Winter voting no.

It was moved by Councillor Major and seconded by Councillor Lindsey to approve the Second Amended Official Development Plan for Westcliff Subdivision filing Nos. 1-5 allowing setback reduction from 20 to 15.2 feet for the property located at 6567 West 96th Drive based on a finding that criteria 1 through 6, 8 or 9 of Section 11-5-15 of the Westminster Municipal Code had not been met, the existence of a disability had not been proven and reasonable accommodation was not required under Federal law. At Mr. McCullough's suggestion, Councillor Major amended his motion to include a finding that the proposed setback reduction was compatible and harmonious with surrounding development and criteria in Section 11-5-15 of the Code had been met. Councillor Lindsey accepted the amendment. The motion carried by a 4:3 margin with Councillors Atchison and Kaiser and Mayor McNally voting no.

COUNCILLOR'S BILL NO. 1 VACATING RIGHTS-OF-WAY WITHIN SEMPER GARDENS SUBDIVISION

Mayor Pro Tem Winter moved to pass Councillor's Bill No. 1 on first reading to vacate rights-of-way within the Semper Gardens Subdivision. The motion was seconded by Councillor Lindsey and passed unanimously on roll call vote.

RESOLUTION NO. 1 RE USE OF ADAMS COUNTY DETENTION FACILITY FOR MUNICIPAL INMATES

Upon a motion by Councillor Lindsey, seconded by Councillor Atchison, the Council voted unanimously on roll call vote to adopt Resolution No. 1 urging the Adams County Board of County Commissioners to immediately suspend the establishment of a cap and charging cities a per day fee for municipal inmates exceeding the cap, and to work cooperatively with the cities to find a collaborative solution to this budget challenge.

RESOLUTION NO. 2 RENEWING THE ROCKY FLATS STEWARDSHIP COUNCIL IGA

It was moved by Councillor Briggs, seconded by Councillor Kaiser, to adopt Resolution No. 2 supporting the continuation of the Rocky Flats Stewardship Council for an additional three years and authorize the Mayor to execute the First Amendment to the Intergovernmental Agreement Establishing the Rocky Flats Stewardship Council. The motion passed unanimously on roll call vote.

ADJOURNMENT

There being no further business to come before the City Council, Councillor Kaiser moved, seconded by Councillor Major to adjourn. The motion carried and the meeting adjourned at 8:10 P.M.

ATTEST:

_____
Mayor

_____
City Clerk

WESTMINSTER

Agenda Item 6 A

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Shen Yun Proclamation

Prepared By: Mary Joy Barajas, Executive Secretary to the City Manager

Recommended City Council Action

Councillor Mary Lindsey to read the proclamation offering congratulations and appreciation for 2012 Shen Yun Performing Arts in Colorado.

Summary Statement

- The Shen Yun show is returning to Colorado for the 5th consecutive year, performing at the The Buell Theatre in Denver on February 22-23, 2012.

- Vivian Lam member of the Falun Dafa Association of Colorado will be present at Monday night's meeting to accept the proclamation.

Expenditure Required: **$** 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Falun Dafa Association of Colorado, a non-profit organization based in Colorado, is devoted to the preservation and promotion of traditional Chinese culture, ethics, and arts. Shen Yun is inspired by 5,000 years of traditional Chinese culture, incorporates in its performances ancient heroic legends, modern stories of courage, divinely inspired epics and beautiful cultural dances.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Proclamation

WHEREAS, the City of Westminster congratulates the Falun Dafa Association of Colorado for bringing the Shen Yun Performing Arts to Colorado; and

WHEREAS, the Falun Dafa Association of Colorado, a non-profit organization based in Colorado, is devoted to the preservation and promotion of traditional Chinese culture, ethics, and arts; and

WHEREAS, the City of Westminster welcomes Shen Yun to Colorado as part of its 2012 international tour; and

WHEREAS, the Shen Yun show, produced by Shen Yun Performing Arts, is coming to Colorado for the fifth consecutive year, performing at the Buell Theatre in Denver on February 22 and 23, 2012; and

WHEREAS, celebrating the excellence and grandeur of classical Chinese dance and music, Shen Yun, inspired by 5,000 years of traditional Chinese culture, incorporates in its performances ancient heroic legends, modern stories of courage, divinely inspired epics and beautiful cultural dances; and

WHEREAS, the show seeks to not only entertain, but also to broadly educate, enrich, and inspire, beyond cultural boundaries.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the Westminster City Council, do hereby proclaim congratulations and appreciation for

2012 SHEN YUN PERFORMING ARTS IN COLORADO

and recognize its artistic contribution to the people of Colorado.

Signed this 23rd day of January, 2012.

_____

Nancy McNally, Mayor

WESTMINSTER

Agenda Item 8 A

Agenda Memorandum

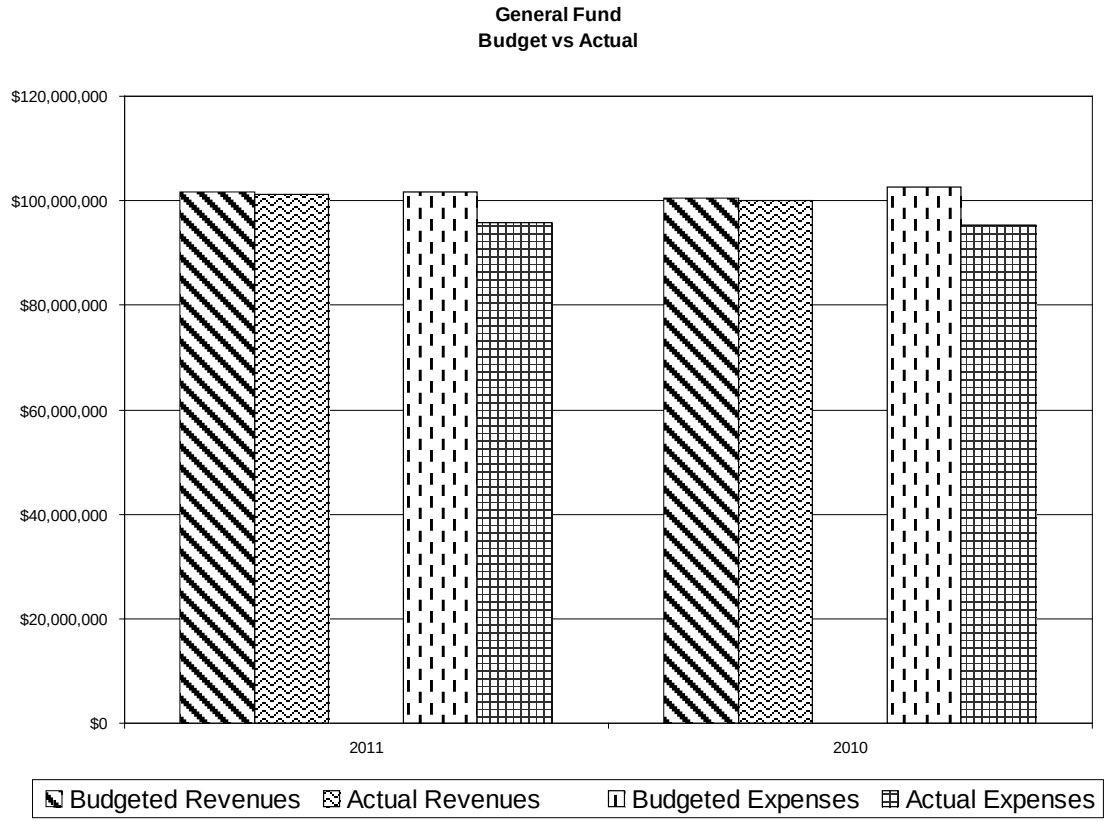
City Council Meeting
January 23, 2012

SUBJECT: Financial Report for December 2011
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action
Accept the Financial Report for December as presented.

Summary Statement
City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. The budget numbers that are presented reflect the City's amended adopted budget. This statement reflects December month end figures. There are several modifications based on year end accruals, both revenue and expense that will be made and will be part of the December year end figures that will be presented to Council in June, after the audit is complete. Some of the more significant accruals include revenue earned in 2011 but not received until 2012, in particular intergovernmental revenue, and all expenses incurred in 2011 but paid in 2012. Revenues also include carryover where applicable.

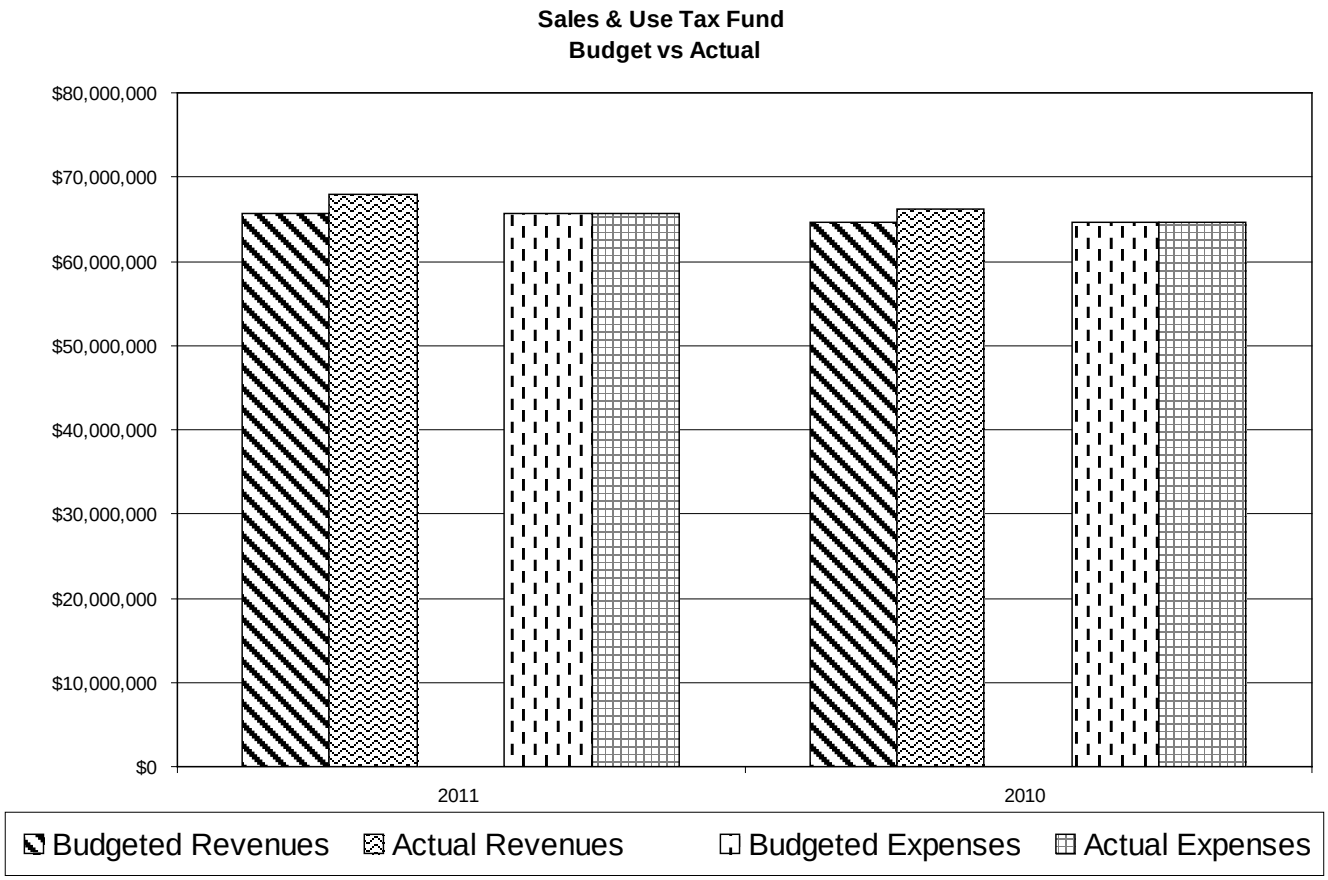
The General Fund revenues and carryover exceed expenditures by $5,482,332. The following graph represents Budget vs. Actual for 2010-2011.



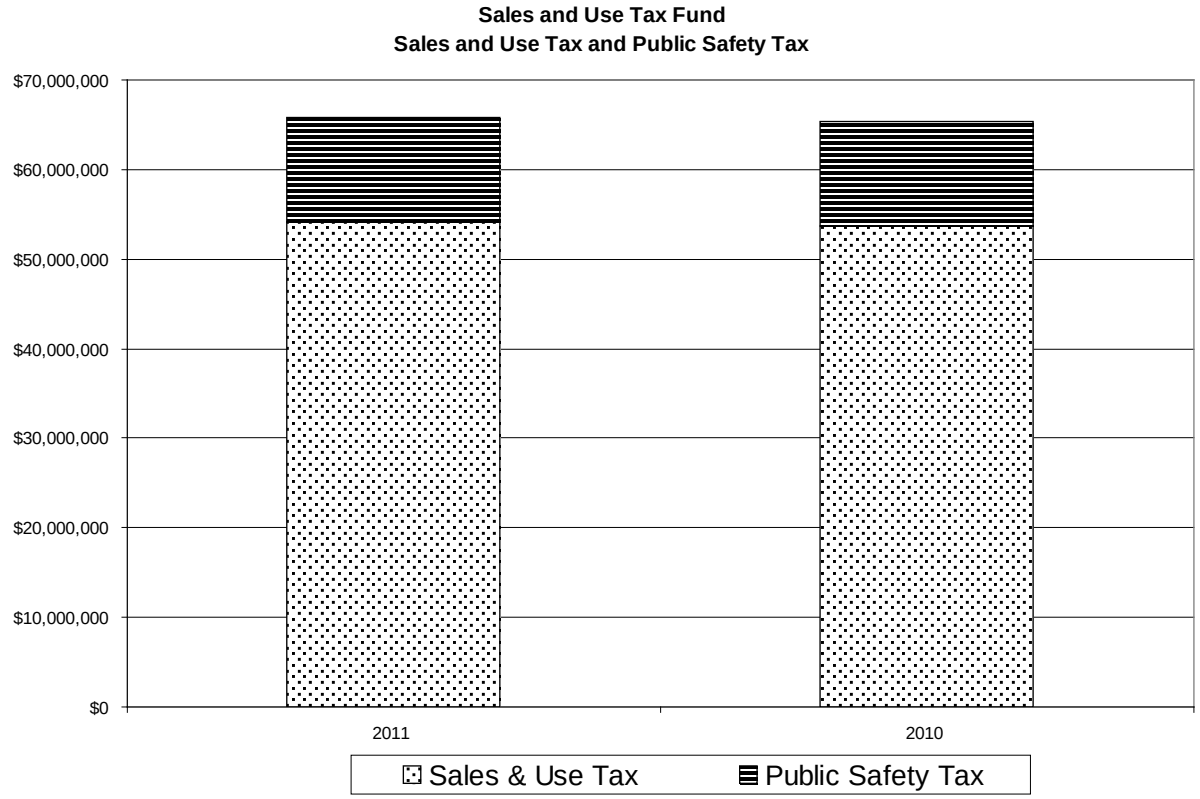
2010 has been adjusted to eliminate the 1998 Certificates of Participation and 2001/2002 Sales and Use Tax Revenue Bonds refunding issues.

The Sales and Use Tax Fund revenues and carryover exceed expenditures by $2,317,471. On a year-to-date cash basis, total sales and use tax is up 0.8% from 2010. Key components are listed below:

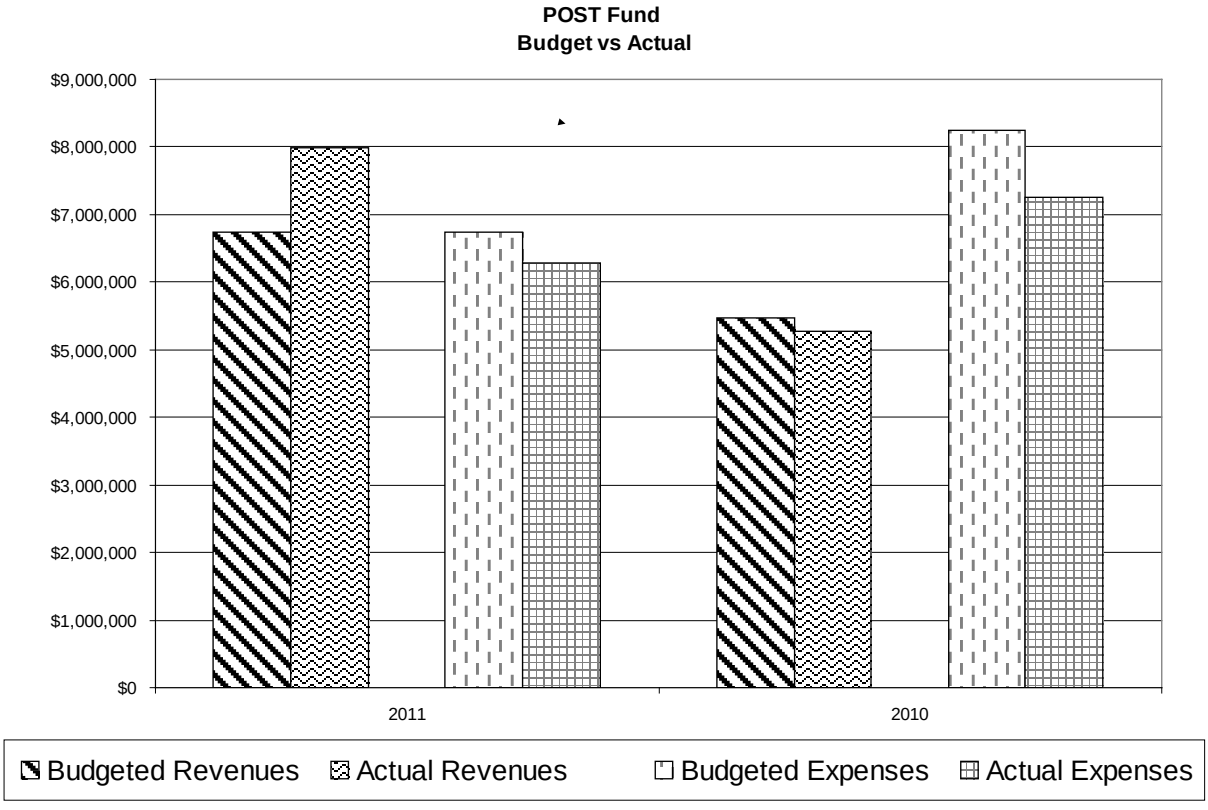
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are down 1.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 64.0% of all collections, are down 1.0% for the month.
- Urban renewal areas make up 41.4% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 80.0% of this money is being retained for General Fund use.



The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.

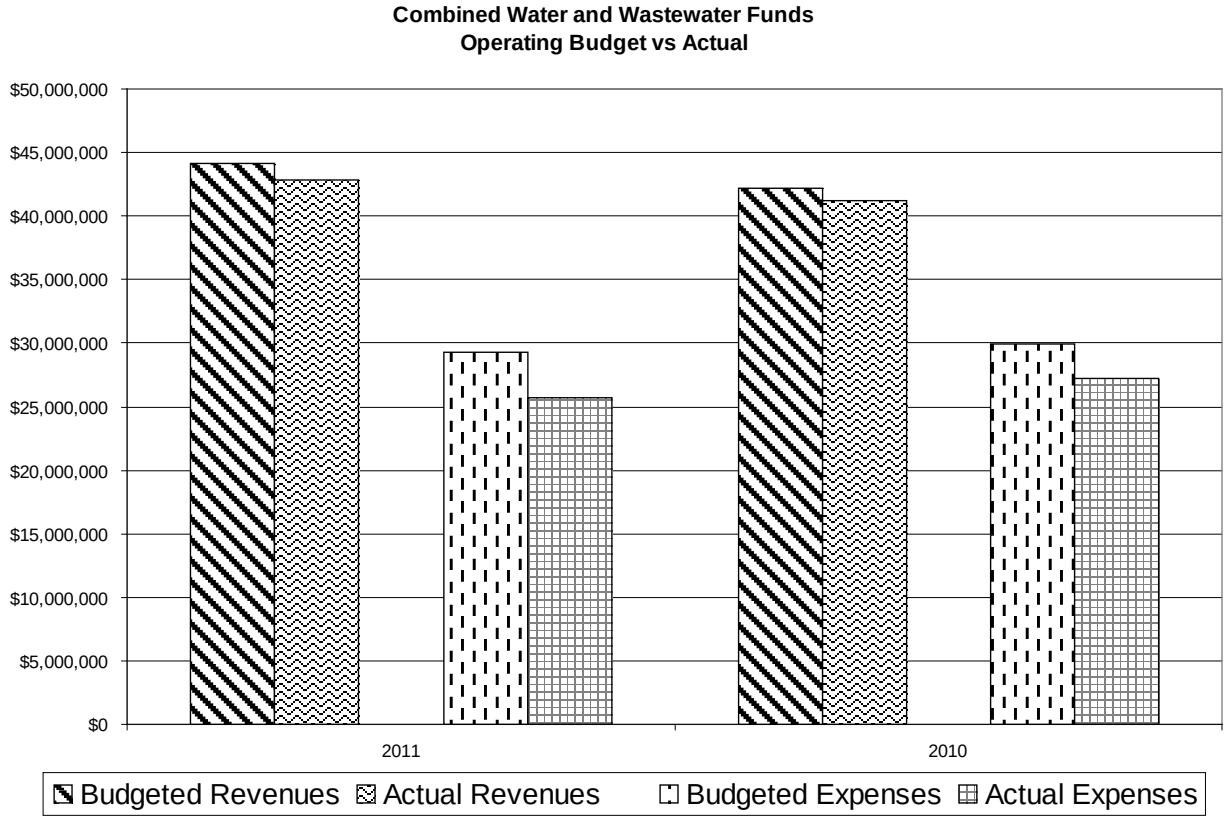


The Parks Open Space and Trails Fund revenues exceed expenditures by $1,705,053.

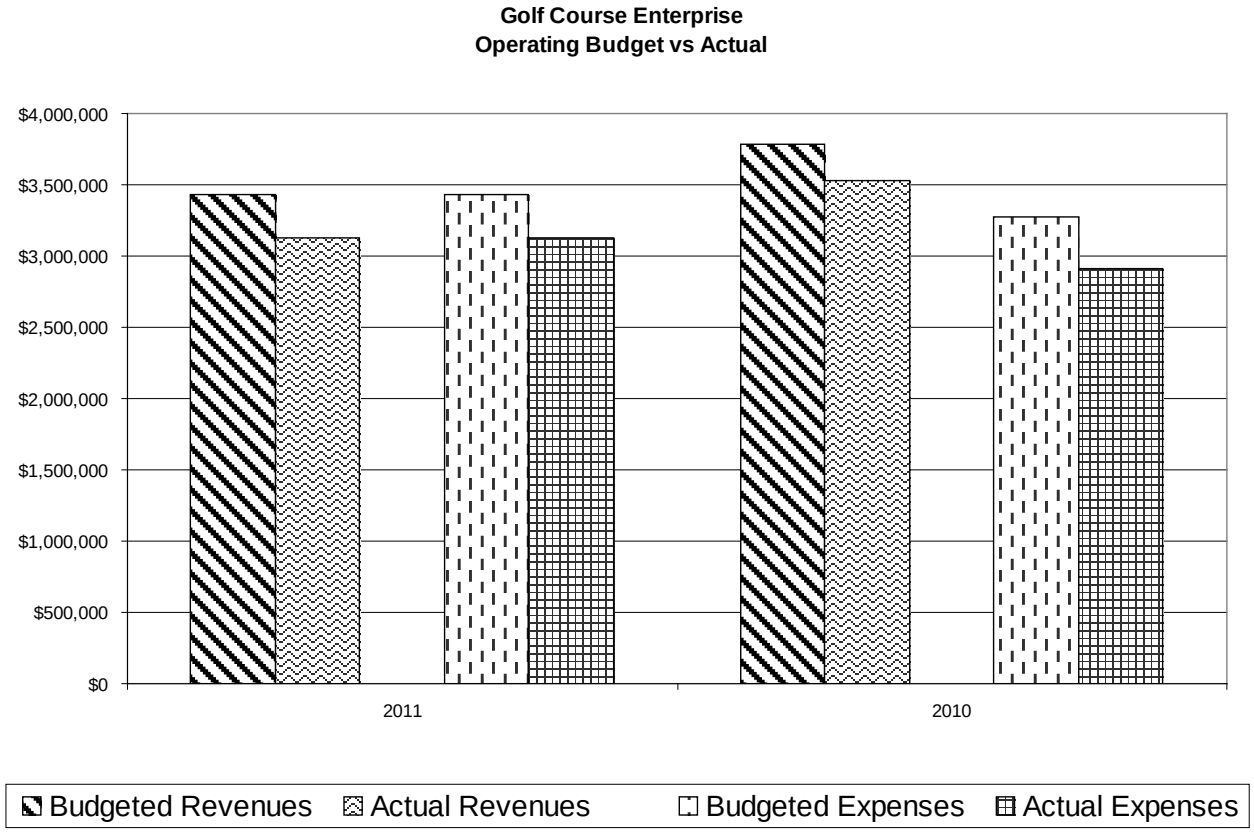


Current year revenues exceed the prior year due to grant reimbursements received in 2011 that were budgeted in a prior year.

The combined Water & Wastewater Fund revenues and carryover exceed expenses by $17,069,695. Operating revenues exceed operating expenses by $17,185,900. $11,952,000 is budgeted for capital projects and reserves.



The combined Golf Course Fund expenses exceed revenues by $8,280.



Policy Issue

A monthly review of the City's financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

Alternative

Conduct a quarterly review. This is not recommended, as the City's budget and financial position are large and complex, warranting a monthly review by the City Council.

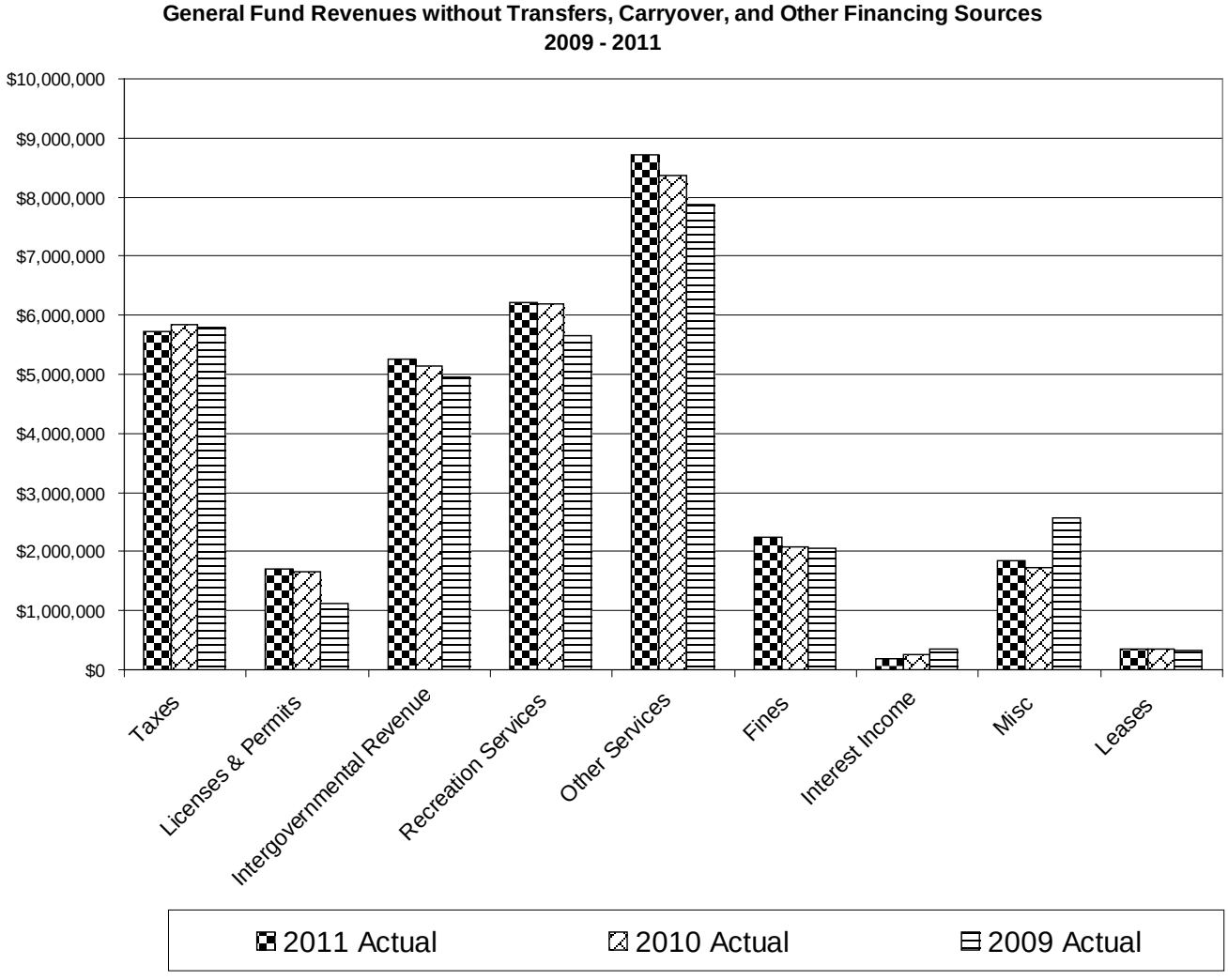
Background Information

This section includes a discussion of highlights of each fund presented.

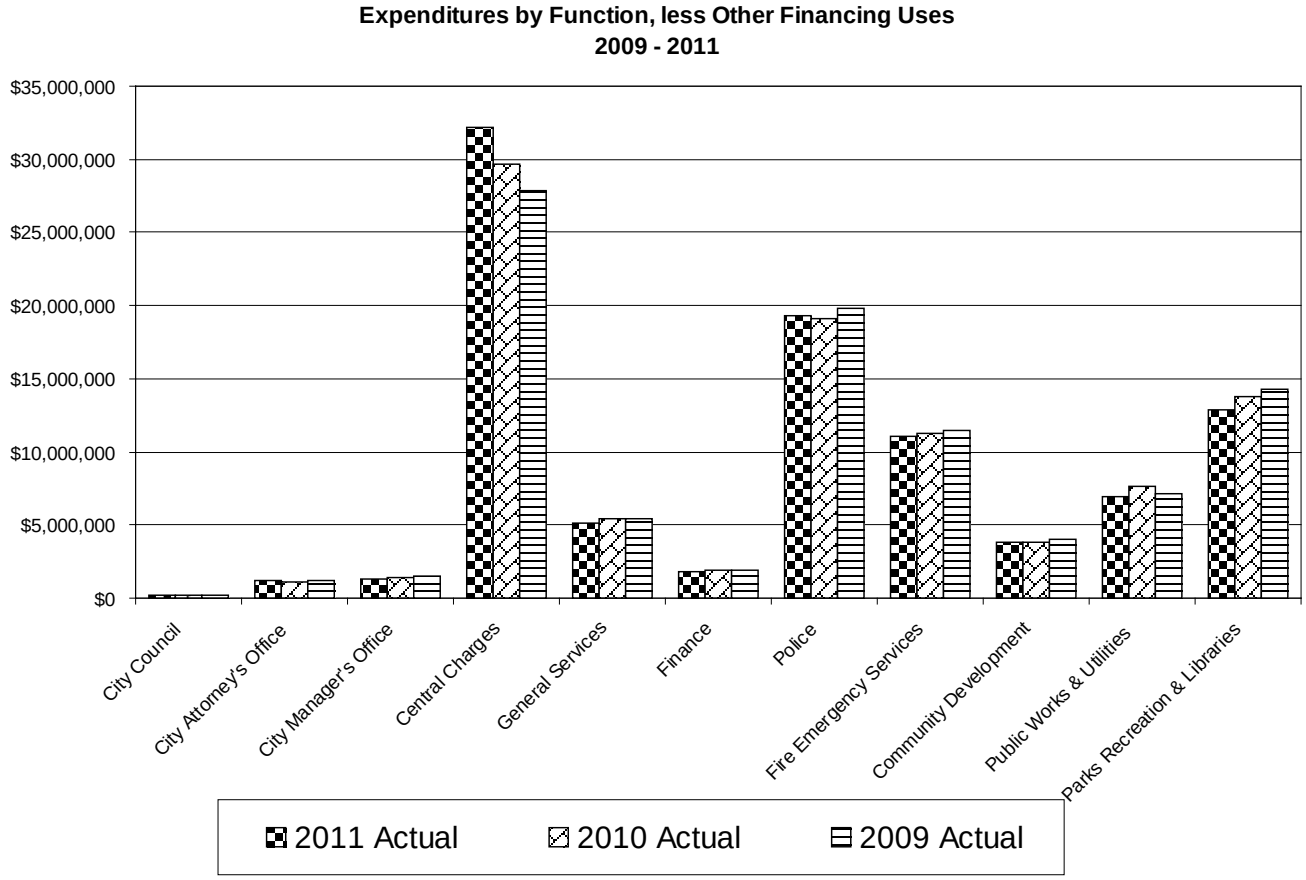
General Fund

This fund reflects the result of the City's operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

The following chart represents the trend in actual revenues from 2009-2011 year-to-date.



The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2009 –2011.



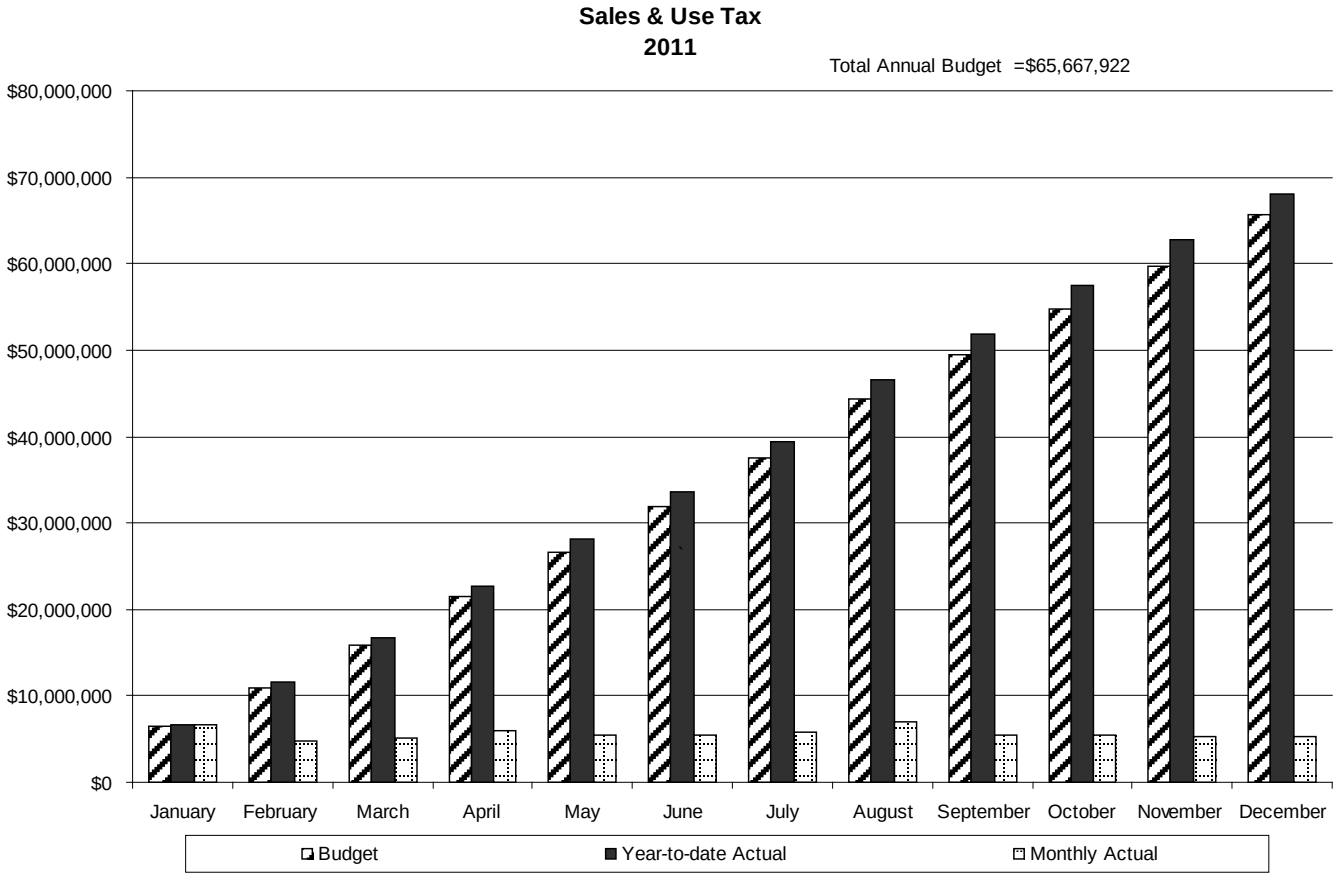
Significant differences between years in General Fund expenditure categories are explained as follows:

- 2011 Central Charges reflects a one time transfer of $4 million of carryover to WEDA for the purchase of the Westminster Mall.

Sales and Use Tax Funds (Sales & Use Tax Fund and Parks, Open Space and Trails Sales & Use Tax Fund)

These funds are the repositories for the 3.85% City Sales & Use Tax for the City. The Sales & Use Tax Fund provides monies for the General Fund, the General Capital Improvement Fund, and the Debt Service Fund. The Parks, Open Space, and Trails Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, pay bonds related to the Heritage Golf Course, buy open space land, and make park improvements on a pay-as-you-go basis. The Public Safety Tax (PST) is a 0.6% sales and use tax to be used to fund public safety-related expenses.

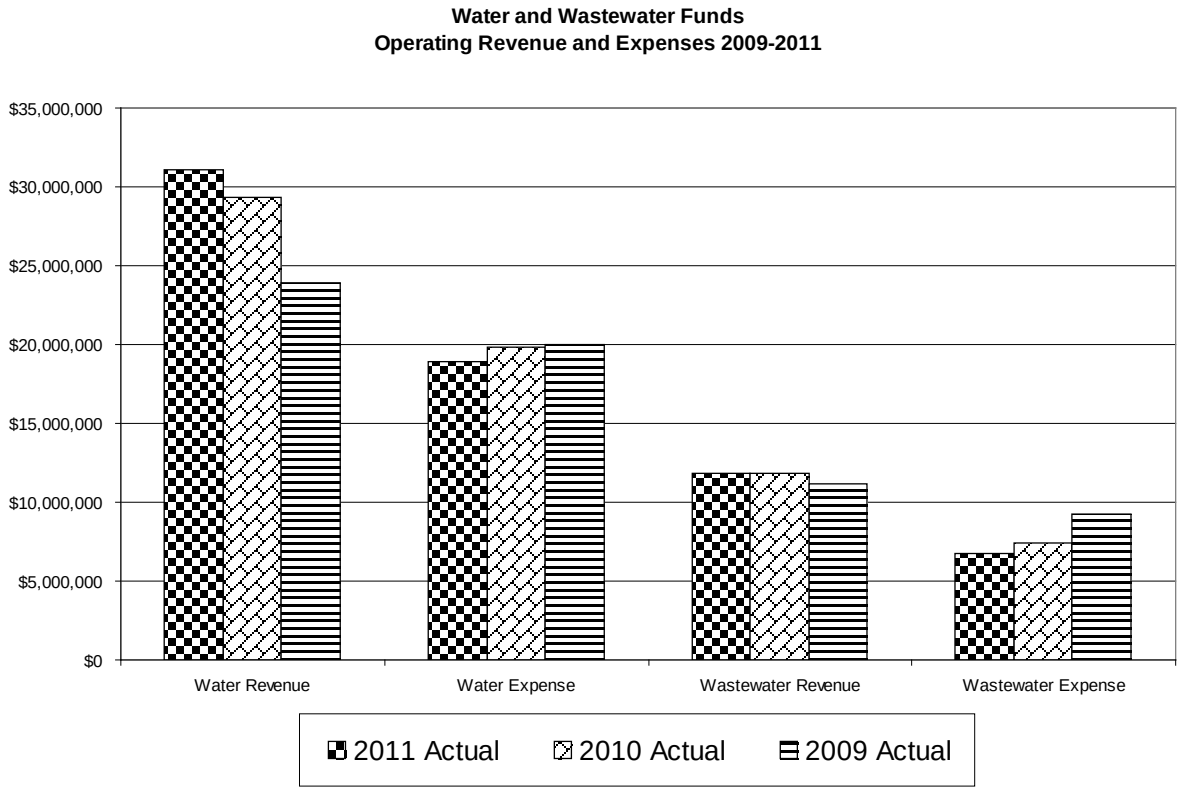
This chart indicates how the City's Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space, and Trails Sales & Use Tax.



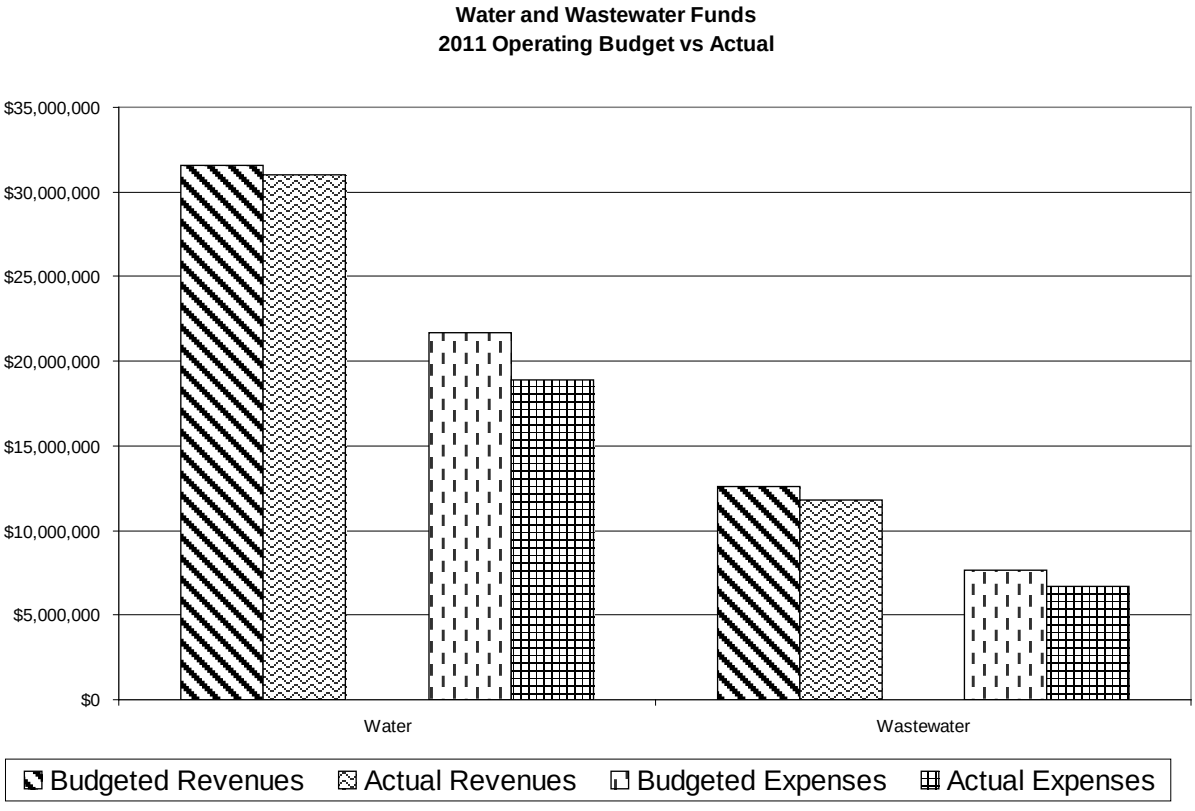
Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

This fund reflects the operating results of the City's water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects and reserves.

These graphs represent segment information for the Water and Wastewater funds.

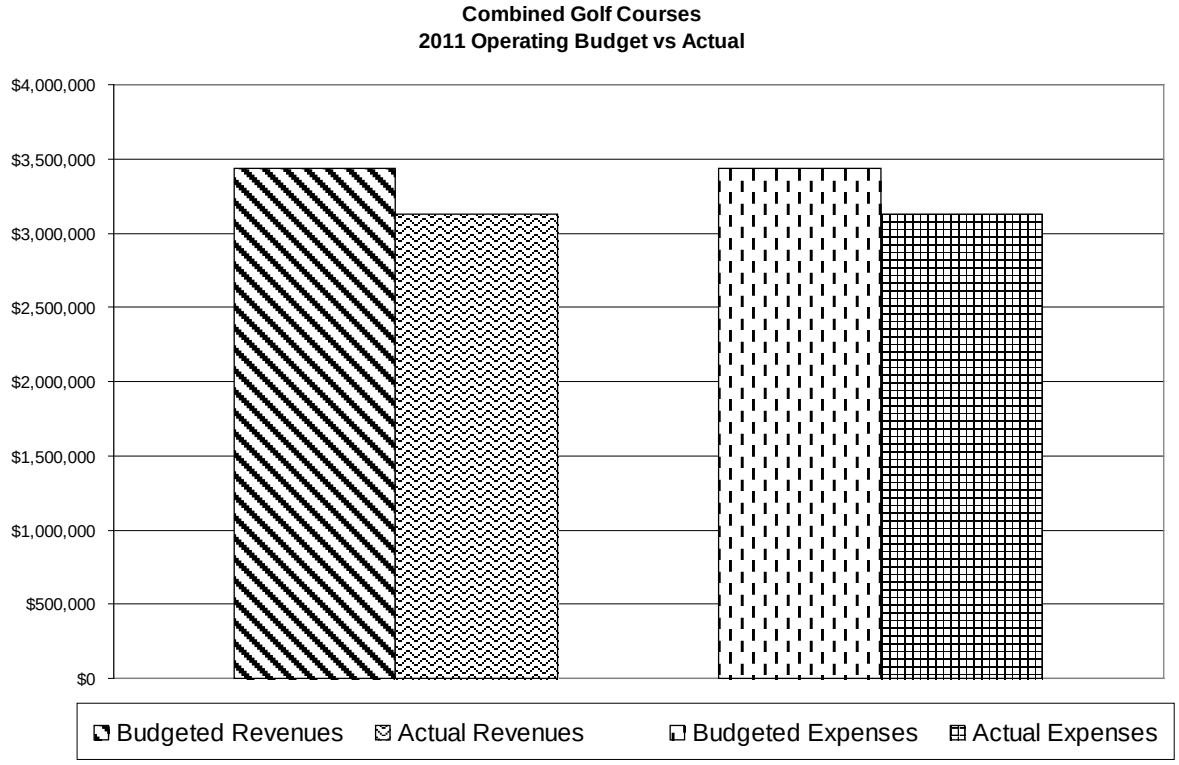


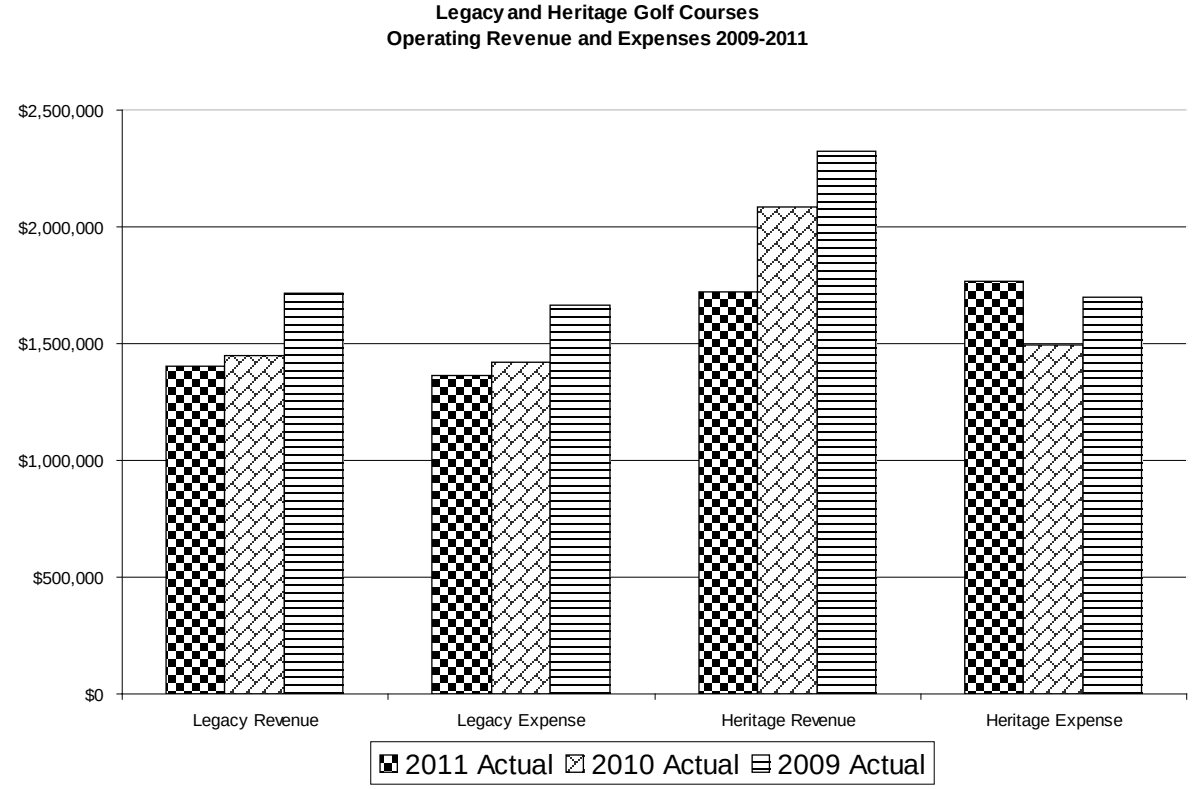
The Water Fund revenue variance between years is due to the effect of climatic variations on water consumption as well as changes in billing rates.



Golf Course Enterprise (Legacy and Heritage Golf Courses)

This enterprise reflects the operations of the City's two municipal golf courses.

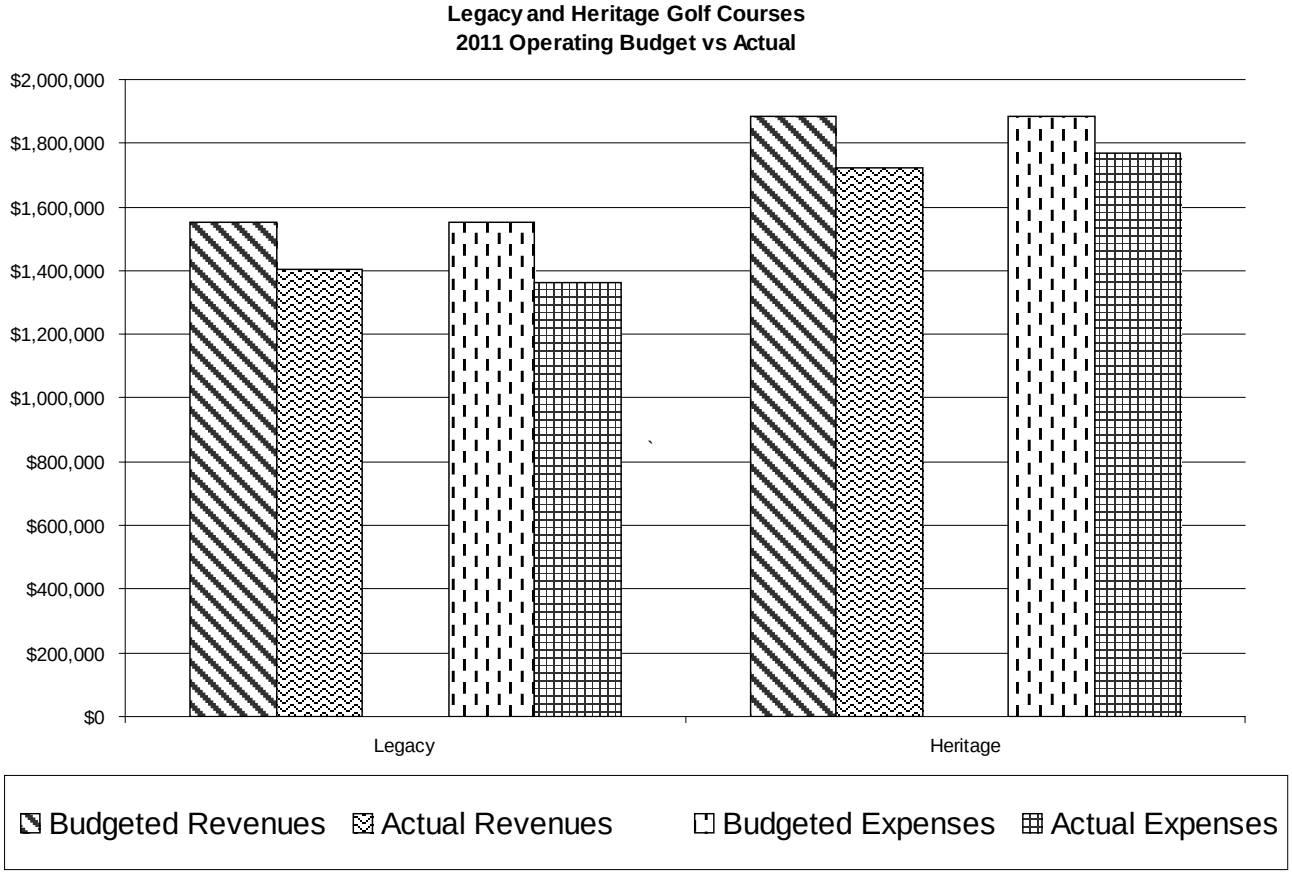




Capital lease financing in 2009 accounts for the variances between years in revenues and expenditures for both courses.

Heritage revenue is down from prior years due to a significant decrease in budgeted transfers.

The following graphs represent the information for each of the golf courses.



This financial report supports City Council's Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services by communicating timely information on the results of City operations and to assist with critical decision making.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments
- Financial Statements
- Shopping Center Report

WESTMINSTER

Agenda Item 8 B

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Quarterly Insurance Claims Report – October through December 2011

Prepared By: Martee Erichson, Risk Manager

Recommended City Council Action

Accept the Fourth Quarter 2011 Insurance Claims Report.

Summary Statement

- The attached report provides detailed information on each insurance claim made to the City including the City's claim number, date of loss, claimant's name and address, a summary of the claim, and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office on litigated claims to make sure that the interests of both the City and the citizen are addressed in each instance. The listing of the claims in this report is provided in accordance with Westminster Municipal Code 1-30-3.

- In accordance with Code provisions, the Risk Manager, acting as the City Manager's designee, has the authority to settle claims of less than $30,000. However, under the City's contract with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), CIRSA acts as the City's claims adjustor and settlement of claims proceed with the concurrence of both CIRSA and the Risk Manager. The City retains the authority to reject any settlement recommended by CIRSA, but does so at the risk of waiving its insurance coverage for such claims.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 4th quarter of 2011 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow-up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the fourth quarter of 2011, Staff has noted the following summary information:

- Eight of the 11 claims reported in the fourth quarter of 2011 are closed at this time.
- Total claims for the quarter and year-to-date are broken down by department as follows:

	4th Qtr 2011			YTD
Department	**Total Claims**	**Open**	**Closed**	**Total**
Fire	1	0	1	1
Police (PD)	2	1	1	9
Parks, Recreation and Libraries (PRL)	3	1	2	12
Public Works and Utilities (PWU) – Streets Maintenance	2	1	1	6
Public Works and Utilities (PWU) – Utility Operations	3	0	3	9
Public Works and Utilities (PWU) – Water Infrastructure	0	0	0	4
TOTAL	11	3	8	41

Risk Management supports Council's Strategic Plan goals of a Financially Sustainable City Government and Safe and Secure Community by working to mitigate the cost of claims to the City and maintaining a loss control program that strives to keep City streets and facilities safe for the general public.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Quarterly Insurance Report

Quarterly Insurance Report
October - December 2011

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2011-300	10/6/2011	PRL	Andrew Gilmer	801 Beech St., Golden CO 80401-4107	A tree at Heritage Golf Course blew over in strong winds and damaged the claimant's vehicle.	$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2011-301	10/6/2011	PRL	Samantha Kiesel	8636 Yukon St. Apt #106, Arvada CO 80005	Park Services employee driving a city vehicle rear ended the claimant's vehicle.	$ 4,980.32	Closed	Claim paid and closed.
2011-334	10/27/2011	Fire	Lyla Ford	336 NW 189th St., Shoreline WA 98177	Fire Department broke a window to gain entrance to the claimant's daughter's home to perform a welfare check.	$ 103.00	Closed	Claim denied based on Colorado Governmental Immunity, however, claimant was paid under the City's "good neighbor" settlement program.
2011-344	11/1/2011	PWU - Util	Pam Barney	11557 Chase Way, Westminster CO 80020	Claimant alleges her sidewalk and porch were damaged due to work performed during installation of a new water main.	$ -	Closed	Claim denied based on investigation found no evidence of negligence on the part of the City.
2011-321	11/2/2011	PWU - Streets	Howard Rose	P.O. Box 17750, Golden CO 80402	Streets Maintenance employee driving a city vehicle rear ended the claimant's vehicle.	$ 2,173.00	Closed	Claim paid and closed.
2011-324	11/2/2011	PWU - Streets	Roy Abeyta	9124 Utica Ct., Westminster CO 80030	Street Maintenance employee driving a city snow plow hit claimant's vehicle as claimant was trying to pass the snow plow.	$ -	Open	CIRSA investigating
2011-342	11/23/2011	PD	Gene Veyhle	5731 W 92nd Ave #150, Westminster CO 80031	Police Officer placed claimant's phone on top of his patrol vehicle during arrest and forgot about the phone. When the Officer drove off, the phone fell and was damaged.	$ -	Open	CIRSA investigating

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2011-370	12/19/2011	PWU - Util	Ron Hellbusch	13891 Fairfax St., Thornton CO 80602	Claimant alleges his vehicle was damaged when his son drove it over asphalt that was crumbling around a man hole cover.	$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2011-376	12/22/2011	PRL	Larry Malin	4901 W. 93rd Ave #2124, Westminster CO 80031	Park Services employee was plowing the sidewalk around the Municipal Court building, when the plow truck slid off the sidewalk and into the claimant's parked vehicle causing damage.	$ -	Open	CIRSA investigating
CLAIM SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 4th QUARTER 2011:								
2011-297	6/22/2011	PD	John Lear	11791 Gray Way, Westminster CO 80020	Claimant alleges advice given by a Westminster Police Officer to another individual, with whom the claimant has a personal argument, caused the claimant legal defense costs.	$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2011-291	9/23/2011	PWU - Util	Rebecca McNab	10046 Julian Ct., Westminster CO 80031	Utility Operations employee driving a city vehicle rear ended the claimant's vehicle.	$ 2,646.23	Closed	Claim paid and closed
					TOTAL	**$ 9,902.55**		

WESTMINSTER

Agenda Item 8 C

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: 2012 Deicing Salt Purchase

Prepared By: Dave Cantu, Street Operations Manager

Recommended City Council Action

Authorize the purchase of rock salt from the two low bid vendors, Independent Salt Company and Envirotech Services, Inc. in an amount not to exceed $300,000.

Summary Statement

- Deicing salt is purchased to ensure safer winter storm travel for the motoring public.
- 2012 bids for rock salt were obtained through the Multiple Assembly of Procurement Officials (MAPO). Independent Salt Company is the low MAPO bidder for 2012 at $65.62/ton.
- The 2012 State of Colorado low bid for deicing salt, (ice slicer) with Envirotech Services, Inc has been quoted at $93.39 per ton.
- Staff estimates that 3,700 tons of deicing salt will be utilized during 2012.
  Envirotech Services, Inc. – approximately 1,850 tons
  Independent Salt Company – approximately 1,937 tons
- The $300,000 authorization requested will allow for the purchase of 3,787 tons of deicing salt. If the City experiences significant snow and ice conditions and these materials are used up, Staff will need to request additional spending authority.
- Splitting this purchase between the two vendors has proven to expand available resources and when delivery can be synchronized closely, the two products are mixed at an approximate ratio of 50/50 to decrease the overall price per ton ($79.50).
- Adequate funds were budgeted and are available for this purchase.

Expenditure Required: Not to exceed $300,000

Source of Funds: General Fund – Public Works and Utilities Street Operations Budget

Policy Issue

Should City Council authorize the purchase of deicing salt from the two available vendors, Independent Salt Company and Envirotech Services, Inc.?

Alternatives

One alternative is to not purchase deicing materials, which is not recommended as keeping the streets safe for the motoring public during the winter months is of the highest priority.

A second alternative is to re-bid the salt purchase. This alternative is not recommended since Staff believes the unit cost of salt and the vendors will remain the same. Locking into one vendor increases the chance for non-delivery and running out of the product.

Background Information

The City has successfully purchased salt through the MAPO and CDOT bids in past years. These expenditures are within the approved 2012 Public Works and Utilities Street Operations Division budgeted amount for these items. Envirotech pricing increased 4.35% over 2011 pricing, and Independent Salt prices increased 4.75% over 2011 prices. The increases are due to increased freight and fuel costs.

Once the entire 2012 budgeted allotment of $300,000 for deicing salt is depleted, depending on the severity of the remaining winter season, additional funding in 2012 may be required. At this time, Westminster's stockpile is at 90% capacity. Staff will make a recommendation to City Council if such a situation should arise.

This purchase helps achieve City Council's strategic plan goal of a "Safe and Secure" community by meeting the objective of safe citizen travel throughout the City.

Respectfully submitted,

J. Brent McFall
City Manager

WESTMINSTER

Agenda Item 8 D

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: 2012 Asphalt and Crackseal Materials Purchase

Prepared By: Dave Cantu, Street Operations Manager

Recommended City Council Action

Authorize the purchase of asphalt and crackseal materials from the low price MAPO (Multiple Assembly of Procurement Officials) bidder each quarter during 2012 in an amount not to exceed $480,000 for asphalt and $80,000 for crackseal materials.

Summary Statement

- City Council approved adequate funds for these expenses in the 2012 Department of Public Works & Utilities, Street Operations Division, and Utilities' Field Operations Division budgets.

- The vendors bidding asphalt on the 2012 MAPO bid are; Brannan Companies (first quarter low bidder), Premier Paving, Aggregate Industries, Asphalt Specialties, ADC Construction, and Colorado Asphalt Services, Inc. The crackseal bidders are Crafco, Inc. (first quarter low bidder), Maxwell Products, and Denver Industrial, for crackseal materials at the unit prices indicated on the bid tabulation on an as-needed basis.

- Hot mix asphalt material is used for all types of street maintenance repairs including; pothole patching, surface replacement, and preparation of streets earmarked for 2012 and 2013 improvements (Street Operations Budget), also included is water break excavation patching and in-house trench patching after water main replacements (Utilities Field Operations Budget).

- Rubberized cracksealing material is used to seal moisture from asphalt pavements citywide (Street Operations Budget).

- The MAPO bid allows for quarterly price adjustment pending substantial and agreed upon justification. Council's approval to purchase these materials from the lowest price vendor per quarter should result in a cost savings opportunity for the City.

Expenditure Required: $560,000

Source of Funds: $510,000 - General Fund, Street Operations Division Budget
$50,000 - Utility Fund, Utilities Field Operations Division Budget

Policy Issue

Should City Council authorize the purchase of asphalt and crackseal materials from the low price vendor per quarter utilizing the 2012 MAPO bids?

Alternative

Council could choose to execute a bid for just the City of Westminster's materials requirements, rather than join the MAPO bid. This alternative is not recommended because the smaller quantities would increase the costs.

Background Information

City Crews will need an estimated 14,000 tons of hot mix asphalt material (12,624 tons for Street Division related work and 1,315 tons for Utilities related work), and 160,000 lbs. of rubberized crackseal material to be purchased on an as-needed basis throughout 2012.

The results of the 2012 MAPO bidding were as follows:

2012 MAPO Hot Mix Asphalt Bids

	Brannan Companies	Premier Paving	Aggregate Industries	Asphalt Specialties Company	ADC Construction	Colorado Asphalt Services, Inc.
Grading "SX" ½" material per ton	$38.02	$38.10	$40.50	$46.00	$46.00	$46.50

Brannan Companies is the 2012 low bidder for hot mix asphalt material and Staff has confirmed that they will guarantee pricing through first quarter 2012. The MAPO bid allows for quarterly price adjustments pending substantial and agreed upon justification. Should one of the MAPO bidders offer lower pricing during a particular quarter in 2012, Staff will purchase asphalt from the vendor with lowest pricing. In 2011 switching to the lowest price vendor during the third and fourth quarters resulted in a $10,372 savings to the City. All vendors' plants are able to supply mix per City specifications. Street Operations Division Staff successfully purchased hot mix asphalt material from all of the vendor's plants in the Denver metro area in past years.

2012 MAPO Rubberized Crackseal Material Bid

	Crafco, Inc.	Maxwell Products	Denver Industrial
Cost per pound – delivered	$0.43	$0.52	$0.65

Crafco, Inc. is the 2012 MAPO low bidder for crackseal material. Staff has confirmed that they will guarantee pricing through first quarter 2012. The MAPO bid allows for quarterly price adjustments pending substantial and agreed upon justification. Should one of the MAPO bidders offer lower pricing during a particular quarter in 2012, Staff will purchase crackseal material from the vendor with lowest pricing. City street maintenance crews have utilized the crackseal material specified in the bid successfully over the past twelve years on roadways throughout the city.

The 2012 asphalt materials bid reflects a 4.89% increase above 2011 fourth quarter pricing and the 2012 crackseal materials bid reflects a 14.1% increase above 2011 pricing. Increases are due to the continued volatility in oil and fuel costs.

Purchasing these materials through the MAPO bid process and tracking costs quarterly helps achieve City Council's goals of "Financially Sound City Government" and "Vibrant Neighborhoods and Commercial Areas" by meeting the following objectives; well maintained City infrastructure and facilities and maintained and improved neighborhood infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager

WESTMINSTER

Agenda Item 8 E

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Open Space Purchase re 5.12-acre Westminster Hills Elementary School Property located at 4105 West 80th Avenue

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Authorize the purchase of the approximately 5.12-acre Westminster Hills Elementary School property located at 4105 West 80th Avenue for open space for $730,000 plus closing costs not to exceed $5,000, and authorize the City Manager to execute all documents required to close on the purchase of the property.

Summary Statement

- Staff has negotiated the purchase of approximately 5.12 acres for a purchase price of $730,000 or ($3.35 per square foot).
- Staff has been awarded an open space acquisition grant from Adams County in the amount of $408,564 or 56% of the purchase price.
- The acquisition of this property will be contingent upon the removal of the school building and other improvements on the property and completing any needed environmental remediation.
- Acquiring this property will provide much needed open space in South Westminster. The site includes over 1,100 feet of frontage along the Allen Ditch, abuts US 36, and is adjacent to the 2.4-acre Westminster Hills Park. A perimeter trail could be built around the combined park/open space area which could eventually become part of the planned US 36 bike trail extending from 80th Avenue north to Boulder.

Expenditure Required: $321,436 plus closing costs not to exceed $5,000
$408,564 grant from Adams County to be reimbursed after closing

Source of Funds: Cash-In-Lieu of School Site Dedication Fund- $66,436
Open Space Bond Funds- $255,000

Policy Issue

Does City Council approve the use of the open space funds and cash-in-lieu of school site dedication funds for the purchase of the 5.12-acre parcel located at 4105 West 80th Avenue for open space?

Alternative

City Council could choose not to authorize the acquisition or the expenditure at this time. Staff does not recommend this option because the seller is currently motivated to work with the City and the City has received a grant award from Adams County towards the purchase of this property.

Background Information

Acquiring the Westminster Hills Elementary School site will provide much needed open space in South Westminster. The 5.12-acre site has about 1,130 feet of linear frontage along the tree lined Allen Ditch, 540 feet along US 36, and 550 feet along the Westminster Hills Park. The school district has agreed to demolish the school building and all improvements on the site and revegetate it with native grasses prior to the sale of the property to the City. This acquisition will help to offset the loss of a portion of City owned open space due to the reconstruction of the 80th Avenue/US 36 bridge. The sound wall next to US 36 could be removed and replaced with a much more attractive landscaped berm extending across both the school site and the park. This would provide a much more inviting green edge along US 36.

A perimeter trail could be built around the combined park/open space. The trail would be approximately ½ mile in length. A portion of this trail could become a part of the planned US 36 trail extending from 80th Avenue north to Boulder. This portion of the US 36 trail will be constructed as a part of the planned US 36 improvements to be built between 2012-1015. This trail would no doubt be very popular since there are very few trails in South Westminster. Staff proposes keeping a portion of the current parking lot to provide parking for the open space and park as there is currently no separate parking lot for the park. The school has allowed the public to use the school parking lot to access the City park.

Staff is currently negotiating the timeframe of the purchase but expects the acquisition to occur in 2012. The appraisal valued the property at $730,000; however this number includes $211,000 in water and sewer tap credit from the existing building. Staff will attempt to sell these tap credits to a developer simultaneously with the purchase so that the open space fund does not have to spend any money for this portion of the acquisition price. The other source of funds is $66,436 that is currently in the cash-in-lieu of school site dedication fund for School District 50. Staff proposes to use these funds towards this purchase. Combining the $66,436 with the $211,000 in tap fee credit, this leaves only $87,564 that would come from the open space fund to purchase over 5 acres of open space.

If the City purchases this property for open space, it will be maintained in a natural condition and will be open to the public for passive use.

This acquisition fits with Council's goal of Beautiful and Environmentally Sensitive City by providing open space and trails to residents in South Westminster.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Vicinity Map

Westminster Hills Elementary School
Open Space Acquisition
Turnpike Dr
Oakwood Dr
Baylor Ln
Auburn Ln
Alternative Proposed Regional US36 Trail Alignment
EB Hwy 36
Current Proposed Regional US36 Trail Alignment
La Place Ct
5.12 Acres
Proposed Minor Trail
Building To Be Demolished Prior To Acquisition
WB Hwy 36
Raleigh St
Westminster Hills Park
Stuart St
Raleigh Pl
Retain Parking Lot
80th Ave
Turnpike Dr
Raleigh St
Quitman St
Bradburn Blvd
Proposed Acquisition
Open Space
Parks
Current Proposed Trails
Existing Trails
Site Proposed Trails
Streams
0 75 150 300 Feet
N

WESTMINSTER

Agenda Item 8 F

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Federal Hazard Elimination Funding Application

Prepared By: Michael Normandin, Transportation Engineer

Recommended City Council Action

Authorize the submission of an application to the Colorado Department of Transportation for Federal Hazard Elimination Program funds to pay for the installation of a traffic signal on 112th Avenue at the main entrance to Front Range Community College.

Summary Statement

- The Colorado Department of Transportation (CDOT) is soliciting applications from local governmental agencies for the 2013-2015 funding cycle for the Federal Hazard Elimination Program (FHEP). The program is intended to improve the safety characteristics at high accident locations. The FHEP is 90% federally funded and managed through CDOT.

- Staff is proposing a project to install a traffic signal on 112th Avenue at the entrance to Front Range Community College (FRCC). The accident history at this intersection over the past five years indicates that there are types of accidents that could be mitigated by the installation of a traffic signal. The estimated cost for the proposed traffic signal is $275,000. Front Range Community College officials have recently stated that the college is willing to provide the required 10% local match required for the federal funds.

- The applications are due to CDOT no later than January 31, 2012. Applicants will be notified of approval or denial by the end of March 2012.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue

Should the City of Westminster pursue federal funding for the installation of a traffic signal on 112th Avenue at the entrance to Front Range Community College?

Alternative

Do not submit a project application to CDOT for Federal Hazard Elimination Program funding. Staff does not recommend this alternative. The FHEP is 90% federally funded, and Front Range Community College officials have indicated that they are willing to provide the required 10% local match. Staff supports the installation of a traffic signal at this location.

Background Information

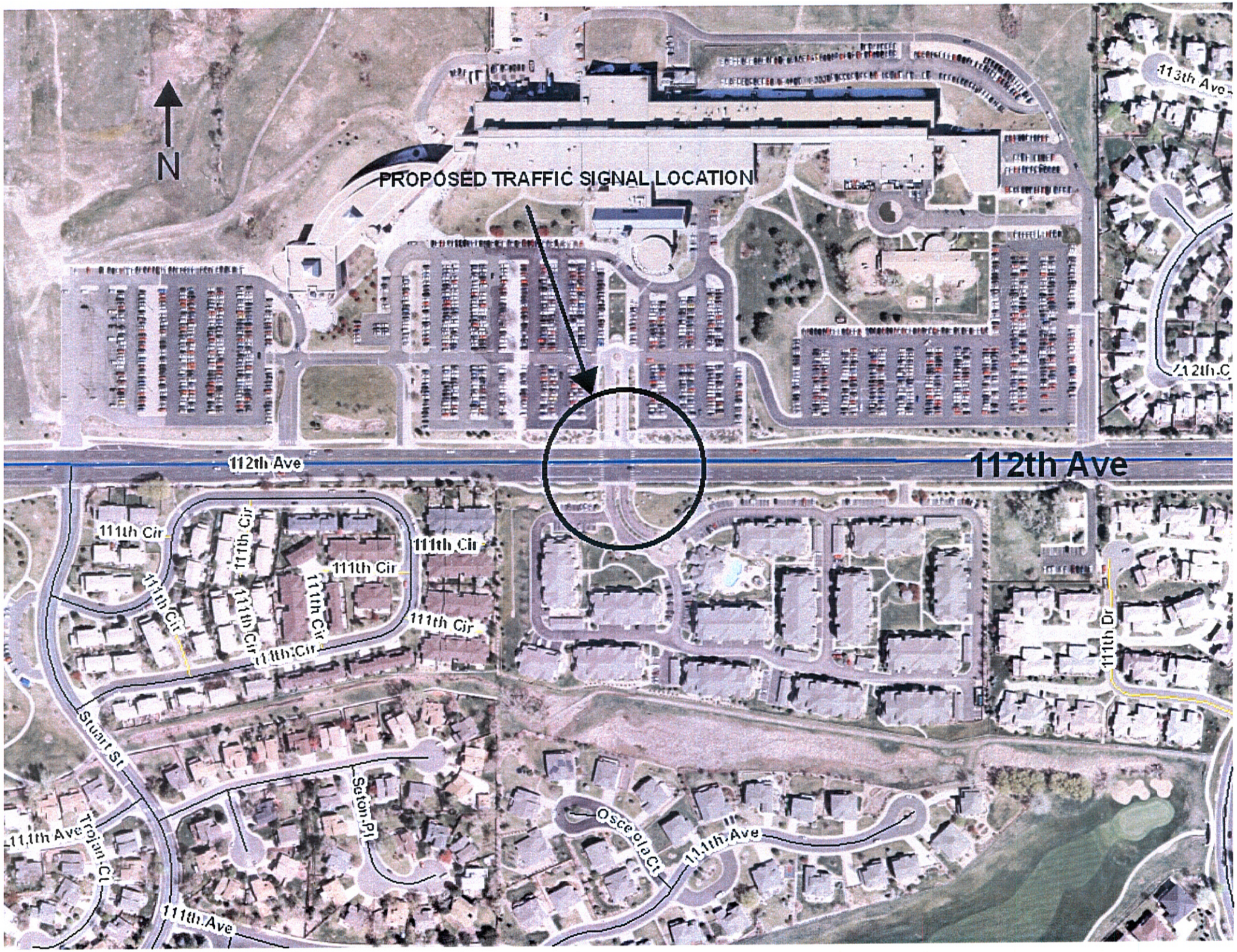
The Federal Hazard Elimination Program was established to provide funds for projects that improve the safety of high accident locations. The proposed FHEP project application consists of the installation of a new traffic signal on 112th Avenue at the main entrance to Front Range Community College (see attached map). This intersection meets the City's warrants for signalization, particularly those warrants pertaining to the frequency of accidents. However, staff has never requested City Capital Improvement Project funding for such a signal due to the City's policy of not participating in the cost of the installation of a signal at a private driveway. Over the past few years, college officials have hinted to City staff that the FRCC might entirely fund the installation of a new signal at this location. But, that effort by the college has been unfulfilled due to its budgetary constraints. City staff is very willing to assist the FRCC by making the requested application on their behalf. The City would own and maintain the signal into the future.

This authorization for grant submittals meets Council's Strategic Plan goals of Safe and Secure Community, Financially Sustainable City Government and Vibrant Neighborhoods In One Livable Community by providing a beneficial safety device for vehicles and pedestrians through the use of outside funding sources.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Location Map


N
PROPOSED TRAFFIC SIGNAL LOCATION
112th Ave
112th Ave
113th Ave
111th Cir
111th Cir
111th Cir
111th Cir
111th Cir
111th Cir
111th Cir
111th Cir
111th Dr
Stuart St
Seton Pl
Osceola Ct
111th Ave
111th Ave
Trojan Ct
111th Ave

WESTMINSTER

Agenda Item 8 G

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Spring 2012 Adams County Open Space Grant Applications

Prepared By: John Burke, Senior Engineer
Dave Loseman, Senior Projects Engineer
Heather Cronenberg, Open Space Coordinator

Recommended City Council Action
Authorize the Department of Community Development to pursue three grants from the Adams County Open Space grant program during the 2012 spring cycle for the acquisition of the McKay Overlook parcels located at 144th Avenue and Zuni Street for open space, for the development of a portion of Little Dry Creek Project located between Federal and Lowell Boulevards, and for the construction of a trail along Federal Boulevard from 92nd Avenue to 97th Avenue and from 116th Avenue to 119th Avenue.

Summary Statement

- The Department of Community Development wishes to pursue a grant from the Adams County Open Space grant program for funding assistance with the acquisition of approximately 6.953 acres of the McKay Overlook property from the Mariners Strategic Fund II, LLC , which is adjacent to the McKay Lake Open Space area south of 144th Avenue and east of Zuni Street. The total purchase price for 6.953 acres is $630,000 or $2.08 per square foot based on an appraisal commissioned by the City. Staff recommends requesting up to $441,000 for the acquisition which represents a 70% request. Acquisition would allow the City to protect a portion of the land surrounding the McKay Lake open space.
- The Department of Community Development would also like to pursue a grant from the Adams County Open Space grant program for assistance with the construction of Little Dry Creek Park and Open Space located between Lowell and Federal Boulevards. The first phase of the project will relocate and stabilize Little Dry Creek and construct fishing pond with accessible piers. The total cost for the Open Space portion of this project is estimated to be $4,405,651. Staff recommends requesting up to $1,900,000 for these improvements. Staff will request assistance with this phase of the project while additional improvements planned on the site will be completed with future funding.
- Lastly, the Department of Community Development would also like to pursue a grant from the Adams County Open Space grant program for assistance with the construction of the Federal Boulevard Trail Project. This project will construct a sidewalk on the west side of Federal Boulevard from 92rd Avenue to 97th Avenue and from 116th Avenue to approximately 119th Avenue. Construction of this sidewalk that will serve as a north/south connection to the City's trail system and will create a continuous sidewalk on the west side of Federal Boulevard between 88th Avenue and approximately 119th Avenue. The total project construction cost is estimated to be $175,000. Staff recommends requesting up to $87,500 from Adams County. A future project in 2014 to improve the intersection at 120th Avenue and Federal Parkway will construct the sidewalk from 119th Avenue up to 120th Avenue and create the connection to Big Dry Creek Trail.

Expenditure Required:

Acquisition of the McKay Overlook parcels:
Matching funds in the amount of $189,000.
Little Dry Creek Park Project:
Matching funds in the amount of $2,505,651.
Federal Boulevard Trail Project:
Matching funds in the amount of $87,500.

Source of Funds:

Open Space Bond Funds
Parks, Open Space, and Trails Funds
Stormwater Utility Fund
Adams County General Fund
Urban Drainage and Flood Control District
General Capital Improvement Fund - Federal Blvd Trail Project

Policy Issue

Should the City attempt to seek assistance with the acquisition of the McKay Overlook parcels, funds to construct improvements at Little Dry Creek, and funds to construct a sidewalk along Federal Boulevard from the Adams County Open Space Grant Program?

Alternative

Council could choose not to pursue additional funding for the McKay acquisition, Little Dry Creek improvements or the sidewalk along Federal Boulevard. This is not recommended because the City does not have the funds to purchase the McKay Overlook parcels, construct all of the first phase of Little Dry Creek improvements nor construct the entire trail along Federal Boulevard without funding assistance from the Adams County Open Space program.

Background Information

The City has been successful in applying for and receiving grants from a variety of sources in the past. In recent years, the City has received grant money from the Adams County Open Space program for park and trail development projects as well as open space acquisitions. The City has developed a strong partnership with Adams County in its successful use of these grant funds. Since 2003, the City has been awarded more than $5.2 million for open space acquisitions from Adams County.

The Department of Community Development wishes to pursue a grant from the Adams County Open Space grant program for funding assistance with the acquisition of approximately 6.953 acres from the McKay Overlook LLC and Mariners Strategic Fund II, LLC, which is adjacent to the McKay Lake Open Space area south of 144th Avenue and east of Zuni Street. Requesting assistance with the acquisition of the McKay Overlook parcels will allow the City to purchase these properties and to further protect the area around the McKay Lake Open Space. The property is going through a foreclosure action and this is an excellent opportunity for the City to negotiate to purchase this property. The property is currently located in unincorporated Adams County. The City's Open Space Advisory Board has been interested in purchasing the land surrounding the McKay Lake Open Space as a buffer against development. There are currently structures on the property along with a natural gas well. The natural gas well recently leaked and contaminated the property it is located on along with City open space property to the east. If the City successfully purchases the property where the natural gas well sits, staff believes we would be in a better position to monitor the cleanup process.

The McKay Overlook property is located north of McKay Lake and due east of the 2.92-acre Barnett open space parcel, which was acquired by the City in 2008. The McKay Overlook property has approximately 530 linear feet of frontage along 144th Avenue. If acquired, the City would have a continuous open space on the south side of 144th Avenue between Zuni Street and Pecos Street, a distance of 2500 linear feet. This acquisition would provide a significant buffer between Broomfield (west of Zuni) and Westminster. The acquisition would also preserve views from 144th Avenue to McKay Lake and provide a wildlife habitat. A future trail could also be built through the area. The acquisition would increase the size of McKay Lake Open Space from 125.8 acres to 132.8 acres.

The total purchase price for 6.953 acres is $630,000 or $2.08 per square foot based on an appraisal commissioned by the City. Staff recommends requesting up to $441,000 for the acquisition, which represents a 70% request. Staff is currently negotiating the timeframe of the purchase but expects the acquisition to occur in 2012. The acquisition will be contingent on receiving Adams County funds. Staff will bring a separate request to Council to consider approval of the acquisition of this property after a response is received from the Adams County Open Space Advisory Board regarding the grant request that should occur by May, 2012.

The City would also like to request assistance with the construction of the 35-acre Little Dry Creek Drainage, Park and Open Space project between Lowell and Federal Boulevards. This park will create a unique outdoor recreation opportunity in an economically challenged area that does not have access to regional park amenities. The proposed RTD FasTracks "Westminster Station" will be located at the center of this site that will draw visitors regionally to this location. The main focus of the project is relocating Little Dry Creek from the existing highly eroded and inaccessible banks and replace it with a natural open channel with moderate slopes, boulder drop structures and riparian areas.

The Little Dry Creek project is currently divided into three general planning areas. The western third of the site is the "recreation district" where the playground, xeriscape and amphitheater could be located. The middle third is the "transit district" as it has direct access to the commuter rail station. The lower third is the "open space district" that could include the fishing pond, open space, wetland plantings and environmental pavilions. Some of the specific elements that could be included in the full build out of the 35-acre park include regional, secondary and tertiary (crusher fine) trail systems; benches; various pedestrian bridges; open space preservation; wetland and wildlife habitat; environmental education pavilions; xeriscape demonstration site; educational signage; water quality facilities; amphitheatre; playground with rock climbing wall etc.

The open space area near Federal Boulevard will have a fishing pond as its main attraction, with a fishing pier and a handicapped accessible trail surrounding the pond. This along with the creek relocation and stabilization is considered part of the Phase I improvements of the project that the City would like to request assistance from the Adams County Open Space grant program. The total cost for the Open Space part of the project is estimated to be $4,405,651. Staff recommends requesting up to $1,900,000 from Adams County for these improvements. This collaborative project is being funded by the City of Westminster, Adams County and the Urban Drainage and Flood Control District. Construction of Phase I of the project is scheduled to begin construction in the winter of 2012, with completion by 2015.

Lastly, the City would like to request assistance with construction of a sidewalk to fill in missing links along the west side of Federal Boulevard. These missing links will be constructed from 92rd Avenue to approximately 97th Avenue and from approximately 116th Avenue to approximately 119th Avenue. Once constructed, this sidewalk will act as a north/south connection to the City's trail system and will create a continuous sidewalk on the west side of Federal Boulevard between 88th Avenue and 119th Avenue. This will allow users to access the City's trail system at the Farmers' High Line Canal Trail and eventually the Big Dry Creek Trail. A future 2014 project to reconstruct the intersection at 120th Avenue and Federal Parkway will construct the sidewalk from 119th Avenue up to 120th Avenue and create the connection to Big Dry Creek Trail. The total construction cost for the trail project is estimated at $175,000. Staff recommends requesting 50% of the cost or $87,500 from Adams County. The trail will consist of a detached 8-foot wide walk.

These grant requests supports the City's Strategic Plan Goals of "Financially Sustainable City Government" and "Beautiful City" by increasing revenues that support defined City projects and by providing the City with increased open space and trails.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Site Map- McKay Overlook parcels
- Site Map- Little Dry Creek Park and Open Space – Master Plan
- Site Map – Little Dry Creek Park and Open Space – Phase One Improvements
- Site Map- Federal Boulevard Trail Project

Adams County Open Space Gran Application
McKay Overlook Property Acquisition

Master Plan

Little Dry Creek Park

Westminster, Colorado

JANUARY 9, 2012

WESTMINSTER

MULLER

DESIGN STUDIOS WEST
Planning & Landscape Architecture

OPEN SPACE BOUNDARY

CREEK CHANNEL / POND

NATIVE SEED

Phase One Improvements

Little Dry Creek Park

Westminster, Colorado

JANUARY 9, 2012

WESTMINSTER

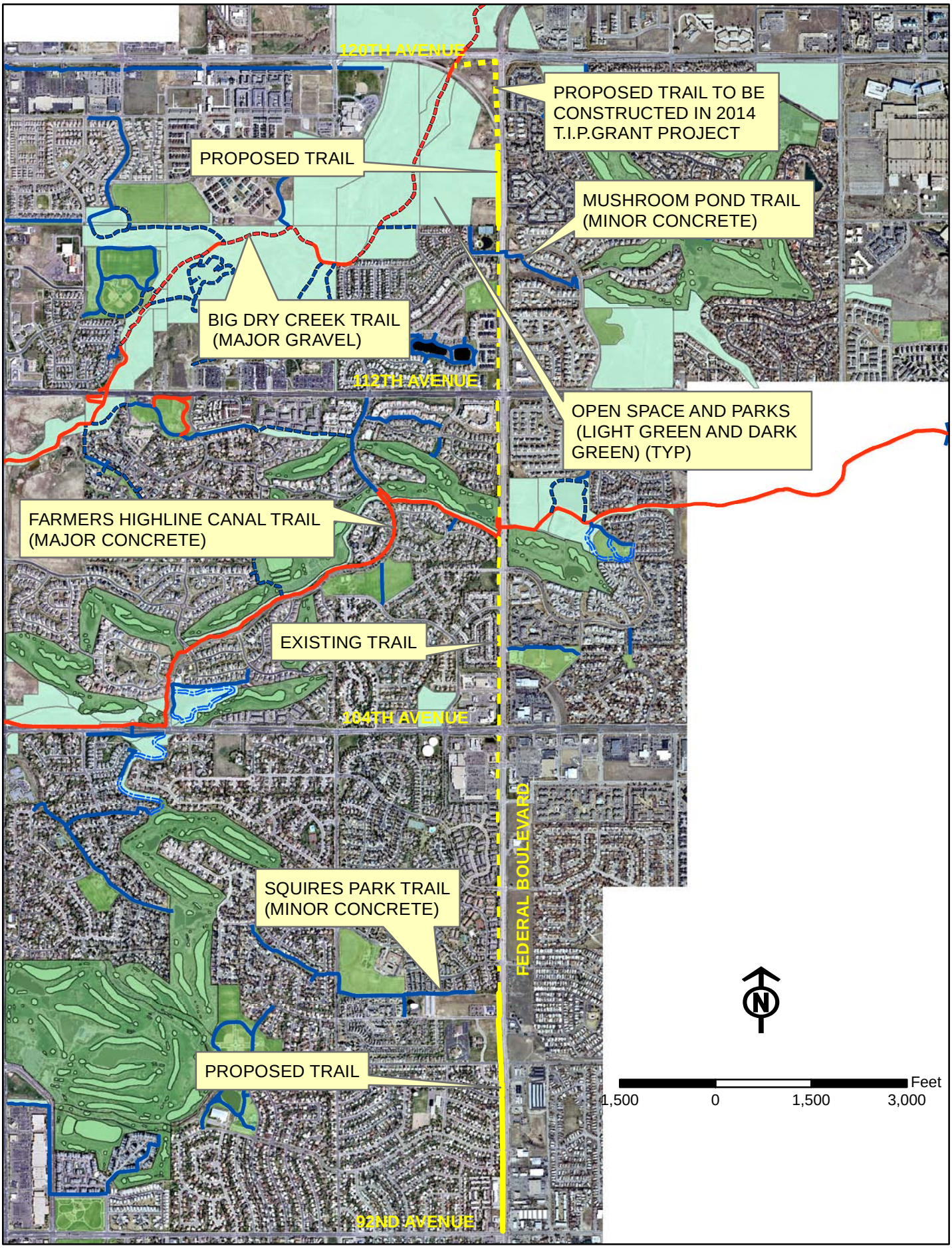
URBAN DRAINAGE AND FLOOD CONTROL DISTRICT

ADAMS COUNTY STATE OF COLORADO

MULLER

DESIGN STUDIOS WEST

Planning & Landscape Architecture



ADAMS COUNTY OPEN SPACE GRANT APPLICATION
FEDERAL TRAIL

WESTMINSTER

Agenda Item 8 H

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Second Reading of Councillor's Bill No. 1 re Right-of-Way Vacations within Semper Gardens Subdivision

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Pass Councillor's Bill No. 1 on second reading, vacating rights-of-way within Semper Gardens Subdivision.

Summary Statement

- City Council action is requested to pass on second reading the attached Councillor's Bill to vacate rights-of-way within Semper Gardens Subdivision as shown on the attached map. State statutes require that the vacation of all rights-of-way be approved by the City Council.
- The property owners, R. Dean Hawn Interests, Ltd., are requesting the right-of-way vacation since they own all of the property surrounding the subject rights-of-way and those rights-of-way do not currently serve a public purpose. In addition, some of the rights-of-way proposed to be vacated cross City-owned open space property, and this vacation will unify this property into one parcel that is not bisected by unnecessary public rights-of-way.
- Portions of the proposed vacated rights-of-way will need to be retained as utility easements to allow the continued use by private utility companies. Furthermore, portions of the existing rights-of-way needed for Westminster Boulevard will not be vacated.
- A legal description of the right-of-way to be vacated is included in Exhibit A.
- City Staff has determined that the subject right-of-way is no longer needed by the City except as noted above.
- Once the R. Dean Hawn Interests property is developed in the future, sufficient rights-of-way for public streets needed to serve the site will be required to be dedicated to the City.
- This Councillor's Bill was passed on first reading on January 9, 2012.

Expenditure Required: $0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachments
- Councillor's Bill
- Exhibit "A" Legal Description
- Exhibit "B"Map

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **1**

SERIES OF 2012 INTRODUCED BY COUNCILLORS
Winter - Lindsey

A BILL
FOR AN ORDINANCE VACATING STREET RIGHTS-OF-WAY WITHIN SEMPER GARDENS SUBDIVISIONAND RESERVING WITHIN A PORTION THEREOF A PUBLIC EASEMENT TO ACCOMMODATE EXISTING FRANCHISED OR PERMITTED UTILITIES

WHEREAS, R. Dean Hawn Interests, Ltd., the owner of property located within portions of Semper Gardens Subdivision, has requested the City vacate rights-of-way which unnecessarily bisect their ownership; and

WHEREAS, the City of Westminster, the owner of property located within portions of Semper Gardens Subdivision, has requested the vacation of rights-of-way which unnecessarily bisect its ownership; and

WHEREAS, certain electric utility lines and an existing telecommunications line exist as of the date of this ordinance in a portion of the street rights-of-way that are being vacated herein and the City desires to reserve a City-owned easement for the continued use of those existing utilities, which by franchise, license or permit it has allowed in the right-of-way; and

WHEREAS, no municipal street exists or has ever been constructed in said rights-of-way; and

WHEREAS, the City Council finds that all requirements for roadway vacation contained in the Westminster Municipal Code and applicable state statutes have been met.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. City Council determines that no present or future public access need exists for the area proposed for vacation.

Section 2. The areas of right-of-way described in Exhibit A and depicted in Exhibit B, attached hereto and incorporated herein by this reference, are hereby vacated, except as described in Section 3. below.

Section 3. Those portions of right-of-way adjacent to lots 36, 37, 45 and 52 located within the right-of-way for the existing Westminster Boulevard are hereby reserved as right-of-way for Westminster Boulevard.

Section 4. The City reserves unto itself certain public utility easements for the existing utility lines that are currently permitted by the City, and generally described as follows:

A. A twenty foot wide easement for electric utility lines in a location containing and centered on the existing electric utility poles running in a generally north-south direction abutting lots 36, 37, 44, and 45, south of Westminster Boulevard and north of the U.S. Highway 36 right-of-way, and

B. A twenty foot wide utility easement for communication lines in a location centered upon the existing communication line running in a generally east-west direction from the western edge of the existing utility pedestal to the western edge of the Westminster Boulevard right-of-way, south of lot 45 and north of lot 52.

Section 5. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

Section 6. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED AND PASSED ON FIRST READING AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of January, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of January, 2012.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

EXHIBIT "A"

LEGAL DESCRIPTION OF STREET RIGHTS-OF-WAY TO BE VACATED WITHIN SEMPER GARDENS SUBDIVISION

THAT CERTAIN RIGHT-OF-WAY LOCATED IN SECTION 13, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

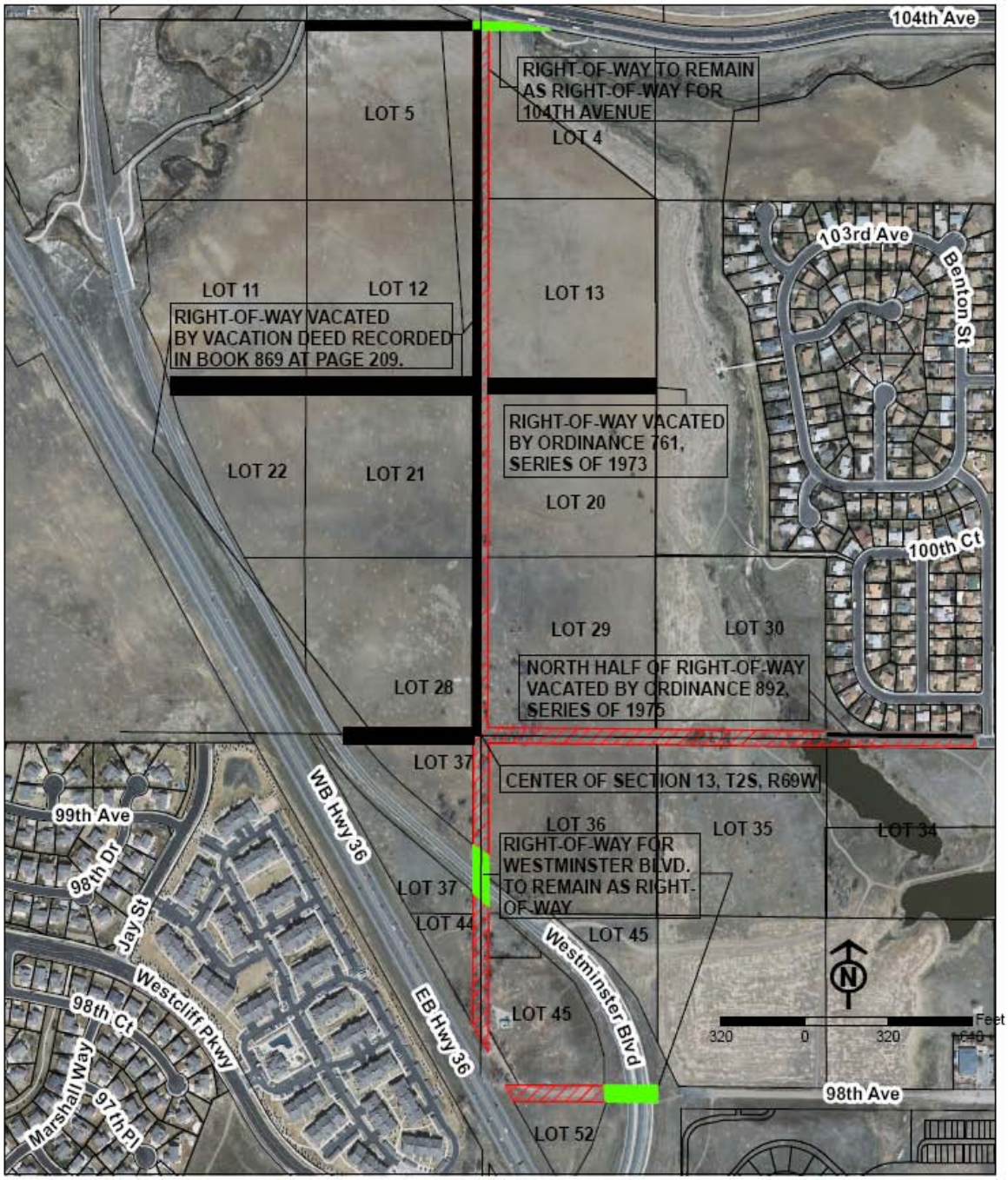
ALL OF THE RIGHTS-OF-WAY ADJACENT TO LOTS (OR TRACTS OR BLOCKS OR PARCELS) 4, 13, 20, 29, 30, 35, 36, 37, 44, 45, AND 52 AS DEDICATED BY THE PLAT FOR SEMPER GARDENS AND RECORDED IN BOOK 2 AT PAGE 32, UNDER RECEPTION NUMBER 36948 IN THE RECORDS OF THE CLERK AND RECORDER OF JEFFERSON COUNTY;

AND, THE RIGHT-OF-WAY ABUTTING THAT RIGHT-OF-WAY PREVIOUSLY VACATED BY ORDINANCE 892, SERIES OF 1975 BY THE CITY OF WESTMINSTER CITY COUNCIL AND ALONG A PORTION OF THE NORTH BOUNDARY OF LOT 34 OF SAID PLAT FOR SEMPER GARDENS;

EXCEPT THAT RIGHT-OF-WAY ALONG THE NORTH LINE OF LOT R AND THE NORTH 30' OF THE NORTH-SOUTH STREET RIGHT-OF-WAY ALONG THE CENTERLINE OF SAID SECTION 13, ALL AS SHOWN ON SAID PLAT FOR SEMPER GARDENS, SAID EXCEPTION RESERVED AS RIGHT-OF-WAY FOR W. 104TH AVENUE; AND,

EXCEPT THAT PORTION OF NORTH-SOUTH RIGHT-OF-WAY CONTAINED IN LOTS 36 AND 37 WITHIN THE EXISITNG RIGHT-OF-WAY FOR WESTMINSTER BOULEVARD; AND,

EXCEPT THAT PORTION OF 98TH AVENUE RIGHT-OF-WAY LYING EAST OF THE EASTERNMOST LINE OF LOTS 36 AND 52 WITHIN THE EXISTING RIGHT-OF-WAY FOR WESTMINSTER BOULEVARD.



SEMPER GARDENS RIGHT-OF-WAY VACATION

RIGHT-OF-WAY TO BE VACATED

NOTES:

1. THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

2. LOTS 5 TO 21, 21 TO 28 AND 37 TO 44 ARE SHOWN FOR REFERENCE TO THE LEGAL DESCRIPTION ONLY. THESE LOTS OR TRACTS OR BLOCKS HAVE BEEN VACATED BY VACATION DEED RECORDED IN BOOK 869 AT PAGE 209 IN THE RECORDS OF THE CLERK AND RECORDER OF JEFFERSON COUNTY.

WESTMINSTER

Agenda Item 10 A-C

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Public Hearing and Action on a Rezoning, Preliminary Development Plan and Official Development Plan for Westminster Reformed Presbyterian Church

Prepared By: Michele McLoughlin, Planner III

Recommended City Council Action

1. Hold a public hearing.

2. Pass Councillor's Bill No. 2 amending the zoning for the Westminster Reformed Presbyterian Church parcel from Open to Planned Unit Development. This recommendation is based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code have been met.

3. Recommend that the City Council approve the Preliminary Development Plan and Official Development Plan for Westminster Reformed Presbyterian Church. This recommendation is based on a finding that the criteria set forth in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code have been met.

Summary Statement

- The 4.59-acre parcel of land is located on the north side of 112th Avenue, between the Vrain Street and Stuart Street alignments.

- The church has agreed to sell approximately 2.24 acres (Outlot A), located on the northern part of Lot 1, to the City of Westminster for Open Space.

- The City will install a new open space fence to delineate the new property boundaries.

- No additional improvements to the church property are proposed at this time. The church site needs to be rezoned to Planned Unit Development (PUD) because, pursuant to Section 11-4-5 of the Westminster Municipal Code, the maximum lot coverage in an Open (O-1) zone district (building footprint as a percent of the overall site) is limited to 5 percent. The existing church is considered legal non-conforming (the lot coverage exceeds 5%), replatting the lot and selling off a portion will increase the nonconformity. To bring the lot into conformance, it needs to be rezoned to PUD, including a PDP and ODP.

- The current Comprehensive Land Use Plan (CLUP) designation is Public/Quasi Public.

Expenditure Required: $ 0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission reviewed this proposal on January 10, 2012 and voted unanimously (7-0) to recommend the City Council approve the rezoning of the proposed Westminster Reformed Presbyterian Church parcel from Open (O-1) to Planned Unit Development (PUD) based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code has been met. The Planning Commission also voted unanimously (7-0) to recommend that the City Council approve the Preliminary Development Plan and Official Development Plan for the Westminster Reformed Presbyterian Church based on a finding that the criteria set forth in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code have been met. No one spoke in favor or opposition to the proposal.

Policy Issues

1) Should the City approve the rezoning of the proposed Westminster Reformed Presbyterian Church parcel from Open (O-1) to Planned Unit Development (PUD)?

2) Should the City approve the Preliminary and Official Development Plans for Westminster Reformed Presbyterian Church?

Alternatives

1) Deny the rezoning of the Westminster Reformed Presbyterian Church property from O-1 to PUD. This alternative is not recommended because, by reducing the size of the site by selling the City a portion, the percent lot coverage becomes more nonconforming. Also, staff's recommendation is that the criteria for rezoning is being met.

2) Deny the Preliminary and Official Development Plans for the Westminster Reformed Presbyterian Church property. This alternative is not supported by City staff because the property should be rezoned to PUD in order to eliminate any nonconformities, and a PDP is required as part of the rezoning to PUD, and an ODP should be prepared to document the existing site conditions. The PDP and ODP municipal code criteria will be met, and the open space parcel is in compliance with the City's Parks and Open Space policies.

Background Information

Nature of Request

The applicant, Westminster Reformed Presbyterian Church, is proposing that the City Council rezone a 4.59-acre parcel of land from O-1 (Open) to PUD (Planned Unit Development), and that the City Council approve a proposed Preliminary Development Plan (PDP) and Official Development Plan (ODP). The property would then be replatted into two parcels, for the purpose of selling the northern 2.24 acres to the City of Westminster for Open Space. This would fit into City Council's goal of "Beautiful and Environmentally Sensitive City" and the objective to "increase and maintain green space (parks, open space, etc) consistent with defined goals."

Rezoning the property to PUD would eliminate any nonconformities of the site and prevent any existing legal nonconformities from being increased by selling off a portion of the land. A PDP and ODP would complete the rezoning and document the existing conditions on the site. Rezoning the entire parcel to PUD, rather than keeping the open space portion as O-1, is necessary in order to include the entire parcel in the PDP, which can be used to transfer the 2.24-acre piece to the City. If desirable, the City can request that the open space portion be rezoned to O-1 in the future, once the sale of land to the City is complete. However, open space is an allowed use in any zone district.

Location
The site is located on the north side of 112th Avenue, between the Vrain Street and Stuart Street alignments.

Public Notification
Westminster Municipal Code §11-5-13 requires the following three public notification procedures:

- Published Notice: Notice of public hearings scheduled before City Council shall be published and posted at least four days prior to such hearings. Notice was published in the Westminster Window on January 12, 2012.

- Property Posting: Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on January 12, 2012.

- Written Notice: At least ten days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowners' associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on January 12, 2012.

Applicant
Paul Welander, Corporate Trustee
Westminster Reformed Presbyterian Church
4455 W. 112th Avenue
Westminster, Colorado 80031

Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	CLUP Designation	Use
North: City Open Space	O-1	City-owned Open Space	Open Space
West: City Open Space and Chabad of Northwest Metro Denver Jewish Center	O-1	R-3.5 Residential; City Owned Open Space	Church; Open Space
East: Front Range Community College	O-1	Public/Quasi Public	Parking
South: Cotton Creek	PUD	Public Park	Park

Site Plan Information
The following site plan information provides examples of how the proposal complies with the City's land development regulations and guidelines; and the criteria contained in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached). This parcel is designated as Public/Quasi Public in the City's Comprehensive Land Use Plan (CLUP). The northern parcel will be sold to the City for City owned Open Space. If successfully sold to the City, the CLUP would be amended as part of the annual CLUP amendments for the open space portion.

- Traffic and Transportation: There is one existing access from 112th Avenue to access the church property.
- Site Design: Access to the site is from 112th Avenue. The parcel will be subdivided into two lots, with the northern outlot designated as City-Owned Open Space.
- Landscape Design: The existing landscaping for the church is to remain.
- Public Land Dedication/School Land Dedication: Not applicable.

- Architecture/Building Materials: The existing church buildings are to remain as they currently exist.
- Signage: There is an existing monument sign for the church on the west side of the entry drive.

Growth Management Program/Service Commitment Category
Not applicable

Referral Agency Responses
Not applicable

Neighborhood Meeting and Public Comments
A neighborhood mailing was sent out to four adjacent property owners on May 6, 2011. No comments have been received.

This proposal supports the City Council's goal of "Beautiful and Environmentally Sensitive City" and the objective to "increase and maintain green space (parks, open space, etc.) consistent with defined goals."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments
- Attachment A - Vicinity Map
- Attachment B - Criteria and Standards for Land Use Applications
- Ordinance
- Exhibit A - Legal Description
- Exhibit B - Zoning Map
- PDP and ODP (available for review in the City Clerk's Office)

Westminster Reformed Presbyterian Church Parcel

4455 W. 112th Avenue

0 125 250 500 Feet

N W E S

DWG - 20 December 2011

Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

- The owner/applicant has "the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan…" (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City's existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.

2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

Official Development Plan (ODP) Application

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.

2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **2**

SERIES OF 2012 INTRODUCED BY COUNCILLORS

_____

A BILL
FOR AN ORDINANCE AMENDING THE ZONING OF THE WESTMINSTER REFORMED PRESBYTERIAN CHURCH PROPERTY, A 4.59-ACRE PARCEL LOCATED AT 4455 W. 112TH AVE, WESTMINSTER, ADAMS COUNTY, COLORADO, FROM CITY OF WESTMINSTER O-1 (OPEN) TO CITY OF WESTMINSTER PUD (PLANNED UNIT DEVELOPMENT)

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for rezoning of the property located at 4455 W. 112th Ave, as described in attached Exhibit A, incorporated herein by reference, from the City of Westminster O-1 zone to the PUD zone has been submitted to the City for its approval pursuant to W.M.C §11-5-2.

b. That the notice requirements of W.M.C. §11-5-13 have been met.

c. That such application has been referred to the Planning Commission, which body held a public hearing thereon on January 10, 2012, and has recommended approval of the requested amendment.

d. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code and has considered the criteria in W.M.C. §11-5-14.

e. That, based on the evidence produced at the public hearing, a rezoning to the proposed PUD zoning complies with all requirements of the Westminster Municipal Code, including, but not limited to, the provisions of W.M.C. §11-5-14 regarding standards for approval of planned unit developments and W.M.C. §11-4-3, requiring compliance with the Comprehensive Land Use Plan.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described in Exhibit A, attached hereto and incorporated herein by reference, from the City of Westminster O-1 zoning district to the PUD zoning district, as depicted on Exhibit B, attached hereto.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of January, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of February, 2012.

_____
Mayor

ATTEST: APPROVED AS TO LEGAL FORM:

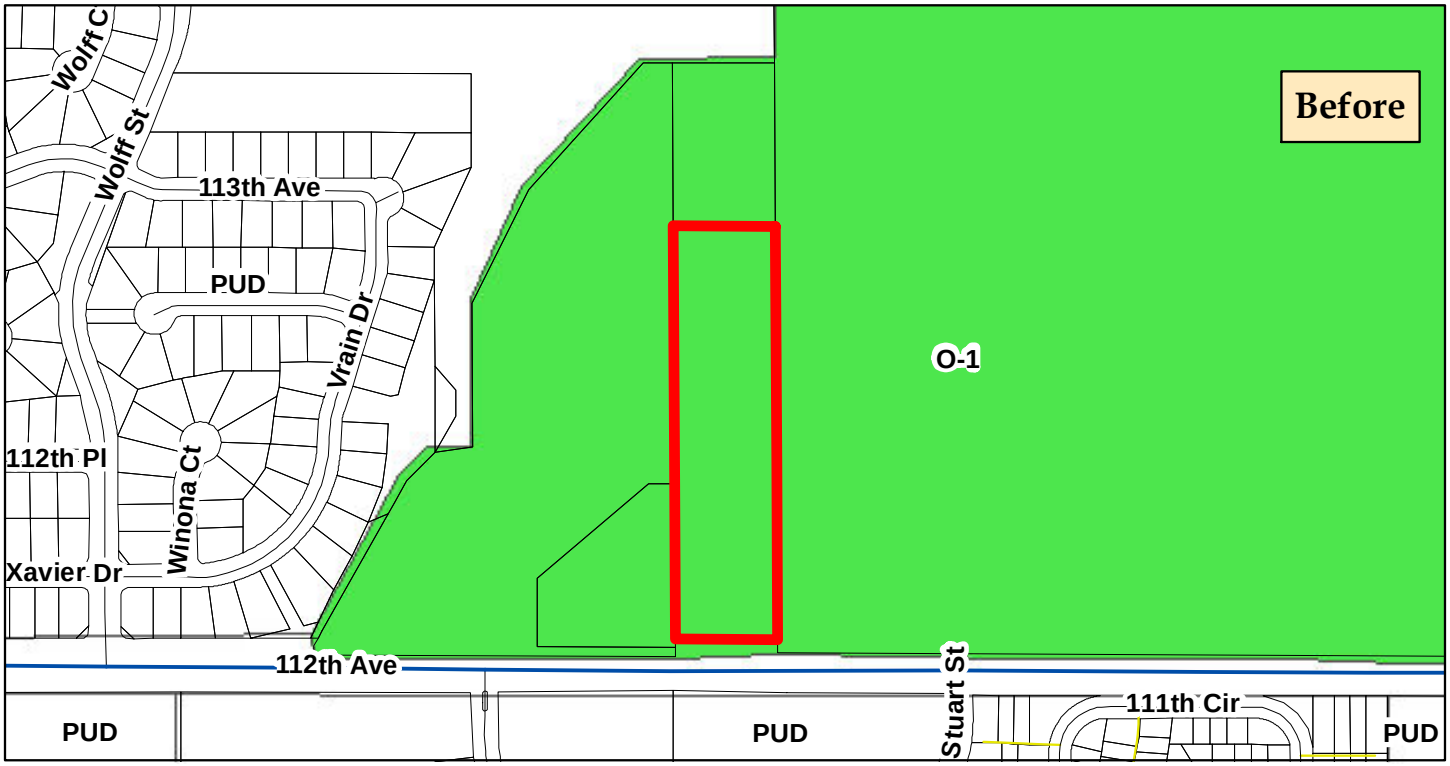
_____ _____
City Clerk City Attorney's Office

Exhibit A
Legal Description
4455 W. 112th Ave.
Westminster Reformed Presbyterian Church

Westminster Reformed Presbyterian Church Subdivision, Lot 1, City of Westminster, County of Adams, State of Colorado, Plat-File No. 17, Map No. 963, Reception No. CO467418, containing 4.59 acres, more or less.

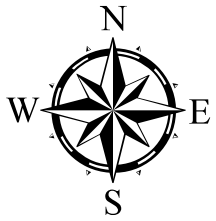
EXHIBIT: B

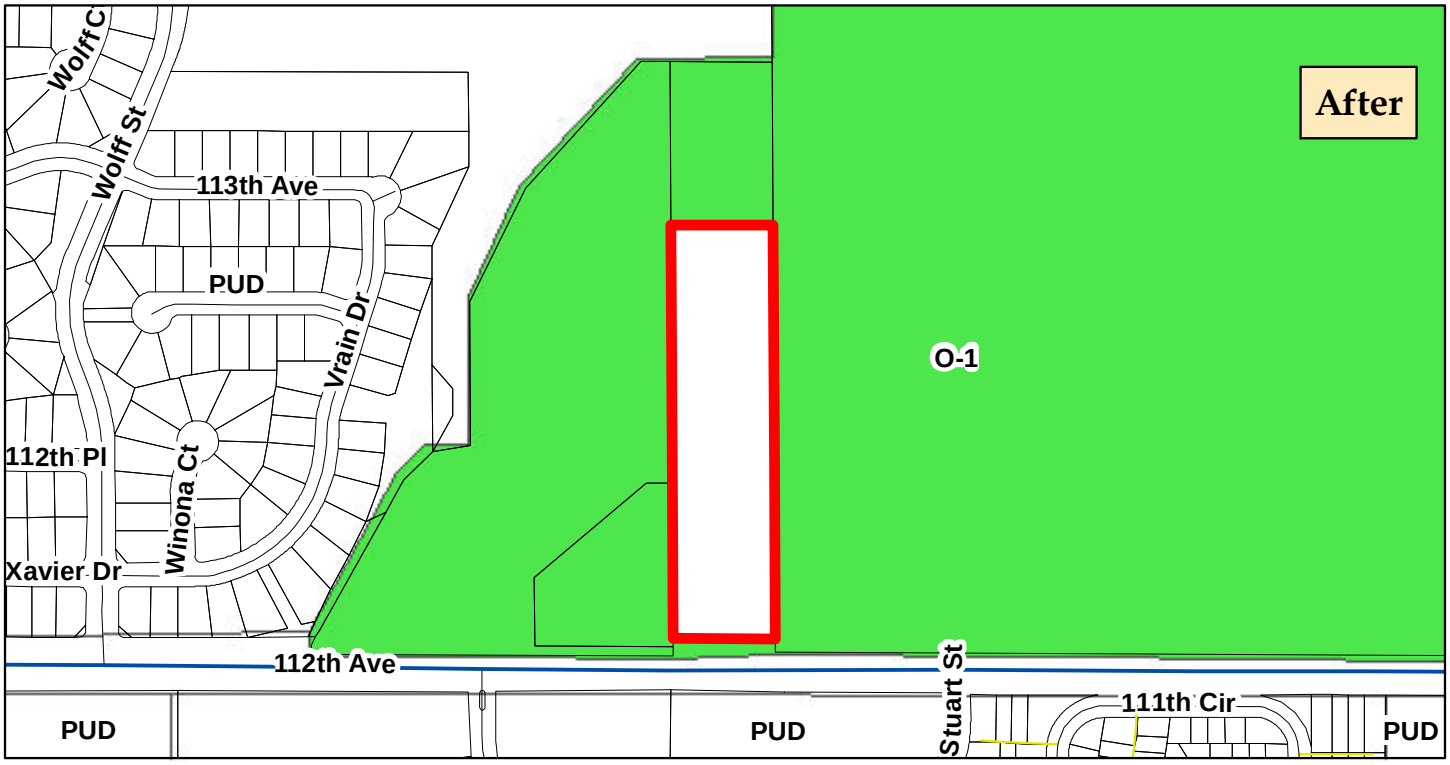
Westminster Reformed Presbyterian Church: Zoning Change from O-1 to PUD



Zoning Categories

B-1	M-1	PUD	R-1	R-4	R-A	T-1		
C-1	O-1	R-3	R-2	R-5	R-E			





DWG - 20 December 2011

WESTMINSTER

Agenda Item 10 D

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Resolution No. 3 re Service Commitment Award Extensions for the Orchard Lakes, LongsView, and West Bradburn Projects

Prepared By: Jana Easley, Principal Planner

Recommended City Council Action

Adopt Resolution No. 3 extending the existing Category B-3 Service Commitment award for Orchard Lakes and LongsView multi-family residential projects through December 31, 2013, and extending the existing B-4 Service Commitment award for West Bradburn Traditional Mixed Use Neighborhood Development (TMUND) project. This is based on the finding that all three projects have submitted development applications, but that none of the projects had the required approvals (Official Development Plan or Comprehensive Land Use Plan amendment) by December 31, 2011.

Summary Statement

- All three sites were awarded service commitments during the 2011 Growth Management competition.
- As a condition of award, both Orchard Lakes and LongsView were required to begin the development review process and receive Official Development Plan (ODP) approval by December 31, 2011.
- As a condition of award, West Bradburn was required to begin the development review process and receive approval for a Comprehensive Land Use Plan (CLUP) amendment by December 31, 2011.
- All three projects have begun the development review process; however, none of the required approvals (ODP or CLUP) occurred prior to December 31, 2011.
- The project owners have each requested an extension of the ODP and CLUP deadlines to December 31, 2012. The attached Resolution would grant all three extensions through December 31, 2013 in order for the projects to have adequate time to get through the zoning entitlement and permitting processes retroactive to December 31, 2011.
- The requests from the property owners for an extension of the Service Commitments for these developments are attached.
- Staff is supportive of all three requests.

Expenditure Required: $ 0

Source of Funds: N/A

Policy Issue

Should the City Council adopt the attached Resolution extending the ODP and CLUP approval dates through December 31, 2013?

Alternative

Do not adopt the proposed resolution extending the ODP approval and Service Commitments for one or more of these projects. However, denying the extensions will force these projects to re-compete for Service Commitments in next year's Growth Management Competition. This could have a benefit of the project "committing" to better features in the competition next year. This is not recommended as each of the projects is in the development review process at various stages and staff believes each can achieve the necessary approvals by the end of 2013.

Background Information

Nature of Requests
Service Commitments were awarded for these projects on June 13, 2011. A total of 358.0 Service Commitments were made available for the two multi-family and TMUND projects in the B-3 and B-4 categories.

Westminster Municipal Code Section 11-3-5 (F) states that, unless an extension is specifically approved by the City Council, a Service Commitment award for any Category B-1, B-2, B-3, B-4 or new senior housing project shall expire as specified on the City Council Service Commitment award resolution for the project.

Pursuant to City Council Resolution 20 of 2011, both Orchard Lakes and LongsView projects "must proceed with the development review process and receive Official Development Plan approval by December 31, 2011, or the entire Service Commitment award for the project shall expire."

Pursuant to City Council Resolution 21 of 2011, for West Bradburn, "must proceed with the development review process and receive approval for a Comprehensive Land Use Plan amendment by December 31, 2011."

The land owners of each of the projects have requested extensions based on they are currently in the development review process, but an ODP or CLUP amendment was not approved prior to December 31, 2011.

Locations
Orchard Lakes – Southeast corner of 141st Avenue and Huron Street
LongsView – Southeast corner of Federal Parkway and Zuni Street
West Bradburn – Southeast corner of 120th Avenue and Vrain Street

Project Descriptions
Orchard Lakes Residential – This project proposes 320 rental apartment units to be built on a 7.48-acre site at the southeast corner of 141st Avenue and Huron Street. The property was annexed into the City in 2008 as part of the Fonay Property Annexation. The CLUP currently designates this area as "District Center." The site is zoned PUD. The ODP would have to be approved in order to begin building units. The proposal is for 232 units in 4-story buildings ("courtyard" units) and 88 units in 3-story townhouse style units. A total of 160 SCs are being requested (0.5 SCs per unit).

The award of Service Commitments for the Orchard Lakes project conditions the approval of the ODP for the Orchard Lakes project upon:

A. The ODP applicants' dedication to the City, at no cost, a sufficient right of way, ranging in width from approximately 100 feet to approximately 140 feet for the entire length of the McKay Lake Drainage Improvements as generally depicted on the Sixth Amended PDP for the North Huron PUD (2008), and;
B. The ODP applicant, or heir, successor, or to remain responsible for the installation and maintenance of landscaping in the McKay Lake Drainage Improvements as generally depicted on the Sixth Amended PDP for the North Huron PUD (2008), and;
C. The dedication of the drainageway improvements to be in a form acceptable to the City, and to be due to the City within fifteen days of written demand thereof by the City.

LongsView – This project proposes 312 apartment units to be built on a 21.24-acre site at the southeast corner of Federal Boulevard and Zuni Street. The property was annexed into the City in 1970 as part of the North Areas to Broomfield Annexation. The Comprehensive Land Use Plan (CLUP) currently designates this area as "Business Park." The site is zoned Planned Unit Development (PUD). A Comprehensive Land Use Plan (CLUP) change, Preliminary Development Plan (PDP), and Official Development Plan (ODP) would have to be approved in order to begin building units. 156 SCs are being requested (0.5 per unit).

West Bradburn – This project proposes 60 townhouse units to be built on a 3.4-acre site at the northwest corner of 118th Place and Vrain Street. The property was annexed into the City in 1970 as part of the North Areas to Broomfield Annexation. The site is zoned Planned Unit Development (PUD). A CLUP change, PDP, and ODP would have to be approved in order to begin building units. The CLUP is currently designated "Retail Commercial" and would need to be changed to Traditional Mixed Use

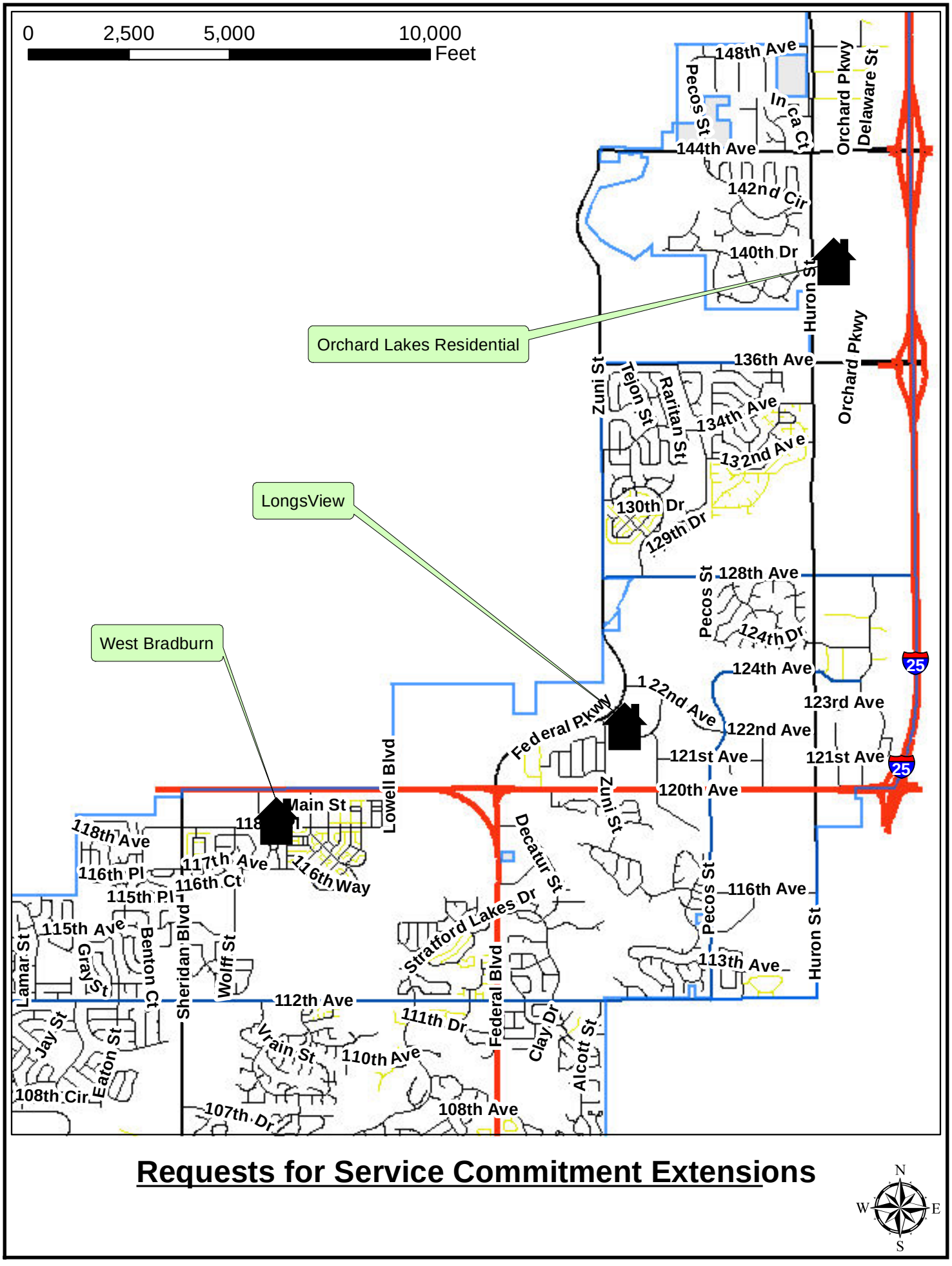
The request for these extensions meets the City Council's Strategic Plan Goals of "Vibrant Neighborhoods and Livable Communities" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Attachment A - Vicinity Map
- Attachment B - Correspondence re Orchard Lakes
- Attachment C - Correspondence re LongView
- Attachment D - Correspondence re BradburnTownhomes
- Resolution



Requests for Service Commitment Extensions

Easley, Jana

From: Fred Cooke [FCooke@Rof.net]
Sent: Wednesday, December 21, 2011 10:26 AM
To: Easley, Jana
Cc: dtread921@comcast.net
Subject: RE: Orchard Lakes

Jana,

Please let this correspondence, on behalf of Orchard Lakes, LLC, serve as our formal request for the extension of time for the award of the service commitments for the Orchard Lakes Multi-Family project to be extended to December 31, 2012. We are requesting this extension to allow for sufficient time to entitle the project. A Concept ODP Application has been submitted to the City for approval of the project. In addition, please be advised that we will be applying for the remainder of the required service commitments in 2012 to allow the project to move forward. The service commitments that were awarded in 2011 were only sufficient for half the project and the remainder of the commitments will hopefully be awarded in the 2012 competition. We are diligently moving forward with the project and the entitlement review process with the City as evidenced by our recent application. There are also some issues that need to be resolved regarding access and utility mains that are under negotiation with the City that has delayed our application.

All assistance that you can offer in obtaining the service commitment extension until December 31, 2012 would be greatly appreciated. Please advise if I have provided all the required information and if I can be of further service with this request. Thanks for advising us as to the process. Have a great Holiday Season and I will plan on attending the Council meeting on January 23.

Fred Cooke
11854 Bradburn Blvd.
Westminster, CO 80031
Phone (303) 404-2468
Mobile (970) 379-7696
Email - fcooke@rof.net

-----Original Message-----
From: Easley, Jana [mailto:JEasley@CityofWestminster.us]
Sent: Tuesday, December 20, 2011 2:56 PM
To: Fred Cooke
Subject: Orchard Lakes
Importance: High

Hi Fred,
The resolution that awarded service commitments for this project says that the project must proceed with the development review process and receive Official Development Plan approval by December 31, 2011, or the entier award will expire.

If you want me to request an extesion, I need a letter from you (or email) stating that you wish to extend the date to December 31, 2012, and the reasoning for the extension. I would like to have the letter by the middle of next week (12/28) if at all possible, because the agenda memo is due the week after. The Council date would be January 23, 2012. If extended, it would be retroactive to 12/31/11.

Let me know if you have any questions.

Jana

Jana Easley, AICP
Principal Planner
City of Westminster
4800 W. 92nd Ave.
Westminster, CO 80031
(303) 658-2100
jeasley@cityofwestminster.us
City Hall is open Monday through Thursday 7:00 am to 6:00 pm and closed on Fridays.

ATTACHMENT C

CORUM
REAL ESTATE GROUP

RECEIVED
JAN 05 2012
BY: PC

January 3, 2012

Mr. Patrick Caldwell – Planner II
The City of Westminster – Department of Community Development
4800 W. 92nd Avenue
Westminster, CO 80031

RE: LongView – 2011 Category B-3, Service Commitment Award

Dear Patrick:

Please find the attached Resolution No. 20 for Category B-1 (New Multi-Family) Competition and Service Commitment Award for a total of 312 Service Commitments (SCs) for the above referenced property.

The Resolution states that the SCs were set to expire on December 31, 2011 if the Applicant has not received Official Development Plan (ODP) approval by such time. During the time since the SC approval, the Applicant has worked closely with City Staff preparing, discussing and refining the ODP/PDP documents and is diligently working now on obtaining final approvals. The Concept ODP/PDP submittal was first made on August 22nd, 2011 with numerous follow-up discussions and meetings with staff. The Applicant intends to resubmit for Technical Review to City Staff in the coming weeks and hopes to finalize the process by 2nd quarter, 2012. As final approval of the ODP is not in place at this time, the Applicant (Corum Real Estate Group) requests that the City of Westminster grant an extension of the current 312 previously awarded SCs.

The request for this extension is the result of a combination of factors, including: delays in the approvals process and an overall redesign of the site plan. The extension of SCs will allow the Applicant to complete the remaining City submittals for final ODP/PDP approvals.

Please accept this request to extend the previously granted SCs as indicated in this letter.

Sincerely,

Jamie Fitzpatrick

James G. Fitzpatrick
Corum Real Estate Group Applicant

Enclosures

cc: Mike Byrne
Mike Komppa
Todd Johnson
Robert Miller
Bob Eck

600 South Cherry Street, Suite 625 • Glendale, Colorado 80246 • Tel 303-796-2000 • Fax 303-796-2065
www.CorumRealEstate.com

Patrick, Walter

From: Rob Johnson [RobJ@centurycommunities.com]
Sent: Thursday, December 22, 2011 2:23 PM
To: Patrick, Walter
Subject: Bradburn Townhomes - Service Commitment Extension

Dear Walter,

It is our understanding that the service commitments on the Bradburn Townhome parcels we are currently seeking an ODP Amendment on are scheduled to expire on December 31, 2011.

Since we are in the process of amending the ODP for these townhome parcels and said amendment process will not be approved prior to the December 31, 2011 expiration of the service commitments, we hereby request an extension of the service commitments for one year until December 31, 2012 in order to allow us the time to complete the ODP Amendment.

Thank you for your attention to this matter.

Very Truly Yours,

Rob Johnson
VP/Director of Development
Century Communities
PLEASE NOTE OUR NEW ADDRESS AS OF 9/1/11
8390 E. Crescent Parkway, Suite 650
Greenwood Village, CO 80111
303-268-8354 Direct
303-915-8506 Mobile
303-268-3000 Fax
robj@centurycommunities.com

RESOLUTION

RESOLUTION NO. **3** INTRODUCED BY COUNCILLORS

SERIES OF 2012 _____

A RESOLUTION TO EXTEND THE CATEGORY B-3 AND B-4 SERVICE COMMITMENT AWARDS FOR THE ORCHARD LAKES, LONGSVIEW AND WEST BRADBURN PROJECTS

WHEREAS, the City of Westminster has adopted by Ordinance No. 3561 a Growth Management Program for the period 2011 through 2020; and

WHEREAS, within Ordinance No. 3561 there is a provision that service commitments for residential projects shall be awarded to Category B-3 (New Multi–Family) and Category B-4 (New Traditional Mixed Use Neighborhood Development); and

WHEREAS, Category B-3 is the category that is appropriate for the Orchard Lakes and LongsView residential projects; and

WHEREAS, Category B-4 is the category that is appropriate for the West Bradburn residential project; and

WHEREAS, Resolution No. 20, Series 2011, establishes that 160 service commitments awarded to the Orchard Lakes residential project shall expire unless it receives Official Development Plan approval by December 31, 2011; and

WHEREAS, Resolution No. 20, Series 2011, establishes that 156 service commitments awarded to the LongsView residential project shall expire unless it receives approval for a Comprehensive Land Use Plan amendment by December 31, 2011; and

WHEREAS, Resolution No. 21, Series 2011, establishes that 42 service commitments awarded to the West Bradburn residential project shall expire unless it receives Comprehensive Land Use Plan amendment approval by December 31, 2011; and

WHEREAS, the project owners are requesting a service commitment extension extending the approvals of Official Development Plan and Comprehensive Land Use Plan amendments deadlines to December 31, 2012; and

WHEREAS, Westminster Municipal Code Section 11-3-5(F) states that, unless an extension is specifically approved by the City Council, a service commitment award for any Category B-1, B-2, B-3, B-4 or new senior housing project shall expire as specified on the City Council Service Commitment award resolution for the project; and

WHEREAS, all three projects are currently in the development review process and extensions are needed to avoid undue hardship that would otherwise result if the extensions were not granted; and

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

1. Category B-3 and B-4 Service Commitment awards are hereby extended as follows:

Table 1

Project Name	Location		2011	2012	2013	2014	TOTAL
Orchard Lakes	SEC 141st Ave & Huron St	Original	100	60	0	n/a	160
		Proposed	**0**	**100**	**60**	**0**	**160**
LongsView	SEC Federal Blvd & Zuni St	Original	0	156	0	n/a	156
		Proposed	**0**	**156**	**0**	**0**	**156**
West Bradburn	SEC 120th Ave & Vrain St	Original	42	0	0	n/a	42
		Proposed	**0**	**42**	**0**	**0**	**42**

2. The service commitment awards to the projects listed above are conditional and subject to the following:
   a) For each project, the applicant must complete and submit proposed development plans to the City for the required development review processes. All minimum requirements and all incentive items indicated by the applicant shall be included as part of the proposed development and listed on the Official Development Plan for the project.
   b) Service commitments for the projects listed above, if approved by the City, may only be used within the project specified above.
   c) This service commitment awards shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.
   d) Each service commitment award is conditional upon City approval of the project listed above and does not guarantee City approval of any project, proposed density, and proposed number of units.
   e) The City of Westminster shall not be required to approve any Comprehensive Land Use Plan amendment, Preliminary Development Plan or amendment, Official Development Plan or amendment, or rezoning action necessary for development of the property involved in this extension of service commitment award, nor shall any other binding effect be interpreted or construed to occur by the City as part of the extension of service commitment award.
   f) Any and all projects that do not receive City approval are not entitled to the service commitment awards, and the service commitments shall be returned to the water supply figures.
   g) The Growth Management Program does not permit City Staff to review any new residential development plans until service commitments have been awarded to the project. During the competition process, the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that significant changes to any such plans will be required once the City's development review process begins for any project.
   h) Future year awards are effective as of January 1 of the specified year and cannot be drawn prior to that date. If fewer service commitments are needed for a project in any given year, the unused amount in that year will be carried over to the following year(s), provided the service commitments have not expired.
   i) In order to demonstrate continued progress on a project, the following deadlines and additional conditions apply:
      1. Orchard Lakes Residential: The project must proceed with the development review process and receive Official Development Plan approval by December 31, 2013, or the entire Service Commitment award for the project shall expire. Applicants shall acknowledge (a) that Official Development Plan approval is contingent upon the applicants' dedication to the City, at no cost, a sufficient right of way, ranging in width from approximately 100' to approximately 140' for entire length of the McKay Lake Drainage Improvements as generally

depicted on the Sixth Amended PDP for the North Huron PUD [2008] and (b) that applicants will remain responsible for the installation and maintenance of landscaping in said drainageway. Said dedication must be in a form acceptable to the City and will be due within fifteen days of written demand thereof by the City.

2. LongsView: The project must proceed with the development review process and receive approval for a Comprehensive Land Use Plan amendment, Preliminary Development Plan, and Official Development Plan approval by December 31, 2013.
3. West Bradburn: The project must proceed with the development review process and receive approval for a Comprehensive Land Use Plan amendment; Preliminary Development Plan, and Official Development Plan approval by December 31, 2013.
4. Each project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (by December 31, 2016), or the entire Service Commitment award for the project shall expire.
5. Following the issuance of the first building permit for the project, all remaining service commitments for a project shall expire if no new building permit is issued for vertical improvements for the project during any consecutive 12-month period.

j) If service commitments are allowed to expire or, if the applicant chooses not to pursue the development, the service commitment award shall be returned to the water supply figures. The award recipient shall lose all entitlement to the service commitment award under those conditions.

k) This award resolution shall supersede all previous service commitment award resolutions for the specified project location.

3. The Category B-3 and B-4 Service Commitments awards shall be reviewed and updated each year. If it is shown that additional or fewer service commitments are needed in the year specified, the City reserves the right to make the necessary modifications.

4. This Resolution shall be retroactive to December 31, 2011.

PASSED AND ADOPTED this 23rd day of January, 2012.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney

WESTMINSTER

Agenda Item 10 E&F

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Resolutions No. 4 and 5 re Residential Competition Service Commitment Awards

Prepared By: Jana Easley, Principal Planner

Recommended City Council Action

1. Adopt Resolution No. 4 awarding Category B-3 Service Commitments to the Westminster Lofts on the Creek Multi-Family project.

2. Adopt Resolution No. 5 awarding Category B-4 Service Commitments to The Village at Westminster City Center Traditional Mixed Use Neighborhood Development project.

Summary Statement

- The City received five applications for the 2012 Water Service Commitment competition including three applications for Multi-Family (MF) projects, one for a Single-Family Attached (SFA) project, and one for a Traditional Mixed Use Neighborhood Development (TMUND) project.
- Staff has reviewed the project applications and recommends awarding Service Commitments (SC) to two of the five projects for the following reasons:
  - The difference in points awarded between the recommended MF project and the two projects not being recommended is significant (4400 to 1250/1350).
  - The SFA application is for the southwest corner of 108th Avenue and Wadsworth Parkway, which is the same project for which a Service Commitment extension was denied in December 2011. The request is for the same density (8 du/acre) that was previously awarded Service Commitments. However, no developer was listed, and staff is not confident the project is realistic. The only inquiries staff is aware of for this site are for higher density apartment projects.
  - The TMUND application being recommended for service commitments received an overall score of 7.7 by the Design Jury.

  Please see the attached map for the locations and the attached Application Summary Table and background section for a summary of the submittals.
- The total number of units proposed for all five applications is 1,363. The number of units proposed for the two recommended projects is 464.
- The attached resolutions would award 166 SCs in 2012 and a total of 232 SCs (0.5 SC/unit). 300 SCs were allotted for Category B projects. The SCs would be phased over 1-2 years for both projects. Both projects anticipate starting construction in 2012. These resolutions relate to the City's Growth Management Program and are based on the findings established in §11-3-1 of the Westminster Municipal Code.
- <u>The attached resolutions are contingent upon ultimate City approval of any necessary documents and do not commit the City to approve any document or project as a result of these awards</u>.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue
As a result of the residential competition process, should the City award Service Commitments as proposed to two of the five projects?

Alternatives
Council has the option of not awarding Service Commitments to one or more of the projects. In this event, the property owner/developer could make a request during next year's residential competition. The most significant outcome of this alternative would be that the project could be delayed for at least one additional year, which could result in discontinued interest in the site by the developer.

Another option would be to award all five projects. This option is not recommended because two of the MF projects had very low points, and staff is concerned this would set a precedent and a very "low bar" for future competitions. The SFA attached project does not seem feasible at this time – there is no developer listed and staff has received no inquiries of interest for lower density on this site, only apartments – and the City Council did not grant an extension for Service Commitments for this site in December 2011.

Background Information
As part of the City's Growth Management Program, the intent of these SC competitions is for a limited number of new residential projects to proceed to the City's development review process. Any project awarded SCs must process any required documents, including Comprehensive Land Use Plan (CLUP) amendments, if necessary. The City does not require that applications for the competitions comply with the CLUP designation for the site, but a CLUP amendment must be submitted with the application if a change is proposed. It is not necessary for projects to process their CLUP amendments prior to the awards. The SC awards do not obligate the City to approve any required plan or document as a result of the award. <u>If a project does not receive approval of any required documents, the SCs are returned to the water supply figures.</u>

As a reminder, in September 2011, City Council allocated 350 SCs to be awarded in 2012 on a competitive basis for all five residential competition categories (300 for Category B and 50 for Category E – Senior Housing).

Three of the proposed projects have not competed in any prior year. The SFA project (Walnut Grove) competed and was awarded SCs in 2006 and those SCs were twice extended through 2010 and 2011 what was previously referred to as the "Axis" project competed and was awarded 300 SCs in 2005 under the TMUND category; this request is under the Multi-Family category.

As indicated in the table below, the projects that are recommended for award are requesting SCs beginning in the year 2012.

RESIDENTIAL COMPETITION SUBMITTALS - 2012						# SCs Requested			
Project Name/Location	**Developer**	**Acres**	**Units**	**du/a***	**App Score**	2012	2013	2014	Total
Multi-Family									
1. **Westminster Lofts on the Creek** SEC Westcliff Pkwy and Church Ranch Way	Etkin Johnson	8.89	264	29.6	**4400**	66	66	0	132
TMUND									
3 **The Village at Westminster City Center** SEC City Center Drive and Sheridan	SH Realty Partners	3.76	200	53	**n/a**	100	0	0	100
TOTALS			**464**			**166**	**66**	**0**	**232**
						300 + 50 for Sr Housing			

**gross density (dwelling units per acre)*

Additional information about all of the submittals is detailed below:

Multi-Family Competition

Westminster Yates (MF) – This project proposes 214 units to be built on a 8.93-acre site at the northeast corner of 88th Avenue and Yates Street. Nine buildings are proposed to contain the 214 units, with a gross density of 24 du/acre.

The property was annexed into the City in 1985 as part of the Sheridan Park North Annexation. The site is zoned PUD and the original Preliminary Development Plan (PDP) allowed for up to 22 du/acre. However, the Comprehensive Land Use Plan (CLUP) designation is Office/Residential, which allows up to 8 du/acre with a maximum of two stories. A CLUP amendment would be required for density greater than 8 du/acre, and the current maximum density in the City in one category other than TMUND or District Center is 18 du/acre.

The applicant reported 1,250 points, and staff confirmed the score. This was the lowest scoring project of the four Category B projects.

The applicant states that the "architectural character and scale will fit within the surrounding context." Staff is unclear on how this would be accomplished while providing 214 units in 9 buildings immediately adjacent to a single-family residential neighborhood. No architectural elevations were provided and there was no mention of the number of stories per building. For comparison, at a density of 8 du/acre, similar to a townhome-style development, approximately 70 units may fit on the site.

Corrections to the application include:
- Gross density, not net density, was provided
- The CLUP designation is Office/Residential, not Commercial
- The maximum density under the CLUP designation is 8 du/acre, not 18 du/acre
- The desired number of SCs per year was not reported; staff confirmed the applicant is requesting 54 in 2012 and 53 in 2013.

The incentives offered by the applicant for this project include:
- Benches will be provided along internal sidewalks
- At least 50% but less than 75% of the required parking would be in carports
- Installed public art valued at $2,000 per acre
- Garages will not be placed along public street frontages
- A covered and lighted structure will be provided over external box units or internal mailbox units will be provided
- Private patios (unobstructed 120 square feet minimum) and balconies (unobstructed 80 square feet minimum with 6-foot minimum depth) will be provided on all units
- Private landscaped area will be increased above the minimum 40% requirement to greater than 40% to 45%
- Turf areas will be reduced to 30-35% of the landscaped area

Public Land Dedication would be required for this site.

Westminster Axis – The applicant proposes 600 apartment units to be built on a 15.8-acre site at the northwest corner of Westminster Boulevard and 108th Avenue. Most of the property was annexed into the City in 1973 as part of the 112th and Pierce Annexation. A small portion was annexed into the City in 1998 as part of the Ryan Property Annexation. The site is zoned PUD. A Preliminary Development Plan (PDP) was approved in 2008 for a high-density condo residential development on the majority of the site; the remainder has uses allowed consistent with the Business Park CLUP designation. An Official Development Plan (ODP) was approved in 2008 for a high-density condo residential development;

however, that ODP has expired and a new ODP application would have to be processed and approved. The majority of the site has a CLUP designation of Business Park; a small piece is District Center. A CLUP amendment and rezoning would be required for the residential use to be allowed. 300 SCs are being requested (0.5 per unit).

This project competed and was awarded 300 SCs in 2005 under the TMUND category. In 2008, 62.5 additional SCs were awarded. Although no site layout or elevations were provided, the proposal indicates incentives that suggest a different type of development than previously proposed, such has garages rather than structured parking.

The applicant reported 1,350 points, and staff confirmed the score.

Corrections to the application include:
- The gross, rather than the net, density was reported
- No residential units are allowed under Business Park (CLUP), rather than the 46 du/acre reported
- The desired number of SCs per year was not reported; staff confirmed the applicant is requesting 150 in 2012 and 150 in 2013.

The incentives offered by the applicant for this project include:
- Benches will be provided along internal sidewalks
- At least 50% but less than 75% of the required parking would be in garages
- Installed public art valued at $2,000 per acre
- Garages will not be placed along public street frontages
- A covered and lighted structure will be provided over external box units or internal mailbox units will be provided
- Private patios (unobstructed 120 square feet minimum) and balconies (unobstructed 80 square feet minimum with 6-foot minimum depth) will be provided on all units
- Private landscaped area will be increased above the minimum 40% requirement to greater than 40% to 45%
- Turf areas will be reduced to 30-35% of the landscaped area

Public Land Dedication would be required for this site.

Westminster Lofts on the Creek – The applicant proposes 264 apartment units to be built on an 8.9-acre site with structured parking at the southeast corner of Westcliff Parkway and Church Ranch Way. The property was annexed into the City in 1988 as part of the Church Ranch Annexation. The site is zoned PUD. An ODP was approved in 1999 for four office buildings, with this site to include a 4-story office building. Two of the four buildings have been built. The existing CLUP designation is Business Park, and the applicant has indicated intent to amend the CLUP to District Center. In order for the residential use to be allowed, a CLUP amendment, a PDP amendment, and an ODP amendment would have to be approved. The PDP will also list residential as an allowed use. 132 SCs are being requested, to be split up between 2012 and 2013 (0.5 per unit).

The applicant reported 4,400 points, and staff confirmed the score.

Corrections to the application include:
- The gross, rather than the net, density was reported

The incentives offered by the applicant for this project include:
- All internal site paths will be a minimum width of six feet
- Lighting along both sides of off-street paths will be provided
- Benches will be provided along internal sidewalks
- Evergreen trees will be planted behind the entry monument signage

- Decorative lighting with ornamental bases, armatures, fixtures, etc. will be installed along collector, local and/or private streets with a maximum 50-foot distance between fixtures
- A sand volleyball court will be provided
- Installed public art valued at $2,000 per acre
- Private park area will be increased above the minimum 4% requirement to greater than 4% to 5%
- Along public streets, primary building setbacks will be increased above the minimum requirement to greater than 5 feet but less than 10 feet
- Garages will not be placed along public street frontages
- Buildings will have variety in horizontal off-sets of at least 8 feet on both the front and rear of the buildings
- A covered and lighted structure will be provided over external box units or internal mailbox units will be provided
- Bay or box windows will be provided on the front façade of at least 50% of the units
- Tile roofs will be used on all buildings
- Private patios (unobstructed 120 square feet minimum) and balconies (unobstructed 80 square feet minimum with 6-foot minimum depth) will be provided on all units
- At least 75% but less than 100% of all non-window/door surfaces on all sides of all primary buildings will be finished with masonry
- A minimum of one tree and three shrubs per 400 square feet of landscaped area will be provided in the private landscaped areas
- At least 50% but less than 75% of all trees will be 3-inch minimum caliper for deciduous and 8-foot minimum height for evergreens
- The detention area will be designed as a permanent water feature
- A minimum of one tree and three shrubs per 500 square feet of landscaped area will be provided in the project entry area
- A minimum of one tree and three shrubs per 400 square feet of landscaped area will be provided in the right-of-way areas
- Parking area landscaped islands will be a minimum of 15 feet wide
- Turf areas will be reduced to 25-29% of the landscaped area
- A vegetative swale or bio-retention area of at least 10% of the total detention square feet will be provided
- Dwelling units will be energy efficient
- Solar water heating and/or photovoltaic systems will be installed on the clubhouse/meeting/ recreational facility buildings
- Mail box kiosks will be covered and incorporate solar-powered lighting

Public Land Dedication would be required for this site.

Single-Family Attached Residential Competition

The Mansions at Walnut Grove – This project was awarded 67.2 SCs in 2006, and those SCs were extended twice through 2011. In December 2011, the City Council decided not to further extend the SCs. The application is essentially the same as the one previously awarded, less the area sold to the City for open space along the southern portion of the site. The project would not exceed 85 townhome-style units to be built on a 10.7-acre site at the southwest corner of 108th Avenue and Wadsworth Parkway. The property was annexed into the City in 1972 as part of the 100th and Wadsworth Annexation. The site is zoned PUD. The CLUP designation is Retail Commercial, which does not allow for residential units. A Preliminary Development Plan (PDP) was approved in 2001 for service and commercial uses. A CLUP amendment would be required for the residential use to be allowed, and the PDP would have to be amended to change the use to residential. 59.5 SCs are being requested (0.7 per unit).

The applicant reported 3,505 points; staff calculated the points as 3,830. The applicant agreed with staff.

Corrections to the application include:
- No net density was provided (staff confirmed that 8 du/acre gross was being requested, which would allow for 85 units)
- No number of units was provided
- The CLUP information was not completed

The incentives offered by the applicant for this project include:
- All internal site paths will be a minimum width of six feet
- Lighting along both sides of off-street paths will be provided
- Benches will be provided along internal sidewalks
- 100% of the required parking will be within attached garages
- Projects with 100 or fewer units will provide an indoor clubhouse/meeting facility
- Public land dedication will exceed the minimum requirement for: non-floodplain land, 2% over minimum; floodplain land, 3% over minimum
- 25% or more ranch homes or two-story homes with a first floor master bedroom and bath with a shower or tub will be built
- A covered and lighted structure will be provided over external box units or internal mailbox units will be provided
- Buildings will include no more than 6 adjacent units
- Private patios (unobstructed 120 square feet minimum) and balconies (unobstructed 80 square feet minimum with 6-foot minimum depth) will be provided on all units
- Private landscaped area will be increased above the minimum 40% requirement to greater than 40% to 45%
- A minimum of one tree and three shrubs per 450 square feet of landscaped area will be provided in the private landscaped areas
- A minimum of one tree and three shrubs per 500 square feet of landscaped area will be provided in the project entry area
- A minimum of one tree and three shrubs per 450 square feet of landscaped area will be provided in the right-of-way areas
- Street trees will be planted in the landscape area between the curb and sidewalk along a minimum of 75% of the local and private street lengths on both sides of the street
- Tree lawns will be increased from 6 feet to 9 feet
- Turf areas will be reduced to 25-29% of the landscaped area
- A vegetative swale or bio-retention area of at least 10% of the total detention square feet will be provided

Public Land Dedication would be required for this site.

Traditional Mixed Use Neighborhood Development Competition

The Village at Westminster City Center – The applicant is proposing 200 apartment units with structured parking to be built on a 3.76-acre site at the southeast corner of City Center Drive and Sheridan Boulevard. The concept is to link this project with the Hyland Village TMUND project, creating one larger TMUND development. The property was annexed into the City in 1961 as part of the SEC 96th and Sheridan Annexation. The site is zoned PUD, and a PDP from 1995 allows Commercial Office use on the site. In 1997, an ODP was approved for a 3-4 story office building on the site. The CLUP designation is Office. A CLUP amendment to TMUND, an amended PDP, and an ODP would have to be approved in order to allow the use and density. 100 SCs are being requested (0.5 per unit).

The proposed apartment complex would have a gross density of 53 du/ac .

Corrections to the application include:
- Net, rather than gross, density was provided

The Design Jury reviewed the proposal and had the following comments:
- The parcel would be connected to Hyland Village and the Farmers High Line Canal trail
- This could be a very unique, very high density project and the first of its kind in Westminster
- All underground parking will greatly aid in the urban design
- Design issues can be worked out during the ODP review
- Pedestrian connectivity to the intersection of Sheridan Boulevard and City Center Drive (96th Avenue) should be as direct as possible and easily reached upon exiting individual units or the community courtyard
- Park space should include a small tot lot
- Building design is attractive and generally well-articulated
- The density will support the adjacent TMUND and commercial uses
- Underground parking is convenient and site-efficient
- The community amenities seem attractive
- Among other use options for the site, this multi-family project would provide rooftops and provide greater density for the nearby TMUND area – a reasonable solution for this corner
- Sheridan Boulevard is a constraint, and a strong connection to Hyland Village and the shopping center needs to be a priority, such as through the proposed underpass at Sheridan Boulevard

A summary of the judges' comment on the project, based on the six criteria for TMUND projects, is listed below, along with the average score given to the project.

Summary

Average score: 7.7
- Compact, Walkable Development: The project would be very compact. Trails/sidewalks should circumnavigate the buildings to provide better on-site walking paths. There needs to be better connectivity to Sheridan Boulevard from the units and courtyard, since many people would cross at that corner to get to Hyland Village and the retail on the west side of Sheridan Boulevard.
- Mixed Use "Village" Center: With the connection to Hyland Village, the density would help support nearby businesses. A village center would require good connections to Hyland Village and nearby shopping.
- Pedestrian Oriented District: Sheridan Boulevard creates challenges for pedestrians. An underpass would help create a pedestrian-friendly connection to the west, and a bridge would create a pedestrian-friendly connection to the south. There are good, wide sidewalks in the area, along Sheridan Boulevard and City Center Drive, which would help to separate pedestrian and vehicular traffic. The connectivity to the corner of Sheridan Boulevard and City Center Drive should be clearer and more direct, since most people tend to take the shortest route.
- Narrow Streets: It may be desirable to reduce City Center Drive down to one lane in each direction, with parallel parking on one or both sides. The project would have no internal streets, only an internal drive.
- Variety of Parks: With a connection to the Farmers High Line Canal Trail, this project will have good pedestrian connections to the regional trail system. There are ample opportunities for green space around the buildings that could be programmed for different uses (i.e. community gardens, tot lot, barbecue area, etc.). Westminster Center Park is also within easy walking distance of the site.

Public Land Dedication would be required for this site. The 10-acre Westminster Center Park dedication would be credited toward the requirement.

Notification letters were emailed on January 5, 2012, to the applicants indicating staff's recommendation for the City Council meeting. Because detailed site development plans are not reviewed as part of this competition process, and significant changes typically occur during the development review process, the

sketch plans submitted for these competitions are not reviewed with City Council as part of these competitions. The developers have been informed that presentations will not be scheduled for the City Council meeting on January 23, 2012, since the developers would tend to focus on site plans not yet reviewed by the City. The developers were also notified that, while it is not required for them to attend the City Council meeting, they are welcome.

The Service Commitment competition meets Council's Strategic Plan Goals of "Vibrant Neighborhoods and Livable Communities" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- A - Vicinity Map
- B - Applications Summary Table
- Resolution for Service Commitments for B-3 Category
- Resolution for Service Commitments for B-4 Category

2012 Service Commitment Applications

0 0.25 0.5 1 Miles

N W E S

ATTACHMENT B

Applications Summary Table

Name	Location	Category	Acres	# Units	Gross Density	SCs Requested	SCs Requested for 2012	Developer	Consultant	Reported Score	Calculated Score	CLUP change needed?
Westminster Axis	Westminster Blvd & 108th	MF / B-3	15.8	600	38 du/ac	300	**150**	The Wolff Company	CLC Associates Inc.	1350	**1350**	Yes
Westminster Yates	88th Pl. & Yates St.	MF / B-3	8.93	214	24 du/ac	107	**54**	The Wolff Company	CLC Associates Inc.	1250	**1250**	Yes
Westminster Lofts on the Creek	Westcliff Pkwy. & Church Ranch	MF / B-3	8.89	264	29.6 du/ac	132	**66**	Etkin Johnson Group	Henry Design Group	4400	**4400**	Yes
The Village at Westminster City Center	City Center Dr. & Sheridan	TMUND	3.76	200	53 du/ac	100	**100**	SH Realty Partners / Jim Sullivan	ZO-Architecture	n/a	**n/a**	Yes
Mansions at Walnut Grove	108th & Wadsworth Pkwy.	SFA / B-2	10.69	85	8	59.5	**0**	n/a	n/a	3505	**3830**	Yes
TOTALS			**48.07**	**1363**		**698.5**	**370**					

RESOLUTION

RESOLUTION NO. **4** INTRODUCED BY COUNCILLORS

SERIES OF 2012 _____

A RESOLUTION CONCERNING
CATEGORY B-3 (NEW MULTI-FAMILY)
COMPETITION AND SERVICE COMMITMENT AWARDS

WHEREAS, the City of Westminster has adopted by Ordinance No. 3561 a Growth Management Program for the period 2011 through 2020; and

WHEREAS, the goals of the Growth Management Program include balancing growth with the City's ability to provide water and sewer services, preserving the quality of life for the existing Westminster residents, and providing a balance of housing types; and

WHEREAS, within the Growth Management Program there is a provision that Service Commitments for residential projects shall be awarded in Category B-3 (new multi-family residential) on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked within each standard by the degree to which it meets and exceeds the said criteria; and

WHEREAS, the City's ability to absorb and serve new multi-family development is limited, and the City of Westminster has previously adopted Resolution No. 56, Series of 2003, specifying the various standards for new multi-family projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City of Westminster has previously allocated 300 Service Commitments for the year 2012 for use in servicing new residential developments based on the criteria set forth in Section 11-3-1 of the Westminster Municipal Code; and

WHEREAS, three applications were received for the multi-family competition and 270 Service Commitments are requested in 2012; and

WHEREAS, the applications request a total of 539 Service Commitments requested over a two-year period for the total build-out of 1,078 multi-family units proposed.

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

1. Category B-3 Service Commitment awards are hereby made to the specific projects listed below as follows:

Project	**Location**	**2012**	**2013**	**2014**	**Total**
Westminster Lofts on the Creek	SEC Westcliff Pkwy. & Church Ranch Way	66	66	0	**132**
					132

2. These Service Commitment awards to the projects listed above are conditional and subject to the following:
    a. The applicant must successfully amend the Comprehensive Land Use Plan to District Center.
    b. The applicant must complete and submit an amended Preliminary Development Plan for the required development review processes.
    c. The applicant must complete and submit proposed development plans in the form of an amendment to the Official Development Plan to the City for the required development review processes. All minimum requirements and all incentive items indicated by the applicant as specified within the competition shall be included as part of the proposed development and listed on the Official Development Plan for the project.
    d. Service Commitment awards for the projects listed above, if approved by the City, may only be used within the projects specified above.
    e. These Service Commitment awards shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.
    f. Each Service Commitment award is conditional upon City approval of the project listed above and does not guarantee City approval of any project, proposed density or proposed number of units.
    g. The City of Westminster shall not be required to approve any Annexation, Establishment of Zoning, Preliminary Development Plan or amendment, Official Development Plan or amendment necessary for development of property involved in this Category B-3 award nor shall any other binding effect be interpreted or construed to occur in the City as a part of the Category B-3 award.
    h. Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.
    i. The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. During the competition process the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that significant changes to any such plans will be required once the City's development review process begins for any project.
    j. Awards shown for the year 2012 are effective as of the date of this Resolution (January 23, 2012). Future year awards are effective as of January 1 of the specified year and cannot be drawn prior to that date. If fewer Service Commitments are needed for a project in any given year, the unused amount in that year will be carried over to the following year(s) provided the Service Commitments have not expired.
    k. In order to demonstrate continued progress on a project, the following deadlines and expiration provisions apply:
        1) The project must proceed with the development review process and receive approval for a Comprehensive Land Use Plan amendment to District Center by December 31, 2013.
        2) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2013, or the entire Service Commitment award for the project shall expire.
        3) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (by no later than December 31, 2016), or the entire Service Commitment award for the project shall expire.
        4) Following the issuance of the first building permit for the project, all remaining Service Commitments for a project shall expire if no new building permit is issued for vertical improvements for the project during any consecutive 12-month period and the project is not deemed an "Active" development.
    l. If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the

Service Commitment supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.

m. This award resolution shall supersede all previous Service Commitment award resolutions for the specified project locations.

3. The Category B-3 Service Commitment awards shall be reviewed and updated each year. If it is shown that additional or fewer Service Commitments are needed in the year specified, the City reserves the right to make the necessary modifications.

PASSED AND ADOPTED this 23rd day of January, 2012.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

RESOLUTION

RESOLUTION NO. **5** INTRODUCED BY COUNCILLORS

SERIES OF 2012 _____

A RESOLUTION CONCERNING
CATEGORY B-4 (NEW TRADITIONAL MIXED USE NEIGHBORHOOD DEVELOPMENT)
COMPETITION AND SERVICE COMMITMENT AWARDS

WHEREAS, the City of Westminster has adopted by Ordinance No. 3561 a Growth Management Program for the period 2011 through 2020; and

WHEREAS, the goals of the Growth Management Program include balancing growth with the City's ability to provide water and sewer services, preserving the quality of life for the existing Westminster residents, and providing a balance of housing types; and

WHEREAS, within the Growth Management Program there is a provision that Service Commitments for residential projects shall be awarded in Category B-4 (new traditional mixed-use neighborhood development) on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked within each standard by the degree to which it meets and exceeds the said criteria; and

WHEREAS, the City's ability to absorb and serve new multi-family development is limited, and the City of Westminster has previously adopted Resolution No. 30, Series of 2006, specifying the various standards for new traditional mixed-use neighborhood development projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City of Westminster has previously allocated 300 Service Commitments for the year 2012 for use in servicing new residential developments based on the criteria set forth in Section 11-3-1 of the Westminster Municipal Code; and

WHEREAS, one application was received for the traditional mixed-use neighborhood development competition and 100 Service Commitments are requested in 2012; and

WHEREAS, the application requests a total of 100 Service Commitments requested over a one-year period for the total build-out of the 200 total traditional mixed-use neighborhood development units proposed.

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

1. Category B-4 Service Commitment awards are hereby made to the specific projects listed below as follows:

Project	**Location**	**2012**	**2013**	**2014**	**Total**
The Village at Westminster City Center	SWC of City Center Drive & Sheridan Blvd.	100	0	0	**100**
					100

2. These Service Commitment awards to the projects listed above are conditional and subject to the following:
   a. The applicant must successfully amend the Comprehensive Land Use Plan to TMUND.
   b. The applicant must complete and submit a Preliminary Development Plan for the required development review processes.
   c. The applicant must complete and submit proposed development plans in the form of an Official Development Plan to the City for the required development review processes. All minimum requirements and all incentive items indicated by the applicant as specified within the competition shall be included as part of the proposed development and listed on the Official Development Plan for the project.
   d. Service Commitment awards for the project listed above, if approved by the City, may only be used within the project specified above.
   e. These Service Commitment awards shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.
   f. Each Service Commitment award is conditional upon City approval of the project listed above and does not guarantee City approval of any project, proposed density or proposed number of units.
   g. The City of Westminster shall not be required to approve any Annexation, Establishment of Zoning, Preliminary Development Plan or amendment, Official Development Plan or amendment necessary for development of property involved in this Category B-4 award, nor shall any other binding effect be interpreted or construed to occur in the City as a part of the Category B-4 award.
   h. Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.
   i. The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. During the competition process the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that significant changes to any such plans will be required once the City's development review process begins for any project.
   j. Awards shown for the year 2012 are effective as of the date of this Resolution (January 23, 2012). Future year awards are effective as of January 1 of the specified year and cannot be drawn prior to that date. If fewer Service Commitments are needed for a project in any given year, the unused amount in that year will be carried over to the following year(s) provided the Service Commitments have not expired.
   k. In order to demonstrate continued progress on a project, the following deadlines and expiration provisions apply:
      1) The project must proceed with the development review process and receive approval for a Comprehensive Land Use Plan amendment to Traditional Mixed Use Neighborhood Development by December 31, 2013.
      2) The project must proceed with the development review process and receive Preliminary Development Plan and Official Development Plan approval by December 31, 2013, or the entire Service Commitment award for the project shall expire.
      3) The project must be issued at least one building permit for vertical improvements within three years of Official Development Plan approval (by no later than December 31, 2016), or the entire Service Commitment award for the project shall expire.
      4) Following the issuance of the first building permit for the project, all remaining Service Commitments for a project shall expire if no new building permit is issued for vertical improvements for the project during any consecutive 12-month period and the project is not deemed an "Active" development.
   l. If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the Service Commitment supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.

m. This award resolution shall supersede all previous Service Commitment award resolutions for the specified project locations.

3. The Category B-4 Service Commitment awards shall be reviewed and updated each year. If it is shown that additional or fewer Service Commitments are needed in the year specified, the City reserves the right to make the necessary modifications.

PASSED AND ADOPTED this 23rd day of January, 2012.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

WESTMINSTER

Agenda Item 10 G&H

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Resolutions No. 6 and 7 re HOME Funding Allocations

Prepared By: Signy Mikita, Community Development Program Planner

Recommended City Council Action

1. Adopt Resolution No. 6 allocating the balance of 2012 HOME funds being administered per agreement by Adams County.

2. Adopt Resolution No. 7 allocating up to $500,000 of the City's HOME fund balance towards the acquisition and rehabilitation of the Westminster Commons Senior Apartments by Volunteers of America.

Summary Statement

- The U.S. Department of Housing and Urban Development (HUD) provides an allocation of HOME Investment Partnership Act (HOME) funds annually to the City of Westminster through Adams County (ADCO), pursuant to a HUD requirement, to support affordable housing efforts;
- It is estimated that the City will receive a HOME fund allocation of about $200,000 for 2012. The City also has a balance of approximately $476,000 in HOME funds that needs to be spent down in a timely manner. The cumulative balance of HOME funds is estimated at $676,000.
- Adams County requires that the City's HOME funds be allocated and assigned by a City Council approved resolution.
- Pursuant to HUD regulations and an agreement with ADCO, the County retains 10% of the City's annual allocation to be applied towards administration of the program.
- At the City Council Study Session on November 21, 2011, Council directed that $50,000 of the HOME funding be allocated to the Housing Rehabilitation Program administered by ADCO, with the balance of the 2012 HOME funding being directed towards future affordable housing development projects.
- Staff is recommending that the HOME balance of $676,000 be allocated in 2012 to the following HOME eligible activities providing assistance to low income households:
    - 10% of total 2012 allocation (estimated at $20,000) towards Adams County Community Development Administration;
    - $50,000 to the Housing Rehabilitation Program; and,
    - The balance, estimated at $606,000, would be applied towards the Affordable Housing Development Project fund. $500,000 from the Affordable Housing Development Project fund would be allocated to the Westminster Commons acquisition/rehabilitation being pursued by Volunteers of America (VOA).

Expenditure Required: $676,000

Source of Funds: HOME Fund Administered by Adams County Community Development

Policy Issue

Should the City allocate HOME funds to program administration, housing rehabilitation, affordable housing development projects, and up to $500,000 for the Westminster Commons Apartments?

Alternatives

1. The City could choose not to allocate the funds. This alternative is not suggested as it will prevent Adams County from expending the funds, which then will be required to be returned to the Federal government. It would also adversely affect the sale of the Westminster Commons development to the Volunteers of America.

2. The City could choose to allocate a higher proportion of the funds to the home rehabilitation and homebuyer down payment assistance programs. This alternative is not recommended as there is limited demand for the down payment assistance program, and the City is supplementing the $50,000 in home rehabilitation with $50,000 in CDBG funding for the City Emergency and Minor Home Repair Program.

Background Information

The City receives an annual allocation of federal HOME Investment Partnership Act (HOME) funds that are distributed to and administered by Adams County. In the past, the City has received an annual allocation in the range of $220,000 to $240,000. It is estimated that the City will receive $200,000 in 2012. Per the City's agreement with ADCO, and in compliance with HUD limits, Staff recommends that 10% of the 2012 HOME funds (estimated at $20,000) be allocated to ADCO for Program Administration. This funding level for administration is consistent with previous annual allocations.

In the past the City Council also allocated HOME funds towards first-time homebuyer down payment assistance and homeowner residential rehabilitation. The demand for the homebuyer assistance, however, has been limited over the years resulting in the City maintaining a substantial unspent balance in its HOME fund account. It was further determined that other sources of down-payment assistance were available through several organizations, including the Colorado Housing and Finance Authority (CHFA), Community Resources & Housing Development Corporation (CRHDC) which is headquartered in Westminster, and Adams County Housing Authority (ACHA). As a result of these findings, City Council chose not to fund homebuyer assistance in 2011. Staff recommends that homebuyer assistance again not be funded in 2012 using its allocation of HOME funds.

In 2011, the City also reduced the amount of HOME funding for major home rehabilitation projects from $100,000 to $50,000 given the City Council's decision to allocate $50,000 in CDBG money to fund minor home repairs. Staff again recommends that $50,000 in 2012 HOME funds be allocated to the Housing Rehabilitation Program administered by Adams County given the City has already allocated a similar amount of 2012 CDBG funds. The combined CDBG/HOME housing rehabilitation fund would total $100,000 for 2012. An annual allocation of $100,000 for housing rehabilitation programs has been more than adequate based upon historical application submittal trends.

Staff recommends that the balance of 2012 HOME proceeds, estimated at $130,000, be allocated to the Affordable Housing Development Project fund. These funds, along with HOME funds accumulated from previous years, could be applied to an affordable housing development in forthcoming years.

As of the end of 2011, the City also retained an estimated balance of $476,000 in HOME funds accumulated from previous years. The lack of demand for homebuyer assistance and the slow-down in the development activity over the last several years has resulted in this significant fund balance. With the

estimated $200,000 allocation in 2012, the City's HOME balance would be $676,000. Pursuant to HUD regulations, the City must commit expenditure of its HOME funds within three years of receiving the allocation. Given much of this HOME balance is approaching the expenditure time limit, Adams County, as fund administrator, has advised the City that a substantial amount of the balance needs to be spent down rather quickly to remain in compliance with HUD's requirement.

The Westminster Housing Authority (WHA) is under contract to sell the Westminster Commons senior apartments to Volunteers of America (VOA). Upon closing on the sales transaction, VOA will commence to fully renovate and rehabilitate all of the apartment units as well as the exterior of the buildings. As part of its financing proposal, VOA has requested that Adams County give consideration to contributing up to $500,000 of ADCO HOME funds to the project as match towards a comparable contribution from the State of Colorado Division of Housing. Given this request, ADCO is proposing, and Staff recommends, that the City use its HOME fund balance to provide up to $500,000 in HOME funds towards this project. In exchange, ADCO staff has agreed to provide up to $500,000 of ADCO HOME funds to be applied towards another affordable housing project in Westminster in an upcoming year. Through this arrangement the City would spend down its balance of "old" HOME funds keeping the City in compliance with HUD, and retain the opportunity to fund a future affordable housing development project using newer HOME funds provided by ADCO.

Staff is aware of three affordable housing projects that may seek an allocation of HOME funds over the next several years.

- Growing Home Affordable Housing Development – acquisition, rehabilitation, and new construction of housing on property immediately adjacent to their apartment project at 7240 Newton Street;
- 7200 Block of Lowell – a potential mixed use development, incorporating approximately 54 affordable apartments and ground floor commercial space; and,
- Adams County Housing Authority TOD Development - land acquisition for affordable rental housing in the Westminster Station TOD area.

The proposed allocation of HOME funds fulfills the City's Strategic Plan Goals of Financially Sustainable City Government Providing Exceptional Services and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments - Resolutions

RESOLUTION

RESOLUTION NO. **6** INTRODUCED BY COUNCILLORS

SERIES OF 2012 _____

A RESOLUTION
ALLOCATING THE BALANCE OF 2012 HOME FUNDS

WHEREAS, the City of Westminster receives an annual allocation of HOME Investment Partnership Act (HOME) funds from the U.S. Department of Housing and Urban Development (HUD) through Adams County; and

WHEREAS, such funds must be applied towards assisting low to moderate income families in obtaining and maintaining residences in safe and habitable housing; and

WHEREAS, the City has an available balance of $676,000 remaining to be allocated to one or more eligible HOME fund activities; and

WHEREAS, Adams County has requested that the City formally allocate the fund balance accordingly; and

WHEREAS, the City wishes to make the funds available for program administration, rehabilitation of single family homes, and development of affordable housing.

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

Adams County is hereby authorized to allocate the City of Westminster HOME balance as follows:

- $20,000 Adams County HOME Administration;
- $50,000 Housing Rehabilitation; and
- $606,000 Affordable Housing Development Projects

PASSED AND ADOPTED this 23rd day of January, 2012.

_____
Mayor

ATTEST: APPROVED AS TO LEGAL FORM:

_____ _____
City Clerk City Attorney

RESOLUTION

RESOLUTION NO. 7 INTRODUCED BY COUNCILLORS

SERIES OF 2012 _____

A RESOLUTION
ALLOCATING UP TO $500,000 IN HOME FUNDS TO BE USED TOWARDS ACQUISITION/REHABILITATION OF THE WESTMINSTER COMMONS APARTMENTS

WHEREAS, the City of Westminster receives an annual allocation of HOME Investment Partnership Act (HOME) funds from the U.S. Department of Housing and Urban Development (HUD) through Adams County; and

WHEREAS, such funds must be applied towards assisting low to moderate income families in obtaining and maintaining residences in safe and habitable housing; and

WHEREAS, the City has an available balance of approximately $606,000 for Affordable Housing Development Projects remaining to be allocated to one or more eligible HOME fund activities; and

WHEREAS, Volunteers of America (VOA), a non-profit corporation, is under contract with the Westminster Housing Authority to acquire and rehabilitate the 130-unit Westminster Commons Senior Apartments at 3180 W. 76th Avenue, Westminster, Colorado, hereafter known as the Project, with the intent of providing affordable housing serving low-income senior and/or disabled residents; and

WHEREAS, VOA is requesting that the City provide up to $500,000 in HOME funds to be used towards the acquisition and rehabilitation of the Westminster Commons Senior Apartments; and

WHEREAS, the Project meets federal eligibility requirements relative to the use of such funds; and

WHEREAS, the City Council finds that the Project as proposed meets the goals and objectives of the South Westminster Strategic Revitalization Plan related to providing a diverse range of livable housing options and will contribute to improving the livability of the south Westminster neighborhood.

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

Up to $500,000 of its HOME funds, currently on deposit with and administered by the Adams County Office of Community Development, be allocated to the Westminster Commons Senior Apartments Project located at 3180 W. 76th Avenue, in the City of Westminster, Adams County, Colorado, and that such funds shall only be applied towards costs incurred relative to acquisition and rehabilitation of the residences.

PASSED AND ADOPTED this 23rd day of January, 2012.

_____
Mayor

ATTEST: APPROVED AS TO LEGAL FORM:

_____ _____
City Clerk City Attorney

WESTMINSTER

Agenda Item 10 I

Agenda Memorandum

City Council Meeting
January 23, 2012

SUBJECT: Councillor's Bill No. 3 re Four Leases for the Strasburg Natural Resource Farm

Prepared By: David Meyer, Water Quality Specialist
Mary Fabisiak, Water Quality Administrator
Mike Happe, Utilities Planning & Engineering Manager

Recommended City Council Action

Pass Councillor's Bill No. 3 on first reading authorizing the City Manager to sign four lease agreements for two homes, one trailer pad and one agricultural lease at the City's Strasburg Natural Resource Farm.

Summary Statement

- The City of Westminster owns approximately 3,000 acres of farmland that is used for biosolids application.
- The four leases being considered involve three different tenants and generate a total income of $37,986 per year.
- Lease agreements are used to define the responsibilities of each party, to protect the interests of the City, to maintain improvements on the property and to ensure the long-term usefulness of the land for biosolids application.
- Lease amounts were determined by taking a market survey of similar residential and agricultural leases in the area.
- Leasing of property by the City must be ratified by ordinance under section 13.4 of the City's Charter.

Expenditure Required: **$** 0

Source of Funds: N/A

Policy Issue

Should the City of Westminster enter into lease agreements with tenants at the City's Strasburg Natural Resource Farm?

Alternatives

The City could choose to not lease any of the land, houses or other improvements on the property. However, because crops must be raised to utilize nitrogen supplied by the biosolids application, the City would need to farm the land itself or arrange for other alternatives for biosolids disposal at higher cost to the City. The City could also choose to enter into shorter term leases, but would risk disruption in farm operations that would have negative impacts on the biosolids application program. Staff does not recommend either of these alternatives.

Background Information

Westminster purchased farmland north of Strasburg, Colorado in 1997 and again in 2001 for the purpose of biosolids application. Biosolids are the highly treated byproduct of the wastewater treatment process and are an excellent source of nitrogen, organic matter and trace nutrients for crop production. The use of biosolids as fertilizer is governed by federal, state and county regulations to ensure the safety of the public and the environment.

The farmland purchased by the City has been under cultivation for well over 50 years and includes a mix of irrigated, dryland and pasture fields, two rental houses and various other structures. In addition to the leases under consideration that will generate $37,986 per year, another crop-share lease generates between $4,000 and $50,000 per year depending on crop yield. Oil and gas leases generate between $40,000 and $110,000 per year. Annual revenue from all leases ranges from $82,000 to $198,000 per year.

The leases are structured as annual agreements, automatically renewable for up to four additional years with cancellation clauses available for both parties. Lease amounts were determined by taking a market survey of similar residential and agricultural leases. The lease rate for the crop land is an increase of 10% from the previous lease period. The lease amounts for the pastureland and the residential property have remained the same. Some of the leases also take into account that the lessees associated with the City's Strasburg Natural Resource Farm provide services beneficial to the biosolids application program. The lessees of the agricultural land, one of the houses and the trailer pad have farmed and lived on the property since it was first purchased by the City.

These contracts will assist in meeting the City's goals of Financially Sustainable City Government Providing Exceptionable Services; Strong, Balanced Local Economy; and Beautiful and Environmentally Sensitive City because they contribute to the continued use and maintenance of City owned facilities, preserve the agricultural uses of the area's local economy and provide a sustainable and environmentally responsible use for the City's wastewater biosolids.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments - Councillor's Bill with Exhibits A – D

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. **3**

SERIES OF 2012 INTRODUCED BY COUNCILLORS

_____

A BILL
FOR AN ORDINANCE APPROVING FOUR LEASE AGREEMENTS FOR CITY-OWNED PROPERTY KNOWN AS THE STRASBURG NATURAL RESOURCE FARM

WHEREAS, the City owns property in central Adams County that it purchased for the purpose of applying biosolids; and

WHEREAS, it is in the City's best interest to maximize the income generated from such operation by collecting rental income from use of the land and improvements thereon; and

WHEREAS, the final terms of the lease agreements have been accepted and filed with the City Clerk.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Those certain leases between the City and the parties listed below are approved and the City Manager is hereby authorized to execute said leases with the following parties as summarized below, in substantially the same forms as attached hereto Exhibits A, B, C and D.

Lessee	Leased Premises	Total Annual Rent
Mr. Matthew Sweeney	Land lease including: 943 acres pastureland @ $7,544/year 230 acres irrigated land @ $11,500/year 222 acres dry farmland @ $2,442/year Quonset hut @ $900/year	$22,386/year
Tom and Jan Linnebur	Residence at 57101 East 88th Avenue	$10,200/year
Mrs. Yvonne Sweeney	Trailer pad at 8551 Headlight Road	$600/year
Mr. Matthew Sweeney	Residence at 8551 Headlight Road	$4,800/year

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of January, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT AS AMENDED ORDERED PUBLISHED this 13th day of February, 2012.

ATTEST:

_____
Mayor

_____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
City Attorney's Office

EXHIBIT A

LAND LEASE

_____ 1. Parties

This lease for the rental of agricultural property is between the City of Westminster ("City") and MATTHEW SWEENEY ("lessee").

The person/position authorized to manage the leased premises for the City is:

Name David Meyer, Water Quality Analyst
Address c/o City of Westminster
13150 N. Huron Street, Westminster, Colorado 80234
Phone 303-658-2376

_____ 2. Leased Premises

The City hereby leases to lessee the premises described below:

230 acres of irrigated land, 222 acres of dry land, and 943 acres of pasture land generally located at eight miles north of Strasburg, Colorado in Adams County, all as depicted in the hatched areas shown on the map attached hereto as Exhibit A.

The premises shall also include:

Two 30 horsepower electric motors with pumps; one Cummins diesel engine with pump; the 8-inch aluminum irrigation pipe system; and that certain Quonset building on the premises.

_____ 3. Term

Fixed Term. The term of this lease shall be from twelve o'clock noon on January 1, 2012 until twelve o'clock noon on January 1, 2013. The lease term shall be automatically renewed on an annual basis, without requirement of further written notice or amendment, until twelve o'clock noon on January 1, 2017. Either party may choose not to annually renew for the following year by providing written notice to the other party by December 1st, in which case the lease shall terminate at the end of that calendar year.

_____ 4. Rent

A. Fixed Term. The total annual rental price for the term of this lease is eighteen thousand seven hundred and four dollars ($22,386), payable prior to December 31st of each year. No proration will be made for a term less than a calendar year.

B. Rent payments shall be made to:

David Meyer, Water Quality Analyst
City of Westminster
13150 N. Huron Street
Westminster,Colorado 80234

C. Lessee shall incur and be charged $5.00 per day as a late fee for payment of rent received after 5 p.m. o'clock on the15th day of January following the lease year. Such fee, which will be considered additional rent, may be collected immediately by the City or, at the City's option, such fee may be withheld from lessee's security deposit if written notice of such intended withholding is provided to lessee within 45 days of the date that the late fee is incurred. The giving of such notice of intent shall not relieve the City of any obligation pertaining to the security deposit set forth in section 6 of this lease. Late fees may be waived if the City agrees in writing. Lessee should request such waiver by notifying the City on or before the rental due date and mutually arranging an alternative payment date.

A charge of $25.00 may be imposed for any lessee's check returned to the City because of insufficient funds, whether the check is for rent, security deposit, or other payment.

5. Use

A. Lessee's use of the leased premises shall be limited to agricultural purposes, including crop production.

B. Lessee acknowledges that a major factor in the City's decision to lease the premises is to insure the viability of the leased premises as a receiving site for bio-solids application. For that reason, lessee agrees to co-ordinate, consult, and cooperate with the City's Water Resources and Treatment Program representative in the selection and timing of the crops planted on the leased premises.

C. Lessee shall not engage in any illegal activities on the premises.

D. Lessee shall not apply fertilizers without prior approval of City.

E. Lessee shall not use, store, or dispose of any chemicals that might create liability for the City resulting from contamination from such chemicals. For that reason, Lessee shall:

(1) Obtain City's approval of all chemicals, including pesticides and herbicides, prior to their use; and

(2) Provide copies of all relevant MSDSs for any chemicals used by Lessee.

_____ 6. City's Obligations

City agrees to furnish the property, and to:

A. Provide all posts and fence for fence maintenance; and

B. Pay taxes on land, improvements, and personal property owned by City.

C. Pay the cost of chemicals, as approved by the City, purchased by lessee for noxious weed removal.

_____ 7. Lessee's Obligations

Lessee agrees to:

A. Provide all machinery, equipment and labor necessary to farm the premises properly.

B. Provide all seed, inoculant, disease-treatment materials, and fertilizers, to the extent they are permitted by the City.

C. Coordinate crop selection, field preparation, and planting schedules to allow the City adequate access to apply biosolids.

D. Maintain any and all wells for crop irrigation on the premises in good order.

E. Maintain the fences on the premises in as good repair and condition as they are at the commencement of the Lease, or in as good repair and condition as they may be put by City during the term of the Lease, ordinary wear, loss by fire, or unavoidable destruction excepted.

F. Maintain and take proper care of, and prevent injury to, all trees, vines, and shrubs. No trees to be cut without City's consent.

G. Prevent noxious weeds from going to seed on the premises, and keep trim the weeds and grasses on the roads adjoining the leased premises.

H. Maintain and keep in good repair any established watercourses or ditches on the premises.

_____ 8. Compensation for Damage

At the conclusion of this Lease, lessee shall pay to City a reasonable compensation for any damage to the property, for which lessee is responsible, after due allowance is made for damage resulting from ordinary wear and depreciation or from causes beyond lessee's control.

_____ 9. Utilities

Lessee shall be responsible for paying for the following initialed utilities or services connected with the premises (check those applicable):

A. water _____
B. sewer _____
C. electricity __x_____
D. gas _____
E. phone (if desired)_____
F. trash pick-up _____
G. other _____

Within 3 business days after the beginning of the lease term, lessee shall arrange for such utilities or services and for billing directly to lessee, unless otherwise agreed here:

_____
_____.

Provision of and the payment for utilities and services listed above but not checked shall be the responsibility of the City.

The party responsible for any particular utility or service shall not be liable for failure to furnish the utility or service when the cause of such failure is beyond that party's control.

_____ 10. Right to Re-Entry

City reserves the right of itself, its employees, assigns, or prospective buyers, to enter upon the leased premises at any reasonable time for the purpose of viewing the same or making repairs or improvements thereon, or of plowing after severance of crops, or of seeding, or applying bio-solids, provided that such entry and activity shall not interfere with the occupancy of lessee.

If Lessee should fail to carry out substantially the provisions of this Lease, within ten days after service by City of written notice to lessee to lessee's failure to fulfill his obligations, City shall have the right to re-enter and to take full possession of the farm and buildings, which lessee agrees to vacate peaceably without claim for damages.

_____ 11. Assignment/Subleasing/Release

Lessee shall not assign this lease, or sublet any portion of the leased premises, for any part or all of the term of this lease without prior written consent of the City.

_____ 12. Nuisance

Lessee agrees not to create any nuisance such as will disturb the peace and quiet of neighbors.

_____ 13. Compensation for Termination of Lease

A. If terminated for cause, no compensation will be paid to lessee.

B. If terminated at the end of the five year term, no compensation will be paid lessee.

C. If terminated at the end of any annually renewable year, compensation will be as follows:

_____

_____

_____

_____ 14. Notice

Unless otherwise specified in this lease, all notices provided by this lease shall be in writing and shall be delivered to the other party personally, or sent by first class mail, postage pre-paid, or securely and conspicuously posted, as follows:

To the City: City of Westminster
Attn. David Meyer
13150 N. Huron Street
Westminster, CO 80234

To lessee at the premises, or at lessee's last known address

Notice to one lessee shall be deemed to be notice to all lessees.

_____15. Insurance

The City's insurance does not cover lessee's personal possessions in the event of loss or damage due to fire, windstorm, flood, theft, vandalism, or other similar cause. If lessee desires to insure personal possessions or to insure against lessee's personal liability, renter's insurance should be obtained.

Lessee will carry liability insurance covering bodily injury and property damage in an appropriate amount and to make the City an additional named insured under this liability policy, and to provide the City with a copy of such insurance policy as evidence of coverage, throughout the term of the lease.

_____ 16. Attorney's fees

In the event of any legal action concerning this lease which results in a judgment, the losing party shall pay to the prevailing party reasonable attorney's fees and court costs to be fixed by the court.

_____ 17. Liability

Lessee will indemnify, defend, and hold harmless the City from and against any claim for personal injury or property damage resulting from any act or omission of its agents.

_____ 18. Subordination

This lease shall be subordinate to all existing and future mortgages and deeds of trust upon the property.

_____ 19. Waiver

Any waiver by either party of any breach of any provision of this lease shall not be considered to be a continuing waiver or a waiver of a subsequent breach of the same or a different provision of this lease.

_____ 20. Severability

The unenforceability of any provision or provisions of this lease shall not affect the enforceability of any other provision or provisions.

_____ 21. Joint and Several Liability

If this lease is signed on behalf of lessee by more than one person, then the liability of the persons so signing shall be joint and several. The language "joint and several" means that if more than one person has signed this lease, then each of these persons individually and all of these persons collectively are fully responsible for fulfilling all of the obligations of this lease, except where expressly otherwise agreed between the City and lessee. For example, one person signing the lease may be liable for any or all damages to the premises, even if caused by another person signing the lease, and one person signing the lease is liable for the total amount of rent due, even though other persons have also signed the lease.

_____ **22. Signatures/Amendment of Lease**

This lease contains the entire agreement of the parties and may not be altered or amended except by mutual written agreement signed by both parties.

Signed this 6TH day of JANUARY, 2012.

CITY OF WESTMINSTER

By: _____

Title: _____

LESSEE:

Matthew Sweeney

Matthew Sweeney

_____

_____

_____

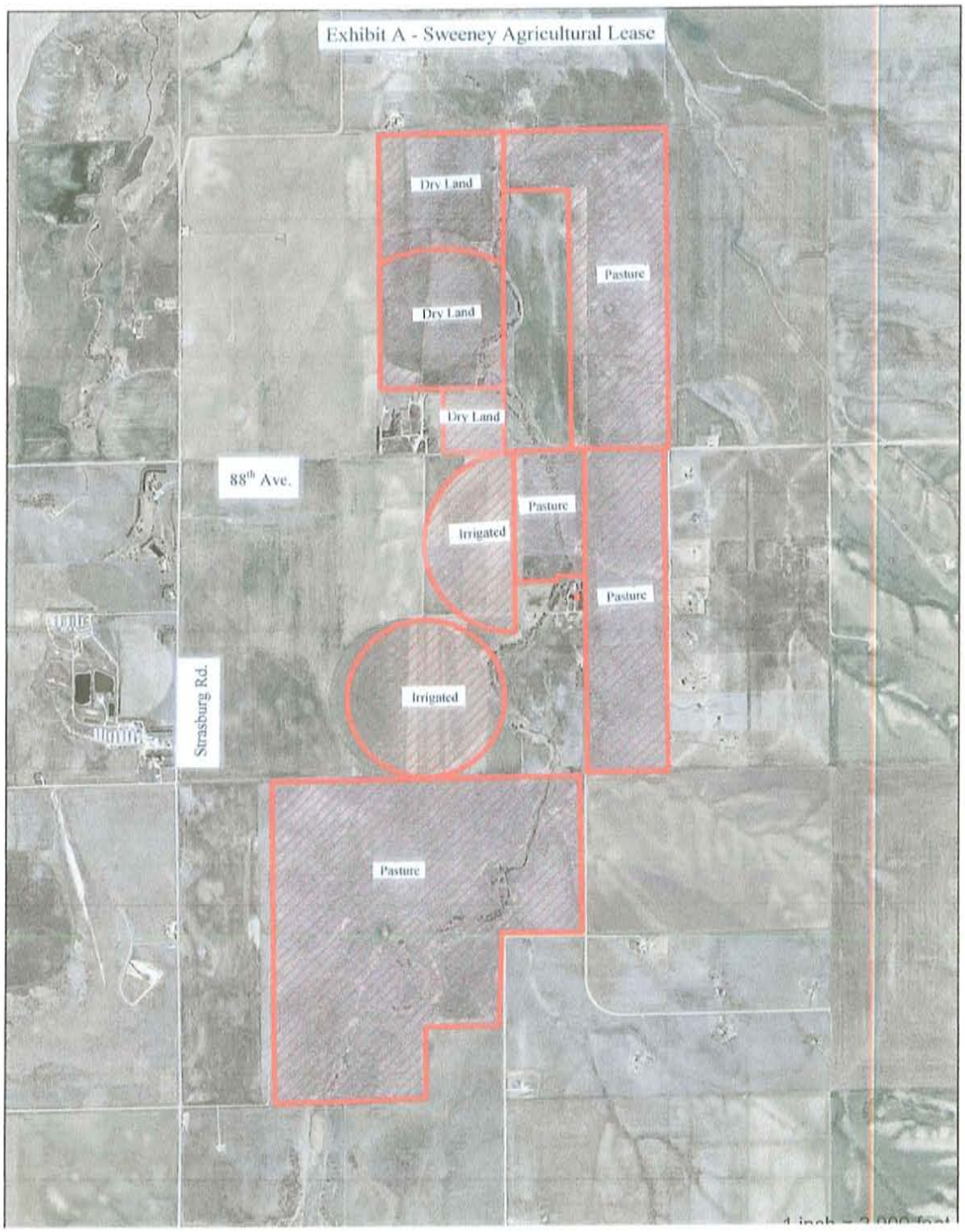


Exhibit A - Sweeney Agricultural Lease
Dry Land
Dry Land
Dry Land
Pasture
88th Ave.
Irrigated
Pasture
Pasture
Strasburg Rd.
Irrigated
Pasture

EXHIBIT B

RESIDENTIAL LEASE

_____ 1. Parties

This lease for the rental of residential property is between the City of Westminster ("City") and Tom Linnebur and Jan Linnebur, ("resident")

The person/position authorized to manage the leased premises for the owner is:

Name David Meyer, Water Quality Specialist
Address c/o City of Westminster
13150 N. Huron Street
Westminster, CO 80234
Phone 303-658-2376

_____ 2. Leased Premises

The City hereby leases to resident the premises described below:

the house, garage, and surrounding residential lot generally located at 57101 East 88th Avenue, Strasburg, Colorado, 80136 and shown on the attached Exhibit A in a red box.

The premises shall also include:

_____

_____ 3. Term

A. Fixed Term. The initial term of this lease shall be from twelve o'clock noon on January 1, 2012 until twelve o'clock noon on January 1st, 2013. The lease term shall be automatically renewed on an annual basis, without requirement of further written notice or amendment, until January 1, 2017. Either party may choose not to annually renew for the following year by providing written notice to the other party by December 1st, in which case the lease shall terminate at the end of that calendar year.

If resident retains possession of the premises after expiration of the fixed lease term with the permission of the City, resident and the City shall continue to be bound by the terms and conditions of this lease on a month-to-month basis. The lease may then be terminated by either party giving at least thirty (30) days written notice prior to the end of the rental month.

_____ 4. Rent

A. Fixed Term. The total rental price for the initial term of this lease is $10,200.00, and the same amount for any subsequent years. Of this amount, the first

rental payment in the amount of $850.00 is due on January 1, 2012. The remainder is payable in monthly installments of $850.00 each, due on the first day of each month.

B. Rent payments shall be made to:

City of Westminster
Attn: David Meyer, Water Quality Specialist
13150 N. Huron Street
Westminster, CO 80234

Resident shall incur and be charged Five Dollars ($5.00) per day as a late fee for payment of rent received after 5 p.m. o'clock on the fifteenth (15th) day of the month. Such fee, which will be considered additional rent, may be collected immediately by the City or, at the City's option, such fee may be withheld from resident's security deposit if written notice of such intended withholding is provided to resident within 45 days of the date that the late fee is incurred. The giving of such notice of intent shall not relieve the City of any obligation pertaining to the security deposit set forth in section 6 of this lease. Late fees may be waived if the City agrees in writing. Resident should request such waiver by notifying the City on or before the rental due date and mutually arranging an alternative payment date.

A charge of up to Twenty-Five Dollars ($25.00) may be imposed for any resident's check returned to the City because of insufficient funds, whether the check is for rent, security deposit, or other payment.

_____ 5. Notice

Unless otherwise specified in this lease, all notices provided by this lease shall be in writing and shall be delivered to the other party personally, or sent by first class mail, postage pre-paid, or securely and conspicuously posted, as follows:

To the City: City of Westminster
Attn. David Meyer
13150 N. Huron Street
Westminster, CO 80234
To resident at the premises, or at resident's last known address

Notice to one resident shall be deemed to be notice to all residents.

_____ 6. Security Deposit

A. Resident has paid the City the sum of $___0_____ as a security deposit to secure the performance of this rental agreement.

B. Resident may not use the security deposit in place of rent without the written permission of the City.

C. It is the duty of resident to return the premises, including any outside areas, yards or driveways required to be maintained by resident under this lease, to their condition at the commencement of this lease, except for normal wear and tear. Colorado state law defines normal wear and tear as: "that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or their invitees or guests."

D. The City shall return the security deposit to resident within one month after termination of this lease or surrender and acceptance of the premises, whichever occurs last. If actual cause exists for retaining any portion of the security deposit, the City shall provide resident with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The City is deemed to have complied with this paragraph E by mailing said statement and any payment required to the last known address of resident. The failure of the City to provide a written statement within the period of time stated above shall work a forfeiture of all the City's rights to withhold any portion of the security deposit.

E. The City, at the City's option, may use resident's security deposit during the term of this lease to fulfill resident's obligations under this lease. Nothing in this paragraph E shall relieve the City of any obligation created by the state security deposit law set forth in Colorado Revised Statutes, section 38-12-101 et seq.

_____ 7. <u>Eviction/holding over</u>

A. The City may evict resident from the premises or undertake other legal action to regain possession for nonpayment of rent or substantial breach of the lease.

B. Resident shall continue to be liable for rent and be bound by the other provisions of this lease during the time resident remains in possession of the leased premises even though the City has chosen to seek eviction because of resident's breach of this lease.

C. If the premises are abandoned or if resident is evicted, resident will remain liable for any loss of rent for the remainder of the lease term. The City will attempt to re-rent the premises to minimize any loss.

_____ 8. <u>Occupancy</u>

No more than one family may reside in the leased premises.

Resident shall not allow guests to stay upon the premises more than thirty (30) consecutive days without prior written consent of the City.

_____ **9. Use**

Resident shall use the premises for residential purposes only unless otherwise agreed in writing signed by both parties.

Resident shall not engage in any illegal activities on the premises.

_____ **10. Utilities**

Resident shall be responsible for paying for the following initialed utilities or services connected with the premises (check those applicable):

A.	water	_____
B.	sewer/septic	x _____
C.	electricity	x _____
D.	gas	x _____
E.	phone (if desired)	x _____
F.	trash pick-up	x _____
G.	other	_____

Within 3 business days after the beginning of the lease term, resident shall arrange for such utilities or services and for billing directly to resident, unless otherwise agreed here:

_____

_____.

Provision of and the payment for utilities and services listed above but not checked shall be the responsibility of the City.

The party responsible for any particular utility or service shall not be liable for failure to furnish the utility or service when the cause of such failure is beyond that party's control.

_____ **11. Privacy**

Resident shall permit the City to enter the premises at reasonable times and upon reasonable notice for the purpose of making necessary or convenient repairs or reasonable inspections, or to show the premises to prospective residents, purchasers, or lenders. Entry may be made without prior notice only if the City reasonably believes that an emergency exists, such as a fire or broken water pipe, or that the premises have been abandoned.

_____ **12. Assignment/subleasing/release**

Resident shall not assign this lease, or sublet any portion of the leased premises, for any part or all of the term of this lease without prior written consent of the City. The City agrees to release resident from this lease if resident finds a replacement resident,

acceptable to the City, who will sign a new lease for the remaining term. Resident acknowledges that due to the unique nature of this property and the public obligations of the City, the acceptability of a replacement resident is in the City's sole discretion.

_____ 13. Noise and Nuisance

Resident agrees not to make any excessive noise or to create any nuisance such as will disturb the peace and quiet of neighbors.

_____ 14. Rules and Regulations

Resident agrees to abide by all rules and regulations in effect at the time of signing this lease (a copy of which is attached to and hereby made part of this lease) and to such amended rules or regulations which resident agrees to in writing.

_____ 15. Check-in/check-out sheet

A check-in/check-out sheet may be attached to this lease. If such sheet is attached, it must be completed and signed and returned to the City within seven days of occupancy in order to help protect both parties.

_____ 16. Furnishings

If the premises are furnished, a separate inventory of the furnishings, including their condition, may be attached to this lease. Both parties should complete and sign this form within seven days of occupancy in order to help protect both parties.

_____ 17. Repairs and Maintenance

Resident shall be responsible for the routine care and maintenance of the exterior and interior of the leased premises. Lessee accepts the leased premises "as is," except for the following repairs that City agrees to make before Resident moves in:

_____

If, after moving into the leased premises, new conditions arise that cause resident to believe repairs are necessary, resident should contact the property manager of the City and request such repairs. Resident shall not make repairs without written consent of the City.

Resident shall pay reasonable charges (other than for normal wear and tear), when billed by the City, for the repair of damage to the premises or common areas caused by the negligence or willful acts of resident, members of resident's household, or guests. Excessive damage to the premises by resident, members of resident's household, pets, or guests shall be grounds for the City to evict resident.

_____ 18. Constructive Eviction

When conditions beyond the control of resident cause the premises to become legally uninhabitable, and when the City is responsible for remedying those conditions but does not do so within a reasonable time after notification by resident, resident may vacate the premises, terminate this lease, and owe no future rent.

_____ 19. Outside Maintenance

A. Resident shall be responsible for the routine care and maintenance of the yard and outside areas as follows: (initial those that apply):

1. mowing lawn __x_____
2. watering lawn, shrubs and trees __x_____
3. removing weeds __x_____
4. raking leaves __x_____
5. removing snow and ice from sidewalks and walkways, driveways and parking areas __x_____
6. other _____
7. other _____

The routine care and maintenance of items listed above but not checked shall be the responsibility of the City.

_____ 20. Alterations to Premises

Resident agrees that before making alterations to the premises including, for example, painting, adding or changing door locks, or altering landscaping, advance written consent of the City will be obtained.

_____ 21. Pets

No pet shall be allowed without prior written consent of the City.

(Insert consent, if any.) _____

_____

_____ 22. Parking

_____

_____

[Insert any special parking requirements or limitations on number of cars or spaces]

_____ 23. Insurance

The City's insurance does not cover resident's personal possessions in the event of loss or damage due to fire, windstorm, flood, theft, vandalism, or other similar cause. If

resident desires to insure personal possessions or to insure against resident's personal liability, renter's insurance should be obtained.

_____ 24. Attorney's fees

In the event of any legal action concerning this lease which results in a judgment, the losing party shall pay to the prevailing party reasonable attorney's fees and court costs to be fixed by the court.

_____ 25. Liability

Resident will indemnify and hold harmless the City from and against any claim for personal injury or property damage resulting from any act or omission of its agents.

_____ 26. Subordination

This lease shall be subordinate to all existing and future mortgages and deeds of trust upon the property.

_____ 27. Waiver

Any waiver by either party of any breach of any provision of this lease shall not be considered to be a continuing waiver or a waiver of a subsequent breach of the same or a different provision of this lease.

_____ 28. Severability

The unenforceability of any provision or provisions of this lease shall not affect the enforceability of any other provision or provisions.

_____ 29. Joint and Several Liability

If this lease is signed on behalf of resident by more than one person, then the liability of the persons so signing shall be joint and several. The language "joint and several" means that if more than one person has signed this lease, then each of these persons individually and all of these persons collectively are fully responsible for fulfilling all of the obligations of this lease, except where expressly otherwise agreed between the City and resident. For example, one person signing the lease may be liable for any or all damages to the premises, even if caused by another person signing the lease, and one person signing the lease is liable for the total amount of rent due, even though other persons have also signed the lease,

_____ 30. Signatures/amendment of lease

This lease contains the entire agreement of the parties and may not be altered or amended except by mutual written agreement signed by both parties.

Signed this 9 day of JANUARY, 2012.

CITY OF WESTMINSTER

By: _____

Title: _____

RESIDENT:

Tom Linnebur

Tom Linnebur

Jan Linnebur

Jan Linnebur

Exhibit A – Linnebur Lease
88th Ave.
1 inch = 150 feet

EXHIBIT C

RESIDENTIAL LEASE

_____ 1. Parties

This lease for the rental of residential property is between the City of Westminster ("City") and Yvonne Sweeney, ("resident")

The person/position authorized to manage the leased premises for the owner is:

Name David Meyer, Water Quality Specialist
Address c/o City of Westminster
13150 N Huron Street
Westminster, CO 80234

Phone 303-658-2376

_____ 2. Leased Premises

The City hereby leases to resident the premises described below:

a parcel of land located at 8551 Headlight Road, Strasburg, Colorado, 80136 as depicted in the hatched area on Exhibit A attached.

The premises shall also include:

_____ 3. Term

A. Fixed Term. The initial term of this lease shall be from twelve o'clock noon on January 1st, 2012 until twelve o'clock noon on January 1st, 2013. The lease term shall be automatically renewed on an annual basis, without requirement of further written notice or amendment, until twelve o'clock noon on January 1, 2017. Either party may choose not to annually renew for the following year by providing written notice to the other party by December 1st, in which case the lease shall terminate at the end of that calendar year.

_____ 4. Rent

A. Fixed Term. The total annual rental price for the term of this lease is Six Hundred Dollars ($600.00) per year payable on or before December 31st of each year.

B. Rent payments shall be made to:

City of Westminster
Attn: David Meyer, Water Quality Analyst
c/o 13150 N. Huron Street
Westminster, CO 80234

C. Resident shall incur and be charged Five Dollars ($5.00) per day as a late fee for payment of rent received fifteen (15) days after any of the above-noted payment dates each year. Such fee, which will be considered additional rent, may be collected immediately by the City or, at the City's option, such fee may be withheld from resident's security deposit if written notice of such intended withholding is provided to resident within 45 days of the date that the late fee is incurred. The giving of such notice of intent shall not relieve the City of any obligation pertaining to the security deposit set forth in section 6 of this lease. Late fees may be waived if the City agrees in writing. Resident should request such waiver by notifying the City on or before the rental due date and mutually arranging an alternative payment date.

A charge of up to Twenty-Five Dollars ($25.00) may be imposed for any resident's check returned to the City because of insufficient funds, whether the check is for rent, security deposit, or other payment.

_____ 5. Notice

Unless otherwise specified in this lease, all notices provided by this lease shall be in writing and shall be delivered to the other party personally, or sent by first class mail, postage pre-paid, or securely and conspicuously posted, as follows:

To the City: City of Westminster
Attn. David Meyer
13150 N. Huron Street,
Westminster, CO 80234
To resident at the premises, or at resident's last known address

Notice to one resident shall be deemed to be notice to all residents.

_____6. Security Deposit

A. Resident has paid the City the sum of $_600.00_____ as a security deposit to secure the performance of this rental agreement.

B. Resident may not use the security deposit in place of rent without the written permission of the City.

C. It is the duty of resident to return the premises, including any outside areas, yards or driveways required to be maintained by resident under this lease, to their condition at the commencement of this lease, except for normal wear and tear. Colorado state law defines normal wear and tear as: "that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or their invitees or guests."

D. The City shall return the security deposit to resident within one month after termination of this lease or surrender and acceptance of the premises, whichever occurs last. If actual cause exists for retaining any portion of the security deposit, the City shall provide resident with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The City is deemed to have complied with this paragraph E by mailing said statement and any payment required to the last known address of resident. The failure of the City to provide a written statement within the period of time stated above shall work a forfeiture of all the City's rights to withhold any portion of the security deposit.

E. The City, at the City's option, may use resident's security deposit during the term of this lease to fulfill resident's obligations under this lease. Nothing in this paragraph E shall relieve the City of any obligation created by the state security deposit law set forth in Colorado Revised Statutes, section 38-12-101 et seq.

_____ 7. Eviction/holding over

A. The City may evict resident from the premises or undertake other legal action to regain possession for nonpayment of rent or substantial breach of the lease.

B. Resident shall continue to be liable for rent prorated on a monthly basis and be bound by the other provisions of this lease during the time resident remains in possession of the leased premises even though the City has chosen to seek eviction because of resident's breach of this lease.

C. If the premises are abandoned or if resident is evicted, resident will remain liable for any loss of rent for the remainder of the lease term. The City may attempt to re-rent the premises to a suitable tenant in order to minimize any loss.

_____ 8. Occupancy

No more than one family may reside upon the leased premises.

Resident shall not allow guests to stay upon the premises more than thirty (30) consecutive days without prior written consent of the City.

_____ **9. Use**

Resident shall use the premises only to maintain a mobile home as her residence unless otherwise agreed to in writing by the City.

Resident shall not engage in any illegal activities on the premises.

_____ **10. Utilities**

Resident shall be responsible for paying for the following initialed utilities or services connected with the premises (check those applicable):

A.	water	_____
B.	sewer/septic	x _____
C.	electricity	x _____
D.	gas	x _____
E.	phone (if desired)	x _____
F.	trash pick-up	x _____
G.	other _____	

Within 3 business days after the beginning of the lease term, resident shall arrange for such utilities or services and for billing directly to resident, unless otherwise agreed here:

_____

_____.

Provision of and the payment for utilities and services listed above but not checked shall be the responsibility of the City.

The party responsible for any particular utility or service shall not be liable for failure to furnish the utility or service when the cause of such failure is beyond that party's control.

_____ **11. Privacy**

Resident shall permit the City to enter the land at reasonable times and upon reasonable notice for the purpose of making necessary or convenient repairs or reasonable inspections, or to show the land to prospective residents, purchasers, or lenders. Entry may be made without prior notice only if the City reasonably believes that an emergency exists or that the premises have been abandoned.

_____ **12. Assignment/subleasing/release**

Resident shall not assign this lease, or sublet any portion of the leased premises, for any part or all of the term of this lease without prior written consent of the City. The City agrees to release resident from this lease if resident finds a replacement resident, acceptable to the City, who will sign a new lease for the remaining term. The City shall exercise good faith and reasonableness in accepting a replacement resident.

_____ **13. Noise and Nuisance**

Resident agrees not to make any excessive noise or to create any nuisance such as will disturb the peace and quiet of neighbors.

_____ **14. Rules and Regulations**

Resident agrees to abide by all rules and regulations in effect at the time of signing this lease (a copy of which is attached to and hereby made part of this lease) and to such amended rules or regulations which resident agrees to in writing.

_____ **15. Check-in/check-out sheet**

A check-in/check-out sheet may be attached to this lease. If such sheet is attached, it must be completed and signed and returned to the City within seven days of occupancy in order to help protect both parties.

N/A 16. Furnishings

If the premises are furnished, a separate inventory of the furnishings, including their condition, may be attached to this lease. Both parties should complete and sign this form within seven days of occupancy in order to help protect both parties.

_____ **17. Repairs and Maintenance**

Resident shall be responsible for the routine care and maintenance of the exterior and interior of the leased premises. Lessee accepts the leased premises "as is," except for the following repairs that City agrees to make before Resident moves in:

_____

If, after moving into the leased premises, new conditions arise that cause resident to believe repairs are necessary, resident should contact the property manager of the City and request such repairs. Resident shall not make repairs without written consent of the City.

Resident shall pay reasonable charges (other than for normal wear and tear), when billed by the City, for the repair of damage to the premises or common areas caused by the negligence or willful acts of resident, members of resident's household, or guests. Excessive damage to the premises by resident, members of resident's household, or guests shall be grounds for the City to evict resident.

_____ **18. Constructive Eviction**

When conditions beyond the control of resident cause the premises to become legally uninhabitable, and when the City is responsible for remedying those conditions but does

not do so within a reasonable time after notification by resident, resident may vacate the premises, terminate this lease, and owe no future rent.

_____ **19. Outside Maintenance**

A. Resident shall be responsible for the routine care and maintenance of the yard and outside areas as follows: (initial those that apply):

1. mowing lawn _____
2. watering lawn, shrubs and trees _____
3. removing weeds _____
4. raking leaves _____
5. removing snow and ice from sidewalks and walkways, driveways and parking areas _____
6. other _____
7. other _____

The routine care and maintenance of items listed above but not checked shall be the responsibility of the City.

_____ **20. Alterations to Premises**

Resident agrees that before making alterations to the premises including, for example, altering landscaping, parking areas or roads, advance written consent of the City will be obtained.

_____ **21. Pets**

No pet shall be allowed without prior written consent of the City.

(Insert consent, if any.) _____
_____

_____ **22. Parking**

_____
_____
[Insert any special parking requirements or limitations on number of cars or spaces]

_____ **23. Insurance**

The City's insurance does not cover resident's mobile home or personal possessions in the event of loss or damage due to fire, windstorm, flood, theft, vandalism, or other similar cause. If resident desires to insure mobile home or personal possessions or to insure against resident's personal liability, homeowner's insurance should be obtained.

_____ **24. Attorney's fees**

In the event of any legal action concerning this lease which results in a judgment, the losing party shall pay to the prevailing party reasonable attorney's fees and court costs to be fixed by the court.

_____ **25. Liability**

Resident will indemnify and hold harmless the City from and against any claim for personal injury or property damage resulting from any act or omission of its agents.

_____ **26. Subordination**

This lease shall be subordinate to all existing and future mortgages and deeds of trust upon the property.

_____ **27. Waiver**

Any waiver by either party of any breach of any provision of this lease shall not be considered to be a continuing waiver or a waiver of a subsequent breach of the same or a different provision of this lease.

_____ **28. Severability**

The unenforceability of any provision or provisions of this lease shall not affect the enforceability of any other provision or provisions.

_____ **29. Joint and Several Liability**

If this lease is signed on behalf of resident by more than one person, then the liability of the persons so signing shall be joint and several. The language "joint and several" means that if more than one person has signed this lease, then each of these persons individually and all of these persons collectively are fully responsible for fulfilling all of the obligations of this lease, except where expressly otherwise agreed between the City and resident. For example, one person signing the lease may be liable for any or all damages to the premises, even if caused by another person signing the lease, and one person signing the lease is liable for the total amount of rent due, even though other persons have also signed the lease,

_____ **30. Signatures/amendment of lease**

This lease contains the entire agreement of the parties and may not be altered or amended except by mutual written agreement signed by both parties.

Signed this 4th day of January, 2012.

CITY OF WESTMINSTER

By: _____

Title: _____

RESIDENT:

Yvonne Sweeney

Yvonne Sweeney

Exhibit A – Yvonne Sweeney Lease
Headlight Rd.
1 inch = 104 feet

EXHIBIT D

RESIDENTIAL LEASE

_____ 1. Parties

This lease for the rental of residential property is between the City of Westminster ("City") and Matthew Sweeney, ("resident")

The person/position authorized to manage the leased premises for the owner is:

Name David Meyer, Water Quality Analyst
Address c/o City of Westminster
13150 N. Huron Street
Westminster, CO 80234

Phone 303-658-2376

_____ 2. Leased Premises

The City hereby leases to resident the premises described below:

the house, detached garage, and surrounding residential lot located at 8551 Headlight Road, Strasburg, Colorado, 80136 in the hatched area shown on attached Exhibit A.

The premises shall also include:

_____
_____
_____

_____ 3. Term

A. Fixed Term. The initial term of this lease shall be from twelve o'clock noon on January 1st, 2012 until twelve o'clock noon on January 1st, 2013. The lease term shall be automatically renewed on an annual basis, without requirement of further written notice or amendment, until twelve o'clock noon on January 1, 2017. Either party may choose not to annually renew for the following year by providing written notice to the other party by December 1st, in which case the lease shall terminate at the end of that calendar year.

If resident retains possession of the premises after expiration of the fixed lease term with the permission of the City, resident and the City shall continue to be bound by the terms and conditions of this lease on a month-to-month basis. The lease may then be terminated by either party giving at least thirty (30) days written notice prior to the end of

_____ 4. Rent

A. Fixed Term. The total annual rental price for the term of this lease is Four Thousand Eight Hundred Dollars ($4,800.00), payable prior to December 31st of each year, or in the event of a hold-over at the rate of $400.00 per month payable prior to the 5th day of each month..

B. Rent payments shall be made to:

City of Westminster
Attn: David Meyer, Water Quality Analyst
13150 N. Huron Street
Westminster, CO 80234

C. Resident shall incur and be charged Five Dollars ($5.00) per day as a late fee for payment of rent received fifteen (15) days after any of the above-noted payment dates each year. Such fee, which will be considered additional rent, may be collected immediately by the City or, at the City's option, such fee may be withheld from resident's security deposit if written notice of such intended withholding is provided to resident within 45 days of the date that the late fee is incurred. The giving of such notice of intent shall not relieve the City of any obligation pertaining to the security deposit set forth in section 6 of this lease. Late fees may be waived if the City agrees in writing. Resident should request such waiver by notifying the City on or before the rental due date and mutually arranging an alternative payment date.

A charge of up to Twenty-Five Dollars ($25.00) may be imposed for any resident's check returned to the City because of insufficient funds, whether the check is for rent, security deposit, or other payment.

_____ 5. Notice

Unless otherwise specified in this lease, all notices provided by this lease shall be in writing and shall be delivered to the other party personally, or sent by first class mail, postage pre-paid, or securely and conspicuously posted, as follows:

To the City: City of Westminster
Attn. David Meyer
13150 N. Huron Street
Westminster, CO 80234
To resident at the premises, or at resident's last known address

Notice to one resident shall be deemed to be notice to all residents.

_____ 6. Security Deposit

A. Resident has paid the City the sum of $____0_____ as a security deposit to secure the performance of this rental agreement.

B. Resident may not use the security deposit in place of rent without the written permission of the City.

C. It is the duty of resident to return the premises, including any outside areas, yards or driveways required to be maintained by resident under this lease, to their condition at the commencement of this lease, except for normal wear and tear. Colorado state law defines normal wear and tear as: "that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or their invitees or guests."

D. The City shall return the security deposit to resident within one month after termination of this lease or surrender and acceptance of the premises, whichever occurs last. If actual cause exists for retaining any portion of the security deposit, the City shall provide resident with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The City is deemed to have complied with this paragraph E by mailing said statement and any payment required to the last known address of resident. The failure of the City to provide a written statement within the period of time stated above shall work a forfeiture of all the City's rights to withhold any portion of the security deposit.

E. The City, at the City's option, may use resident's security deposit during the term of this lease to fulfill resident's obligations under this lease. Nothing in this paragraph E shall relieve the City of any obligation created by the state security deposit law set forth in Colorado Revised Statutes, section 38-12-101 et seq.

_____ 7. <u>Eviction/holding over</u>

A. The City may evict resident from the premises or undertake other legal action to regain possession for nonpayment of rent or substantial breach of the lease.

B. Resident shall continue to be liable for rent and be bound by the other provisions of this lease during the time resident remains in possession of the leased premises even though the City has chosen to seek eviction because of resident's breach of this lease.

C. If the premises are abandoned or if resident is evicted, resident will remain liable for any loss of rent for the remainder of the lease term. The City may, at its sole discretion, attempt to re-rent the premises to a suitable tenant in order to minimize any loss.

_____ **8. Occupancy**

No more than one family may reside in the leased premises.

Resident shall not allow guests to stay upon the premises more than thirty (30) consecutive days without prior written consent of the City.

_____ **9. Use**

Resident shall use the premises for residential purposes only unless otherwise agreed in writing.

Resident shall not engage in any illegal activities on the premises.

_____ **10. Utilities**

Resident shall be responsible for paying for the following initialed utilities or services connected with the premises (check those applicable):

A.	water	_____
B.	sewer/septic	x _____
C.	electricity	x _____
D.	gas	x _____
E.	phone (if desired)	x _____
F.	trash pick-up	x _____
G.	other _____	

Within 3 business days after the beginning of the lease term, resident shall arrange for such utilities or services and for billing directly to resident, unless otherwise agreed here:

_____

_____.

Provision of and the payment for utilities and services listed above but not checked shall be the responsibility of the City.

The party responsible for any particular utility or service shall not be liable for failure to furnish the utility or service when the cause of such failure is beyond that party's control.

_____ **11. Privacy**

Resident shall permit the City to enter the premises at reasonable times and upon reasonable notice for the purpose of making necessary or convenient repairs or reasonable inspections, or to show the premises to prospective residents, purchasers, or lenders. Entry may be made without prior notice only if the City reasonably believes that

an emergency exists, such as a fire or broken water pipe, or that the premises have been abandoned.

_____ **12. Assignment/subleasing/release**

Resident shall not assign this lease, or sublet any portion of the leased premises, for any part or all of the term of this lease without prior written consent of the City. The City agrees to release resident from this lease if resident finds a replacement resident, acceptable to the City, who will sign a new lease for the remaining term. Resident acknowledges that due to the unique nature of this property and the public obligations of the City, the acceptability of a replacement resident is in the City's sole discretion.

_____ **13. Noise and Nuisance**

Resident agrees not to make any excessive noise or to create any nuisance such as will disturb the peace and quiet of neighbors.

_____ **14. Rules and Regulations**

Resident agrees to abide by all rules and regulations in effect at the time of signing this lease (a copy of which is attached to and hereby made part of this lease) and to such amended rules or regulations which resident agrees to in writing.

_____ **15. Check-in/check-out sheet**

A check-in/check-out sheet may be attached to this lease. If such sheet is attached, it must be completed and signed and returned to the City within seven days of occupancy in order to help protect both parties.

_____ **16. Furnishings**

If the premises are furnished, a separate inventory of the furnishings, including their condition, may be attached to this lease. Both parties should complete and sign this form within seven days of occupancy in order to help protect both parties.

_____ **17. Repairs and Maintenance**

Resident shall be responsible for the routine care and maintenance of the exterior and interior of the leased premises. Lessee accepts the leased premises "as is," except for the following repairs that City agrees to make before Resident moves in:

_____

If, after moving into the leased premises, new conditions arise that cause resident to believe repairs are necessary, resident should contact the property manager of the City and request such repairs. Resident shall not make repairs without written consent of the City.

Resident shall pay reasonable charges (other than for normal wear and tear), when billed by the City, for the repair of damage to the premises or common areas caused by the negligence or willful acts of resident, members of resident's household, or guests. Excessive damage to the premises by resident, members of resident's household, or guests shall be grounds for the City to evict resident.

_____ **18. Constructive Eviction**

When conditions beyond the control of resident cause the premises to become legally uninhabitable, and when the City is responsible for remedying those conditions but does not do so within a reasonable time after notification by resident, resident may vacate the premises, terminate this lease, and owe no future rent.

_____ **19. Outside Maintenance**

A. Resident shall be responsible for the routine care and maintenance of the yard and outside areas as follows: (initial those that apply):

1. mowing lawn __x_____
2. watering lawn, shrubs and trees __x_____
3. removing weeds __x_____
4. raking leaves __x_____
5. removing snow and ice from sidewalks and walkways, driveways and parking areas __x_____
6. other _____

The routine care and maintenance of items listed above but not checked shall be the responsibility of the City.

_____ **20. Alterations to Premises**

Resident agrees that before making alterations to the premises including, for example, painting, adding or changing door locks, or altering landscaping, advance written consent of the City will be obtained.

_____ **21. Pets**

No pet shall be allowed without prior written consent of the City.

(Insert consent, if any.) _____

_____

_____ **22. Parking**

_____

_____

[Insert any special parking requirements or limitations on number of cars or spaces]

_____ **23. Insurance**

The City's insurance does not cover resident's personal possessions in the event of loss or damage due to fire, windstorm, flood, theft, vandalism, or other similar cause. If resident desires to insure personal possessions or to insure against resident's personal liability, renter's insurance should be obtained.

_____ **24. Attorney's fees**

In the event of any legal action concerning this lease which results in a judgment, the losing party shall pay to the prevailing party reasonable attorney's fees and court costs to be fixed by the court.

_____ **25. Liability**

Resident will indemnify and hold harmless the City from and against any claim for personal injury or property damage resulting from any act or omission of its agents.

_____ **26. Subordination**

This lease shall be subordinate to all existing and future mortgages and deeds of trust upon the property.

_____ **27. Waiver**

Any waiver by either party of any breach of any provision of this lease shall not be considered to be a continuing waiver or a waiver of a subsequent breach of the same or a different provision of this lease.

_____ **28. Severability**

The unenforceability of any provision or provisions of this lease shall not affect the enforceability of any other provision or provisions.

_____ **29. Joint and Several Liability**

If this lease is signed on behalf of resident by more than one person, then the liability of the persons so signing shall be joint and several. The language "joint and several" means that if more than one person has signed this lease, then each of these persons individually and all of these persons collectively are fully responsible for fulfilling all of the obligations of this lease, except where expressly otherwise agreed between the City and resident. For example, one person signing the lease may be liable for any or all damages to the premises, even if caused by another person signing the lease, and one person signing the lease is liable for the total amount of rent due, even though other persons have also signed the lease,

_____ **30. Signatures/amendment of lease**

This lease contains the entire agreement of the parties and may not be altered or amended except by mutual written agreement signed by both parties.

Signed this 6TH day of JANUARY, 2012.

CITY OF WESTMINSTER

By: _____

Title: _____

RESIDENT:

Matthew Sweeney

Matthew Sweeney

_____

_____

_____

Exhibit A – Matthew Sweeney Residential Lease
Headlight Rd.
1 inch = 104 feet

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
SPECIAL MEETING

MONDAY, January 23, 2012

AT 7:00 P.M.

1. **Roll Call**

2. **Minutes of Previous Meeting** (January 9, 2012)

3. **Purpose of Special WEDA Meeting is to**

   A. Authorize an Amended Loan Agreement with Gateway Plaza, LLC re 7305 Lowell Blvd

   B. Authorize a Phase 2 Contract Amendment with Smith Environmental for the Westminster Mall Demolition

   C. Authorize the Acquisition of Lot 1, Block 11, Westminster Mall 2nd Amended Plat, Jefferson County, Colorado

4. **Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JANUARY 9, 2012, AT 8:10 P.M.

ROLL CALL

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

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Atchison, to approve the minutes of the meeting of December 19, 2011, as written. The motion carried unanimously.

WESTMINSTER CENTER URBAN REINVESTMENT PROJECT SECURITY CONTRACT

It was moved by Board Member Major, seconded by Board Member Lindsey, based on the recommendation of the Executive Director, to find that the public interest would best be served by authorizing the Executive Director to enter into agreement with Advantage Security to obtain security services for the Westminster Mall property. The motion carried with all members voting affirmatively.

ADJOURNMENT

Mr. McCullough announced that the Board would convene in executive session to discuss strategy and progress on potential acquisition of certain real property by the Westminster Economic Development Authority for the Westminster Urban Reinvestment Project pursuant to C.R.S. §24-6-402 (4)(a) and (e); to discuss strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and provide instructions to the Authority's negotiators as authorized by C.R.S. §24-6-402 (4)(a) and (e); and to consult with the Authority's legal counsel concerning the *Sears* litigation pursuant to C.R.S. §24-6-402(4)(b) and (e) and Westminster Municipal Code Section 1-11-3 (C)(3).

The Board departed from the Council Chambers and went to the Board Room at 8:13 P.M.

_____
Chairperson

ATTEST:

_____
Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
January 23, 2012

SUBJECT: Amended Loan Agreement with Gateway Plaza, LLC pertaining to 7305 Lowell Boulevard

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Authorize the Executive Director to execute an amended loan agreement with Gateway Plaza, LLC, a subsidiary of the Community Resources and Housing Development Corporation, relative to a loan provided by the Westminster Economic Development Authority for the construction and acquisition of the commercial building at 7305 Lowell Boulevard.

Summary Statement

- In 2001, the Westminster Economic Development Authority (WEDA) entered into agreements with Community Builders, Inc. that provided for the construction of a commercial building on the northwest corner of 73rd Avenue and Lowell Boulevard.
- The Community Resources and Housing Development Corporation (CRHDC), formerly the Colorado Rural Housing Development Corporation, a non-profit housing agency, agreed to purchase the building from the Developer for the purpose relocating their corporate offices.
- To assist in making the development financially viable, WEDA approved a bridge loan to CRHDC in the amount of $334,000 to be applied towards construction and acquisition of the building.
- Under the original terms of the loan, CRHDC was to fully repay the loan within 3-years using proceeds from their annual Equity Capital Campaign and 20% of any annual surplus cash flow. The interest rate was set between 2% and 4% dependant upon the remaining balance.
- Due to the downturn in the economy, banks have been reluctant to donate proceeds to the Equity Capital Campaign, and CRHDC has produced limited surplus cash flow, thereby collectively affecting their ability to repay the loan under the original terms and conditions, leading to repayment of about $1,000 per month.
- CRHDC is requesting consideration to amend the repayment schedule to better match their cash flows and provide more time to raise money for full repayment.

Expenditure Required: $0

Source of Funds: N/A

Policy Issue

Should WEDA amend the loan agreement with CRHDC thereby extending the repayment period by five more years knowing that the borrower's cash flow and capital fundraising abilities have been impacted by the economic downturn, thereby affecting their ability to make full repayment within the timeline stipulated in the current loan agreement?

Alternative

The Board may choose to not amend the loan agreement and require full repayment as provided for in the original loan agreement. Staff recommends that this alternative not be pursued as CRHDC does not have the funds to fully pay the loan. WEDA's recourse could then be to foreclose on the property and possibly look towards negotiating with the primary lender to take over ownership or force a sale of the building. Under this scenario, the likelihood of WEDA recapturing the loan amount through a sale in the short term is unlikely given the current market conditions and the building's corresponding value.

Background Information

In May 2001, the City issued a request-for-proposal (RFP) seeking a developer to work with the City in redeveloping property along Lowell Boulevard and Meade Street in the vicinity of 73rd Avenue. On November 15, 2004 the City entered into a final development agreement for the second phase of development that included the proposed construction of a 12,000 square foot, two-story commercial building on the northwest corner of 73rd Avenue and Lowell Boulevard to be sold to the American Real Estate College. Several months after approval of the development agreement and prior to construction, the real estate college withdrew its intent to purchase the building, requiring the developer to seek an alternative buyer that would allow him to proceed with the project.

The Community Resources and Housing Development Corporation (CRHDC), formerly known as Colorado Rural Housing Development Corporation, needing to find suitably sized space for their expanding non-profit operations, opened a dialogue with the developer relative to buying the building. CRHDC is a non-profit group that provides assistance to low and moderate income households to become homeowners. Their services range from providing down-payment loans and grants, to homebuyer counseling, to development, construction, and rehabilitation of affordable housing. CRHDC has a long established presence in the neighborhood and City, and provides a "one-stop" shop for homebuyers.

Given the negatively perceived character of the neighborhood and low rents commanded within the market area, the appraisal on the completed project was about $180,000 below the construction cost. The developer agreed to sell the building to CRHDC at the appraised value that basically allowed the developer to recoup construction costs and cover overhead, but not any additional profit. Based on the appraisal the primary lender agreed to loan CRHDC $1,336,000 towards the acquisition leaving a gap of $334,000. As a non-profit, CRHDC did not have sufficient funds to cover the gap. Accordingly, they requested consideration of a loan from WEDA to bridge the financing. WEDA approved the loan on September 18, 2006 given the City's interest in getting a catalyst project built on Lowell and knowing the financial and market challenges relative to getting redevelopment projects built in South Westminster.

The following loan terms and conditions were included in the loan agreement offered to CRHDC.

- The loan would be taken out by Gateway Plaza, LLC, a company created by CRHDC to own and manage the building;
- The loan was for $334,000;
- The loan was for a 3-year period;
- The interest rate was set at 4% on a balance of $200,000 or more; 3% on balance of $100,000 - $200,000; and, 2% on a balance of $100,000 or less;

- As an incentive to repay the loan early, the payment of interest was to be forgiven should full repayment be made within the first year and discounted 50% if fully repaid by second year;
- CRHDC was required to make a minimum annual payment from its annual operating account whereby at least 20% of surplus cash flow generated annually would be applied to retiring the debt. This value is in part subject to requirements established by the US Department of Housing and Urban Development (HUD). Many of these Federal funds can only be applied to specific expenses, which interplays with CRHDC's discretionary cash flow opportunities. In addition to the minimum annual payment, all revenue proceeds generated by CRHDC from its equity capital campaign were to be applied to repayment of the loan on a quarterly basis so as to repay the loan at the earliest convenience;
- WEDA was required to secure the loan with a lien on the property in second position to the primary lender. WEDA would be required to consult with bank prior to any foreclosure proceedings related to default on loan;
- There were no penalties on early repayment of loan.

After receiving the loan the economy took a severe downturn affecting the ability of CRHDC to raise funds through its Equity Capital Campaign, whereby banks, being the primary source of funds, were no longer making the expected contributions. Other private and foundation contributions also dried up further impeding their operations budget to the point where CRHDC was unable to produce surplus cash flow. And compounding the cash flow matter, CRHDC has been unable to raise the tenant's rents on the ground floor space in the building given the challenging market conditions. This has all led to CRHDC not being able to fully repay the loan pursuant to the terms and conditions agreed to in the original agreement. CRHDC has been making minimal payments of $1,000 per month that do not fully cover the principal and interest. In an effort to protect WEDA's financial interest, Staff has been working with CRHDC to restructure the agreement to ensure more timely and consistent repayment that better reflects their short and long term cash flow and fundraising capabilities.

The proposed new terms and conditions are as follows:

- The loan repayment schedule is based on a current balance due of $355,513;
- The loan is to be amortized over 30 years with principal and interest payments made over 5 years.
- The proposed interest rate is 1.5% for the first year of repayment, 2% for the second year, 2.5% for the third year, and 3% for final two years of repayment.
- This would be an interest and principal loan with a balloon payment of unpaid principal. There would be a balloon payment at the end of the 5th year of $313,681.

CRHDC has confidence that the economy will continue to rebound sufficiently over the next several years so as to improve the organization's ability to pursue and receive grants and donations. The restructured loan payment will give CRHDC more time to raise the entirety of funds to make the balloon payment in by 2017.

The construction of the building, which was only made possible with CRHDC's acquisition, was instrumental in getting the adjoining Lowell Row townhouses under construction and fully sold, and has raised development interest in the adjacent area. CRHDC's continued presence in the neighborhood has also reaped benefit to the City of Westminster, where approximately $1.6 million has been invested over the last year buying and rehabilitating dilapidated and foreclosed residential properties for resale as affordable homeownership opportunities. CRHDC intends to continue its commitment to assisting the City in its revitalization and affordable housing endeavors. CRHDC is also working with a prospective affordable housing developer, whereby CRHDC would provide a grant of up to $2.0 million to facilitate a potential mixed use redevelopment project in the 7200 block of Lowell Boulevard.

Approval of the Amended Agreement, as proposed, will assist the City in meeting its goal of "Financially Sustainable City Government" by working to ensure all debt obligations due to the City or its affiliated agencies (i.e. Westminster Housing Authority and Westminster Economic Development Authority) are repaid. It also meets the goal of "Vibrant Neighborhoods and Commercial Areas" whereby continued partnerships with CRHDC will lead to continued investment in a revitalization of the South Westminster area.

Respectfully submitted,

J. Brent McFall
Executive Director

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
January 23, 2012

SUBJECT: Westminster Mall Demolition – Phase 2 Amendment to contract with Smith Environmental

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended Board Action

Authorize the Executive Director to execute a contract amendment with Smith Environmental in the amount of $21,934 for the Westminster Mall Demolition – Phase 2 Project bringing its total contract amount to $71,934.

Summary Statement

- Over the past few years, the Westminster Economic Development Authority (WEDA) has acquired approximately 90% of the land area of the Westminster Mall, and Staff believes that it is in the City's best interest to remove a majority of the structures in preparation for the eventual redevelopment of the property. The subject contract amendment is for the removal of the Dillard's building, the Wards building and all of the remaining mall, with the exception of the Sears, Sear's Automotive, J.C. Penney, Olive Garden, Brunswick Bowl, U.S. Bank and the dentist's office buildings.

- During the demolition work some unforeseen asbestos was encountered that was hidden behind drywall. It is also necessary to walk the concrete slabs of the demolition area prior to the removal of the foundations to assure that no asbestos material gets into the soil that will remain. The removal of this asbestos requires additional abatement work and monitoring by Smith Environmental. In addition, Smith Environmental will prepare an environmental report for other buildings on the mall property as part of this change order.

- Smith's current contract amount is $50,000 and this proposed amendment would make their contract amount exceed the authorization limits in the City's Administrative Memorandum 02-09, which requires Council or WEDA approval for contracts over $50,000.

Expenditure Required: $71,934

Source of Funds: WEDA - Westminster Center Urban Reinvestment Project CIP

Policy Issue

Should WEDA approve this contract amendment with Smith Environmental?

Alternative

WEDA could choose to not approve this contract amendment; however, this would stop the current demolition efforts. Asbestos abatement and monitoring is a State regulated issue and has to be completed before demolition can proceed. Given the relatively small amendment amount, staff recommends the approval of this contract amendment.

Background Information

Over the past few years, the Authority has purchased many properties at the Mall making WEDA the owner of approximately 90% of the site. Staff is recommending demolition of portions of the mall in a timely manner because of security costs, utility costs and the desire to show activity in the redevelopment of the property. The first phase of this effort was the demolition of the Mervyn's, Macy's, Steak and Ale and the theater buildings. The second phase of demolition includes the Dillard's, Montgomery Ward's and the main mall corridor buildings, essentially all structures within the main mall structure with the exception of the Sears and J.C. Penney stores. Accommodations for fire protection, electrical, gas, water service, sanitary sewer service and parking lot lighting will be made to maintain all of these services to Sears and J.C. Penney so the stores can continue to operate once the mall demolition is completed.

During the current mall demolition phase, some unforeseen asbestos was uncovered during demolition. Abatement of this asbestos is required as well as the monitoring of this abatement. In addition, staff is requiring a walkthrough of all the floor slabs once all of the vertical elements are removed and prior to removing the foundations. The purpose of this inspection is to make sure that none of the vermiculite that is installed in the outer concrete masonry unit (CMU) walls of the mall for insulation is mixed with the soil that will remain on site. This vermiculite contains trace amounts of asbestos and this extra effort will allow Smith Environmental to certify in their final post demolition report that the entire property is environmentally "clean."

Smith Environmental has been doing all of the asbestos removal air quality monitoring for this project and this extra abatement and inspection requires an amendment to the company's current contract to monitor this additional work. Smith will also do an asbestos abatement report for other buildings on the mall property. The study of these other buildings was not included in the original asbestos abatement report for the scope of demolition currently under contract with American Demolition, LLC.

WEDA Board action on this item meets elements of two goals in the City's Strategic Plan: Strong Balanced Local Economy, and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
Executive Director

WEDA Agenda Item 3 C

Agenda Memorandum

Westminster Economic Development Authority Meeting
January 23, 2012

SUBJECT: Acquisition of Lot 1, Block 11, Westminster Mall 2nd Amended Plat, County of Jefferson, State of Colorado

Prepared By: Susan Grafton, Economic Development Director
Steve Smithers, Deputy City Manager
Marty McCullough, City Attorney

Recommended Board Action

Authorize the Executive Director to: (1) enter into a purchase and sale agreement for the acquisition of Lot 1, Block 11, Westminster Mall 2nd Amended Plat, County of Jefferson, State of Colorado, in substantially the same form as attached and containing such other terms as may be approved by the Executive Director and the Authority Attorney, to the extent such terms do not effect the purchase price for this property; (2) enter into a loan agreement for the financing of this acquisition on commercially acceptable terms and conditions deemed acceptable to the Executive Director, the Finance Director and the City Attorney; and (3) enter into such other agreements and make such related court filings as may be approved by the Executive Director and the Authority Attorney to formally settle and dismiss the litigation related to this property.

Summary Statement

- The property is owned by Sears Development Company and contains the Sears Department Store.
- Sears has agreed to sell the property to the Westminster Economic Development Authority (WEDA) under threat of condemnation for $4.2 million.
- The acquisition of this property is one of the last pieces of property assemblage needed for the Authority to move forward with an agreement for the redevelopment of the former Westminster Mall site.
- WEDA has available the necessary funds to make interest payments on the loan proposed to finance this acquisition. It is anticipated that the takedown of this loan will be addressed in the redevelopment agreement.

Expenditure Required: $4.2 million plus interest and closing costs

Source of Funds: WEDA Loan

Policy Issue

Should WEDA proceed with the purchase of the above referenced parcel?

Alternative

Do not approve this acquisition at this price and/or delay the acquisition. This alternative is not recommended because (1) it would unnecessarily risk the Authority's ability to secure a redevelopment agreement for the Westminster Center Urban Reinvestment Project (WURP), (2), the price is significantly lower than the Seller's appraisal for this property, and (3) the terms of this acquisition includes the settlement of the pending litigation between Sears and WEDA concerning the WURP project.

Background Information

The acquisition of the above referenced parcel by WEDA completes the property assemblage necessary to move forward with negotiations related to the redevelopment of the WURP site. Sears desires to sell the property immediately. They have, however requested a 120 day "wind down period" to allow for closure of the department store and auto center. Closings on the loan and the purchase and sale agreement are expected to occur in the third or fourth week in February, depending on how much time it may take for the loan and other documents to be prepared and reviewed by the bank and the parties. Thus it is anticipated that the property should be vacated by the middle of July, 2012.

In addition to the purchase price, WEDA will also cover a portion of the closing costs. To cover the cost of acquisition, WEDA will borrow $4.2 million using a portion of the WURP site for collateral. It is anticipated that the takedown of this loan will be addressed in the redevelopment agreement.

WEDA Board action on this item supports the following Strategic Plan Goals: Financially Sustainable City Government Providing Exceptional Services, Strong, Balanced Local Economy and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment – Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

between

SEARS DEVELOPMENT CO.,
a Delaware corporation

as Seller,

and

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY,
an urban renewal authority of the State of Colorado

as Purchaser

_____ ___, 2012

TABLE OF CONTENTS

Page

1. Incorporation of Recitals 2
2. Purchase and Sale 2
3. Purchase Price 3
4. Purchaser's Investigations. 3
   - 4.1 Title Commitment 3
   - 4.2 Survey 3
   - 4.3 Indemnity 3
   - 4.4 Property Information 3
   - 4.5 Property Inspection 3
   - 4.6 Closing Not Contingent on Purchaser's Investigations 4
5. Title 4
   - 5.1 Issuance of Title Policy 4
6. Representations and Warranties 4
   - 6.1 Seller's Representations and Warranties 4
   - 6.2 Purchaser's Representations and Warranties 5
   - 6.3 Survival 5
7. Condition of Property 5
   - 7.1 As-is, Where-is 5
   - 7.2 No Representations 5
   - 7.3 Waiver and Release 6
   - 7.4 Wind-down Period for Sears Store 6
   - 7.5 Wind-down Period for Auto Center 6
   - 7.6 REA 7
   - 7.7 Survival. 7
8. Conditions Precedent 7
9. Closing 7
   - 9.1 Closing Date 7
   - 9.2 Closing Documents 7
   - 9.3 Further Documents 8
10. Adjustments and Prorations 8

TABLE OF CONTENTS
(continued)

Page

10.1 Ad Valorem Taxes 8
10.2 Closing Costs 8
10.3 Appraisal Costs 9
10.4 Insurance 9
10.5 Survival 9
11. Casualty Damage 9
11.1 Notice 9
11.2 No Termination 9
12. Condemnation 9
13. Commissions 9
13.1 Sales Commissions 9
13.2 Survival 9
14. Remedies 9
14.1 Seller's Default 9
14.2 Purchaser's Default 10
14.3 Indemnities; Defaults after Closing or Termination 10
15. General Provisions 10
15.1 Time and Dates 10
15.2 Attorneys' Fees 10
15.3 Entire Agreement 10
15.4 Governing Law 10
15.5 Notices 11
15.6 Headings 12
15.7 Counterparts and Execution 12
15.8 Successors and Assigns 12
15.9 Confidentiality and Publicity 12
15.10 Exculpation 12

TABLE OF CONTENTS
(continued)

Page

EXHIBIT A Legal Description of the Land A-1
EXHIBIT B Wind-down License B-1
EXHIBIT C Lease Amendment C-1
EXHIBIT D Special Warranty Deed D-1
EXHIBIT E Assignment and Assumption Agreement E-1

PURCHASE AND SALE AGREEMENT
(Westminster, CO – Sears #1001)

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of _____ _____, 2012 (the "Effective Date"), by and between SEARS DEVELOPMENT CO., a Delaware corporation ("Seller"), and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado ("Purchaser").

Recitals

This Agreement is made with respect to the following facts:

A. Seller owns the following described property (the "Property"):

(1) The land described in **Exhibit A** attached hereto which consists of approximately 7.974 acres more or less (the "Land");

(2) All improvements in, upon and under the Land, including all fixtures therein (such improvements and fixtures owned by Seller are hereinafter collectively referred to as the "Improvements"); the Land and the Improvements are located at 5501 West 88th Ave, Westminster, Colorado, and are commonly known as the Sears Store at the Westminster Mall; and

(3) All rights and interests owned or acquired by Seller which are appurtenant to the Land, including, without limitation, all rights and interests owned or acquired by Seller (if any) in and to any rights-of-way, easements, improvements, structures and other property rights, if any, which are appurtenant to the Land, including but not limited to, the Reciprocal Construction, Operation and Easement dated February 13, 1986 recorded at Reception No. 86016389 of the Official Records of Jefferson County, Colorado (the "REA").

B. The Property is part of the Westminster Mall, in Westminster, Colorado (the "Westminster Mall").

C. Purchaser is an urban renewal authority under the laws of the State of Colorado that has the power of condemnation and is trying to acquire all of the Westminster Mall so that it may begin redevelopment of the area.

D. Purchaser threatened to condemn the Property.

E. In Sears Development Co., et al. v. City of Westminster, et al., Jefferson County District Court Case No. 2011CV3569, Seller sued Purchaser, asserting various claims, including claims that Seller had violated the terms of the REA ("Seller's Suit").

F. Seller and Purchaser have agreed that all proceedings in Seller's Suit shall be stayed upon the Effective Date and that Seller's Suit shall be dismissed with prejudice upon Closing.

G. Seller currently operates a Sears department store on the Property (the "Sears Store").

H. For up to 120 days after the Closing Date (as that term is defined below), Seller will continue to operate the Sears Store as it winds-down its business (the "Wind-down Period").

I. Purchaser will permit Seller to operate the Sears Store during the Wind-down Period pursuant to a license agreement in substantially the form attached hereto as **Exhibit B** (the "Wind-down License").

J. One of Seller's affiliated companies, Sears, Roebuck and Co. ("Tenant"), leases an auto center at Westminster Mall (the "Auto Center"), pursuant to a lease dated February 25, 2002 by and between Westminster Mall Company, as landlord, and Tenant (the "Auto Center Lease").

K. As of the Effective Date, Seller has assumed the responsibilities of the landlord under the Auto Center Lease.

L. Section 19 of the Auto Center Lease specifies that in the event of condemnation, the Auto Center Lease terminates.

M. The Auto Center Lease will be reinstated and amended to permit Tenant to continue to occupy the Property and wind-down its business during the Wind-down Period. Such amendment shall take the form of the lease amendment attached hereto as **Exhibit C** (the "Lease Amendment").

N. The sale contemplated in this Agreement is in lieu of condemnation by Purchaser.

O. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, on the terms and conditions hereinafter set forth.

Agreement

In consideration of the mutual promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals**. The above stated recitals are hereby incorporated and made a part of this Agreement.

2. **Purchase and Sale**. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, assign and convey the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller.

3. **Purchase Price**. The total purchase price (the "Purchase Price") for the Property shall be $4,200,000, and shall be paid by Purchaser to Seller in immediately available funds at Closing, subject to the prorations and adjustments provided for herein.

4. **Purchaser's Investigations**.

4.1 Title Commitment. Purchaser may, at its sole cost and expense, order a current title insurance commitment issued by Heritage Title Company, 8450 E. Crescent Parkway, Suite 410, Greenwood Village, CO 80111 (the "Title Company"), including copies of all recorded exceptions to title referred to therein (collectively, the "Title Commitment"), showing title to the Land as vested or to be vested in Seller and committing to insure title to the Land in Purchaser by issuance of its standard ALTA owner's policy of title insurance. "Permitted Exceptions" as that term is used herein, shall be those matters reflected in the Title Commitment or revealed by the Survey which are not (i) delinquent taxes or assessments, or (ii) any monetary encumbrance created by, through or under Seller.

4.2 Survey. Purchaser may order and provide to Seller and the Title Company a current ALTA survey of the Land (the "Survey"), sufficient to secure the deletion of the standard preprinted "survey" exceptions contained in the Title Commitment. Purchaser may cause the Survey to be certified to and for the benefit of Purchaser. All costs of the Survey shall be borne by Purchaser.

4.3 Indemnity. Purchaser agrees to indemnify, defend and hold Seller harmless, to the extent permitted by law, from any claim, demand, liability, lien, cost or expense asserted against Seller or the Property arising out of or resulting from Purchaser's or its employees', agents', representatives' or contractors' investigations of the Property prior to Closing and to pay Seller all costs and expenses, including reasonable attorneys' fees, incurred in defending any such matter; provided, however, that Purchaser shall have no obligation to indemnify Seller with respect to claims arising from Seller's negligent acts or omissions or any pre-existing condition of the Property. Notwithstanding any other terms and provisions of this Agreement to the contrary, this indemnification obligation of Purchaser will survive any termination of this Agreement.

4.4 Property Information. Seller shall allow Purchaser access to, and the opportunity to review, documents in Seller's possession relating to the Land; provided, nothing herein shall require Seller to allow Purchaser to review any privileged document or information or any other real property, any communications between or among the officers, directors, employees or owners of Seller, or any other document or information reasonably deemed proprietary in nature by Seller.

4.5 Property Inspection. Following the Effective Date until the end of the Wind-down Period, Purchaser and its agents and representatives shall have and Seller hereby grants to Purchaser, the right, upon reasonable prior notice to Seller, to enter on the Property for the purposes of taking measurements and performing any studies of the Property, engineering, environmental, surveying or otherwise, as Purchaser shall reasonably determine to be desirable.

4.6 Closing Not Contingent on Purchaser's Investigations. Notwithstanding the foregoing, Purchaser's investigations of the Property shall not result in any additional obligations for Seller (nor any additional rights or remedies for Purchaser), as Closing is not contingent upon Purchaser's satisfaction with its investigations of the Property.

5. **Title**.

5.1 Issuance of Title Policy. At Closing, Seller and Purchaser will cause the Title Company to issue, or unconditionally commit to issue, to Purchaser its standard ALTA owner's policy of title insurance insuring in an amount equal to the Purchase Price that title to the Land is vested in Purchaser, subject only to the Permitted Exceptions (the "Title Policy"). Purchaser will be solely responsible for satisfying any requirements that the Title Company may impose specifically with respect to Purchaser, such as, for example, requirements with respect to Purchaser's authority to complete the transaction. Subject to Seller's approval thereof (acting reasonably), Seller agrees to execute and deliver customary affidavits concerning mechanic's liens arising by, through or under Seller and parties in possession that the Title Company may require in order to delete the standard preprinted exceptions to coverage.

6. **Representations and Warranties**.

6.1 Seller's Representations and Warranties. Seller represents and warrants to Purchaser as of the Effective Date and as of the Closing Date, as follows:

6.1.1 Authority. Seller is a corporation duly organized and in good standing under the laws of the State of Delaware. Seller has full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. All requisite action has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Seller is authorized to do so.

6.1.2 Binding Obligations; Violations. This Agreement and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Seller is subject or by which Seller is bound, or constitute a breach or default under any agreement or other obligation to which Seller is a party or otherwise bound.

6.1.3 Special Assessments. Seller makes the following disclosure to Purchaser, which disclosure is required in certain circumstances by Colorado law: SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS

SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

No duty of inquiry or investigation on the part of Seller shall be implied by the making of any representation or warranty set forth in this Section 6.1.

6.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller as of the Effective Date and as of the Closing Date, as follows:

6.2.1 Authority. Purchaser is a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado. Purchaser has full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. All requisite action has been taken by Purchaser in connection with the entering into of this Agreement and the instruments referenced herein and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Purchaser is authorized to do so.

6.2.2 Consents; Binding Obligations; Violations. All consents and approvals which may be required in order for Purchaser to enter into this Agreement or consummate the transaction contemplated hereby have been obtained. This Agreement and all documents required hereby to be executed by Purchaser are and will be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Purchaser is subject or by which Purchaser is bound, or constitute a breach or default under any agreement or other obligation to which Purchaser is a party or otherwise bound.

6.3 Survival. All representations in Sections 6.1 and 6.2 shall survive Closing, provided that any action for the breach of such representations must be commenced within one (1) year after the Closing Date.

7. **Condition of Property**.

7.1 As-is, Where-is. Seller makes no representations or warranties regarding the condition of the Property and Purchaser shall acquire and accept the Property in its then existing condition on an "AS-IS, WHERE IS and WITH ALL FAULTS BASIS."

7.2 No Representations. Purchaser acknowledges and agrees that, except as expressly represented or undertaken by Seller in accordance with the provisions of this Agreement or in any instrument of conveyance signed by Seller and delivered to Purchaser at Closing, NEITHER SELLER NOR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, MANAGER, PARTNER, BROKER, OR REPRESENTATIVE OF SELLER HAS MADE, AND SELLER SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE

PROPERTY, INCLUDING, WITHOUT LIMITATION: (A) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY; (B) THE VALUE OF THE PROPERTY, THE HISTORICAL OR FUTURE INCOME OR PROFITS THAT HAVE BEEN OR MAY BE DERIVED FROM ANY OPERATION OR USE OF THE PROPERTY, OR ANY COSTS, EXPENSES, RISKS OR LIABILITIES ARISING FROM OR ATTRIBUTABLE TO THE PAST OR ANY FUTURE OWNERSHIP, USE, OCCUPANCY OR DEVELOPMENT OF THE PROPERTY; (C) THE COSTS OF OWNING, OPERATING, REPAIRING OR MAINTAINING THE PROPERTY; (D) THE MARKETABILITY OF THE PROPERTY, THE EXISTENCE OR AVAILABILITY OF ANY ENTITLEMENTS OR GOVERNMENTAL APPROVALS WITH RESPECT TO THE PROPERTY OR THE OPERATION THEREOF, OR ANY POTENTIAL TO DEVELOP, SUBDIVIDE, ZONE, CONSTRUCT OR ALTER IMPROVEMENTS ON, OR LEASE OR SELL THE PROPERTY; (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE SUITABILITY OF SOILS AND SOIL CONDITIONS AFFECTING THE PROPERTY FOR PURPOSES OF ANY FUTURE CONSTRUCTION OR DEVELOPMENT; (G) ANY WATER, WATER RIGHTS, WATER CAPACITIES OR WATER YIELD CAPABILITIES RELATING TO THE PROPERTY; OR (H) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY.

7.3 Waiver and Release. Purchaser, for itself and its successors and assigns, releases Seller and Seller's predecessors in interest in and to the Property and their respective agents, employees, officers, directors, managers, members, partners, brokers and representatives from, and waives any and all causes of action or claims against any of such persons for, (a) any and all liability attributable to any physical condition of or at the Property; (b) any and all liability resulting from the failure of the Property to comply with any applicable laws; and (c) any liability, damages or information arising from, connected with or otherwise caused by statements, opinions or information obtained from any of such persons with respect to the Property, including the information and deliveries provided in accordance with Sections 4.1, 4.2 and 4.4 hereof. The foregoing waiver and release does not release Seller from any claims or causes of action arising from Seller's breach of its express warranties and representations set forth in Section 6.1.

7.4 Wind-down Period for Sears Store. At Closing, Seller and Purchaser shall enter into the Wind-down License set forth on **Exhibit B**, pursuant to which Seller shall retain exclusive possession of the Property and continue to operate the Sears Store during the Wind-down Period. As more particularly set forth in the Wind-down License, during the Wind-down Period, Seller shall not be obligated to pay any rent or common area maintenance charges, provided, however, that Sears may be required to pay the portion of any possessory use tax imposed by Jefferson County for the Wind-down Period.

7.5 Wind-down Period for Auto Center. At Closing, Tenant and Purchaser shall enter into the Lease Amendment set forth on **Exhibit C**, pursuant to which Tenant shall retain exclusive possession of the Auto Center and continue to operate the Auto Center during the Wind-down Period. As more particularly set forth in the Lease Amendment, during the Wind-down Period, Tenant shall not be obligated to pay rent, common area maintenance charges, or any other charges under the Auto Center Lease.

7.6 REA. At Closing, Seller shall assign and Purchaser shall assume all rights Seller may have under the REA and Purchaser shall relieve Seller and Tenant of any and all obligations to pay any applicable merchants association fees (or other similar fees) imposed under the REA or other documents governing operation of the Westminster Mall.

7.7 Survival. The provisions of this Section 7 shall survive Closing.

8. **Conditions Precedent**. In addition to any other express conditions set forth in this Agreement, unless waived by the party entitled to the benefit thereof, the obligations of either party to close under this Agreement are subject to satisfaction of the conditions that all representations and warranties of the other party contained in this Agreement are true and correct in all material respects as of Closing and that the other party has performed all material covenants, agreements and obligations required to be performed by it under this Agreement.

9. **Closing**. Purchaser and Seller agree that the closing on the purchase of the Property will be consummated as follows (the "Closing"):

9.1 Closing Date. Closing will occur on February 29, 2012, or such earlier date as may be mutually agreed to by the parties (the "Closing Date"). Closing will take place through an escrow with Title Company on the Closing Date. All deliveries required to be made by the parties must be delivered to Title Company at its offices, by 10:00 a.m. on the Closing Date.

9.2 Closing Documents. Seller and Purchaser will deliver or cause to be delivered to each other at Closing, as appropriate, the following items (all documents will be duly executed and acknowledged where required):

9.2.1 Deed. The special warranty deed executed by Seller in the form attached hereto as **Exhibit D** conveying to Purchaser all of Seller's right, title and interest in and to the Land, subject only to the Permitted Exceptions.

9.2.2 Non-foreign Affidavit. An affidavit of Seller that evidences that it is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended.

9.2.3 Conveyance Information. A Colorado Form DR-1083, in form required by law and signed by Seller, concerning information with respect to a conveyance of a Colorado real property interest.

9.2.4 Transfer Declaration. A real property transfer declaration, in form required by law and signed by Purchaser, concerning the transaction contemplated by this Agreement.

9.2.5 Settlement Statements and Funds. Settlement statements executed by Seller and Purchaser reflecting the Purchase Price and all adjustments and prorations to be made thereto pursuant to this Agreement including, without limitation, Section 10 below, together with any amounts, in immediately available funds, required to be paid by either party thereunder.

9.2.6 Affidavits. Such customary mechanic's lien and parties in possession affidavits that the Title Company may require in order to delete the standard preprinted exceptions to coverage.

9.2.7 Wind-down License. Seller and Purchaser shall sign the Wind-down License in the form shown on **Exhibit B** that allows Seller to operate the Sears Store during the Wind-down Period.

9.2.8 Assignment and Assumption Agreement. Seller and Purchaser shall each execute, ackownledge and deliver to Title Company an assignment and assumption agreement in substantially the form of **Exhibit E** attached hereto pursuant to which all right, title and interest of Seller in and to the REA with respect to the Land and Improvements shall be conveyed to and assumed by Purchaser.

9.2.9 Stipulation for Dismissal. Attorneys for Seller and Purchaser shall execute a Stipulation for Dismissal with Prejudice for the dismissal of Seller's Suit to be filed by attorneys for Seller and Purchaser within 3 business days of Closing.

9.2.10 Lease Amendment. Tenant and Purchaser shall sign the Lease Amendment in the form shown on **Exhibit C** that allows Tenant to operate the Auto Center during the Wind-down Period.

9.3 Further Documents. Seller and Purchaser will execute and deliver such other documents and will take such other action at Closing as may be necessary or appropriate to carry out their respective obligations under this Agreement, without further representations or warranties other than those contained herein.

10. **Adjustments and Prorations**. The following adjustments and prorations will be made at Closing and reflected, where appropriate, on the settlement statements described in Section 9.2.5 above:

10.1 Ad Valorem Taxes. All real estate taxes and assessments (if any) attributable to the Property will be prorated at Closing. Seller will pay all such taxes attributable to any period prior to the Closing Date. If the applicable tax rate and assessed valuation for the Property have not been established for the year in which Closing occurs, the proration of real estate property taxes will be based upon the real estate taxes for the preceding year, and such proration shall be final for all purposes.

10.2 Closing Costs. Purchaser will pay: (i) the Title Company's closing or escrow fees; (ii) the costs of any extended coverage or endorsements to the Title Policy; (iii) the Title Company's base premium for the Title Policy; (iii) the cost of recording the closing documents, including, without limitation, the Deed, the state documentary fee and any local transfer, documentary or sales fee; (iv) Purchaser's attorneys' fees; and (v) any other closing costs customarily paid by a purchaser in the City of Westminister, Colorado. Seller will pay (i) Seller's attorneys' fees; (ii) any recording fee required for the removal from record of a monetary lien or encumbrance arising directly from an outstanding payment due from Seller; and (iii) any other closing costs customarily paid by a seller in the City of Westminister, Colorado.

10.3 Appraisal Costs. Purchaser will reimburse Seller for the following actual reasonable costs, all of which were incurred by Seller under threat of condemnation by Purchaser: (i) Seller's appraisal of the Sears Store; and (ii) work performed by Seller's appraiser in evaluating whether to complete a formal appraisal of the Auto Center. The parties acknowledge and agree that the actual reasonable costs of Seller's appraisal for the Sears Store is Nine Thousand and No/100 Dollars ($9,000.00), and that the actual reasonable costs for work performed by Seller's appraiser in evaluating whether to complete a formal appraisal of the Auto Center is Five Thousand, Four Hundred and No/100 Dollars ($5,400.00).

10.4 Insurance. Purchaser understands that Seller will cause all property and liability insurance currently being carried by Seller to be canceled at Closing, and Purchaser will be responsible for obtaining new insurance coverage with respect to the Property as of Closing.

10.5 Survival. The parties' obligations under this Section 10, to the extent not fully discharged by or through Closing, will survive Closing and remain fully enforceable thereafter.

11. **Casualty Damage**.

11.1 Notice. In the event that any of the Property should be damaged by any casualty prior to the Closing Date, Seller will promptly give Purchaser written notice of such occurrence.

11.2 No Termination. If the Property should be so damaged, this Agreement will remain in full force and effect and the parties will proceed to close the transaction contemplated hereby without any adjustment to the Purchase Price.

12. **Condemnation**. Seller is conveying the Property to Purchaser pursuant to this Agreement under Purchaser's threat to condemn the Property.

13. **Commissions**.

13.1 Sales Commissions. Seller and Purchaser each hereby represents and warrants to the other that its sole contact with the other or with the Property in connection with the transaction contemplated by this Agreement has been made without the assistance of any broker or other third party. Seller and Purchaser agree to save and hold each other free, clear and harmless from any claim, cost or expense, including reasonable attorneys' fees, for or in connection with any claims for commissions or compensation claimed or asserted by or through each respective party in connection with the transaction contemplated herein.

13.2 Survival. The parties' obligations under this Section 13 will survive Closing or any termination of this Agreement and remain fully enforceable thereafter.

14. **Remedies**.

14.1 Seller's Default. In the event that Seller fails to perform any of the material covenants or agreements contained herein which are to be performed by Seller, which failure is not cured within thirty (30) days after Purchaser's written notice, Purchaser may, at its option, (i) terminate this Agreement by giving written notice of termination to Seller whereupon the Title Company will return the Deposit to Purchaser, and both Purchaser and Seller will be

relieved of any further obligations or liabilities hereunder, except for the Surviving Obligations; or (ii) seek specific performance of this Agreement. Purchaser unconditionally waives any right to recover damages from Seller.

14.2 Purchaser's Default. In the event that Purchaser fails to perform any of the material covenants or agreements contained herein which are to be performed by Purchaser, including, without limitation, any failure to close as required herein, Seller may, at its option, terminate this Agreement by giving written notice of termination to Purchaser and/or seek to enforce this Agreement by any legal or equitable remedy. Without limiting the generality of the foregoing, in any resulting legal action, Seller shall be entitled to recover any actual, special, and/or consequential damages (including, without limtiation, any lost profits) suffered by Seller as a result of Purchaser's default.

14.3 Indemnities; Defaults after Closing or Termination. The limitations on the parties' remedies set forth in Sections 14.1 and 14.2 will not be deemed to prohibit either party from (i) seeking indemnification from the other for any matter with respect to which such other party has agreed hereunder to provide indemnification or from seeking damages from such other party in the event it fails or refuses to provide such indemnification; (ii) subject to the express limitations set forth in Section 6.3, seeking damages incurred for the other party's breach of any representation or warranty; (iii) seeking damages or such equitable relief as may be available for the other party's failure to perform after Closing hereunder any obligation hereunder which expressly survives Closing; or (iv) seeking damages or such equitable relief as may be available for the other party's failure to perform after any termination of this Agreement any obligation hereunder which expressly survives such termination.

15. **General Provisions**. The parties further agree as follows:

15.1 Time and Dates. Time is of the essence of this Agreement and Seller's and Purchaser's obligations hereunder. If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or holiday, then such date will be automatically extended to the next succeeding weekday that is not a holiday.

15.2 Attorneys' Fees. In the event it becomes necessary for Purchaser or Seller to file a suit to enforce this Agreement or any provisions contained herein, the prevailing party in such suit will be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred in such suit.

15.3 Entire Agreement. No change or modification of this Agreement will be valid unless the same is in writing and signed by the parties hereto. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property. All prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as set forth herein.

15.4 Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of Colorado.

15.5 Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows; or upon actual receipt if transmitted by telecopier to the telecopy number set forth below:

If to Seller, to:

SEARS DEVELOPMENT CO.
c/o SHC
333 Beverly Rd, Dept. 824RE-BC-130B
Hoffman Estate, IL 60179
Attention: Robyn L. Alexander
Assistant General Counsel – Real Estate
Telecopy: (847)-286-2286
Email: robyn.alexander@searshc.com

With a copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, Colorado 80202
Attention: Tom Ragonetti, Esq.
Michael Kaplan, Esq.
Telecopy: (303) 825-6525
Email: tjr@ottenjohnson.com
mkaplan@ottenjohnson.com

If to Purchaser, to:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
J. Brent McFall, Executive Director
4800 West 92nd Avenue
Westminster, CO 80031

With a copy to:

Susan Grafton, Director
4800 West 92nd Avenue
Westminster, CO 80031

or to such other address of which, or such other person of whom, any party notifies the other for such purpose in accordance with this Section 15.5.

15.6 Headings. The headings which appear in some of the Sections of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Sections in which they appear.

15.7 Counterparts and Execution. This Agreement may be executed in counterparts, each of which (or any combination of which) when signed by all of the parties will be deemed an original, but all of which when taken together will constitute one agreement. Facsimiles of executed copies hereof may be delivered by telecopy, email or other electronic means and upon receipt, such facsimile copies will be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of facsimile executed copies hereof that have been delivered by telecopy, email or other electronic means, each party will endeavor to deliver originals to the other party as promptly as possible after execution.

15.8 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing provisions of this Section 15.8, Purchaser shall not assign its interest under this Agreement without the prior written consent of Seller in its sole discretion, except that no consent shall be required in the event of an assignment by Purchaser to any entity which is wholly-owned or controlled by Purchaser.

15.9 Confidentiality and Publicity. The parties agree that, until the expiration of the Wind-down Period, any public statements made on Seller's or Purchaser's behalf concerning the subject matter of this Agreement shall be made pursuant to one or more written press releases (each, a "Press Release"), and that neither party shall make any other public statements concerning the existence or terms of this Agreement, except as may be required by law. Any Press Release issued by either party shall be subject to the prior review and approval of the other party, which approval shall be given or withheld in the sole and absolute discretion of the reviewing party. Each party's right to issue Press Releases shall be limited as follows: (i) prior to Purchaser's Board of Directors' formal action to approve Purchaser's entry into this Agreement, Purchaser and Seller shall each be permitted to issue a single Press Release, on its own behalf, concerning the subject matter of this Agreement; (ii) following Purchaser's Board of Directors' formal action to approve Purchaser's entry into this Agreement, and prior to the Closing, Purchaser and Seller shall each be permitted to issue a single Press Release, on its own behalf, concerning the subject matter of this Agreement; and (iii) following the Closing, and until the expiration of the Wind-down Period, the parties agree to cooperate in preparing any additional Press Releases.

15.10 Exculpation. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that no individual member of Seller or Purchaser or any of their respective officers, directors, officials, board members, members' representatives or employees shall be personally liable for any of Seller's or Purchaser's obligations or any undertaking or covenant of Seller or Purchaser contained in this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

SEARS DEVELOPMENT CO., a Delaware corporation

By:_____
Name: _____
Title_____

PURCHASER:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority

By:_____
Name: J. Brent McFall
Title: Executive Director

EXHIBIT A
TO PURCHASE AND SALE AGREEMENT

LEGAL DESCRIPTION OF THE LAND

[See attached page(s)]

EXHIBIT B
TO PURCHASE AND SALE AGREEMENT

WIND-DOWN LICENSE

LICENSE AGREEMENT
(Westminster, Colorado – Sears #1001)

THIS LICENSE AGREEMENT (this "**Agreement**") is made and entered into as of _____ __, 2012 (the "**Effective Date**"), by and between WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a a body corporate duly organized and existing as an urban renewal authoirty under the laws of the State of Colorado ("**Licensor**"), and SEARS DEVELOPMENT CO., a Delaware corporation ("**Licensee**").

Recitals

A. Pursuant to that certain Purchase and Sale Agreement between Licensor and Licensee, dated as of _____ __, 2012 (the "**Contract**"), Licensee sold to Licensor certain real property and improvements located in the City of Westminster, Colorado, defined in the Contract as the "Property," and as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**License Area**").

B. The improvements located within the License Area consist of a Sears department store (the "**Sears Store**").

C. In order to wind-down its business, Licensee desires to retain possession of the License Area, and to continue to operate the Sears Store in the License Area, for a period of 120 days following closing of the transaction contemplated by the Contract (as more particularly described in the Contract, the "**Wind-down Period**").

D. Licensor desires to grant a license to Licensee for the use of the License Area and the Sears Store as more particularly described below.

E. Licensor and Licensee now desire to enter into this Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound, hereby agree as follows:

1. Incorporation of Recitals. The above stated recitals are incorporated and made a part of this Agreement.

2. Grant of License. Licensor hereby grants to Licensee, its successors and assigns, a non-revocable license (the "**License**") to use the License Area for the Use (as that term is defined below). The License shall be exclusive in nature, except that it shall be subject and subordinate to any prior rights-of-way or easements of record over the License Area as of the Effective Date.

3. Use. The License shall be used by Licensee, its successors and assigns, for the purposes of (a) continuing the current operation of its retail business in the Sears Store; (b) conducting any and all customary retail store closing operations, such as liquidation sales and similar or related activities; and (c) any other legally permissible use which Licensee shall determine to be necessary or required in connection with the wind-down of its business in the Sears Store (collectively, the "**Use**").

4. Term. The term of this Agreement will be for the Wind-down Period. Upon the expiration of the Wind-down Period, Licensee shall surrender possession of the License Area to Licensor in its as-is condition.

5. Maintenance; Services. Licensee agrees to be responsible for all costs associated with the Use, and to assume any and all maintenance of the License Area and the Sears Store that Licensee deems necessary in order to conduct its wind-down activities. All such activities within the License Area shall be conducted in accordance with all applicable laws and performed in a good and workmanlike manner. At no cost to Licensee, Licensor will provide snow removal and parking lot lighting for the License Area during the Wind-down Period.

6. Rent. This Agreement constitutes partial consideration for the Contract. During the Wind-down Period, Licensee shall not be required to make any payment of rent, common area maintenance charges, merchants association fees, or any other rental amounts. Notwithstanding the foregoing, Licensee may be required to pay the portion of any possessory use tax imposed by Jefferson County, Colorado for the Wind-down Period.

7. Indemnification. Licensee will indemnify and hold Licensor and its licensees, invitees, contractors, agents and employees harmless from and against any claims, damages, liens, liabilities, costs and expenses incurred by Licensor and proximately caused by Licensee or any of its licensees, invitees, contractors, agents and employees in their use of the License Area. Licensor will indemnify and hold Licensee and its licensees, invitees, contractors, agents and employees harmless from and against any claims, damages, liens, liabilities, costs and expenses incurred by Licensee and proximately caused by Licensor or any of its licensees, invitees, contractors, agents and employees in their use of the License Area.

8. Binding Effect. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and assigns. There shall be no third party beneficiaries of the provisions of this Agreement. The terms, conditions, covenants and agreements of this Agreement shall be construed as covenants touching and concerning, running with and appurtenant to the License Area.

9. Notices. Any and all notices, demands, requests and responses thereto permitted or required to be given under this Agreement will be in writing, signed by or on behalf of the party giving such notice, and will be delivered to the other party at the address of such other party set forth below:

If to Licensor:

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY
4800 West 92nd Avenue
Westminster, CO 80031
Attention: J. Brent McFall
Facsimile No.: (___) ___-____

If to Licensee:

SEARS DEVELOPMENT CO.
3333 Beverly Road, Dept. 824RE
Hoffman Estates, IL 60179
Attention: Kal Gibron, VP Real Estate
Facsimile No.: (842) 286-2282

10. Severability. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

11. Miscellaneous. (A) This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein, will be of any force or effect. This Agreement may not be amended or terminated except by an agreement in writing signed by the parties hereto or their respective successors in interest. (B) This Agreement will be construed in accordance with the laws of the State of Colorado. (C) The parties each represent that no real estate agent or broker has any interest in or right to payment pursuant to this Agreement.

12. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which will constitute an original, but all of which, when taken together, will constitute but one agreement. Executed copies hereof may be delivered by telecopier, email or other electronic means and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands and affixed their seals as of the Effective Date.

LICENSOR:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority

By:_____
Name: J. Brent McFall
Title: Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2012, by _____ as _____ of WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority.

My commission expires:_____.

_____
Notary Public

[Additional Signature Page Follows]

LICENSEE:

SEARS DEVELOPMENT CO., a Delaware corporation

By:_____
Name: _____
Title: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2012, by _____ as _____ of SEARS DEVELOPMENT CO., a Delaware corporation.

My commission expires:_____.

_____
Notary Public

EXHIBIT A
(The License Area)

[See attached pages]

EXHIBIT C
TO PURCHASE AND SALE AGREEMENT

LEASE AMENDMENT

AMENDMENT TO LEASE
(Westminster, Colorado – SAC 2716)

THIS AMENDMENT TO LEASE (this "**Amendment**") is made and entered to be effective as of the ___ day of _____, 2012 (the "**Effective Date**"), by and between WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a a body corporate duly organized and existing as an urban renewal authoirty under the laws of the State of Colorado (hereinafter referred to as "**Landlord**"), and SEARS, ROEBUCK AND CO., a New York corporation (hereinafter referred to as "**Tenant**").

Recitals

F. On or about February 25, 2002, Westminster Mall Company, a Colorado general partnership ("**WMC**") and Tenant entered into that certain Lease (the "**Lease**"), whereby WMC demised to Tenant certain premises known as the Sears Auto Center (f/k/a Wards Auto Center), located in the Westminster Mall, in Westminster, Colorado (the "**Auto Center**").

G. Landlord has assumed the rights and obligations of WMC under the Lease.

H. Sears Development Co., a Delaware corporation ("**Sears Development**"), an affiliate of Tenant, is the owner of other property located in the Westminster Mall that is used for the operation of a Sears retail store (the "**Sears Store**").

I. Landlord is an urban renewal authority under the laws of the State of Colorado that has the power of condemnation and is trying to acquire all of the Westminster Mall, including the Auto Center and the Sears Store, so that it may begin redevelopment of the area.

J. Under threat of Landlord condemning the Sears Store, Sears Development has entered into that certain Purchase and Sale Agreement between Sears Development and Landlord, dated as of _____ __, 2012, whereby Sears Development will sell the Sears Store to Landlord (the "**Contract**").

K. The Contract provides for Sears Development and Tenant to have the benefit of a period of 120 days following the closing of the transaction contemplated by the Contract (as more particularly described in the Contract, the "**Wind-down Period**"), during which 120-day period (i) Sears Development may operate and retain possession of the Sears Store in order to wind-down its business operations; and (ii) Tenant may operate and retain possession of the Auto Center in order to wind-down its business operations.

L. Landlord and Tenant desire to amend the Lease in order to provide Tenant with a modified Term of the Lease to account for the Wind-down Period, and to amend certain other matters as more particularly described in this Amendment.

M. Landlord and Tenant have agreed to amend the Lease as more particularly described herein.

Agreement

NOW, THEREFORE, in consideration of the premises, the consideration set forth in the Lease, the promises and covenants of the parties set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Incorporation of Recitals. The above stated recitals are incorporated and made a part of this Agreement.

2. Defined Terms. All capitalized terms used but not defined in this Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this Amendment and used in any provisions that are added to the Lease pursuant to this Amendment will have the meanings set forth for such terms in this Amendment.

3. Modified Term. The Term of the Lease is hereby modified to remain in effect until the expiration of the Wind-down Period (the "**Lease Expiration Date**"). Section 3(a) of the Lease is hereby revised and amended accordingly. Landlord and Tenant acknowledge that the Lease shall continue in full force and effect until the Lease Expiration Date.

4. Rent. During the Wind-down Period, through and including the Lease Expiration Date, Tenant shall not be required to make any payment of Rent, operating costs, common area maintenance charges, merchants association fees, or any other rental amounts due under the Lease. Notwithstanding the foregoing, Tenant may be required to pay the portion of any possessory use tax imposed by Jefferson County, Colorado for the Wind-down Period.

5. Ratification. Tenant and Landlord hereby specifically agree that all provisions set forth in the Lease, except as specifically amended by this Amendment, shall remain in full force and effect and are hereby adopted, reinstated, ratified and confirmed by Landlord and Tenant. This Amendment shall not be construed as a waiver of any provision under said Lease.

6. Governing Law. This Amendment shall be governed by the laws of the State of Colorado. The parties hereto expressly consent to jurisdiction over them in the subject matter of this Amendment in the courts of the State of Colorado.

7. Counterparts and Signatures. This Amendment, or the signature pages thereof, may be executed in counterparts, all of which will have full force and effect as an original, including admission into evidence. Facsimile signatures or signatures delivered by e-mail shall be effective to bind each of the parties hereto. However, each such party hereby agrees to provide the other with original signatures on this Amendment at the earliest reasonable time after facsimile signatures or signatures delivered by e-mail have been transmitted.

8. Severability. In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Amendment, the remainder of this Amendment shall be fully enforceable.

9. Integration. This Amendment constitutes the entire agreement of the parties and a complete merger of all prior negotiations and agreements. This Amendment shall not be modified except in writing signed by the parties or their authorized representatives.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment to be effective as of the Effective Date.

LANDLORD:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority

By:_____
Name: J. Brent McFall
Title: Executive Director

TENANT:

SEARS, ROEBUCK AND Co., a New York corporation

By:_____
Name: _____
Title: _____

EXHIBIT D
TO PURCHASE AND SALE AGREEMENT

SPECIAL WARRANTY DEED

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (this "Deed") evidences a conveyance by SEARS DEVELOPMENT CO., a Delaware corporation ("Grantor"), whose street address is 3333 Beverly Rd., Dept. 824RE, Hoffman Estates, IL 60179, to WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority ("Grantee"), whose street address is _____, _____,.

Grantor, for Ten and No/100 Dollars ($10.00) and other good and valuable consideration, in hand paid, hereby sells and conveys to Grantee, the real property in the City of Westminster, County of Jefferson and State of Colorado that is legally described in **Exhibit A** attached hereto and made a part hereof (the "Land"), together with all its appurtenances and any and all improvements located on the Land, and warrants the title to the same against all persons claiming by, through or under Grantor, subject to the below reservations and those matters described in **Exhibit B** attached hereto and made a part hereof.

Signed as of the ____ day of _____, 2012.

GRANTOR:

SEARS DEVELOPMENT CO., a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____ as _____ of SEARS DEVELOPMENT CO., a Delaware corporation.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

Exhibit A
To Special Warranty Deed

(Legal Description)

Exhibit B
To Special Warranty Deed

(Exceptions to Title)

Exhibit E

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**") is made and is effective as of the _____, 2012, by and between SEARS DEVELOPMENT CO., a Delaware corporation ("**Assignor**") and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado ("**Assignee**").

WHEREAS, Assignor is the owner of certain real property located in the City of Westminster, County of Jefferson, State of Colorado, as more particular described on Schedule 1 (the "Sears Parcel") and which is part of the shopping center commonly known as the Westminster Mall (the "Center");

WHEREAS, Assignor, as Seller, and Assignee, as Buyer, entered into that certain Purchase and Sale Agreement dated as of _____, 2012 (the "**Purchase Agreement**") with respect to the sale of the Sears Parcel, including a certain building and other property and rights of Assignor; and

WHEREAS, the Sears Parcel is subject to and/or Assignor is a party to those certain agreements listed in attached Schedule 2 as the same may have been modified, amended or supplemented, directly or indirectly, by any agreement that in any manner affects the Sears Parcel or the Center, recorded or unrecorded (collectively, together with any collateral or incidental agreements, the "REA");

WHEREAS, Assignor, in connection with the purchase and sale of the Sears Parcel desires and intends to assign, transfer and convey to Assignee, all of Assignor's rights, title, interests and obligations in, to and under the REA upon the terms hereinafter set forth; and

WHEREAS, Assignee desires and intends to accept the assignment of the REA and to assume Assignor's obligations and liabilities thereunder as and to the extent hereinafter provided.

NOW THEREFORE, in consideration of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Assignor and Assignee hereby covenant and agree as follows:

1. Effective as of the date hereof, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's rights, title, and interests in, to and under the REA, to have and to hold the same unto Assignee, its successors and assigns, subject to all of the terms, covenants and conditions contained in the REA.

2. Assignee hereby accepts the assignment of the REA from Assignor and hereby assumes and agrees to observe and perform all the obligations, terms, covenants and conditions thereof to be observed or performed by Assignor thereunder from and after the date hereof and hereby assumes all liabilities to the extent arising out of or relating to the REA from and after the date hereof.

3. Assignee acknowledges and agrees that Assignor's rights under the REA have been offered to Assignee on an "as is, where is" basis, and that no oral or written representation of warranties concerning the REA have been made in connection with Assignee's agreement to purchase Assignor's rights under the Purchase Agreement.

4. Assignee hereby agrees to indemnify and hold harmless Assignor from and against any loss, costs, liabilities and damages that arise from any third party holding or attempting to hold Assignor liable for the obligations assumed by Assignee in this Agreement with respect to the Sears Parcel that relate to the period of time from and after the date of this Agreement. Assignor hereby agrees to indemnify and hold harmless Assignee from and against any loss, costs, liabilities and damages that arise from any third party holding or attempting to hold Assignee liable for the obligations of Assignor under the REA with respect to the Sears Parcel that relate to the period of time prior to the date of this Agreement but only during the Assignor's period of ownership of the Sears Parcel.

5. Capitalized terms not defined herein shall have the meanings given to such terms in the Purchase Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

6. This Agreement shall be binding upon, and shall inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

7. All exhibits attached hereto are incorporated herein by reference.

The rest of this page intentionally left blank.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption Agreement to be executed as of the day and year first above written.

ASSIGNOR:

SEARS DEVELOPMENT CO., a Delaware corporation

By:_____
Name: _____
Title: _____

ASSIGNEE:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, an urban renewal authority

By:_____
Name: J. Brent McFall
Title: Executive Director