



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 (November 10, 2014)
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda
 - A. Financial Report for October 2014
 - B. 2014 Assistance to Firefighters Grant Application
 - C. 2014 Construction Crew Cumulative Purchases of Over \$75,000 for Pipe and Materials
 - D. Big Dry Creek Wastewater Treatment Facility Electrical Improvements Construction and Engineering Contracts
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Councillor's Bill No. 36 Authorizing 2014 3rd Quarter Budget Supplemental Appropriation
 - B. Councillor's Bill No. 37 Authorizing Supplemental Appropriation of HUD Section 108 Loan Fund Balance
 - C. Councillor's Bill No. 38 Appropriating Adams County Open Space Grant Funds for McKay Drainageway Project
 - D. Award of Construction Contract for McKay Drainageway Project
 - E. Councillor's Bill No. 39 Amending the Police and General Employee Pension Plans
 - F. Resolution No. 26 Authorizing IGA with CDOT for 120th Avenue/Federal Boulevard Intersection Improvements
 - G. Councillor's Bill No. 40 Authorizing Supplemental Appropriation of Grant for 120th/Federal Improvements
 - H. Resolution No. 27 Amending the IGA with CDOT for I-25 North Managed Lanes Project – US 36 to 120th Ave.
 - I. Resolution No. 28 Adopting City's 2015 Legislative Policy Statement
 - J. Appointment of David R. Frankel, City Attorney
11. Old Business and Passage of Ordinances on Second Reading
 - A. Councillor's Bill No. 35 Rezoning the Westminster Center Urban Reinvestment Plan Site to Specific Plan District
 - B. Councillor's Bill No. 29 Amending Section 10-1-12, W.M.C., re RV Parking on Streets (Tabled 10-13-14)
 - C. Special Legal Counsel Services for Drafting of Collective Bargaining Ordinance (Tabled 10-27-14)
12. Miscellaneous Business and Executive Session
 - A. City Council
13. Adjournment

NOTE: *Persons needing an accommodation must notify the City Clerk no later than noon on the Thursday prior to the scheduled Council meeting to allow adequate time to make arrangements. You can call 303-658-2161/TTY 711 or State Relay or write to lyeager@cityofwestminster.us to make a reasonable accommodation request.*

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, NOVEMBER 10, 2014, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor Atchison invited veterans in attendance to come forward and lead the Council, Staff, and audience in the Pledge of Allegiance. Afterward, he thanked them for their service to the country.

ROLL CALL

Mayor Herb Atchison, Mayor Pro Tem Faith Winter, and Councillors Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter, and Anita Seitz were present at roll call. Also present were City Manager J. Brent McFall, Assistant City Attorney Jane Greenfield, and City Clerk Linda Yeager.

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Councillor Baker, to approve the minutes of the regular meeting of October 27, 2014, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall had no report.

COUNCIL REPORTS

Councillors had no reports.

PRESENTATION OF IEDC 2014 SILVER EXCELLENCE IN ECONOMIC DEVELOPMENT AWARD

Mayor Atchison presented the 2014 Silver Excellence in Economic Development Award to Susan Grafton, Chris Gray, Ryan Johnson, Mona Choury, and Carol Parkin, the City's Economic Development team. The award was from the International Economic Development Council and recognized the team for its business retention efforts, in which Ms. Grafton noted the City Council and various members of City staff also participated.

CITIZEN COMMUNICATION

Nicki Leo, 1915 Harmony Park Drive, presented a petition signed by 255 City employees who requested Council to put a clear and understandable issue on the 2015 ballot to ask citizens if they support the firefighter collective bargaining agreement for Westminster fire employees. The subject of the petition was similar to that submitted by firefighters on August 20, 2014, to notify the City that firefighters would begin circulating petitions to place a question on the next general election ballot to determine if citizens wanted the Colorado Fire Fighter Safety Action apply to IAFF Local 2889 firefighters.

Jim Earley, 5490 West 115th Loop, objected to the Jefferson County Board of Education's actions and initiatives the past 11 months, asserting that it was causing good teachers to leave the district in significant numbers and tarnishing the good reputation of the Jefferson County School District. The actions would soon spill over into the business world, reducing economic opportunities and influencing companies to exclude the County when considering relocation to Colorado. He urged civic and business leaders within the County to get involved and asked City Council to voice their concern through adoption of a resolution admonishing the Board of Education about the potential impact of the Board's controversial actions and stances.

Eric Brandt relayed a recent incident of abuse he alleged a Westminster Police Officer had threatened and described continued Police abuse of the homeless. He advised Council that its continued failure to take action to dismiss the Police Chief after receiving repeated notification of abusive behavior would not go unpunished and vowed that he would not be silenced.

Presenting a business plan to locate a food incubator, small batch facility, and indoor retail space in vacant historic buildings at Shoenberg Farms were Nathan and Kimberly Mudd, 5716 Yarrow Street in Arvada; Ben Tyson, 5427 Dover Street in Arvada; Zach Owens the owner of a small food company producing honey; Kaati Ross, 7590 Bradburn Boulevard; and Dan Borgmann, 14770 Orchard Parkway. The plan would fill a nearly empty shopping center with local food and wellness-related businesses; use idle, historic City-owned buildings to satisfy objectives in the City's Strategic Plan; and create an estimated 120 jobs. They urged a private/public partnership between the City and themselves and asked for staff assistance in making their proposal a reality with a goal of opening in the Spring of 2015.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the City Manager to execute the an agreement with West-Hy Holdings, LLC regarding a commitment by the City to use \$876,513 of remaining funds from a previously cashed surety bond to reimburse the new developer of Hyland Village Subdivision for certain improvements within that development; authorize the City Manager to amend the contract with Beaudin Ganze Consulting Engineers, Inc. for the design and contract administration of the City Hall Courtyard ice melt system and boiler piping consolidation project, increasing the existing contract amount of \$57,690 by \$21,415 for a total of \$79,105; authorize the City Manager to execute an agreement with David Rockwell for Municipal Court Public Defender Services for the 12-month period beginning January 1, 2015, and authorize up to four 1-year renewals of the agreement; authorize the City Manager to execute a contract with the low bidder, Layne Inliner, LLC, in the amount of \$355,513 for small diameter wastewater pipe lining plus a contingency of \$35,551 for a total expenditure of \$391,064; authorize the City Manager to execute a third amendment to the Westminster Station Infrastructure, Phase One contract with Martin/Martin, Inc. in the amount of \$338,895 for the design of the relocation of the bus transfer facility (\$169,165) and the design of the Federalview Subdivision water main (\$169,730), bringing the total amount of this contract to \$733,691, and authorize a design contingency of \$33,890 bringing the total design project budget to \$767,581; and final passage on second reading of Councillor's Bill No. 34 authorizing the City Manager to enter into a one-year lease, renewable automatically on an annual basis for four additional one-year terms, for dry-land farming of the Strasburg Natural Resource Farm in return for one third of the gross annual crop sale revenues; and as a part of the lease, authorize the payment of weed control costs not to exceed \$50,000 per calendar year.

It was moved by Councillor Baker, seconded by Councillor Garcia, to approve the consent agenda excluding agenda item 8E. The motion passed unanimously.

WESTMINSTER STATION INFRASTRUCTURE PHASE ONE CONTRACT AMENDMENT

Mayor Pro Tem Winter moved, seconded by Councillor Pinter, to authorize the City Manager to execute a third amendment to the Westminster Station Infrastructure, Phase One contract with Martin/Martin, Inc. in the amount of \$338,895 for the design of the relocation of the bus transfer facility (\$169,165) and the design of the Federalview Subdivision water main (\$169,730), bringing the total amount of this contract to \$733,691, and authorize a design contingency of \$33,890 bringing the total design project budget to \$767,581. The motion passed by a 6:1 margin with Councillor Baker voting no.

PUBLIC HEARING TO REZONE WURP SITE (WESTMINSTER DOWNTOWN) TO SPECIFIC PLAN

At 7:55 p.m. the Mayor opened a public hearing to consider the rezoning of the former Westminster Mall site from Planned Unit Development to Specific Plan District. Mac Cummins, Planning Manager, entered the agenda memorandum and its attachments into the record, noting that the public legal notification requirements of the Westminster Municipal Code had been met and exceeded. He presented the Downtown Specific Plan and summarized its salient features. Key components of the Specific Plan included circulation and streetscape design, built form, green space, and public art. After responding to questions from Council, Mr. Cummins reported that the Planning Commission had considered the proposal in public hearing and had voted to recommend approval of the rezoning and the Downtown Specific Plan.

Mayor Atchison invited public input. No one wished to speak, and the Mayor closed the hearing at 8:30 p.m.

COUNCILLOR'S BILL NO. 35 REZONING THE WURP SITE FROM PUD TO SPD

Councillor Garcia moved, seconded by Councillor Pinter, to pass on first reading Councillor's Bill No. 35, rezoning of the site of the former Westminster Mall from Planned Unit Development to Specific Plan District based on a finding that the criteria as set forth in Sections 11-5-3 and 11-4-7.5 of the Westminster Municipal Code had been considered and satisfied. On roll call vote, the motion passed by a margin of 6:1 with Councillor Baker dissenting.

ADOPTION OF THE WESTMINSTER DOWNTOWN SPECIFIC PLAN

Upon a motion by Councillor Seitz, seconded by Mayor Pro Tem Winter, the Council voted 5:2 with Councillors Baker and Briggs dissenting to adopt the Westminster Downtown Specific Plan based on a finding that the criteria as set forth in Section 11-5-20(H) of the Westminster Municipal Code had been considered and satisfied.

COUNCILLOR'S BILL NO. 26 AMENDING W.M.C. RE SALARIES FOR ELECTIVE OFFICERS

Councillor Seitz moved, seconded by Mayor Pro Tem Winter, to pass on second reading Councillor's Bill No. 26 amending the Westminster Municipal Code to allow for automatic biennial adjustments to City Council's compensation in an amount equal to the percentage of the Non-Exempt General Pay Plan's market adjustments; the compensation adjustments to be effective the first full pay period in January, 2016, and effective the first full pay period in even-numbered years thereafter. The motion carried at roll call by a 5:2 margin with Councillors Baker and Garcia voting no.

ADJOURNMENT

There was no further business to come before the City Council, and, hearing no objections, Mayor Atchison adjourned the meeting at 8:48 p.m.

ATTEST:

City Clerk

Mayor



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Financial Report for October 2014

Prepared By: Tammy Hitchens, Finance Director

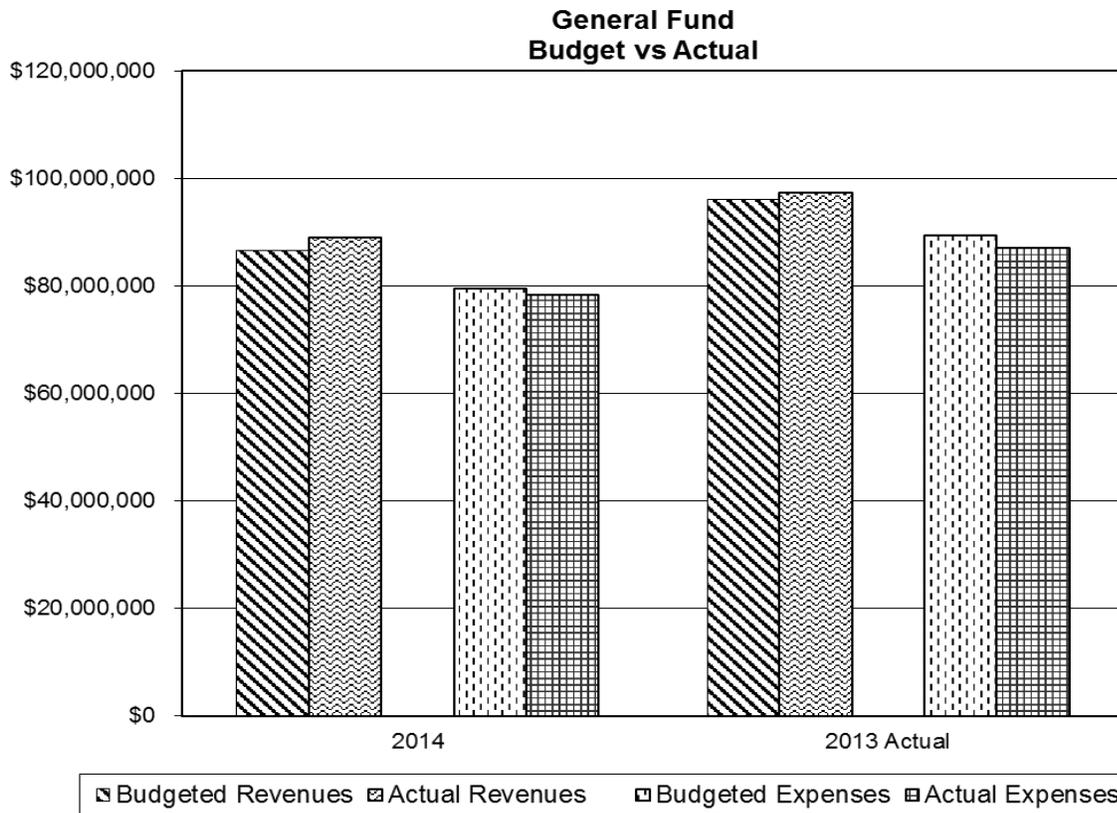
Recommended City Council Action

Accept the Financial Report for October as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, "budget" refers to the pro-rated budget. The budget numbers that are presented reflect the City's amended adopted budget. Both revenues and expenditures are pro-rated based on 10-year historical averages.

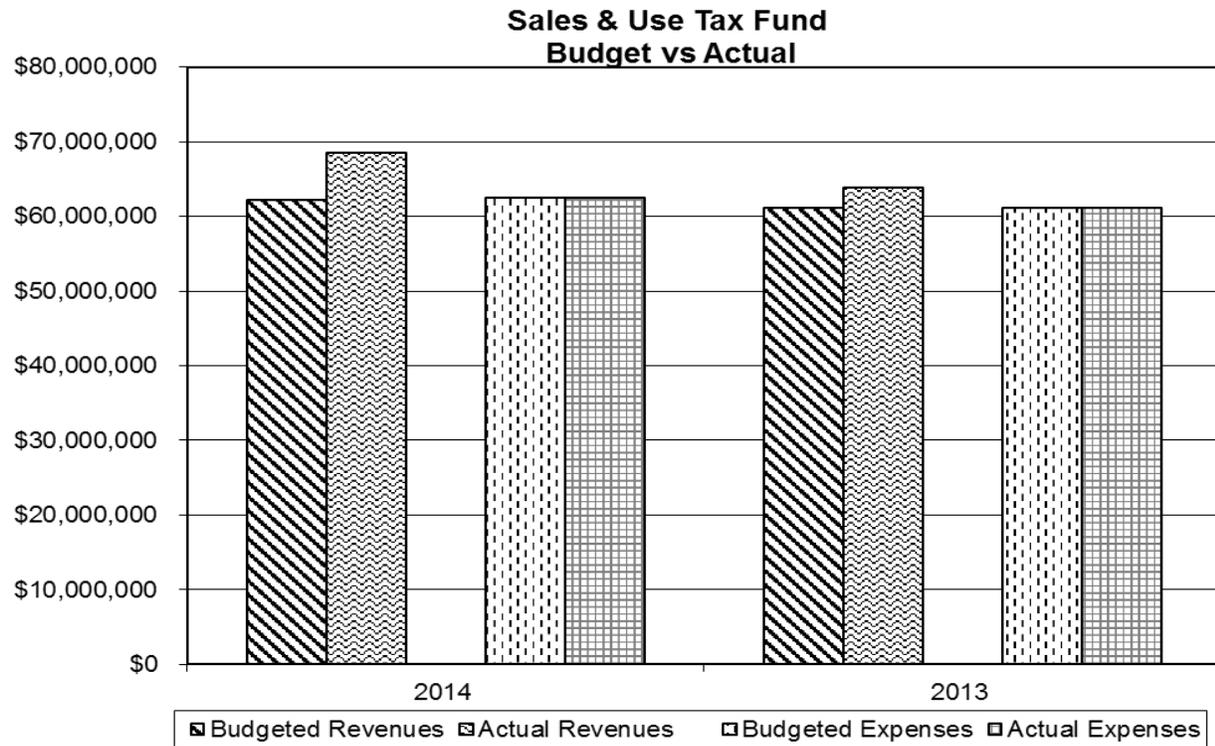
Current projections show General Fund revenues and carryover exceeding expenditures by \$3,794,301. The following graph represents Budget vs. Actual for 2013-2014.



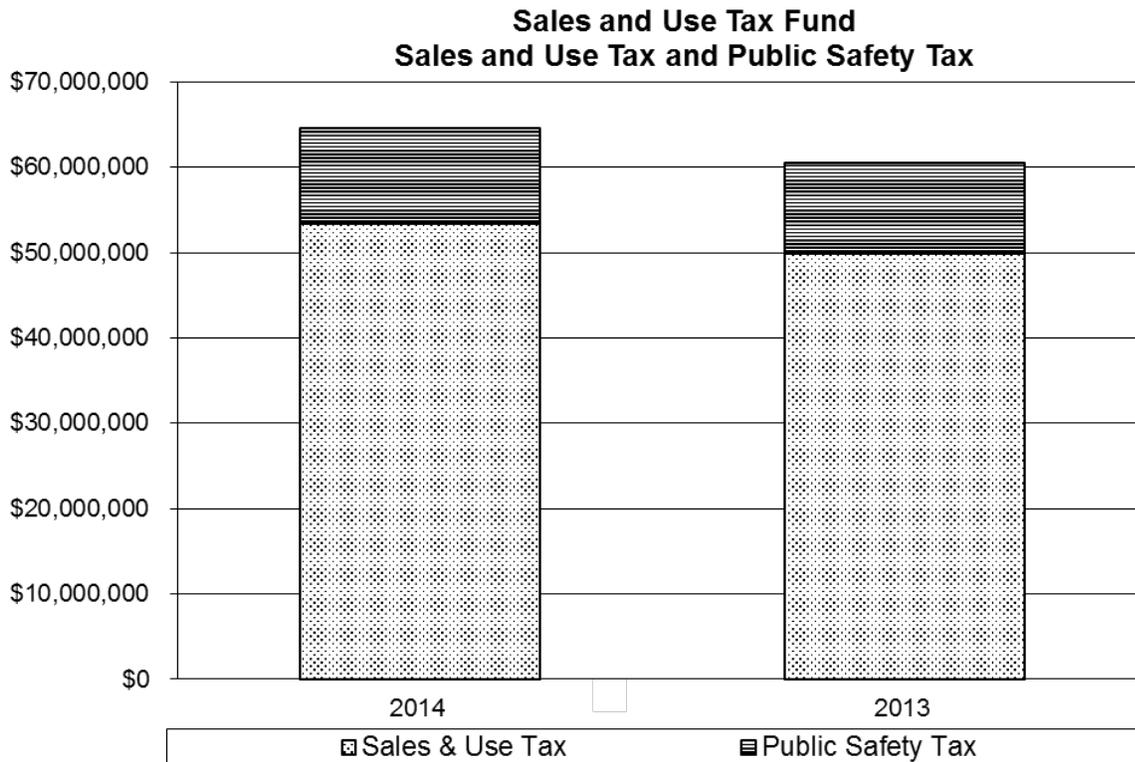
2013 revenue and expense includes an \$11.1 million refinancing of long term debt.

Current projections show the Sales and Use Tax Fund revenues and carryover exceeding expenditures by \$6,397,678. On a year-to-date cash basis, total sales and use tax is up 7.0% from 2013. Key components are listed below:

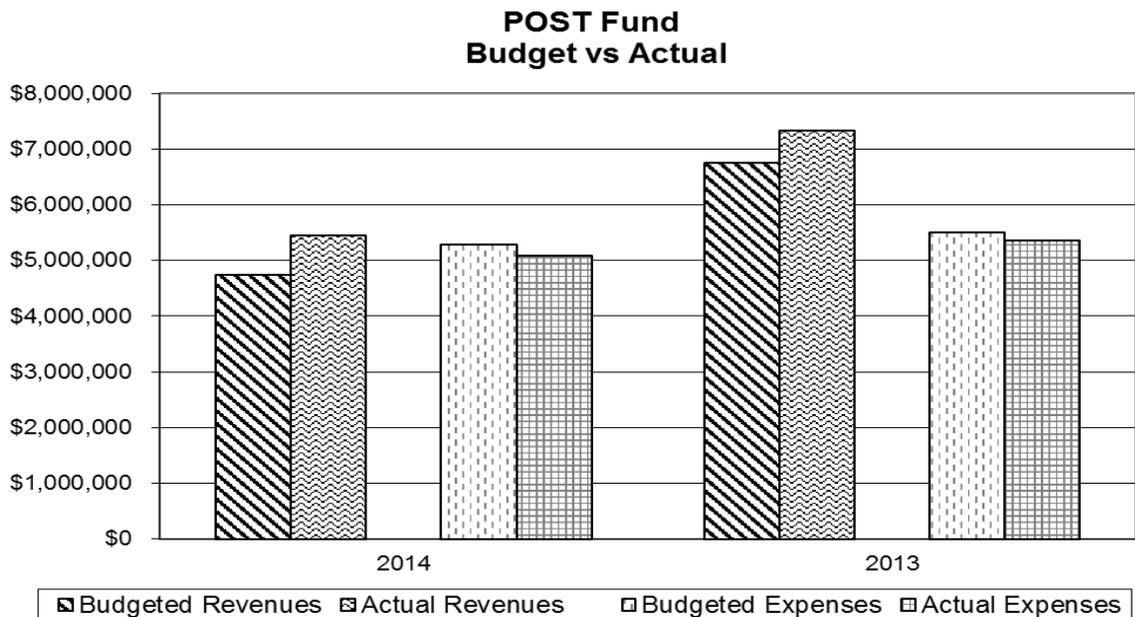
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 6.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 54.7% of all collections, are up 2.4% for the month when compared to 2013.
- Urban renewal areas make up 39.5% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 86.4% of this money is being retained for General Fund use in operating the City.



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

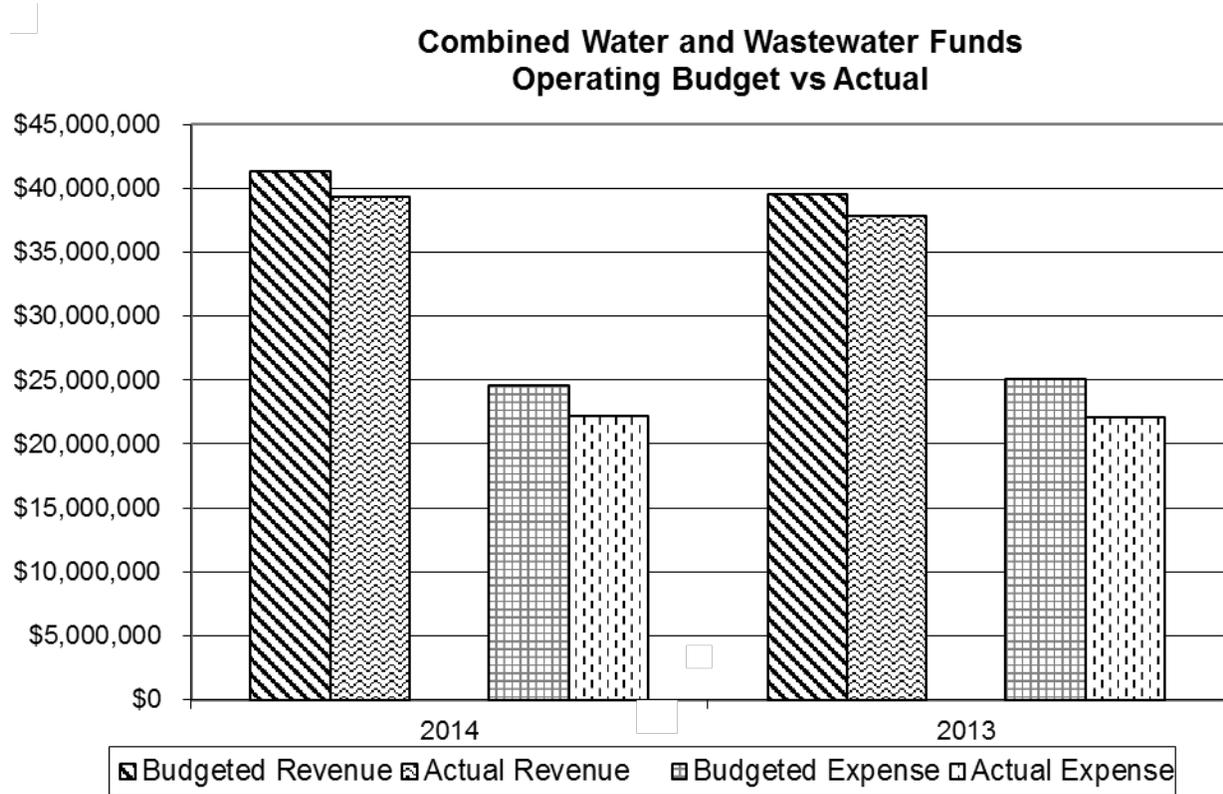


Current projections show Parks, Open Space and Trails (POST) Fund revenues exceeding expenditures and carryover by \$898,554.



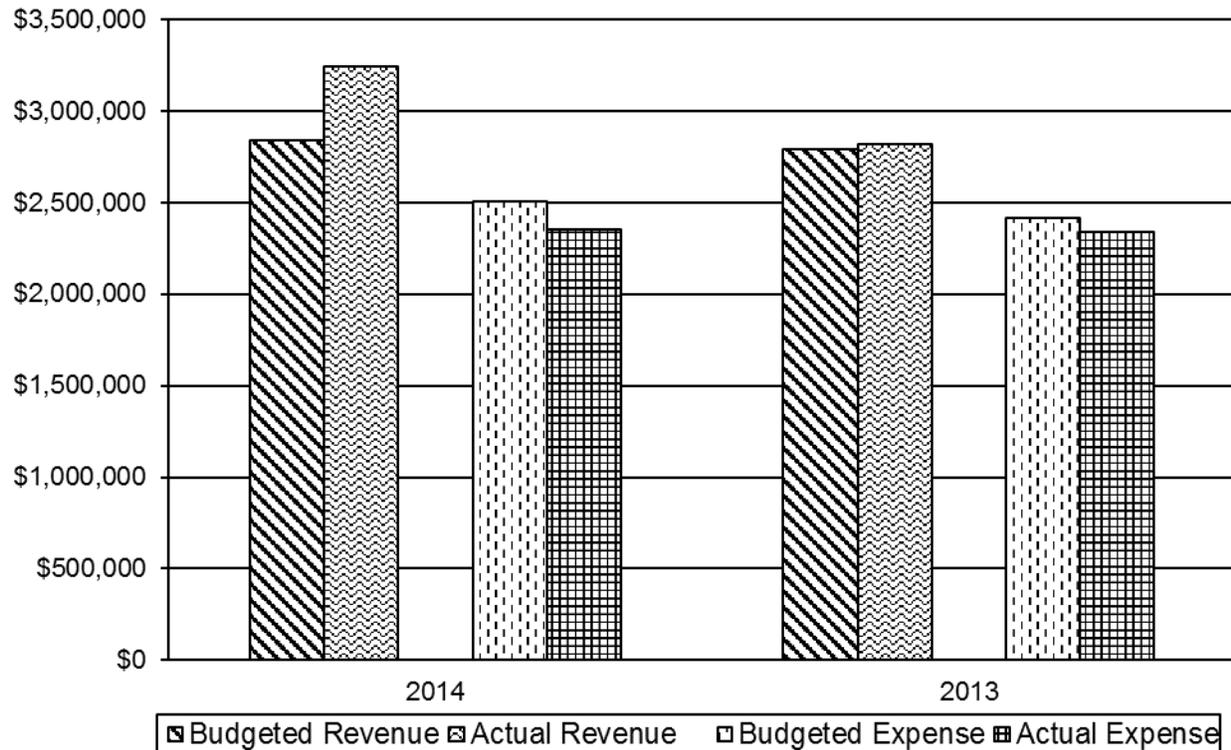
Budget to actual revenue variances reflect grant reimbursements that were budgeted in prior years. The disparity in budget and actual revenue between years results mostly from carryover and to a lesser extent intergovernmental revenues that fluctuate from year to year based on grant activity. 2013 carryover was roughly \$1.2 million more than what was appropriated in 2014.

Overall, current projections show combined Water & Wastewater Fund expenditures exceeding revenues and carryover by \$73,942. Current projections show combined Water & Wastewater Fund operating revenues exceeding expenditures by \$415,554.



Current projections show combined Golf Course Fund revenues and carryover exceeding expenditures by \$562,105. Current projections show combined Golf Course Fund operating revenues exceeding expenditures by \$555,529.

**Golf Course Enterprise
Operating Budget vs Actual**



2014 Golf Course revenue exceeds budget in part because of various promotions and proceeds from the Golf Expo as well as a reimbursement from Trimble Navigation for modifications made to the Heritage. The Trimble Navigation payment will be appropriated at a later date.

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

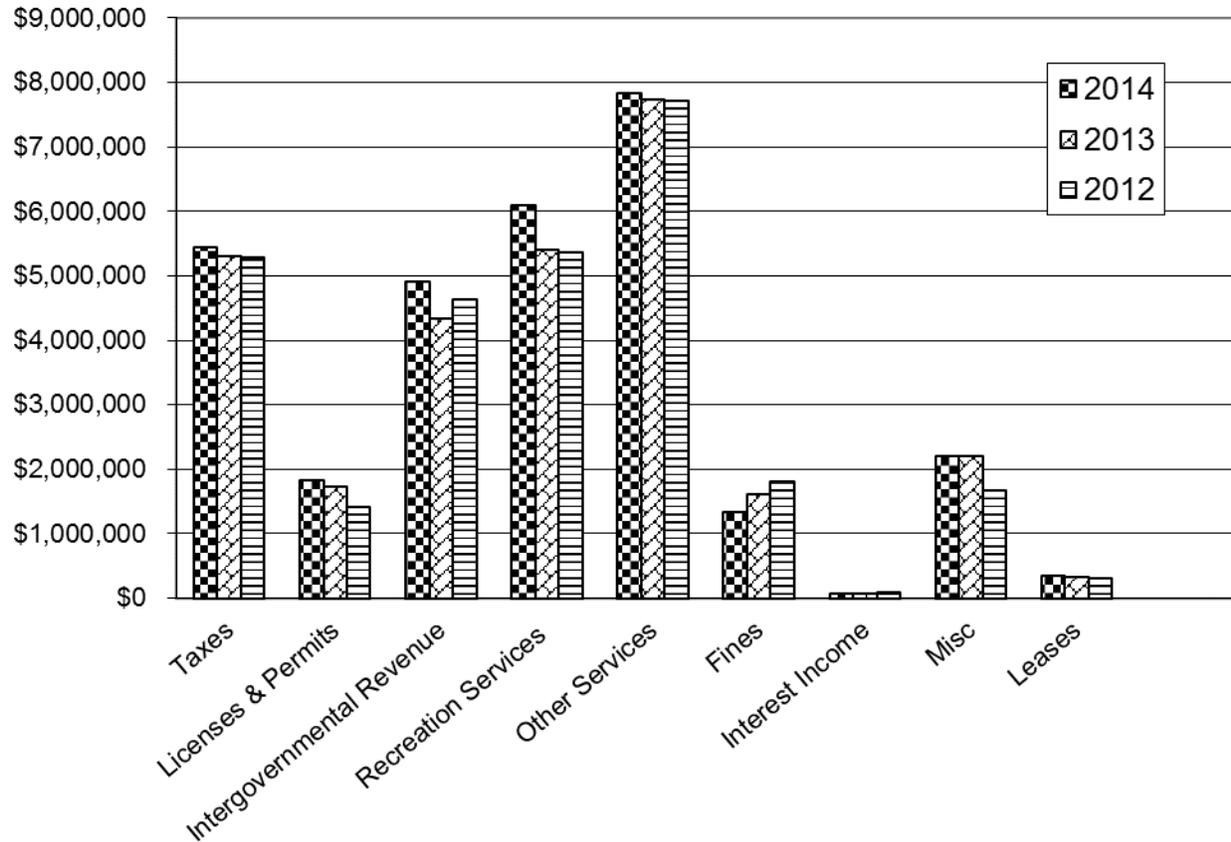
This section includes a discussion of highlights of each fund presented.

General Fund

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

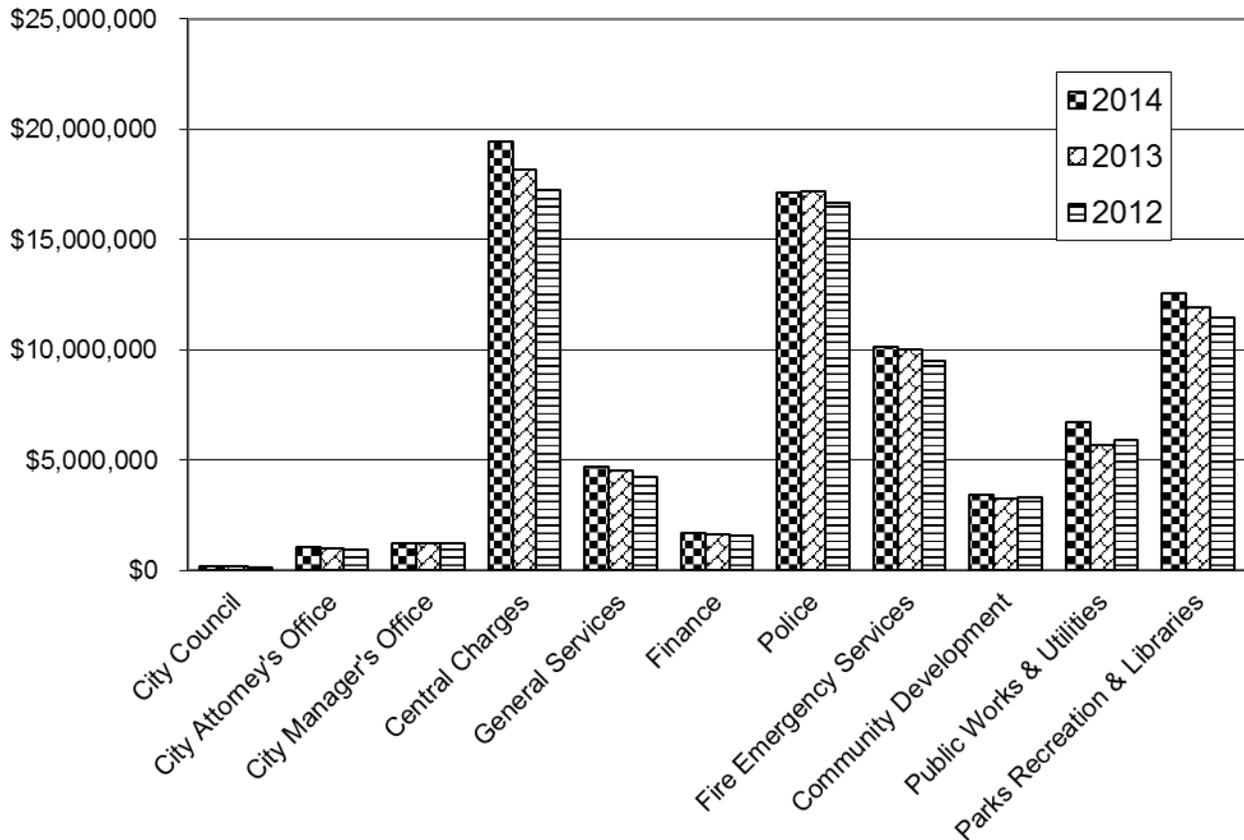
The following chart represents the trend in actual revenues from 2012-2014 year-to-date.

**General Fund Revenues, less Transfers and Carryover
2012-2014**



2014 Intergovernmental Revenue variance reflects urban renewal income generated by a revenue sharing agreement between Westminster and Thornton in the North Huron URA. The increase in Recreation Services reflects additional pass revenue and youth activity fees as an outcome of various Parks, Recreation and Libraries promotions during the year. Fines are lower in 2014 mostly because of a decrease in traffic fines.

General Fund Expenditures by Function 2012-2014

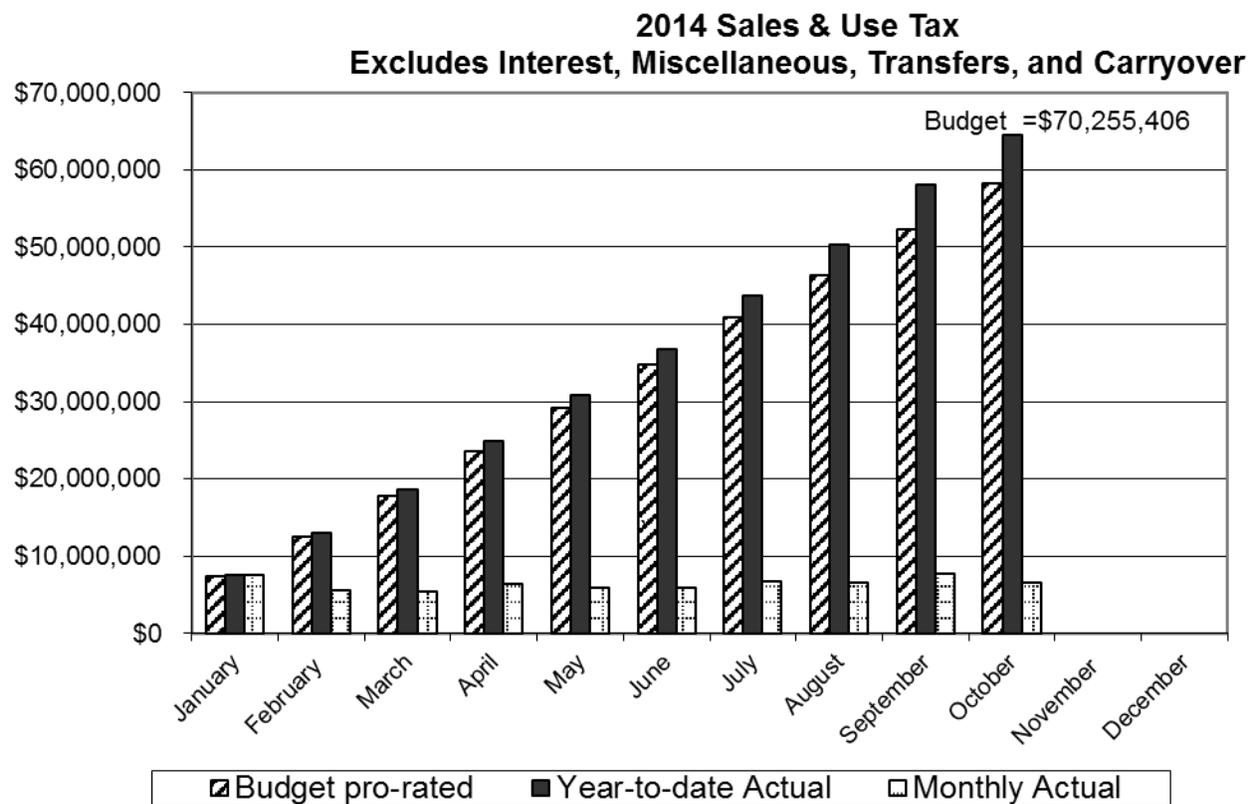


2014 Central Charges expenditures are higher when compared to prior years mostly because of an increase in budgeted transfers. Public Works & Utilities expenditures are higher mainly due to street rehabilitation and street light work. Parks, Recreation and Libraries expenditures are slightly higher when compared to prior years primarily due to salaries, program expenditures, contract services and supplies.

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. 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 (POST) 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 for funding public safety-related expenditures.

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.

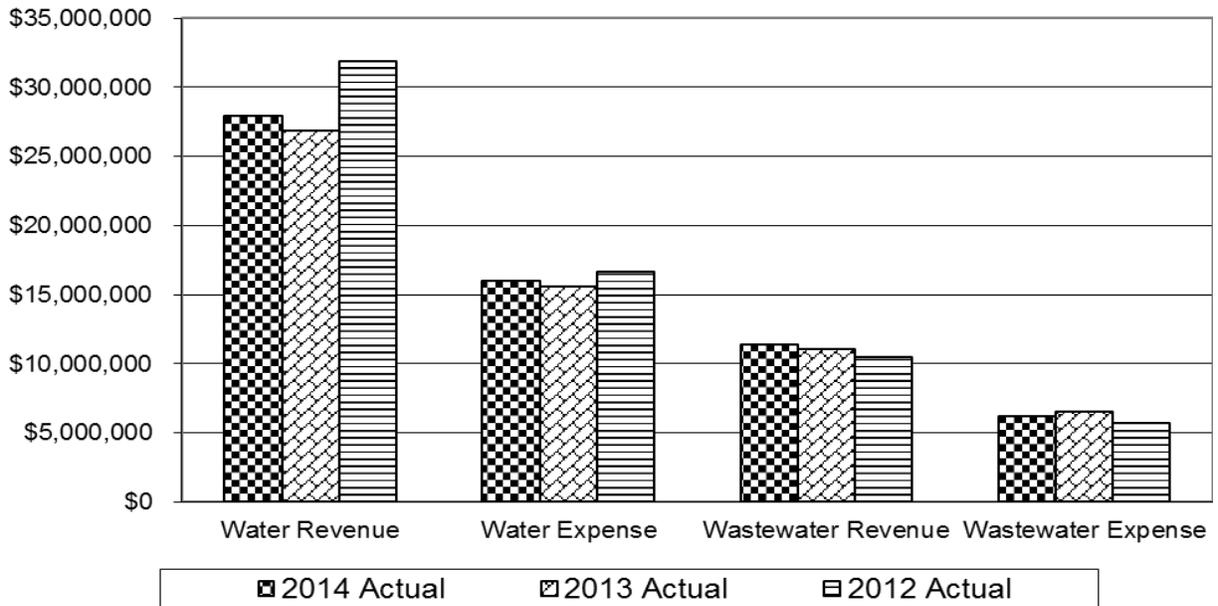


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

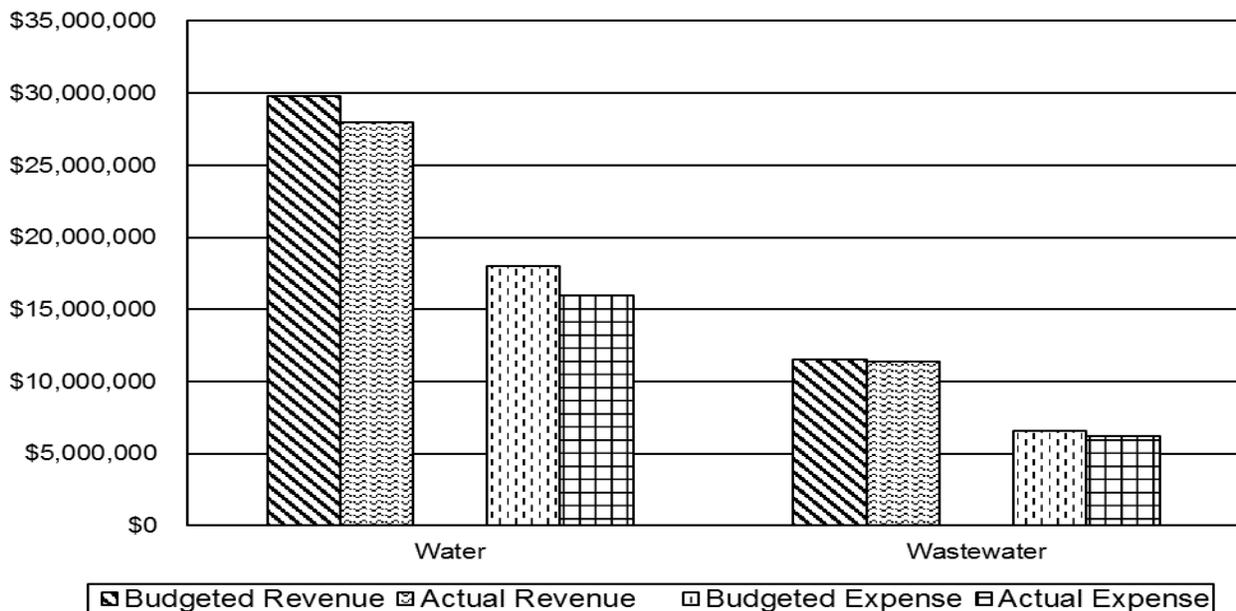
These graphs represent segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenues and Expenditure
2012-2014**



The Water revenue variance is due to the effect of climatic variations on water consumption.

**Water and Wastewater Funds
2014 Operating Budget vs Actual**



The Stormwater Fund information is provided in the attached financial reports.

Golf Course Enterprise (Legacy and Heritage Golf Courses)

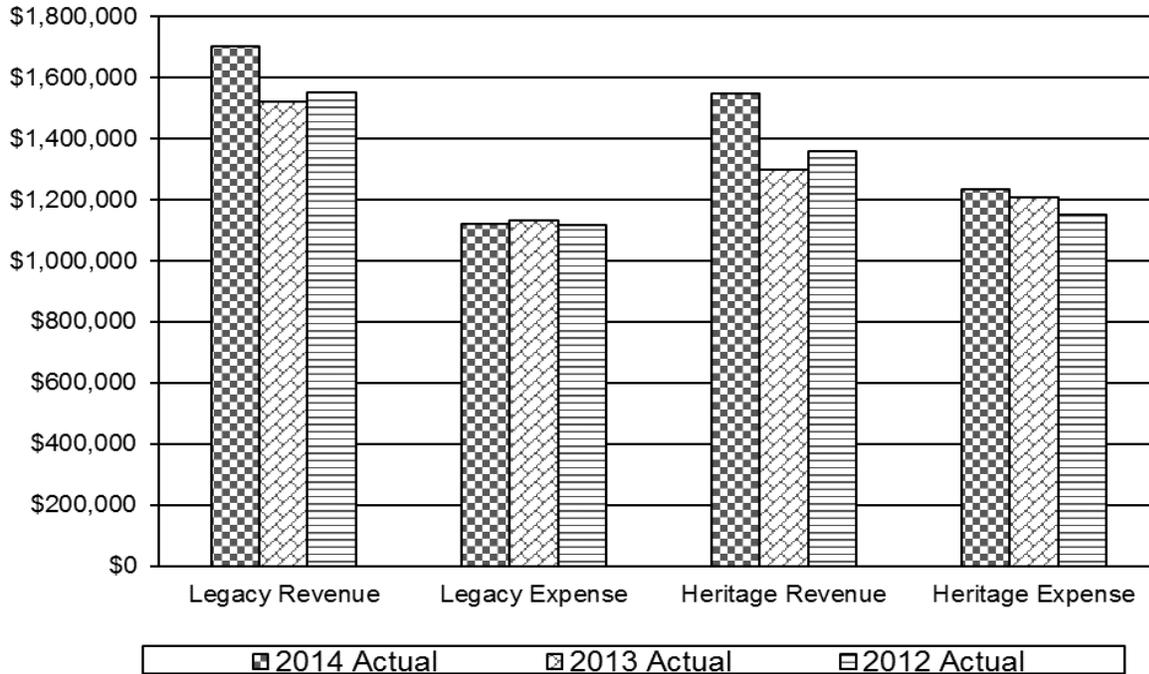
This enterprise reflects the operations of the City’s two municipal golf courses.



Golf Course revenues exceed budget in part because of various special promotions during the year as well as proceeds from the Golf Expo; for Heritage, a reimbursement from Trimble Navigation that has not yet been appropriated, increases the variance.

The following graph represents the information for each of the golf courses.

**Legacy and Heritage Golf Courses
Operating Revenue and Expenditures
2012-2014**



Revenue variances are due primarily to climatic effects on charges for services including driving range and greens fees. Several promotions during the year and the Golf Expo generated additional revenue for the courses. Heritage revenue also reflects a reimbursement from Trimble Navigation for modifications to the Heritage.

This financial report supports City Council’s Strategic Plan Goal of Excellence in City Services by communicating timely information on the results of City operations to assist with critical decision making.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

- Attachments
- Financial Statements
 - Shopping Center Report

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Taxes	5,617,500	5,406,293		5,450,646	44,353	100.8%
Licenses & Permits	1,622,000	1,285,747		1,829,427	543,680	142.3%
Intergovernmental Revenue	5,396,439	4,178,270		4,908,721	730,451	117.5%
Charges for Services						
Recreation Services	6,907,338	5,498,022		6,102,060	604,038	111.0%
Other Services	9,412,865	7,140,997		7,840,517	699,520	109.8%
Fines	2,150,000	1,845,741	(1)	1,336,118	(509,623)	72.4%
Interest Income	55,000	44,272		69,830	25,558	157.7%
Miscellaneous	1,938,977	1,759,924		2,211,836	451,912	125.7%
Leases	401,779	348,201		348,201	0	100.0%
Interfund Transfers	66,881,386	55,734,488		55,734,488	0	100.0%
Sub-total Revenues	<u>100,383,284</u>	<u>83,241,955</u>		<u>85,831,844</u>	<u>2,589,889</u>	<u>103.1%</u>
Carryover	<u>3,235,585</u>	<u>3,235,585</u>		<u>3,235,585</u>	<u>0</u>	<u>100.0%</u>
Total Revenues	<u>103,618,869</u>	<u>86,477,540</u>		<u>89,067,429</u>	<u>2,589,889</u>	<u>103.0%</u>
Expenditures						
City Council	254,094	197,659		181,453	(16,206)	91.8%
City Attorney's Office	1,316,507	1,051,387		1,051,307	(80)	100.0%
City Manager's Office	1,602,272	1,266,333		1,247,729	(18,604)	98.5%
Central Charges	30,132,661	20,179,282		19,455,348	(723,934)	96.4%
General Services	6,126,997	4,803,663		4,691,262	(112,401)	97.7%
Finance	2,133,622	1,695,741		1,670,152	(25,589)	98.5%
Police	21,634,658	17,281,839		17,148,618	(133,221)	99.2%
Fire Emergency Services	12,663,848	10,130,939		10,140,656	9,717	100.1%
Community Development	4,382,669	3,484,474		3,409,684	(74,790)	97.9%
Public Works & Utilities	8,181,812	6,661,756		6,724,888	63,132	100.9%
Parks, Recreation & Libraries	15,189,729	12,718,598		12,546,162	(172,436)	98.6%
Total Expenditures	<u>103,618,869</u>	<u>79,471,671</u>		<u>78,267,259</u>	<u>(1,204,412)</u>	<u>98.5%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>7,005,869</u>		<u>10,800,170</u>	<u>3,794,301</u>	

(1) Budget to actual variance is due mostly to traffic fines.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues						
Sales Tax						
Sales Tax Returns	48,071,133	39,946,962		42,864,684	2,917,722	107.3%
Sales Tx Audit Revenues	729,000	607,257		1,494,743	887,486	246.1%
S-T Rev. STX	<u>48,800,133</u>	<u>40,554,219</u>		<u>44,359,427</u>	<u>3,805,208</u>	109.4%
Use Tax						
Use Tax Returns	8,390,000	6,769,345		7,862,547	1,093,202	116.1%
Use Tax Audit Revenues	785,000	653,905		1,087,357	433,452	166.3%
S-T Rev. UTX	<u>9,175,000</u>	<u>7,423,250</u>		<u>8,949,904</u>	<u>1,526,654</u>	120.6%
Total STX and UTX	<u>57,975,133</u>	<u>47,977,469</u>		<u>53,309,331</u>	<u>5,331,862</u>	111.1%
Public Safety Tax						
PST Tax Returns	11,971,773	10,002,566		10,742,647	740,081	107.4%
PST Audit Revenues	308,500	256,981		516,234	259,253	200.9%
Total Rev. PST	<u>12,280,273</u>	<u>10,259,547</u>		<u>11,258,881</u>	<u>999,334</u>	109.7%
Interest Income	61,000	50,833		48,353	(2,480)	95.1%
Miscellaneous	287,291	287,291	(1)	356,253	68,962	124.0%
Interfund Transfers	329,463	274,552		274,552	0	100.0%
Carryover	3,272,649	3,272,649		3,272,649	0	100.0%
Total Revenues	<u>74,205,809</u>	<u>62,122,341</u>		<u>68,520,019</u>	<u>6,397,678</u>	110.3%
Expenditures						
Central Charges	<u>74,205,809</u>	<u>62,431,498</u>		<u>62,431,498</u>	<u>0</u>	100.0%
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>(309,157)</u>		<u>6,088,521</u>	<u>6,397,678</u>	

(1) Budget to actual variance primarily reflects reimbursement from WEDA for City funded improvements in the South Sheridan URA.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Sales & Use Tax	5,152,477	4,308,232		4,689,992	381,760	108.9%
Intergovernmental Revenue	754,600	0		282,472	282,472	
Interest Income	10,000	8,333		4,829	(3,504)	58.0%
Miscellaneous	85,030	70,858	(1)	113,304	42,446	159.9%
Interfund Transfers	24,537	20,448		20,448	0	100.0%
Sub-total Revenues	<u>6,026,644</u>	<u>4,407,871</u>		<u>5,111,045</u>	<u>703,174</u>	116.0%
Carryover	328,400	328,400		328,400	0	100.0%
Total Revenues	<u>6,355,044</u>	<u>4,736,271</u>		<u>5,439,445</u>	<u>703,174</u>	114.8%
Expenditures						
Central Charges	6,015,328	5,043,725		4,859,245	(184,480)	96.3%
Park Services	339,716	239,652		228,752	(10,900)	95.5%
Total Expenditures	<u>6,355,044</u>	<u>5,283,377</u>		<u>5,087,997</u>	<u>(195,380)</u>	96.3%
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>(547,106)</u>		<u>351,448</u>	<u>898,554</u>	

(1) Budget to actual variance includes reimbursements from WEDA for costs previously incurred by the City for the South Sheridan URA as well as certain building permit fee rebates.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	62,500		88,800	26,300	142.1%
Intergovernmental Revenue	0	0	(1)	240,008	240,008	
Rates and Charges	47,265,414	40,933,656		38,835,150	(2,098,506)	94.9%
Miscellaneous	410,000	341,666		198,904	(142,762)	58.2%
Total Operating Revenues	<u>47,750,414</u>	<u>41,337,822</u>		<u>39,362,862</u>	<u>(1,974,960)</u>	95.2%
Operating Expenditures						
Central Charges	6,170,349	5,141,958		5,098,229	(43,729)	99.1%
Finance	646,754	526,458		470,239	(56,219)	89.3%
Public Works & Utilities	20,892,643	16,334,268		14,273,608	(2,060,660)	87.4%
Parks, Recreation & Libraries	152,417	145,253		129,247	(16,006)	89.0%
Information Technology	3,038,821	2,443,212		2,229,312	(213,900)	91.2%
Total Operating Expenditures	<u>30,900,984</u>	<u>24,591,149</u>		<u>22,200,635</u>	<u>(2,390,514)</u>	90.3%
Operating Income (Loss)	<u>16,849,430</u>	<u>16,746,673</u>		<u>17,162,227</u>	<u>415,554</u>	
Other Revenue and Expenditures						
Tap Fees	8,662,000	7,218,333		6,687,929	(530,404)	92.7%
Interest Income	323,847	269,873		303,651	33,778	112.5%
Sale of Assets	0	0		7,130	7,130	
Carryover	6,118,308	6,118,308		6,118,308	0	100.0%
Debt Service	(7,204,825)	(3,009,319)		(3,009,319)	0	100.0%
Reserve Transfer In	9,156,830	9,156,830		9,156,830	0	100.0%
Reserve Transfer Out	(5,566,192)	(5,566,192)		(5,566,192)	0	100.0%
Total Other Revenue (Expenditures)	<u>11,489,968</u>	<u>14,187,833</u>		<u>13,698,337</u>	<u>(489,496)</u>	
Revenues Over(Under) Expenditures	<u>28,339,398</u>	<u>30,934,506</u>	(2)	<u>30,860,564</u>	<u>(73,942)</u>	

(1) Intergovernmental revenue reflects the Build America Bond rate subsidy.

(2) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	62,500		88,800	26,300	142.1%
Intergovernmental Revenue	0	0	(1)	240,008	240,008	
Rates and Charges	33,445,414	29,416,989		27,433,605	(1,983,384)	93.3%
Miscellaneous	400,000	333,333		191,719	(141,614)	57.5%
Total Operating Revenues	<u>33,920,414</u>	<u>29,812,822</u>		<u>27,954,132</u>	<u>(1,858,690)</u>	
Operating Expenditures						
Central Charges	4,316,054	3,596,712		3,534,241	(62,471)	98.3%
Finance	646,754	526,458		470,239	(56,219)	89.3%
Public Works & Utilities	14,405,355	11,304,054		9,621,677	(1,682,377)	85.1%
PR&L Standley Lake	152,417	145,253		129,247	(16,006)	89.0%
Information Technology	3,038,821	2,443,212		2,229,312	(213,900)	91.2%
Total Operating Expenditures	<u>22,559,401</u>	<u>18,015,689</u>		<u>15,984,716</u>	<u>(2,030,973)</u>	88.7%
Operating Income (Loss)	<u>11,361,013</u>	<u>11,797,133</u>		<u>11,969,416</u>	<u>172,283</u>	
Other Revenue and (Expenditures)						
Tap Fees	7,567,000	6,305,833		5,183,093	(1,122,740)	82.2%
Interest Income	233,665	194,721		235,853	41,132	121.1%
Carryover	4,446,506	4,446,506		4,446,506	0	100.0%
Debt Service	(5,697,476)	(2,437,471)		(2,437,471)	0	100.0%
Reserve Transfer In	8,619,230	8,619,230		8,619,230	0	100.0%
Reserve Transfer Out	(4,375,938)	(4,375,938)		(4,375,938)	0	100.0%
Total Other Revenues (Expenditures)	<u>10,792,987</u>	<u>12,752,881</u>		<u>11,671,273</u>	<u>(1,081,608)</u>	
Revenues Over(Under) Expenditures	<u>22,154,000</u>	<u>24,550,014</u>	(2)	<u>23,640,689</u>	<u>(909,325)</u>	

(1) Intergovernmental revenue reflects the Build America Bond rate subsidy.

(2) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	13,820,000	11,516,667		11,401,545	(115,122)	99.0%
Miscellaneous	10,000	8,333		7,185	(1,148)	86.2%
Total Operating Revenues	<u>13,830,000</u>	<u>11,525,000</u>		<u>11,408,730</u>	<u>(116,270)</u>	99.0%
Operating Expenditures						
Central Charges	1,854,295	1,545,246		1,563,988	18,742	101.2%
Public Works & Utilities	6,487,288	5,030,214		4,651,931	(378,283)	92.5%
Total Operating Expenditures	<u>8,341,583</u>	<u>6,575,460</u>		<u>6,215,919</u>	<u>(359,541)</u>	94.5%
Operating Income (Loss)	<u>5,488,417</u>	<u>4,949,540</u>		<u>5,192,811</u>	<u>243,271</u>	
Other Revenue and Expenditures						
Tap Fees	1,095,000	912,500		1,504,836	592,336	164.9%
Interest Income	90,182	75,152		67,798	(7,354)	90.2%
Sale of Assets	0	0		7,130	7,130	
Carryover	1,671,802	1,671,802		1,671,802	0	100.0%
Debt Service	(1,507,349)	(571,848)		(571,848)	0	100.0%
Reserve Transfer In	537,600	537,600		537,600	0	100.0%
Reserve Transfer Out	(1,190,254)	(1,190,254)		(1,190,254)	0	100.0%
Total Other Revenues (Expenditures)	<u>696,981</u>	<u>1,434,952</u>		<u>2,027,064</u>	<u>592,112</u>	
Revenues Over(Under) Expenditures	<u>6,185,398</u>	<u>6,384,492</u>	(1)	<u>7,219,875</u>	<u>835,383</u>	

(1) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,698,000	2,248,333		2,213,383	(34,950)	98.4%
Interest Income	38,000	31,667		19,660	(12,007)	62.1%
Miscellaneous	88,262	73,552	(1)	88,385	14,833	120.2%
Sub-total Storm Drainage Revenues	<u>2,824,262</u>	<u>2,353,552</u>		<u>2,321,428</u>	<u>(32,124)</u>	98.6%
Carryover	130,728	130,728		130,728	0	100.0%
Total Revenues	<u>2,954,990</u>	<u>2,484,280</u>		<u>2,452,156</u>	<u>(32,124)</u>	98.7%
Expenditures						
General Services	86,200	62,150		32,420	(29,730)	52.2%
Community Development	178,990	146,235		144,642	(1,593)	98.9%
PR&L Park Services	200,000	104,000		94,753	(9,247)	91.1%
Public Works & Utilities	329,810	243,070		156,890	(86,180)	64.5%
Total Expenditures	<u>795,000</u>	<u>555,455</u>		<u>428,705</u>	<u>(126,750)</u>	77.2%
Revenues Over(Under) Expenditures	<u>2,159,990</u>	<u>1,928,825</u>	(2)	<u>2,023,451</u>	<u>94,626</u>	

(1) Revenue variance is due to a reimbursement for the LDC/Crestview Water District interceptor relocate project.

(2) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Courses Combined						
Operating Revenues						
Charges for Services	3,019,336	2,840,794		3,135,099	294,305	110.4%
Miscellaneous	0	0	(1)	109,896	109,896	
Total Revenues	<u>3,019,336</u>	<u>2,840,794</u>		<u>3,244,995</u>	<u>404,201</u>	114.2%
Operating Expenditures						
Central Charges	211,700	176,897		150,287	(26,610)	85.0%
Recreation Facilities	2,662,458	2,325,893		2,201,175	(124,718)	94.6%
Total Expenditures	<u>2,874,158</u>	<u>2,502,790</u>		<u>2,351,462</u>	<u>(151,328)</u>	94.0%
Operating Income (Loss)	<u>145,178</u>	<u>338,004</u>		<u>893,533</u>	<u>555,529</u>	
Other Revenues and Expenditures						
Interest Income	0	0		6,576	6,576	
Other Financing Sources	1,101,069	1,101,069		1,101,069	0	100.0%
Other Financing Use	(1,107,149)	(1,107,149)		(1,107,149)	0	100.0%
Debt Service	(718,241)	(443,652)		(443,652)	0	100.0%
Interfund Transfers	579,143	482,620		482,620	0	100.0%
Carryover	375,000	375,000		375,000	0	100.0%
Total Other Revenue (Expenditures)	<u>229,822</u>	<u>407,888</u>		<u>414,464</u>	<u>6,576</u>	
Revenues Over(Under) Expenditures	<u>375,000</u>	<u>745,892</u>	(2)	<u>1,307,997</u>	<u>562,105</u>	

(1) Reflects one-time payment from Trimble to be appropriated for golf course alterations at Heritage.

(2) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Operating Revenues						
Charges for Services	1,609,968	1,511,760		1,699,893	188,133	112.4%
Total Revenues	<u>1,609,968</u>	<u>1,511,760</u>		<u>1,699,893</u>	<u>188,133</u>	112.4%
Operating Expenditures						
Central Charges	98,900	82,483		64,281	(18,202)	77.9%
Recreation Facilities	1,335,665	1,202,099		1,054,506	(147,593)	87.7%
Total Expenditures	<u>1,434,565</u>	<u>1,284,582</u>		<u>1,118,787</u>	<u>(165,795)</u>	87.1%
Operating Income (Loss)	<u>175,403</u>	<u>227,178</u>		<u>581,106</u>	<u>353,928</u>	
Other Revenues and Expenditures						
Interest Income	0	0		3,780	3,780	
Other Financing Sources	540,431	540,431		540,431	0	100.0%
Other Financing Use	(543,431)	(543,431)		(543,431)	0	100.0%
Debt Service	(204,133)	(204,121)		(204,121)	0	100.0%
Interfund Transfers	31,730	26,442		26,442	0	100.0%
Carryover	100,000	100,000		100,000	0	100.0%
Total Other Revenue (Expenditures)	<u>(75,403)</u>	<u>(80,679)</u>		<u>(76,899)</u>	<u>3,780</u>	
Revenues Over(Under) Expenditures	<u>100,000</u>	<u>146,499</u>	(1)	<u>504,207</u>	<u>357,708</u>	

(1) Net revenues are used to fund capital projects and reserves.

**City of Westminster
Financial Report
For Ten Months Ending October 31, 2014**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Operating Revenues						
Charges for Services	1,409,368	1,329,034		1,435,206	106,172	108.0%
Miscellaneous	0	0	(1)	109,896	109,896	
Total Revenues	<u>1,409,368</u>	<u>1,329,034</u>		<u>1,545,102</u>	<u>216,068</u>	116.3%
Operating Expenditures						
Central Charges	112,800	94,414		86,006	(8,408)	91.1%
Recreation Facilities	1,326,793	1,123,794		1,146,669	22,875	102.0%
Total Expenditures	<u>1,439,593</u>	<u>1,218,208</u>		<u>1,232,675</u>	<u>14,467</u>	101.2%
Operating Income (Loss)	<u>(30,225)</u>	<u>110,826</u>		<u>312,427</u>	<u>201,601</u>	
Other Revenues and Expenditures						
Interest Income	0	0		2,796	2,796	
Other Financing Sources	560,638	560,638		560,638	0	100.0%
Other Financing Use	(563,718)	(563,718)		(563,718)	0	100.0%
Debt Service	(514,108)	(239,531)		(239,531)	0	100.0%
Interfund Transfers	547,413	456,178		456,178	0	100.0%
Carryover	275,000	275,000		275,000	0	100.0%
Total Other Revenue (Expenditures)	<u>305,225</u>	<u>488,567</u>		<u>491,363</u>	<u>2,796</u>	
Revenues Over(Under) Expenditures	<u>275,000</u>	<u>599,393</u>	(2)	<u>803,790</u>	<u>204,397</u>	

(1) Reflects one-time payment from Trimble to be appropriated for golf course alterations at Heritage.

(2) Net revenues are used to fund capital projects and reserves.

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF OCTOBER 2014

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General	General	Total	General	General	Total	Sales	Use	Total
	Sales	Use		Sales	Use		Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	448,493	11,539	460,032	432,729	11,018	443,747	4	5	4
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	325,885	3,577	329,462	323,702	1,364	325,066	1	162	1
SHOPS AT WALNUT CREEK 104TH & REED TARGET	275,888	2,005	277,893	261,863	3,387	265,250	5	(41)	5
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	233,499	735	234,234	214,442	2,814	217,256	9	(74)	8
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	195,952	1,362	197,314	203,205	1,239	204,444	(4)	10	(3)
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	185,272	3,167	188,439	176,705	2,709	179,414	5	17	5
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	168,473	412	168,885	160,089	419	160,508	5	(2)	5
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	158,072	2,632	160,704	164,423	378	164,801	(4)	596	(2)
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	142,558	15,056	157,614	121,149	15,241	136,390	18	(1)	16
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	129,938	1,274	131,212	120,118	2,202	122,320	8	(42)	7
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	126,435	1,577	128,012	99,222	454	99,676	27	247	28
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	92,140	366	92,506	81,688	360	82,048	13	2	13
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	79,004	431	79,435	78,727	1,371	80,098	0	(69)	(1)

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF OCTOBER 2014

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	76,642	132	76,774	75,480	134	75,614	2	(1)	2
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	61,630	215	61,845	59,321	436	59,757	4	(51)	3
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	18,793	38,486	57,279	26,567	22,223	48,790	(29)	73	17
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	55,702	525	56,227	53,528	733	54,261	4	(28)	4
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	50,077	1,328	51,405	43,843	1,980	45,823	14	(33)	12
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	42,830	588	43,418	44,078	1,581	45,659	(3)	(63)	(5)
NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART	38,583	335	38,918	25,010	365	25,375	54	(8)	53
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	34,813	3,088	37,901	33,212	325	33,537	5	850	13
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	35,276	610	35,886	27,125	1,223	28,348	30	(50)	27
WILLOW RUN 128TH & ZUNI SAFEWAY	32,054	159	32,213	32,503	166	32,669	(1)	(4)	(1)
MEADOW POINTE NE CRN 92ND & OLD WADS CARRABAS	30,181	93	30,274	25,621	82	25,703	18	13	18
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	28,178	304	28,482	26,946	417	27,363	5	(27)	4
TOTALS	3,066,368	89,996	3,156,364	2,911,296	72,621	2,983,917	5	24	6

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
OCTOBER 2014 YEAR-TO-DATE

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General	General	Total	General	General	Total	Sales	Use	Total
	Sales	Use		Sales	Use				
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	4,505,565	147,249	4,652,814	4,389,461	147,389	4,536,850	3	0	3
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	3,355,840	33,026	3,388,866	3,366,602	25,895	3,392,497	0	28	0
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,634,765	43,244	2,678,009	2,401,734	8,974	2,410,708	10	382	11
SHOPS AT WALNUT CREEK 104TH & REED TARGET	2,574,093	18,146	2,592,239	2,553,504	32,559	2,586,063	1	(44)	0
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	2,035,947	17,745	2,053,692	2,162,337	52,842	2,215,179	(6)	(66)	(7)
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,780,552	25,387	1,805,939	1,725,358	10,265	1,735,623	3	147	4
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,765,297	13,398	1,778,695	1,739,050	6,346	1,745,396	2	111	2
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,738,987	8,489	1,747,476	1,677,188	14,240	1,691,428	4	(40)	3
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,537,422	259,584	1,797,006	1,372,493	193,389	1,565,882	12	34	15
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,365,695	8,125	1,373,820	1,290,342	13,326	1,303,668	6	(39)	5
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,170,127	18,043	1,188,170	1,078,567	13,982	1,092,549	8	29	9
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	936,194	5,474	941,668	868,212	4,220	872,432	8	30	8

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
OCTOBER 2014 YEAR-TO-DATE

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General	General	Total	General	General	Total	Sales	Use	Total
	Sales	Use		Sales	Use				
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	825,910	6,661	832,571	766,606	4,944	771,550	8	35	8
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	713,048	8,036	721,084	679,431	26,718	706,149	5	(70)	2
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	647,082	5,335	652,417	625,899	5,791	631,690	3	(8)	3
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	589,391	4,031	593,422	571,648	6,673	578,321	3	(40)	3
SHERIDAN PROF OFFICE PARK 86TH-87TH YATES - WOLFF DOUBLETREE	572,198	39,825	612,023	37,835	13,610	51,445	1,412	193	1,090
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	494,822	7,779	502,601	451,509	19,234	470,743	10	(60)	7
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	481,407	9,119	490,526	480,976	7,809	488,785	0	17	0
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	431,411	33,399	464,810	448,755	2,052	450,807	(4)	1,528	3
NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART	416,737	5,086	421,823	269,721	21,100	290,821	55	(76)	45
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	341,271	2,983	344,254	305,468	4,723	310,191	12	(37)	11
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	337,731	8,121	345,852	307,247	5,937	313,184	10	37	10
WILLOW RUN 128TH & ZUNI SAFEWAY	335,582	1,998	337,580	338,497	2,531	341,028	(1)	(21)	(1)
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	265,376	4,425	269,801	257,561	6,538	264,099	3	(32)	2
TOTALS	31,852,450	734,708	32,587,158	30,166,001	651,087	30,817,088	6	13	6



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: 2014 Assistance to Firefighters Grant Application

Prepared By: Doug Hall, Fire Chief
Lee Birk, Chief of Police
Russ Bowers, Communications Administrator

Recommended City Council Action

Approve the Fire and Police Departments pursuing the 2014 Assistance to Firefighters Grant in the amount of \$219,534 to enhance the Citywide P25 Radio System.

Summary Statement

- In 2011, a Capital Improvement Project was funded to replace the aging radio system with a new technology P25 Digital Interoperable Simulcast Radio System (P25 Radio System). In 2013, the replacement of the old radio system was accomplished and resulted in a new and improved technology to encompass improved interoperability and a simulcast transmission system.
- The Fire and Police Departments are proposing to combine efforts to apply for the 2014 Assistance to Firefighters Grant (AFG). On November 3, 2014, the Department of Homeland Security, Federal Emergency Management Agency, posted the 2014 AFG documents.
- The AFG grant funding for 2014 will require a 15% cost share in the amount of \$32,930 for the purchase, installation and configuration of 9 base stations/repeaters to expand the Citywide P25 Radio System from a 7 channel system to a 10 channel system. A total grant request of \$219,534 assumes a \$32,930 match by the City to the AFG requested amount of \$186,604.
- The grant submittal deadline is December 5, 2014.
- Staff is seeking City Council authorization to pursue this grant opportunity.

Expenditure Required: \$219,534

Source of Funds: \$32,930 - General Fund - Police Department - Radio Maintenance Budget
\$186,604 - Assistance to Firefighters Grant proceeds

Policy Issue

Should the City of Westminster Fire Department, in conjunction with the Police Department, apply for the 2014 Assistance to Firefighters Grant to fund the purchase of equipment required to activate 3 additional channels?

Alternative

Direct Staff not to apply for the 2014 Assistance to Firefighters Grant. This option is not recommended because without the 3 additional channels, there would eventually be some over-loading issues as well as “system busy” issues due to the high volume of current radio users on the existing 7 channels.

Background Information

In 2011, City Council funded a Capital Improvement Project managed by the Police Department to replace the entire aging radio system with a new Citywide P25 Digital Interoperable Simulcast Radio System Technology (P25 Radio System). In 2013, the replacement of the old radio system was accomplished and resulted in a new and improved technology to encompass improved interoperability P25 Radio System and a simulcast transmission system. These enhancements represent state of the art and best practice radio technology to ensure that multiple radio users with diverse radio systems and equipment can effectively communicate with each other. The new P25 Radio System allowed for enhanced safety for the community, interoperability with surrounding agencies, as well as reliable and dependable service and communications.

The P25 Radio System consists of a 3 site, 7 channel simulcast system that currently supports 650 local users as well as 1,300 additional external users from surrounding agencies. With the implementation of a full digital P25 Radio System, the City also took advantage of Interoperable Sub System Interface (ISSI) technology and purchased 2 necessary licenses and servers to allow a direct digital connection to other regional P25 Radio Systems. The City currently has 1 connection in place with Adams County Communications that allows both systems to extend and improve Adams County’s radio coverage through the ISSI connection.

Westminster Communications is currently working with the Denver Metro Area Radio Consortium (MARC) users to establish an ISSI connection that would allow 14 active regional “Network 1st” talk groups to transmit on Westminster’s Citywide Radio System. MARC users include Denver Police and Fire, Lakewood Police, West Metro Fire, Wheat Ridge Police and Fire, and Arvada Police and Fire. This connection will allow these and other Fire and Police First Responders agencies to extend their radio coverage beyond their normal radio frequency (RF) coverage area by using Westminster’s RF resources/channels to talk back to their home system via the ISSI connection.

With the impending ISSI connection to Network 1st, combined with the City’s everyday radio operations, there is future potential for radio system over-loading issues as well as “system busy” on the existing 7 channel P25 Radio System. Fortunately, the City’s 3 current simulcast sites were licensed, designed and configured for 10 channels, as the City anticipated the need for 10 channels although funding did not provide for it initially during the original installation. Westminster only requires the physical 9 base stations/repeaters (3 for each simulcast site) to complete this expansion from a 7 channel system to a 10 channel system. The 3 added channels would easily accommodate the increased radio traffic generated by the addition of the Network 1st talk groups to Westminster’s system. The expansion will require the purchase, installation and configuration of 9 repeaters. The City of Westminster currently owns ten 800 MHz Federal Communication Commission (FCC) licensed frequencies. However, the City is only utilizing 7 frequencies at this time. If the 3 additional frequencies are not utilized by the City, we risk the chance of losing them to other outside agencies, which could jeopardize the safety of all radio users due to the high volume of radio traffic and the possibility of having “system busy” issues.

The addition of 3 channels to the City's existing P25 Radio System will increase our system capacity by 50%, thus virtually eliminating the potential for rejected radio transmissions due to unavailable channels. During critical incidents, timely and dependable communication is key in situational assessment and response of emergency calls such as fire, Emergency Medical Services (EMS), crimes and other major calls for service. A missed call due to a busy radio system can become a key factor in both the Fire and Police Departments' ability to provide safe and effective service to its citizens. Also, this expansion will similarly assist outside agencies by providing them strong and dependable radio coverage when they are working outside of their own radio coverage areas.

The Fire and Police Departments propose joining efforts to apply for 2014 Assistance to Firefighters Grant (AFG). On November 3, 2014, the Department of Homeland Security, Federal Emergency Management, posted the 2014 AFG documents. The grant submittal deadline is December 5, 2014.

Since 2001, AFG has helped firefighters and other first responders to obtain critically needed equipment, training, and other resources to protect the public and emergency personnel from fire and related hazards. The AFG grant program focuses on firefighter health and safety as well as the safety of the public the firefighters serve. The primary goal is to meet the firefighting emergency response needs of fire departments and non-affiliated emergency medical service organizations.

The AFG grant process is highly competitive and it is important that the City apply for consideration at this time in order to secure the possibility of receiving grant funding in the near future.

Applying for the AFG grant program allows for the total purchase of equipment for the estimated amount of \$219,534 that will provide for 3 additional channels to the existing 7 channel Citywide P25 Radio System. With the required 15% cost sharing of \$32,930 from the City of Westminster, the actual requested grant funds from AFG is \$186,604. Funds are available from the Police Department's Radio Maintenance Budget in the General Fund to meet the cost share requirements.

Action on this item supports the City's Strategic Plan goals of Proactive Regional Collaboration and Excellence in City Services.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Item 8 C

Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: 2014 Construction Crew Cumulative Purchases of Over \$75,000 for Pipe and Materials

Prepared By: Robert Booze, Distribution and Collection Superintendent
Stephen Gay, Utilities Operations Manager

Recommended City Council Action

Authorize the cumulative purchases in 2014 with HD Supply not to exceed \$137,477 through year end for waterworks materials.

Summary Statement

- The Utilities Operations Staff performs scheduled and emergency repair work on the City's water distribution system throughout the year using parts and materials in stock.
- The recommended action consists of cumulative purchases of water system materials from HD Supply. These materials will replenish the inventory used throughout this past year and will be available in stock for future use.
- Multiple vendors were solicited for bids on eight different categories of materials in October for supply purchases needed to operate through year-end. Dana Kepner Company was the lowest bidder on three material lots totaling \$52,088. Ferguson Waterworks was the lowest bidder on one lot totaling \$52,256. HD Supply was the lowest bidder on four material lots totaling \$47,477. Staff has purchased materials through competitive bid pricing from HD Supply approximately \$70,000 year-to-date in 2014; Staff is seeking City Council authorization to purchase an additional \$47,477 from HD Supply plus a \$20,000 contingency for a total cumulative authorized expenditure up to \$137,477.
- Adequate funds were budgeted and are available for this planned expense.

Expenditure Required: Not to exceed \$137,477

Source of Funds: Utility Fund - Utilities Operations Division Operating Budget

Policy Issue

- Should the City authorize the cumulative purchase of waterworks materials from the low bidder HD Supply (HD) as proposed?

Alternatives

1. City Council could choose to authorize Staff to purchase materials only on an as-needed basis and negotiate prices for each purchase individually throughout the year. This would take a large amount of Staff time and would likely increase the prices for each piece of material purchased, particularly for those purchases made during the peak construction season. This would also require City Council action for each expenditure that exceeds \$75,000. This option is not recommended since the City requested and received bids for these materials and would most likely receive higher unit costs if items were purchased on an as-needed basis. In addition, some parts have a long lead time for delivery. If purchased on an as-needed basis, there may be a wait to make repairs to the water distribution system.
2. City Council could choose to reject all of the bids and rebid. Staff does not recommend this alternative, as the City received bids from four qualified companies who are existing City suppliers and who have provided materials to the City in 2014. It is unlikely that new bids would be lower or that the City would receive more bids. Staff recommends awarding the cumulative purchase of materials to the low bidder HD to ensure adequate material supplies are available for emergency repairs to the water system.

Background Information

The Utilities Operations Staff performs routine and emergency repairs on the City's water system throughout the year, using parts such as pipes, fire hydrants, valves and other materials. Staff attempts to have on hand the appropriate parts for all types of repairs. Some parts have a long lead time for delivery, and Staff orders those proactively so that they are available when needed.

In addition to materials purchased throughout the year, Staff strategically purchases commonly used materials near the end of each year to take advantage of better pricing and availability in the winter months as opposed to the peak construction season. The materials purchased at the end of 2014 will be used in late 2014 and into 2015.

City Council action is requested to approve the cumulative purchase over \$75,000 with HD Supply for 2014 since based on previously competitively bid materials purchases that currently total approximately \$70,000. The additional materials bid in October that HD provided the lowest bid prices will make their cumulative purchases for the year in excess of the City Manager authorized expenditure level of \$75,000, which is why City Council authorization is requested on the HD bid. In addition, additional purchases for materials needed in emergency water repairs may exceed current amounts, and Staff is requesting a contingency of \$20,000 for materials supplied by HD. The total authorized expenditure request is not to exceed \$137,477.

These purchases help achieve the City Council's Strategic Plan Goal of "Excellence in City Services" by ensuring the ability to make scheduled and emergency repairs to the City's infrastructure and facilities.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Big Dry Creek Wastewater Treatment Facility Electrical Improvements
Construction and Engineering Contracts

Prepared By: Kent Brugler, Senior Engineer
Stephen Grooters, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with Eckstine Electric Company in the amount of \$1,131,734 for construction of electrical improvements at the Big Dry Creek Wastewater Treatment Facility, plus a contingency of \$113,173, for a total authorized expenditure of \$1,244,907; execute an amendment to the design contract with Black & Veatch Corporation to include engineering services during construction in the amount of \$218,058 plus approve a contingency of \$21,806, for a total of \$239,864, increasing the total authorized expenditure with this firm from the previously approved amount of \$501,131 to \$740,995; and reallocate \$300,285 from the Big Dry Creek Wastewater Treatment Facility Ongoing Major Repairs and Replacement account into the Big Dry Creek Wastewater Treatment Facility 2013 Major Repairs and Replacement project account to provide funds necessary to complete the project.

Summary Statement

- Over the last several years, Staff has identified and prioritized repair and replacement needs at the Big Dry Creek Wastewater Treatment Facility. As part of that effort, the fiber optic communications cable system, a raw sewage lift station control panel and two primary electrical transformers were identified as the highest priority components for replacement.
- Staff recommends City Council award a construction contract for the replacement of these components to the low bidder, Eckstine Electric Company, and amend the engineering contract with Black & Veatch Corporation to include engineering services upon completion. Construction is anticipated to be completed by December 2015.
- Due to the changing bid climate, construction bids were higher than the originally budgeted funds. To accommodate the scope of work, an additional \$300,285 is requested for this project to be reallocated from the BDCWWTF Major Repair and Replacement Project account.

Expenditure Required: \$1,484,771

Source of Funds: Utility Fund Capital Improvement Program - Big Dry Creek Wastewater Treatment Facility 2013 Major Repairs and Replacement Project;
Utility Fund Capital Improvement Program - Big Dry Creek Wastewater Treatment Facility Ongoing Major Repairs and Replacement Project

Policy Issues

- Should City Council authorize a contract with the lowest responsible bidder, Eckstine Electric Company (Eckstine Electric)?
- Should City Council authorize an amendment to the Black & Veatch Corporation (Black & Veatch) contract to include engineering services during construction?
- Should City Council authorize the reallocation of funds into the Big Dry Creek Wastewater Treatment Facility 2013 Major Repairs and Replacement project account?

Alternatives

1. City Council could choose to reject all bids and rebid the project. This is not recommended because the City received bids from three qualified construction companies, two of which were within a close range of the engineering cost estimate for project construction. Staff believes these bids are competitive for the scope of work involved.
2. City Council could choose to construct the improvements at a later date. However, due to the condition, age and criticality of the electrical infrastructure to be replaced, Staff recommends the improvements be made at this time.
3. City Council could choose to request proposals for engineering services during construction. This is not recommended as Staff believes Black & Veatch provides the best value for this project. In addition, Black & Veatch was originally selected for design services via a competitive process that anticipated subsequent engineering services during construction. The project team is intimately familiar with the improvements needed, having successfully completed the design and bidding phases of the project. The team's knowledge will streamline key project tasks and provide the best value to the City.
4. City Council could choose not to authorize the reallocation of additional funds for this project and direct Staff to reduce the scope of the current project. Staff does not recommend this alternative as only the most essential elements of the project were included in the recommended contract. Funds are available from the Big Dry Creek Wastewater Treatment Facility Major Repair and Replacement account.

Background Information

Over the last several years, Staff has developed a comprehensive repair and replacement program for all of the assets at the Big Dry Creek Wastewater Treatment Facility (BDCWWTF) and identified and prioritized repair and replacement needs. As part of that program, several electrical and communication infrastructure components were identified for replacement. The highest priority components include the fiber optic communications cable system, a raw sewage lift station control panel and two primary electrical transformers. These high-priority components are the focus of this project.

This project involves construction within and adjacent to components of the plant required to remain in service at all times. As such, Staff incorporated several special precautions into the design to minimize disruption to operations and to reduce the risk associated with outages of power, instrumentation, and communications. These specific requirements, combined with the tightened bid climate and rising commodity prices led to project costs that are higher than originally estimated. The request for bids was sent to eight qualified contractors and three bids were received as summarized in the following table. To address the higher cost of the project, Staff worked to determine scope and cost for the few

miscellaneous items that could be removed from the project scope while preserving the project’s main goals. The numbers presented below represent the bid prices for the minimum scope of work recommended by Staff.

<u>Contractor</u>	<u>Bid Price (Base Bid + Selected Alternates)</u>
Eckstine Electric Company	\$1,131,734
Sun Valley Electric	\$1,178,169
Sturgeon Electric	\$823,323 (Bid withdrawn by bidder due to error)
Engineer’s Estimate	\$1,215,000
2012 City Construction Cost Estimate Developed For the 2013/14 Budget Process	\$828,000

Sturgeon Electric was the original apparent low bidder but withdrew its bid due to an error. A review of the remaining bids received indicated that Eckstine Electric’s bid was valid and reasonable for the scope of work. Eckstine Electric is a local electrical contracting firm that has successfully completed several projects for the City, including previous improvements at the BDCWWTF. As such, Staff recommends Eckstine Electric be awarded the construction contract. Construction is anticipated to commence following award of the contract with substantial completion anticipated by December 2015.

City Council authorized a contract with Black & Veatch Corporation for the design and bidding phases of the project in September 2013. Staff wishes to note that the design contract included fees for many City-requested services beyond basic design tasks, including condition assessment and cost estimates for the future repair of various electrical equipment throughout the facility. For this reason, Black & Veatch’s original contract fees for design appear to be higher when compared to the bids received. For the components of the project being constructed, the design fees are 18% of the construction costs and in line with typical ranges for this type of complex retrofit project.

Following successful completion of the project design, Staff negotiated a competitive contract amendment for engineering services during construction in the amount of \$218,058. Costs for construction management services are estimated to be approximately 19% of the construction contract value of \$1,131,734. This is higher than the range of costs for other types of utility capital improvement projects, which are typically 12-15% of the construction contract value. Reasons for the higher costs are:

1. This is a retrofit and repair project. These types of projects are more complex and therefore require a longer construction duration and more inspection hours.
2. This type of electrical work requires a more experienced on-site inspector to monitor the work and ensure compliance with the contract documents.
3. The work must be carefully coordinated with the facility operations in order to maintain continuous operation, which requires additional engineering effort during construction.

For these reasons, it is Staff’s assessment that the scope and fees are reasonable for the work requested. Staff recommends executing a contract amendment with Black & Veatch as its team has provided quality design and construction phase services to the City on previous projects and is familiar with the BDCWWTF facility, City standards, and the project-specific requirements.

Funding for the project was included in the 2013 Utility Capital Improvement Fund budget. Based on the bids received, an additional \$300,285 is needed to fund the recommended scope of the project. Savings are available in the Big Dry Creek Ongoing Major Repair and Replacement account. This account is typically used for unanticipated emergency projects, which have been fewer than in past years. Staff is requesting reallocation of these funds at this time as this project is the highest priority use of the funds.

The BDCWWTF Electrical Improvements Project helps achieve City Council's Strategic Plan Goals of "Beautiful, Desirable, Environmentally Responsible City" and "Excellence in City Services" by protecting and enhancing environmental assets, operating well-maintained City infrastructure and facilities and providing wastewater treatment service with reduced risk of system failures.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Councillor's Bill No. 36 re 2014 3rd Quarter Budget Supplemental Appropriation

Prepared By: Karen Barlow, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 36 on first reading, providing for a supplemental appropriation of funds to the 2014 budget of the General, Legacy Ridge, Heritage at Westmoor, Parks, Open Space and Trails, and General Capital Improvement Funds.

Summary Statement

- At the end of each quarter, Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- General Fund amendments:
 - \$49,063 Grant Proceeds
 - \$18,001 Reimbursements
 - \$4,891 Program Revenue
- Legacy Ridge Fund amendments:
 - \$6,000 Program Revenue
- Heritage at Westmoor Fund amendments:
 - \$107,886 Reimbursements
- Parks, Open Space and Trails Fund amendments:
 - \$250,000 Carryover
 - \$13,871 Rent
- General Capital Improvement Fund amendments:
 - \$263,871 Transfers

Expenditure Required: \$713,583

Source of Funds: The funding sources for these budgetary adjustments include program revenue, grant proceeds, reimbursements, rent, carryover, and transfers.

Policy Issue

Does City Council support amending the appropriations for the 2014 budget of the General, Legacy Ridge, Heritage at Westmoor, Parks, Open Space and Trails, and General Capital Improvement Funds as outlined?

Alternative

The alternative would be not to amend the 2014 budget appropriations for the General, Legacy Ridge, Heritage at Westmoor, Parks, Open Space and Trails, and General Capital Improvement Funds and to utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them with their current budget or planned projects in anticipation of appropriation of these additional funds.

Background Information

The attached Councillor's Bill is a routine action addressing the need to adjust revenue and expenditure appropriations as a result of activities or events that were not anticipated during the normal budget process.

The Parks, Recreation, and Libraries (PRL) Department has increased revenue in 2014 due to proceeds from community events such as Concerts in the Park, concessions at special events held in Westminster, and program reimbursements. The PRL Department has also received a \$6,000 grant from the Legacy Foundation. Staff is recommending that \$4,891 of additional revenues and the \$6,000 grant be appropriated to the Special Promotions Youth Scholarships account to provide scholarships for City recreation programs to City of Westminster youth who could not otherwise afford to participate.

The Legacy Ridge Golf Course has experienced increased sales in merchandise this season. In order to keep merchandise stocked through the end of the season, the PRL Department is requesting that \$6,000 of these additional revenues be appropriated to the Merchandise for Resale account.

The Heritage at Westmoor Golf Course has received a reimbursement of \$107,886 from Trimble Navigation Limited. The City negotiated with Trimble that modifications would be made to the number nine hole at Heritage to help reduce the number of errant golf balls entering onto the adjacent Trimble property. This reimbursement is being appropriated to the CIP account to which the modifications were originally charged, Golf Course Improvements-Heritage.

The Community Development Department is requesting the appropriation of 2013 carryover funds in the Parks, Open Space & Trails Fund in the amount of \$250,000. These funds will cover the cost of demolishing structures on up to four open space parcels. These structures were determined to be unnecessary, two of them are required to be removed pursuant to the grants utilized to acquire the properties, and staff would like to remove them and open up the sites for public use. Once the structures are removed, these sites will be planted with native grasses. Staff is requesting that these funds be appropriated to the Open Space Demolition CIP account.

Community Development Staff is requesting that \$13,871 be appropriated to the Bonnie Stewart CIP for rent funds that were collected for residential property located on open space property. The grant provided by Jefferson County specifies that any net revenue from rental of the two residences on this property shall be spent for future improvements to this property. The rental period shall not exceed two years, and 24% of the net income shall be paid to Jefferson County. This appropriation to the CIP will allow the funds to be spent in accordance with the grant agreement.

The Public Works and Utilities Department received \$871 in subrogation monies. This was for street signs damaged throughout the City, and the funds are being appropriated to the Signing Materials account in the Street Division.

The Public Works and Utilities Department received \$470 from the Town of Bennett. This was for the use of the City's crack-seal machine and training labor. The funds are being appropriated to the Signing Materials account in the Street Division.

The Police Department received \$17,391 from International Crimes Against Children (ICAC) for travel expenses, software, software licenses, and computer supplies. The funds are being appropriated to the department's Maintenance and Repair account and the Contract Services account.

The Police Department received \$9,625 from the State of Colorado Department of Transportation, Law Enforcement Assistance Funding (LEAF) Grant, for overtime incurred while officers worked DUI enforcement campaigns. The funds are being appropriated to the department's Overtime account.

The Police Department received \$1,609 from the State of Colorado Department of Transportation for their participation in the High Visibility Impaired Driving Enforcement (HVIDE) campaign. The grant reimburses overtime incurred by enforcement officers while working the St. Patrick's Day enforcement campaign. The funds are being appropriated to the department's Overtime account.

The Police Department received \$2,996 from the State of Colorado Department of Transportation for overtime incurred while officers worked the 2014 Click It or Ticket Enforcement (CIOT). The funds are being appropriated to the department's Overtime account.

The Police Department received a reimbursement of \$4,950 from the State of Colorado Department of Transportation for the purchase of two lidar radar devices from the 2014 Speed Mini grant. The funds are being appropriated to the department's Capital Outlay equipment account.

The Police Department received \$500 from the Target Corporation for supplies purchased for the National Night Out Ice Cream Social. The funds are being appropriated to the Supply account.

The Police Department received \$6,078 from the North Metro Task Force as reimbursement for overtime incurred by the department's Task Force members working on Federal High Intensity Drug Tracking Area (HIDTA) cases during the second quarter of 2014. The reimbursement is being appropriated to the department's Overtime account.

The Police Department received reimbursements of \$4,114 from the North Metro Task Force (NMTF) for overtime incurred by the department's NMTF members working on Organized Crime Drug Enforcement Task Force cases. The reimbursement is being appropriated to the department's Overtime account.

The Police Department received a reimbursement of \$1,275 from the Jefferson County Victim Assistance Fund for the 2014 Colorado Organization for Victim Assistance (COVA) conference attended by the Victim Advocate Supervisor and Victim Advocates. The reimbursement is being appropriated to the department's Career Development account.

The Police Department received \$5,193 from the Jefferson County Emergency Communications Authority Board (E911). This was reimbursement for the 2014 National Emergency Number Association conference attended by Dispatch Supervisors. The reimbursement is being appropriated to the department's Career Development account.

The Fire Department received \$4,992 from the West Metro Fire Protection District on behalf of the Colorado Urban Search and Rescue Task Force One. This reimbursement is for overtime incurred by the Fire Department personnel while assisting with various projects associated with the Hazardous Material Equipment Push Package (HEPP). This work ensures that the Hazmat equipment is ready when needed. The funds are being appropriated to the Salaries Overtime account.

The Fire Department received a Community Grant of \$1,000 from the Walmart Foundation to assist with the purchase of an “i-clicker” electronic response system. This will provide a more interactive experience with participants of fire safety education programs, as well as providing data to measure retention levels of these programs. The funds are being appropriated to the Special Promotions Fire Prevention account.

These appropriations will amend General Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$75,626	\$22,383	\$98,009
State Grants	1000.40620.0000	135,907	19,180	155,087
Other Grants	1000.40650.0057	0	7,500	7,500
Youth Scholarships	1000.41030.0528	0	4,891	4,891
General	1000.43060.0000	288,293	470	288,763
Reimbursements	1000.43080.0000	300,434	<u>17,531</u>	317,965
Total Change to Revenues			<u>\$71,955</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Salaries OT-Investigation Section	10020300.60400.0344	\$200,404	\$10,192	\$210,596
Career Development-Investigation Section	10020300.61800.0344	16,700	1,275	17,975
Career Dev-Comm Sect	10020300.61800.0345	7,229	5,193	12,422
Maint/Repair Equip-Inv Section	10020300.66100.0344	6,850	8,807	15,657
Contract Svcs-Inv Section	10020300.67800.0344	95,711	8,584	104,295
Supplies-Prof Svcs	10020300.70200.0341	5,969	500	6,469
Salaries OT-Traffic	10020500.60400.0348	103,484	14,230	117,714
Other Equip-Traffic	10020500.76000.0348	0	4,950	4,950
Salaries Overtime	10025260.60400.0000	237,514	4,992	242,506
Spec Promo Fire Prev	10025260.67600.0547	7,700	1,000	8,700
Signing Materials	10035450.72600.0000	53,769	1,341	55,110
Spec Prom Yth Scholarship	10050760.67600.0528	6,057	10,891	16,948
Total Change to Expenses			<u>\$71,955</u>	

These appropriations will amend Legacy Ridge Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Merchandise Legacy Ridge	2200.40920.0220	\$164,220	<u>\$6,000</u>	\$170,220
Total Change to Revenues			<u>\$6,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Merch for Resale Club Ops	22050720.73400.0249	\$145,600	<u>\$6,000</u>	\$151,600
Total Change to Expenses			<u>\$6,000</u>	

These appropriations will amend Heritage at Westmoor Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Reimbursements	2300.43080.0000	\$0	<u>\$107,886</u>	\$107,886
Total Change to Revenues			<u>\$107,886</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Golf Course Impr-Heritage	81423050145.80400.8888	\$0	\$107,886	\$107,886
Total Change to Expenses			<u>\$107,886</u>	

These appropriations will amend Parks, Open Space and Trails Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	5400.40020.0000	\$328,400	\$250,000	\$578,400
Gen Misc Rentals	5400.43060.0540	11,280	13,871	25,151
Total Change to Revenues			<u>\$263,871</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	54010900.79800.0750	\$590,088	\$263,871	\$853,959
Total Change to Expenses			<u>\$263,871</u>	

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF - Open Space	7500.45000.0540	\$0	\$263,871	\$263,871
Total Change to Revenues			<u>\$263,871</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Bonnie Stewart CIP	81275030001.80400.8888	\$11,586	\$13,871	\$25,457
Open Space Demolition Project	81475030079.80400.8888	0	250,000	250,000
Total Change to Expenses			<u>\$263,871</u>	

These adjustments will bring the City's accounting records up-to-date to reflect the various detailed transactions.

The proposed action supports all of City Council's strategic goals, including: Visionary Leadership and Effective Governance; Vibrant and Inclusive Neighborhoods; Comprehensive Community Engagement; Beautiful, Desirable, Environmentally Responsible City; Proactive Regional Collaboration; Dynamic, Diverse Economy; Excellence in City Services; and Ease of Mobility.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **36**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2014 BUDGETS OF THE GENERAL, LEGACY RIDGE, HERITAGE AT WESTMOOR, PARKS OPEN SPACE AND TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS, AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2014 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2014 appropriation for the General, Legacy Ridge, Heritage at Westmoor, Parks, Open Space and Trails, and General Capital Improvement Funds initially appropriated by Ordinance No. 3655 is hereby increased in aggregate by \$713,583. This appropriation is due to the receipt of funds from program revenue, grant proceeds, reimbursements, rent, carryover, and transfers.

Section 2. The \$713,583 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10A dated November 24, 2014 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$71,955
Legacy Ridge Fund	6,000
Heritage at Westmoor Fund	107,886
Parks, Open Space and Trails Fund	263,871
General Capital Improvement Fund	<u>263,871</u>
Total	<u>\$713,583</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of November, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2014.

ATTEST:

Mayor

City Clerk



Agenda Item 10 B

Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Councillor's Bill No. 37 re Supplemental Appropriation of HUD Section 108 Loan Fund Balance

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 37 on first reading appropriating a balance of funds received from the United States Department of Housing and Urban Development, HUD Section 108 Loan Fund Program, in the amount of \$100,000.

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill appropriating the balance of funds awarded by the U.S. Department of Housing and Urban Development (HUD) through the HUD Section 108 Loan Fund Program in the amount of \$100,000.
- The City Council approved acceptance of the HUD Section 108 Loan Program award of \$2.534 million in funding capacity on December 12, 2011.
- HUD awarded the City an initial drawdown of \$1,500,000 to be used in conjunction with land acquisition/site preparation for a redevelopment project at 73rd Avenue and Lowell Boulevard.
- The City authorized an initial appropriation of \$1,400,000 on September 24, 2012, leaving a balance of \$100,000 for future appropriation.
- A balance of HUD Section 108 funds in hand, currently at about \$458,000 inclusive of the \$100,000, must be spent by December 31, 2014. Should the funds not be spent, the balance will no longer be available to help fund redevelopment of the Lowell Boulevard property.
- Staff is requesting that the \$100,000 award balance be appropriated and applied to the balance of appropriated proceeds of approximately \$358,000 to provide funding to complete the acquisition of property in further support of the redevelopment at 73rd Avenue and Lowell Boulevard.
- City Council authorized Staff to proceed with the purchases for the Lowell Boulevard/73rd Avenue project on August 13, 2012.

Expenditure Required: \$100,000

Source of Funds: Community Development Block Grant Fund; HUD Section 108 Loan Fund Program

Policy Issue

Should the remaining HUD Section 108 Program fund balance in the amount of \$100,000 be appropriated to support redevelopment in the 7200 block of Lowell Boulevard?

Alternative

Do not appropriate the funds. This alternative is not recommended as the City would lose the ability to utilize the funds in support of redeveloping property at 73rd Avenue and Lowell Boulevard.

Background Information

The City of Westminster is designated by the U.S. Department of Housing and Urban Development (HUD) as a "CDBG entitlement" jurisdiction, and as such receives an annual allocation of Community Development Block Grant (CDBG) funds in the range of \$600,000. As an "entitlement" jurisdiction, the City of Westminster is also eligible to participate in the HUD Section 108 Loan Program that provides funding to assist in facilitating revitalization and redevelopment in economically distressed areas. The South Westminster area qualifies as a distressed economic area. Under the program, the City was entitled to apply for Section 108 Loan Program proceeds up to five times its annual CDBG allocation equaling \$2.534 million. As a "loan" program the proceeds would be repaid over a 20-year period from revenues generated by a development project or by payment using CDBG proceeds. By participating in the program, the City's future CDBG allocations are also pledged as collateral to cover any default on repayment.

Per City Council authorization on September 27, 2010, City staff submitted an application to HUD for a Section 108 Loan Program grant, which resulted in the City being awarded loan funding in the amount of \$2,534,000. City Council accepted the grant of funds on December 12, 2011. Upon acceptance of the loan funding, Staff received approval from HUD to draw down \$1.5 million of the funds to assist in redeveloping a portion of the west side of the 7200 block of Lowell Boulevard into a three-story, mixed use project comprised of residential apartments over commercial space. Per an agreement with a prospective developer approved by City Council on May 14, 2012, the City proceeded to acquire the properties to be redeveloped. An initial appropriation of \$1,400,000 was made to provide funding for the acquisitions and site preparation. The remaining \$100,000 was withheld from appropriation to ensure adequate funding was available for interest payments for the first few years. Based on interest payments made over the last two and a half years, City staff believes that a current interest payment balance in remaining appropriated funds is sufficient to cover approximately two years of the interest payments, thereby reducing the need to hold back the \$100,000 of unappropriated funds.

HUD is further requiring the balance of the \$1.5 million drawdown to be expended by December 31, 2014. The City currently has a balance of approximately \$458,000, inclusive of the \$100,000 unappropriated funds, that need to be spent. Otherwise, the balance not expended will be retracted by HUD and placed into a loan repayment account to be applied towards repayment of the principal beginning 2027. These funds would, then, not be available to provide further financial support towards completing a development project. To ensure that the City does not lose this financial capacity to support a redevelopment project, Staff is proposing that the remaining HUD Section 108 funds be utilized towards acquiring the two remaining properties needed to redevelop the site, both properties being owned by the Westminster Housing Authority at 7287 Lowell Boulevard (currently utilized as a community theater) and 3630 W. 73rd Avenue, being an unused storage unit. The funds will thereafter be held in an account of the Westminster Housing Authority that can be utilized to providing funding assistance to future redevelopment of the property. Additional information on this proposal is included in a separate Staff Report for Monday's Post City Council meeting review.

Staff is requesting a remaining \$100,000 balance of HUD Section 108 funds be appropriated in 2014 to allow the City to complete acquisitions related to redevelopment at 73rd Avenue and Lowell Boulevard.

These appropriations will amend the Community Development Block Grant Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Note Proceeds	7600.46010.0000	\$0	<u>\$100,000</u>	\$100,000
Total Change to Revenues			<u>\$100,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Lowell Redvl HUD Section 108	81276030998.80400.8888	\$340,841	<u>\$100,000</u>	\$440,841
Total Change to Expenses			<u>\$100,000</u>	

The appropriation as requested supports the City of Westminster Strategic Plan Goal of creating and maintaining Vibrant and Inclusive Neighborhoods by promoting development providing quality residential living and commercial space that is attractive to smaller businesses, and the goal of creating a Dynamic, Diverse Economy by promoting new development that will eventually generate new tax revenue.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment
- Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **37**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2014 BUDGETS OF THE COMMUNITY
DEVELOPMENT BLOCK GRANT FUND, AND AUTHORIZING A SUPPLEMENTAL
APPROPRIATION FROM THE 2014 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2014 appropriation for the Community Development Block Grant Fund initially appropriated by Ordinance No. 3655 is hereby increased in aggregate by \$100,000. This appropriation is due to the receipt of Section 108 loan funds from the U.S. Department of Housing and Urban Development.

Section 2. The \$100,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10B dated November 24, 2014 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

Community Development Block Grant Fund	<u>\$100,000</u>
Total	<u>\$100,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of November, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2014.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Councillor’s Bill No. 38 Appropriating Adams County Open Space Grant Funds and Awarding Construction Contract for McKay Drainageway Project

Prepared By: David W. Loseman, Assistant City Engineer

Recommended City Council Action

1. Pass Councillor’s Bill No. 38 on first reading appropriating \$428,459 to the McKay Drainageway Project from Adams County Open Space grant for trail improvements.
2. Authorize the City Manager to award the bid and execute a contract after approval of Councillor’s Bill No. 38 on second reading with the lowest and most qualified bidder, Concrete Express, Inc., in the amount of \$4,499,907.20 for the construction of the project and authorize a construction contingency of \$275,000 for a total authorized expenditure of \$4,774,907.20.

Summary Statement

The McKay Drainageway Project is a planned system of drainage facilities in the general area located between 136th Avenue and 144th Avenue and east from Zuni Street to Big Dry Creek at Washington Street in Thornton. The only remaining unimproved portion of the drainageway lies between I-25 and Huron Street (see attached Project Map) where a wide, shallow floodplain still exists. This floodplain is a significant constraint to the development of one of the larger vacant sites in the City.

The preliminary design of the drainage improvements necessary to reduce the width of the floodplain was pursued by City staff until 2009 when development interest in the site waned. In the past year, that interest has increased, and the City recently received the rights-of-way needed for the project from the adjacent property owners. The final design has also been completed.

Requests for bids for the construction of the project were advertised in the Daily Journal for four weeks, and bids were opened on November 6. Two bids were received and opened, and the lowest bidder is Concrete Express, Inc. with a bid of \$4,499,907.20.

The proposed construction contingency of \$275,000 is approximately 6.1% of the cost of construction. Typically a contingency of 10% would be requested, however, \$275,000 is all that remains in the project budget for this purpose. Given the relative lack of complexity of the construction of this project, Staff is comfortable with the \$275,000 contingency being recommended. A total expenditure authorization of \$4,774,907.20 is being requested.

Expenditure Required: \$4,774,907.20

Source of Funds: General Capital Improvement Fund—McKay Lake Drainage account; WEDA Fund – McKay Drainageway Project account; and Stormwater Fund – McKay Lake Drainage account

Policy Issue

Should the City proceed with the construction of the McKay Drainageway Channel and Regional Detention Pond Project?

Alternative

An alternative to this proposal is to not construct the project. Staff does not recommend this alternative because the completion of this project is necessary in order to reduce the size of the floodplain in this area, which will allow for the development of the adjacent parcels. In addition, the McKay Drainageway crossing at the intersection of 142nd Avenue and Orchard Parkway has already been constructed as part of the Orchard Parkway project. Because of this, the remaining McKay Drainageway channel needs to be completed to prevent the flooding of this new structure during high storm events.

Background Information

The planning and construction of the improvements needed to reduce the width of the floodplain of the McKay Lake Drainageway have been underway for more than fifteen years. The McKay basin contains approximately 1,800 acres and extends from its confluence with Big Dry Creek at 140th Avenue and Washington Street upstream to the southern portions of the City and County Broomfield. Previously completed projects include the rehabilitation of the dam at the McKay Lake Open Space, the installation of a channel through the Huntington Trails Subdivision and, most recently, the construction of a culvert under I-25 and channelization from there to Big Dry Creek. With the completion of that most recent project in 2010, only the portion of the basin located between I-25 and Huron Street (see Project Map) remains unimproved, and those adjacent properties are still encumbered by a wide, shallow floodplain that constrains development within the North Huron Planned Unit Development, located between 136th Avenue and 144th Avenue.

The preliminary design of the McKay Drainageway was being coordinated with the North Huron PUD developers up until 2009 when economic factors dampened their interest. Recently, that interest has increased, and recent development proposals that call for modifications to the preliminary plan for the drainageway have been received by City staff. The owners of the adjacent properties have dedicated the necessary rights-of-way for the drainage improvements, and the design was subsequently completed by Merrick and Company in September 2014.

The construction package for this project was advertised in the Daily Journal and on the City’s website for four weeks, and bids were opened on November 6. Two contractors submitted bids on this project with the low bid of \$4,499,907.20 being submitted by Concrete Express, Inc. It is recommended that City Council award the construction contract to Concrete Express, Inc.

The bid results are as follows:

<u>Bidder</u>	<u>Amount of Bid</u>
Concrete Express, Inc.	\$4,499,907.20
Hammerlund Construction, LLC	\$5,740,846.00
Engineer’s Estimate from Merrick Engineering	\$4,595,376

Staff has reviewed the results of the bidding procedure and recommends that the low bidder for the McKay Drainageway Project, Concrete Express, Inc., be awarded the contract for construction of the project in the amount of \$4,499,907.20. Staff is familiar with Concrete Express, Inc. since they are currently under contract with the City for the Westminster Urban Redevelopment Project Grading and the Ranch Creek Underpass Project. Staff is confident that this contractor can perform the work in a qualified and efficient manner.

The requested construction contingency of \$275,000 is approximately 6.1% of the overall construction budget. Staff believes that this is a reasonable contingency for this particular project.

In February 2013, City staff submitted an application to the Adams County Open Space program for a grant for certain trail improvements located parallel to I-25 in the vicinity of the McKay Drainageway. In December 2013, the City was awarded funds for these trails in the amount of \$428,459 under the condition that a local match of \$856,085 be provided by the City. While City funds earmarked for the drainage improvements are proposed to be used to serve as this local match, it is important to note that only approximately \$120,000 of these City funds will actually be needed to pay for the trails due to the fact that the actual cost of the trails will be vastly less expensive than Staff originally anticipated. Nonetheless, Staff wishes to advise Council that the I-25 trails are included within the construction package for the McKay Drainageway Project. Approval of the attached Councillor’s Bill is necessary to appropriate the Adams County share of the project costs until reimbursement is received after the construction of the project is completed. This appropriation will amend the General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Open Space Grant Adams County	7501.40630.0010	\$0	<u>\$428,459</u>	\$428,459
Total Change to Revenues			<u>\$428,459</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
McKay Drainageway	80375030313.80400.8888	\$4,178,001	<u>\$428,459</u>	\$4,606,460
Total Change to Expenses			<u>\$428,459</u>	

The award of this contract is in line with the City Council’s goals of providing a Vibrant and Inclusive Neighborhood, Excellence in City Services, a Dynamic, Diverse Economy, and a Beautiful, Desirable, Environmentally Responsible City.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments: Ordinance
Project Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **38**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2014 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2014 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2014 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3655 is hereby increased by \$428,459. This increase is due to the appropriation of an Adams County Open Space Grant for construction costs necessary for the I-25 Trails Connection Project as part of the McKay Drainageway Channel and Regional Detention Pond Project.

Section 2. The \$428,459 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10C-D dated November 24, 2014 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$428,459</u>
Total	<u>\$428,459</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of November, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2014

ATTEST:

Mayor

City Clerk



- Existing Trails
- Proposed Trails

Project Map

0 250 500 1,000 Feet



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Councillor's Bill No. 39 re Amendments to the Police and General Employee Pension Plans

Prepared By: Kim McDaniel, Retirement Administrator

Recommended City Council Action

Pass Councillor's Bill 39 on first reading amending Title XIV of the Westminster Municipal Code concerning the Police and General Employee Pension Plans.

Summary Statement

- Retirement Administration is recommending a series of changes to the City's Pension Ordinances. The IRS requires that plans operate within the rules established by the plan document and that the plan document properly reflect the operational procedures of the plan. A few of the procedures outlined by the current Pension Ordinance cause hardship to the members of the plan.
- The Pension Ordinance currently restricts active participants from transferring plan assets to the statewide Fire and Police Pension Association (FPPA) to purchase years of service.
- One of the recommended changes is substantive while the remainder are of a housekeeping nature. State statutes mandate that 65% of the active participants in the Police Pension Plan approve any changes before these changes can be implemented.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

Does City Council approve the recommendations for amendments to Title XIV of the Westminster Municipal Code to make administrative changes to the operation of the plans?

Alternatives

1. Do not approve the proposed amendments. Staff does not recommend this option as amendments to the plan are beneficial to pension plan participants, do not result in additional financial liability to the City, and cannot be utilized by plan participants until they become a part of the Municipal Code.
2. Request more time to review the amendments. Staff does not recommend this option as the amendments are very straightforward.

Background Information

The Pension Ordinance does not contain language allowing an active plan participant to transfer some or all of their account from the General or Police Pension Plan to the statewide plan under the Fire and Police Pension Association (FPPA) to purchase years of service. Staff worked with outside legal counsel to confirm there are no restrictions under the Internal Revenue Code with regard to transferring an active plan participant's assets to purchase years of service under FPPA. Staff also confirmed with FPPA that they would accept a trust-to-trust transfer from the General or Police Pension Plan so long as the transfer fully depletes the participant's pension account balance. This change to the Police Pension Plan is substantive and would require approval by a vote of the members in the Police Pension Plan. Approval by 65% of those members of the Police Pension Plan who vote is required in order to implement this amendment; upon City Council's approval of the attached ordinance on second reading, these changes will be voted upon by eligible Police Pension Plan employees. Staff will report the results of this election to City Council.

Retirement Administration met with City Attorney's Office and identified the final list of recommended housekeeping items that will allow the pension plans to operate more efficiently. Highlights of these proposed changes are as follows:

- The definition of "Employee" under both pension plans was changed to match the definition of "Employee" in the City's Personnel Policies and Rules.
- The definition of "Eligible Employee" in the Police and General Pension Plan was changed to encompass all Employees who are eligible to participate in the Plan.
- References were changed from "Employee" to "Eligible Employee" where appropriate throughout the Pension Ordinance.
- The Pension Ordinance was changed to clarify that if a Police Plan Participant becomes eligible to participate in the City's General Employee Pension Plan that Participant's interest may be transferred to the General Employee Pension Plan.
- The Pension Ordinance was changed to clarify that if a General Employee Plan Participant becomes eligible to participate in the City's Police Pension Plan that Participant's interest may be transferred to the Police Pension Plan.

The recommended changes were prepared by Staff and reviewed by Attorney Nancy Strelau of Brownstein Hyatt Farber Schreck, LLP. Based on her expertise, Staff believes the proposed amendments are beneficial for plan participants and comply with the Internal Revenue Code.

City Council is requested to approve the attached Councillor's Bill to amend the W.M.C. Attachments A and B simply reflect the recommended amendments included in the Councillor's Bill within the full context of Chapter 1, Police Pension Plan, and Chapter 2, General Employee Pension Plan, of Title XIV of the Westminster Municipal Code.

The proposed amendments to the Pension Ordinances provide an employee retirement benefit that directly impacts the ability to meet City Council's goal of Excellence in City Services. The administrative changes and addition of the trust-to-trust transfer to FPPA provides an opportunity to enhance employee opportunities.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments

Proposed Councillor's Bill

Attachment A – Chapter 1, Police Pension Plan

Attachment B – Chapter 2, General Employee Pension Plan

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **39**

SERIES OF 2013

INTRODUCED BY COUNCILLORS

A BILL
FOR AN ORDINANCE AMENDING CHAPTERS 1 AND 2 OF TITLE 14
OF THE WESTMINSTER MUNICIPAL CODE CONCERNING
POLICE AND GENERAL EMPLOYEE PENSION PLANS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The title of subsection 14-1-3, W.M.C., is hereby AMENDED to read as follows:

14-1-3: PARTICIPATION OF ELIGIBLE EMPLOYEES

Section 2. Section 14-1-2, W.M.C. is hereby AMENDED to read as follows:

14-1-2: DEFINITIONS: (2464 3319 3360 3447 3584 3704) The following words, terms and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural.

“Contributing Participant” shall mean any Eligible Employee who is making contributions to the Plan, whether or not the City is contributing to the Plan on behalf of such Eligible Employee.

“Distributee” shall mean an Eligible Employee or former Eligible Employee. In addition, the Eligible Employee’s or former Eligible Employee’s surviving spouse and the Eligible Employee’s or former Eligible Employee’s spouse or former spouse who is the alternate payee under a QDRO are Distributees with regard to the interest of the spouse or former spouse.

“Eligible Employee” shall mean any ~~individual~~ Employee who fills a City-authorized position of Police Officer as defined in this Chapter that is in a 0.5 FTE or greater, excluding individuals employed as temporary employees, elected officials, independent contractors, volunteers and non-benefited full-time and part-time employees. ~~The determination of whether an individual is an Employee, an independent contractor or any other classification of worker or service provider and the determination of whether an individual is classified as a member of any particular classification of employees shall be made solely in accordance with the classifications used by the Employer and shall not be dependent on, or change due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.~~

“Employee” shall mean a person who receives monetary compensation from the City in return for present services or work performed on a non-contractual basis, or who is on a leave of absence without pay that has been approved by the General Services Director or Designee. This definition shall include all full-time and part-time regular, administrative officers, temporary, provisional, seasonal, substitute, hourly, instructor, indexed, intern, special project, short-term disability and emergency employees. This definition shall exclude elected municipal officials, volunteer firefighters, all other volunteer personnel, and retirees from the City. The determination of whether an individual is an Employee, an independent contractor or any other classification of worker or service provider and the determination of whether an individual is classified as a member of any particular classification of employees shall be made solely in accordance with the classifications used by the Employer and shall not be dependent on, or change due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.

“Full Participant” shall mean any Eligible Employee who is qualified to receive Employer contributions under the Plan.

“Inactive Participant” shall mean any person who has been a Contributing Participant to the Plan or a preceding pension plan of the City and who is no longer an Eligible Employee, but who has not received full distribution of all respective Interest.

“Termination of Employment” shall mean the cessation of a person’s status as an “Employee” as defined in this Section. ~~If the person, upon Termination of Employment, becomes eligible to participate in the City’s General Employee Pension Plan, without a break in municipal service, that person’s Interest shall be transferred to that plan and the person shall retain status as a participant.~~ Termination due to dismissal shall become effective on the date after the employee’s grievance rights, if any, have lapsed or, if a grievance is filed, on the date of the final decision by the City.

Section 3. Section 14-1-3, subsection (A), W.M.C., is hereby AMENDED to read as follows:

14-1-3: PARTICIPATION OF ELIGIBLE EMPLOYEES: (2464 3319 3447 3704)

(A) PARTICIPANTS.

(1) Contributing Participant. Each Eligible Employee hired on or after January 6, 1986, shall become a Contributing Participant in the Plan on the date the Eligible Employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). By accepting employment with the City, each Employee shall be deemed to have consented to the terms and provisions of the Plan.

(2) Full Participant. No matter when an Eligible Employee becomes a Contributing Participant, each Eligible Employee shall become a Full Participant, eligible to receive Employer contributions on the first day of the pay period coinciding with or immediately following the date on which the Employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18), provided such Eligible Employee is still employed as an Employee on such date and has not severed employment (as provided in subsection (4)(d) of this Section) during such twenty-two (22) month period.

(3) Last pay period of contribution. The City shall not make any contribution for the account of a Full Participant for the pay period in which such Participant’s employment by the City shall terminate for any reason, unless such Participant is employed by the City on the last date of such pay period. No Participant may make contributions to the Plan pursuant to Sections 14-1-4, W.M.C., other than changes in the valuation of, or earnings on, the Participant’s undistributed Interest, after Termination of Employment or loss of status as an Employee as defined in this Chapter.

(4) Determination of service. For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) Service shall include the continuous period of time an individual is employed by the City as an Eligible Employee, commencing on the date the individual is categorized as an Eligible Employee.

(b) A leave of absence without pay, other than for military service, shall be considered a break in continuous municipal service, unless municipal service is extended. Neither the City nor the Eligible Employee shall be required to contribute to the Participant’s account during a leave of absence without pay.

(c) Any Eligible Employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a Termination of Employment, provided the individual returns to the employ of the City within ninety (90) days (or such other length of time required by applicable law) of the date on which the individual shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary Termination of Employment with the City shall be considered as a break in continuity of service; regardless of the length of the break in continuity of service, subsequent re-employment shall be deemed to be new employment, and the Employee will be subject to the eligibility requirements as if such Employee were a new Employee, whether or not

such Employee was formerly a Full Participant. However, if the City reinstates an Employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all Eligible Employees and Participants in a like manner.

Section 4. Section 14-1-4, subsection (C)(3), W.M.C., is hereby AMENDED to read as follows:

14-1-4: CONTRIBUTIONS BY THE CITY, THE STATE OF COLORADO AND PARTICIPANTS: (2464 3319 3360 3447 3704)

(C) CONTRIBUTIONS BY CONTRIBUTING PARTICIPANTS:

(3) Payment of Participant contributions. The contributions of the Contributing Participant shall be withheld every pay period and shall be credited to the Plan each pay period.

Section 5. Section 14-1-7, subsection (D), W.M.C., is hereby AMENDED by the addition of new subsections (2) and (3) to read as follows:

14-1-7: DISTRIBUTION FROM THE TRUST FUND: (2464 3319 3360 3447 3584 3704)

(D) TRANSFERS FROM THE PLAN INTO AN ELIGIBLE RETIREMENT PLAN:

(1) The Trustee is authorized, at the direction of the Plan custodian and at the request of the Participant, to transfer the portion of such Participant's vested Interest that is an Eligible Rollover Distribution and has become distributable under subsection (A) of this Section directly to another Eligible Retirement Plan for the benefit of such Participant, provided such transfer satisfies the requirements under law for such transfers and rollover contributions and the transferee plan accepts the Participant's Eligible Rollover Distribution from the Plan.

(2) If a Participant becomes eligible to participate in the City's General Employee Pension Plan without a break in municipal service, that Employee's vested Interest may be transferred to the General Employee Pension Plan and the Employee shall become a participant of the General Employee Pension Plan pursuant to Title XIV, Chapter 2.

(3) If a Participant becomes eligible to participate in the FPPA system without a break in municipal service, the Participant may elect to have his/her vested Interest transferred to the FPPA system, as permitted by FPPA.

Section 6. The title of subsection 14-2-3, W.M.C., is hereby AMENDED to read as follows:

14-2-3: PARTICIPATION OF ELIGIBLE EMPLOYEES

Section 7. Section 14-2-2, W.M.C. is hereby AMENDED to read as follows:

14-2-2: DEFINITIONS: (2464 3319 3447 3584 3704) The following words, terms and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise; and further provided that the masculine gender shall include the feminine, and the singular shall include the plural.

"Contributing Participant" shall mean any Eligible Employee who is making contributions to the Plan, whether or not the City is contributing to the Plan on behalf of such Eligible Employee.

"Distributee" shall mean an Eligible Employee or former Eligible Employee. In addition, the Eligible Employee's or former Eligible Employee's surviving spouse and the Eligible Employee's or former Eligible Employee's spouse or former spouse who is the alternate payee under a QDRO are Distributees with regard to the interest of the spouse or former spouse.

"Eligible Employee" shall mean an Employee ~~individual~~ who fills a City-authorized position or temporary intern position in a 0.5 FTE or greater, excluding individuals employed as firefighters and Police Officers, temporary employees, elected officials, independent contractors, volunteers and non-

~~benefited full-time and part-time employees.—The determination of whether an individual is an Employee, an independent contractor or any other classification of worker or service provider and the determination of whether an individual is classified as a member of any particular classification of employees shall be made solely in accordance with the classifications used by the Employer and shall not be dependent on, or change due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.~~

“Employee” shall mean a person who receives monetary compensation from the City in return for present services or work performed on a non-contractual basis, or who is on a leave of absence without pay that has been approved by the General Services Director or Designee. This definition shall include all full-time and part-time regular, administrative officers, temporary, provisional, seasonal, substitute, hourly, instructor, indexed, intern, special project, short-term disability and emergency employees. This definition shall exclude elected municipal officials, volunteer firefighters, all other volunteer personnel, and retirees from the City. The determination of whether an individual is an Employee, an independent contractor or any other classification of worker or service provider and the determination of whether an individual is classified as a member of any particular classification of employees shall be made solely in accordance with the classifications used by the Employer and shall not be dependent on, or change due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.

“Full Participant” shall mean any Eligible Employee who is qualified to receive City contributions under the Plan.

“Inactive Participant” shall mean any person who has been a Contributing Participant to the Plan or a preceding pension plan of the City and who is no longer an Eligible Employee, but who has not received full distribution of all respective Interest.

“Termination of Employment” shall mean the cessation of a person’s status as an “Employee” as defined in this Section. ~~If the person, upon Termination of Employment, becomes eligible to participate in the City’s Police Pension Plan, without a break in municipal service, that person’s Interest shall be transferred to that plan and the person shall retain status as a participant.—~~Termination due to dismissal shall become effective on the date after the employee’s grievance rights, if any, have lapsed or, if a grievance is filed, on the date of the final decision by the City.

Section 8. Section 14-2-3, subsection (A), W.M.C., is hereby AMENDED to read as follows:

14-2-3: PARTICIPATION OF ELIGIBLE EMPLOYEES: (2464 3319 3447 3704)

(A) PARTICIPANTS:

(1) Contributing Participant. Each Eligible Employee hired on or after January 6, 1986, shall become a Contributing Participant in the Plan on the date the Eligible Employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). By accepting employment with the City, each Employee shall be deemed to have consented to the terms and provisions of the Plan.

(2) Full Participant. No matter when an Eligible Employee becomes a Contributing Participant, each Eligible Employee shall become a Full Participant, eligible to receive Employer contributions on the first day of the pay period coinciding with or immediately following the date on which the Eligible Employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18), provided such Eligible Employee is still employed as an Employee on such date and has not severed employment (as provided in subsection (4)(d) of this Section) during such twenty-two (22) month period.

(3) Last pay period of contribution. The City shall not make any contribution for the account of a Full Participant for the pay period in which such Participant’s employment by the City shall terminate for any reason, unless such Participant is employed by the City on the last date of such pay period. No Participant may make contributions to the Plan pursuant to Sections 14-2-4, W.M.C., other than changes in the valuation of, or earnings on, the Participant’s undistributed Interest, after Termination of Employment or loss of status as an Employee as defined in this Chapter.

(4) Determination of service. For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) Service shall include the continuous period of time an individual is employed by the City as an Eligible Employee, commencing on the date the individual is categorized as an Eligible Employee.

(b) A leave of absence without pay, other than for military service, shall be considered a break in continuous municipal service, unless municipal service is extended. Neither the City nor the Eligible Employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any Eligible Employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a Termination of Employment, provided the individual returns to the employ of the City within ninety (90) days (or such other length of time required by applicable law) of the date on which the individual shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary Termination of Employment with the City shall be considered as a break in continuity of service; regardless of the length of the break in continuity of service, subsequent re-employment shall be deemed to be new employment, and the Employee will be subject to the eligibility requirements as if such Employee were a new Employee, whether or not such Employee was formerly a Full Participant. However, if the City reinstates an Eligible Employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all Eligible Employees and Participants in a like manner.

Section 9. Section 14-2-4, subsection (B)(3), W.M.C., is hereby AMENDED to read as follows:

14-2-4: CONTRIBUTIONS BY THE CITY AND PARTICIPANTS: (2464 3319 3360 3447 3704)

(B) CONTRIBUTIONS BY CONTRIBUTING PARTICIPANTS:

(3) Payment of participant contributions. The contributions of the Contributing Participant ~~Employee~~ shall be withheld every pay period and shall be credited to the Plan each pay period.

Section 10. Section 14-2-7, subsection (D), W.M.C., is hereby AMENDED by the addition of new subsections (2) and (3) to read as follows:

14-2-7: DISTRIBUTION FROM THE TRUST FUND: (2464 3319 3390 3447 3584 3704)

(D) TRANSFERS FROM THE PLAN INTO AN ELIGIBLE RETIREMENT PLAN:

(1) The Trustee is authorized, at the direction of the Plan custodian and at the request of the Participant, to transfer the portion of such Participant's vested Interest that is an Eligible Rollover Distribution and has become distributable under subsection (A) of this Section directly to another Eligible Retirement Plan for the benefit of such Participant, provided such transfer satisfies the requirements under law for such transfers and rollover contributions and the transferee plan accepts the Participant's Eligible Rollover Distribution from the Plan.

(2) If a Participant becomes eligible to participate in the City's Police Pension Plan without a break in municipal service, that Employee's vested Interest may be transferred to the Police Pension Plan and the Employee shall become a participant of the Police Pension Plan pursuant to Title XIV, Chapter 1.

(3) If a Participant becomes eligible to participate in the FPPA system without a break in municipal service, the Participant may elect to have his/her vested Interest transferred to the FPPA system, as permitted by FPPA.

Section 11. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED THIS 24th day of November, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2014.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

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POLICE PENSION PLAN**CHAPTER 1**

- 14-1-1: NAME AND PURPOSE OF PLAN; HISTORY**
- 14-1-2: DEFINITIONS**
- 14-1-3: PARTICIPATION OF ELIGIBLE EMPLOYEES**
- 14-1-4: CONTRIBUTIONS BY THE CITY, STATE OF COLORADO, AND PARTICIPANTS**
- 14-1-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS**
- 14-1-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY**
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- 14-1-8: CONTRIBUTIONS TO RETIREMENT MEDICAL SAVINGS ACCOUNTS**
- 14-1-9: INSURANCE COMPANY CONTRACTS**
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- 14-1-11: POWERS AND DUTIES OF THE TRUSTEE**
- 14-1-12: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN**
- 14-1-13: MISCELLANEOUS**

14-1-1: NAME AND PURPOSE OF PLAN; HISTORY: (2464 3319 3447 3704)

(A) The City of Westminster (the “City” or the “Employer”) does hereby establish its Police Pension Plan (the “Plan”), which is a qualified money purchase pension plan. The Plan is created for the exclusive benefit of the City’s eligible Employees who qualify as Participants and their Beneficiaries. The Plan is intended to qualify under Code Section 401(a) and the Trust created pursuant to the Plan is intended to be exempt under Code Section 501(a), and all provisions of the Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the City to have

the Plan comply with the provisions of the Code after the enactment of the Employee Retirement Income Security Act of 1974, except to the extent that changes to the Code apply to governmental plans.

(B) **PRIOR COVERAGE UNDER OTHER CITY-FUNDED PENSION PLANS:** Upon the approval of the Plan by at least sixty-five percent (65%) of the Participants, any Employee who was formerly a participant in the Employee's Pension Plan and Trust Agreement, General Employee Pension Plan or the Police and Fire Pension Plan shall automatically have such interest in such plan, whether held by investment agents, the Trustee, or the City, transferred to the Plan upon becoming eligible to be a Participant in the Plan. Upon transfer of the Employee's interest without a break in municipal service, the Employee shall have the same Participant status as the Employee had under the other plan. Any contributions due from the City, or withheld from the Employee for the pay period ending January 5, 1986, will be paid directly into the Plan.

(C) On September 1, 2004, the City transferred the assets of the Firefighter's Pension Plan to the Fire and Police Pension Association ("FPPA") of Colorado defined benefit system and the Firefighter's Pension Plan was terminated. Participants in the Firefighter's Pension Plan became participants in the FPPA defined benefit system. Assets in the retirement medical savings account in the Firefighter's Pension Plan were transferred to the General Employee's Pension Plan for use as defined in Section 14-1-8, W.M.C.

14-1-2: DEFINITIONS: (2464 3319 3360 3447 3584 3704) The following words, terms and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural.

"Beneficiary" shall mean any person or entity that, pursuant to Section 14-1-6(B), W.M.C., becomes entitled to receive all or any part of a Participant's Interest upon the Participant's death.

"Board" shall mean the Police Pension Plan Board established in this Chapter.

“City” shall mean the City of Westminster, Colorado. The City also may be referenced in the Plan as the “Employer.”

“Civil Union Partner” shall mean an Employee’s lawful civil union partner, as determined by the laws of the jurisdiction where the union occurred until the entry of a dissolution of the union.

“Code” shall mean the Internal Revenue Code of 1986, as it may be amended, or re-enacted or replaced. Reference to a specific section of the Code shall mean the section in effect at the date of adoption of the Plan, or any successor section to such section.

“Compensation” shall mean the base pay of a Participant for services rendered to the City, excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to the Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of FTEs budgeted for their positions. For purposes of determining the compensation applicable to the limitations on annual contributions in Section 14-1-5, W.M.C., Compensation shall be as defined in Section 14-1-5(B)(5), W.M.C.

Effective January 1, 2009, (A) an individual receiving a differential wage payment (as defined by Code Section 3401(h)(2)) shall be treated as an Employee of the Employer making the payment, (B) the differential wage payment shall be treated as compensation for purposes of Code Section 415 and any other Code section that references the definition of compensation under Code Section 415, and (C) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

“Contributing Participant” shall mean any Eligible Employee who is making contributions to the Plan, whether or not the City is contributing to the Plan on behalf of such Eligible Employee.

“C.R.S.” shall mean the Colorado Revised Statutes.

“Current Annual Base Salary” shall mean compensation annualized for the current calendar year.

“Direct Rollover” shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

“Distributee” shall mean an Eligible Employee or former Eligible Employee. In addition, the Eligible Employee’s or former Eligible Employee’s surviving spouse and the Employee’s or former employee’s spouse or former spouse who is the alternate payee under a QDRO are Distributees with regard to the interest of the spouse or former spouse.

“Eligible Retired Public Safety Officer” shall mean a Police Officer who is separated from service with the City as a public safety officer by reason of disability or is separated from service with the City as a public safety officer and separated from service after normal retirement age, as defined in Section 14-1-6(A)(1), W.M.C.

“Eligible Retirement Plan” shall mean (A) an individual retirement account described in Code Section 408(a), (B) an individual retirement annuity described in Code Section 408(b), (C) an annuity plan described in Code Section 403(a), (D) a qualified trust described in Code Section 401(a), (E) an eligible plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (F) an annuity contract described in Code Section 403(b) and (G) a Roth IRA described in Code Section 408A(b). The preceding definition of Eligible Retirement Plan shall also apply in the case of a distribution from the Plan to a surviving spouse or to a spouse or former spouse who is the alternate payee under a QDRO. In the case of an Eligible Rollover Distribution from the Plan to a non-spouse beneficiary, an Eligible Retirement Plan shall mean

an individual retirement account described in Code Section 408(a), individual retirement annuity described in Code Section 408(b), or a Roth IRA described in Code Section 408A(b).

“Eligible Rollover Distribution” shall mean any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (A) any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s designated Beneficiary, or for a specified period of ten (10) years or more; (B) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (C) the portion of any distribution that is not includable in gross income. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income; provided that such portion is transferred in a direct trustee-to-trustee transfer (1) to a qualified trust or to an annuity contract described in Code Section 403(b) and such trust or contract agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution that is includable in gross income and the portion of such distribution that is not so includable or (2) to an individual retirement account or annuity described in Code Section 408(a) or 408(b).

“Eligible Employee” shall mean any individual who fills a City-authorized position of Police Officer as defined in this Chapter that is in a 0.5 FTE or greater, excluding individuals employed as temporary employees, elected officials, independent contractors, volunteers and non-benefited full-time and part-time employees. ~~The determination of whether an individual is an Employee, an independent contractor or any other classification of worker or service provider and the determination of whether an individual is classified as a member of any particular classification of employees shall be made solely in accordance with the classifications used by the Employer and shall not be dependent on, or change due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.~~

“Employee” shall mean a person who receives monetary compensation from the City in return for present services or work performed on a non-contractual basis, or who is on a leave of absence without pay that has been approved by the General Services Director or Designee. This definition shall include all full-time and part-time regular, administrative officers, temporary, provisional, seasonal, substitute, hourly, instructor, indexed, intern, special project, short-term disability and emergency employees. This definition shall exclude elected municipal officials, volunteer firefighters, all other volunteer personnel, and retirees from the City. The determination of whether an individual is an Employee, an independent contractor or any other classification of worker or service provider and the determination of whether an individual is classified as a member of any particular classification of employees shall be made solely in accordance with the classifications used by the Employer and shall not be dependent on, or change due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.

“Employer” shall mean the City.

“FTE” shall mean full-time equivalents.

“Full Participant” shall mean any Eligible Employee who is qualified to receive Employer contributions under the Plan.

“Highest Annual Base Salary” shall mean the largest amount of compensation as calculated for any calendar year of employment.

“Inactive Participant” shall mean any person who has been a Contributing Participant to the Plan or a preceding pension plan of the City and who is no longer an Eligible Employee, but who has not received full distribution of all respective Interest.

“Interest” shall mean the amount of a Participant’s share in the Trust Fund, including City contributions, Employee contributions, and earnings thereon.

“Investment Advisor” shall have the meaning ascribed to it in Section 14-1-10(B)(1), W.M.C.

“OASDI” shall mean old age survivors and disability insurance.

“Participant” shall mean any Contributing Participant or Inactive Participant.

“Plan” shall mean the Police Pension Plan established in this Chapter and all subsequent amendments thereto.

“Plan Administrator” shall mean the person appointed by the City Manager to administer the Plan.

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“Plan Year” shall mean the City’s fiscal year, which is the calendar year and which shall also be the fiscal year of the Trust Fund established pursuant to the Plan.

“Police Officer” shall mean any person who is employed by the City as a Police Officer, as defined by Title III of W.M.C., and who either is the Chief of Police or reports to the Chief of Police.

“QDRO” shall mean a qualified domestic relations order as defined in Code Section 414(p).

“Qualified Health Insurance Premiums” shall mean premiums for coverage of the eligible retired public safety officer, their spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract as defined in Code Section 7702B(b).

“Qualified Military Service” shall mean service in the uniformed services of the United States (as defined in Chapter 43 of Title 38 of the United States Code) by any individual if, such individual is entitled to re-employment rights with respect to such service.

“Retirement Medical Savings Accounts” shall have the meaning ascribed to it in Section 14-1-8(A)(1), W.M.C.

“Termination of Employment” shall mean the cessation of a person’s status as an “Employee” as defined in this Section. ~~If the person, upon Termination of Employment, becomes eligible to participate in the City’s General Employee Pension Plan, without a break in municipal service, that person’s Interest shall be transferred to that plan and the person shall retain status as a participant.~~ Termination due to dismissal shall become effective on the date after the employee’s grievance rights, if any, have lapsed or, if a grievance is filed, on the date of the final decision by the City.

“Total Disability” shall mean a disability that permanently renders a Contributing Participant unable to perform satisfactorily the Participant’s usual duties of employment with the City as determined by the City and that results in the Participant’s Termination of Employment with the City.

“Trust Fund” shall mean the assets of the trust established pursuant to the Plan, out of which the benefits under the Plan shall be paid, including all income of whatever nature earned by the Trust Fund and all increases in fair market value.

“Trustee” shall mean the trustee of the Trust Fund established pursuant to the Plan, who shall always be the current acting Finance Director of the City of Westminster, and any duly qualified corporate co-trustee appointed pursuant to Section 14-1-11, W.M.C., and any duly appointed and qualified successor trustees.

“W.M.C.” shall mean the Westminster Municipal Code.

(A) PARTICIPANTS.

(1) Contributing Participant. Each Eligible Employee hired on or after January 6, 1986, shall become a Contributing Participant in the Plan on the date the Eligible Employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). By accepting employment with the City, each Employee shall be deemed to have consented to the terms and provisions of the Plan.

(2) Full Participant. No matter when an Eligible Employee becomes a Contributing Participant, each Eligible Employee shall become a Full Participant, eligible to receive Employer contributions on the first day of the pay period coinciding with or immediately following the date on which the Employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18), provided such Eligible Employee is still employed as an Employee on such date and has not severed employment (as provided in subsection (4)(d) of this Section) during such twenty-two (22) month period.

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(3) Last pay period of contribution. The City shall not make any contribution for the account of a Full Participant for the pay period in which such Participant's employment by the City shall terminate for any reason, unless such Participant is employed by the City on the last date of such pay period. No Participant may make contributions to the Plan pursuant to Sections 14-1-4, W.M.C., other than changes in the valuation of, or earnings on, the Participant's undistributed Interest, after Termination of Employment or loss of status as an Employee as defined in this Chapter.

(4) Determination of service. For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

- (a) Service shall include the continuous period of time an individual is employed by the City as an Eligible Employee, commencing on the date the individual is categorized as an Eligible Employee.

(b) A leave of absence without pay, other than for military service, shall be considered a break in continuous municipal service, unless municipal service is extended. Neither the City nor the Eligible Employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any Eligible Employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a Termination of Employment, provided the individual returns to the employ of the City within ninety (90) days (or such other length of time required by applicable law) of the date on which the individual shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary Termination of Employment with the City shall be considered as a break in continuity of service; regardless of the length of the break in continuity of service, subsequent re-employment shall be deemed to be new employment, and the Employee will be subject to the eligibility requirements as if such Employee were a new Employee, whether or not such Employee was formerly a Full Participant. However, if the City reinstates an Employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all Eligible Employees and Participants in a like manner.

(B) BOARD TO DETERMINE PARTICIPANTS:

(1) Obligations of the City. The City shall deliver to the Board in writing such information from the City's records with respect to Employees and their Compensation as the Board may require, in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Information provided by the City. Any information given by the City to the Board pursuant to subsection (B) of this Section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that, whenever any Employee proves to the satisfaction of the City that such Employee's period

of employment with the City or such Employee's Compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) Determination of the Board. The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all Employees, all Participants and all Beneficiaries.

14-1-4: CONTRIBUTIONS BY THE CITY, THE STATE OF COLORADO AND PARTICIPANTS: (2464 3319 3360 3447 3704)

(A) CONTRIBUTIONS BY THE CITY:

(1) Determination of contribution by the City. On and after January 6, 1986, each pay period the City shall contribute to the credit of each Full Participant's account, ten and one-quarter percent (10.25%) of each Full Participant's Compensation for that pay period; provided that, during any period in which the

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City is required to make contributions on behalf of Participants under the Federal Insurance Contributions Act or the Social Security Act, the contribution to the Plan for each Participant shall be offset by the amount of the OASDI portion of the Social Security taxes paid by the City for such Participant. This offset shall not exceed the City contribution.

(2) Time and method of payment of contribution by the City. The contributions of the City shall be made every pay period and shall be credited to the Plan each pay period.

(B) CONTRIBUTIONS BY STATE OF COLORADO: All monies from the State of Colorado contributed on behalf of Police Officers each year will be credited to the account of each Police Officer in the ratio that such Police Officer's full months of service as a Police Officer for the City relates to the full months of service of all other Police Officers who are Participants in the Plan for that year.

(C) CONTRIBUTIONS BY CONTRIBUTING PARTICIPANTS:

(1) Mandatory employee contributions.

(a) Each Contributing Participant must contribute to the Trust Fund a percentage of such Participant's Compensation for each pay period as follows: for the pay periods commencing January 1, 1997, eight percent (8%) and for the pay periods commencing January 1, 1998, and thereafter, ten percent (10%) or, if greater, the percentage at least equal to the OASDI tax rate. During any period in which the Contributing Participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to the Plan by each Contributing Participant shall be offset by the OASDI taxes paid by the Participant, except that no offset for OASDI taxes shall reduce the mandatory contribution to the Plan for a Participant to less than two and one-half percent (2.5%) of that Contributing Participant's Compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as Employer, as provided in Code Section 414(h), and the Participant's gross income shall be reduced by the amount of the contributions picked up by the City.

(c) Each Participant, as a condition to such Participant's employment with the City, shall be deemed to have authorized the City to reduce the Participant's Compensation by such amount from each paycheck and to transmit such amount directly to the Plan custodian, according to the provisions of this Chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the Employees, prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary contributions.

(a) Subject to the provisions of Section 14-1-5(B), W.M.C., each Contributing Participant may elect to contribute to the Trust Fund an amount that, when combined with the mandatory contributions required in paragraph (1) of this subsection (C), does not exceed the amount described in Section 14-1-5(B)(1), W.M.C.

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund, must be contributed through payroll deductions on an after tax basis. A Contributing Participant may have the option of increasing, decreasing or terminating voluntary contributions at any time. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-1-4(G), W.M.C., shall not be considered voluntary contributions.

(3) Payment of Participant contributions. The contributions of the Contributing Participant~~Employee~~ shall be withheld every pay period and shall be credited to the Plan each pay period.

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(D) RETIREMENT MEDICAL SAVINGS ACCOUNTS: See Section 14-1-8, W.M.C., for the terms and conditions relating to Retirement Medical Savings Accounts.

(E) CITY'S OBLIGATIONS:

(1) No contract of employment. The adoption and continuance of the Plan, as set forth in this Chapter, shall not be deemed to constitute a contract between the City and any Employee or Participant, nor to be consideration for, or an inducement or condition of, the City's employment of any person. Nothing in this Chapter shall be deemed to give any Employee or Contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any Employee or Contributing Participant at any time, nor shall it be deemed to give the City the right to require the

Employee or Contributing Participant to remain in its employ, nor shall it interfere with the right of any Employee or Contributing Participant to terminate employment at any time.

(2) No liability. The City shall not incur any liability whatsoever to the Trust Fund, any Participant or any Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation, in whole or in part, of the Trust Fund.

(F) **CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE:** The Employer shall make all contributions to the Plan required by Code Section 414(u) that are attributable to periods of Qualified Military Service. In addition, the Employer shall allow any Participant to make mandatory Employee contributions and voluntary contributions for periods of Qualified Military Service as required by Code Section 414(u). The Employer may elect to make additional contributions based upon such Qualified Military Service, based upon Employer contributions made during the applicable period, provided such election by the Employer is made on a nondiscriminatory basis applicable to all similarly-situated Employees who have Qualified Military Service. Any contributions made under this subsection shall be subject to the provisions of Code Section 414(u) and the provisions of the Plan shall be applied considering any such contributions as having been made during the Plan Year to which the contributions relate.

(G) **ROLLOVER CONTRIBUTIONS:** A Participant may transfer to the Participant's Interest all or any portion of the Participant's vested interest in the assets, including after-tax employee contributions, held under any other Eligible Retirement Plan (but excluding Roth IRAs described in Code Section 408A), subject to acceptance of such rollover contribution by the Board. The rollover contribution must be transferred to the Plan either (1) in a direct trustee-to-trustee transfer from the other Eligible Retirement Plan or (2) by the Participant within sixty (60) days after the Participant has received the vested interest from such other Eligible Retirement Plan. In such event, the assets so received shall be (a) fully vested, (b) held in a separate account and (c) administered and distributed pursuant to the provisions of the Plan concerning Employer contributions. No rollover contribution shall (x) include assets from any plan that the Board determines, in its sole discretion, would impose upon the Plan requirements as to form of distribution that would not otherwise apply hereunder or (y) contain nondeductible contributions made to

such other Eligible Retirement Plan by the Participant unless the transfer to the Participant's interest is directly from the funding agent of such other Eligible Retirement Plan. An Inactive Participant may make a rollover contribution from an Eligible Retirement Plan that is a Code Section 457(b) plan only if it is the City's Code Section 457(b) plan.

14-1-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS: (2464 3319 3447 3584 3704)

(A) **ALLOCATION OF EMPLOYER CONTRIBUTIONS:** The contributions made by the Employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this Section.

(B) **LIMITATIONS ON ALLOCATIONS:**

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(1) General rule. In no event may a Participant receive an allocation for any Plan Year that, when combined with contributions allocated to the Participant's Retirement Medical Savings Account (if any) and a Participant-related allocation under any other defined contribution plan established by the City, exceeds the lesser of (a) one hundred percent (100%) of the Participant's Compensation for such year or (b) fifty-one thousand dollars (\$51,000) (for the 2013 Plan Year), provided that such figure shall be adjusted as provided in Code Section 415(d). For purposes of clarification, the compensation limit referred to in clause (a) in the preceding sentence shall not apply to any contribution allocated to the Participant's Retirement Medical Savings Account, which is otherwise treated as an annual addition. For the purpose of applying the foregoing limitation, the limitation year shall be the Plan Year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this subsection multiplied by a fraction, the

numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations. For the purpose of applying the limitations of this section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and nondeductible contributions made by the Participant, provided that, for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of the Participant's Compensation for the year, or one-half (1/2) of the nondeductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the Plan Years beginning on or after January 1, 1994, allocations may not be based on Compensation in excess of the annual limitation of two hundred fifty-five thousand dollars (\$255,000) (for the 2013 Plan Year), subject to adjustment as provided for by law or regulation, for the account of any individual Participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer that is a common member with the Employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded amounts. Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, rollover contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of excess. With respect to any limitation year beginning on or after July 1, 2007, in the event an allocation would otherwise exceed the limitations of this section (an "excess allocation") with respect to a Participant, the Plan shall only correct the excess allocation in accordance with the Employee Plans Compliance Resolution System ("EPCRS"), as set forth in Revenue Procedure 2013-12 or any superseding guidance, including, but not limited to, the preamble of the final Section 415 Regulations.

(5) Compensation. For the purposes of applying the limitations of this subsection (B), Compensation means the total amount paid by the Employer to a Participant for services rendered to the Employer that are included in the taxable income of the Participant, including any amounts paid to the Participant by the later of (x) two and one-half (2-½) months after the Participant's separation from employment or (y) the end of the limitation year that includes such date of the Participant's separation from employment if, absent such separation from employment, such amounts would have been paid to the Participant while the Participant continued in employment with the Employer. For limitation years beginning after December 31, 1997, Compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a Participant under a plan established under Code Section 125, 132(f)(4), 402(g)(3), 457, 401(k) or 403(b). The "Annual Compensation" of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2012, shall not exceed two hundred fifty-five thousand dollars (\$255,000), as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(b). "Annual Compensation" means Compensation during the Plan Year or such other consecutive twelve- (12-) month period over which Compensation is otherwise

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determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(C) ALLOCATION OF EARNINGS, LOSSES, CHARGES AND CHANGES IN FAIR MARKET VALUE OF THE NET ASSETS OF THE TRUST FUND: Earnings and losses of the Trust Fund and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee at least quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the Interest of each such Participant bears to the aggregate dollar value of all of such Interests of all such Participants. Third party and administrative charges shall be allocated in the ratio that

the total dollar value of the Interest of each such Participant bears to the aggregate dollar value of all of such Interests of all such Participants or equally to all Participants.

(D) PARTICIPANT'S ACCOUNTS: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of such Participant's current Interest resulting from any contributions made by the City, which account shall be known as the City contributions account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

(E) EVALUATION DATES: The regular evaluation dates of the Trust Fund shall be at least the last bank business day of each calendar quarter, at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contributions of the City, the State, and the Participants for that quarter. If an event described in Section 14-1-7(A), W.M.C., occurs between regular evaluation dates requiring a distribution of any part of a Participant's Interest, the dollar value of such Participant's Interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of a Participant's Interest as so adjusted shall be the amount that shall be distributed to such Participant or such Participant's Beneficiary.

(F) VESTING OF PARTICIPANTS' INTERESTS:

(1) Fully vested. A Participant's Interest in the contributions made by him, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The Interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Distribution of a Participant's Interest. Any Interest shall be and become payable to a Participant or such Participant's Beneficiaries only as and to the extent provided in this Chapter; and a

Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in the Participant's separate trust account, and the Participant's Beneficiary shall become entitled to distribution thereof as herein provided by virtue of the terms of this Chapter and not as a result of any transfer of said Interest or account.

(G) VESTING UPON TERMINATION OF PLAN OR DISCONTINUANCE OF CONTRIBUTIONS:

Notwithstanding the provisions of subsection (F) of this Section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the Interest of all Participants shall become fully and completely vested and nonforfeitable for all purposes.

(H) INVESTMENT OF PARTICIPANT'S INTEREST: A Participant's Interest shall be invested in the investment options in accordance with the investment elections specified by the Participant. A Participant may change the investment of contributions and may reallocate amounts in such Participant's Interest among the investment options in a manner determined by the Plan custodian and subject to such provisions as the Plan Administrator may adopt. Allocation of assets among investment options is solely the responsibility of each Participant. The fact that an investment option is available for investment to

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Participants under the Plan shall not be construed as a recommendation for investment in that investment option.

14-1-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY: (2464 3319 3360 3447 3584 3704)

(A) RETIREMENT DATE:

(1) Normal retirement. For the purposes of Section 14-1-7(L), Payment for Qualified Health Insurance Premiums, the normal retirement age for each Participant shall be age fifty-five (55) and, on the

last day of the month in which the Participant attains normal retirement age, the Participant shall be entitled to retire voluntarily.

(B) BENEFICIARIES:

(1) Designation of Beneficiaries. Each Participant shall have the right to designate one or more Beneficiaries and one or more contingent Beneficiaries to receive the Participant's Interest upon the Participant's death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation. Any Beneficiary designation shall be effective when received by the Board.

(2) Determination of a Beneficiary when there is no designated Beneficiary. If a Participant shall fail to designate a Beneficiary before the Participant's death, or if all designated Beneficiaries or contingent Beneficiaries should die, cease to exist before the Participant's death, or if all designated Beneficiaries or contingent Beneficiaries disclaim their interests or die prior to distribution, the Board shall direct the Trustee to pay the Participant's entire Interest to the Participant's surviving spouse or Civil Union Partner (as applicable), if any, or, if none, then to the personal representative of the Participant's estate. If, however, no personal representative shall have been appointed, and no actual notice thereof has been given to the Board within one hundred twenty (120) days after the Participant's death, the Board may direct the Trustee to pay the Participant's entire Interest to such person or persons as may be entitled thereto under the intestate laws of Colorado and, in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance policies. The Beneficiary of any insurance on a Participant's life shall be determined and designated as provided in Section 14-1-9(A), W.M.C.

(A) WHEN INTERESTS BECOME DISTRIBUTABLE AND EFFECT THEREOF: When a Participant dies, suffers Total Disability, retires or experiences a Termination of Employment for any other reason, the Participant's Interest shall thereupon become distributable. When a Participant's Interest shall have become distributable, such Participant's Interest shall remain a part of the Trust Fund until it is distributed.

(B) INFORMATION TO BE FURNISHED TO THE BOARD: For the purpose of enabling the Board to determine the Participant's distributable Interest, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the Participant's Termination of Employment and other such information as is needed and requested.

(C) DISTRIBUTION OF INTERESTS:

(1) Insurance. If there has been an investment in life insurance for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in the Plan, obtain an absolute assignment of any such life insurance by

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informing the Board of such election. If said election is not exercised within thirty (30) days after the Participant's Termination of Employment and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. After December 31, 1996, no new life insurance contracts may be adopted as pension investments under the Plan.

(2) Election to defer benefits. A Participant may elect to defer the commencement of distribution of the Participant's benefit, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (F) of this Section.

(3) Distribution of Participant's interest. Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of a Termination of Employment for any reason, shall be entitled to receive payment in one lump sum of the Participant's Interest, provided the Participant makes written demand therefor upon the Board. Notwithstanding any provision of the Plan to the contrary, if the amount of a Participant's Interest (including any rollover contributions that were made to the Plan pursuant to Section 14-1-4(G). W.M.C.) does not exceed one thousand dollars (\$1,000) at the time of a Participant's Termination of Employment for any reason, such Participant's Interest shall be automatically distributed in a cash lump sum as soon as administratively practicable after the Participant's Termination of Employment for any reason. For purposes of this subsection (C)(3), if such amount is zero, the Participant will be deemed to have received a distribution of such amount.

(D) TRANSFERS FROM THE PLAN INTO AN ELIGIBLE RETIREMENT PLAN:

(1) The Trustee is authorized, at the direction of the Plan custodian and at the request of the Participant, to transfer the portion of such Participant's vested Interest that is an Eligible Rollover Distribution and has become distributable under subsection (A) of this Section directly to another Eligible Retirement Plan for the benefit of such Participant, provided such transfer satisfies the requirements under law for such transfers and rollover contributions and the transferee plan accepts the Participant's Eligible Rollover Distribution from the Plan.

(2) If a Participant becomes eligible to participate in the City's General Employee Pension Plan without a break in municipal service, that Employee's vested Interest may be transferred to the General Employee Pension Plan and the Employee shall become a participant of the General Employee Pension Plan pursuant to Title XIV, Chapter 2.

(3) If a Participant becomes eligible to participate in the FPPA system without a break in municipal service, the Participant may elect to have his/her vested Interest transferred to the FPPA system, as permitted by FPPA.

(E) **WITHDRAWALS WHILE EMPLOYED:** A Participant may elect to receive a distribution while still employed by the City as follows:

(1) Age 62 Withdrawal. A Participant who has attained age sixty-two (62) may elect to begin distributions from the Trust Fund according to the rules described in this Section 14-1-7, W.M.C., while employed by the City, if the Participant's current annual base salary at the time of election is at least twenty-five percent (25%) less than the Participant's highest annual base salary.

(2) Age 59-1/2 Withdrawal. Effective January 1, 2014, a Participant who has attained age fifty nine and one half (59-1/2) may elect to receive a distribution of up to fifteen percent (15%) of the Participant's Interest according to the rules described in this Section 14-1-7, W.M.C., provided that the Participant irrevocably agrees to terminate employment with the City within five (5) years from receipt of this distribution.

(F) **REQUIRED DISTRIBUTION COMMENCEMENT DATE:** Distribution of a Participant's Interest must begin no later than April 1 of the calendar year following the later of the year the Participant attains the age of seventy and one-half (70-1/2) or the year the Participant retires.

(G) **SPENDTHRIFT PROVISIONS:**

(1) General rule. Except as otherwise provided in this Chapter, all amounts payable pursuant to this Chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate,

anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof.

(2) QDRO. Paragraph (1) of this subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or alternate payee pursuant to a QDRO setting forth the agreement of the parties with respect to the division of benefits in compliance with Code Section 414(p) and Section 14-10-113, C.R.S. The QDRO must specifically address the division of any Retirement Medical Savings Account, if applicable. A lump sum distribution will be made pursuant to such QDRO within one hundred twenty (120) days after the date on which a certified court order approving such an agreement permitting such a distribution has been submitted to and received by the Board. Procedures for submitting a QDRO may be obtained from the Board or its delegate.

The Board shall establish such reasonable procedures as are necessary to determine the compliance of a domestic relations order with the requirements of Section 14-10-113, C.R.S., and to administer distributions under such qualified order. Such procedures may be at the discretion of the Board, including standardized forms to be used for such marital agreements and orders. A person who obtains a right to a benefit payable to a Participant pursuant to a qualified domestic relations order shall have no rights to vote in elections held pursuant to the Plan.

(H) **MANNER OF DISTRIBUTION:** A Participant's Interest may be distributed by one or more of the following methods:

(1) Lump sum distribution. The Participant's Interest may be paid to the Participant or the Participant's Beneficiary by the distribution of the total balance of the Participant's Interest in one lump sum. The Participant, or the Participant's Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the Trustee within such time as the Board shall prescribe.

(2) Installments. The Participant's Interest may be paid to the Participant or the Participant's Beneficiary in substantially equal periodic installments over a period of time not to exceed the joint life expectancy of the Participant and the Participant's Beneficiary (or until the Interest is exhausted) and not in installment frequency greater than monthly. This maximum period shall be determined under the applicable IRS Tables at the time the initial monthly installment payment becomes payable. The Participant, or the Participant's Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written election with the Trustee within such time as the Board shall prescribe.

(3) Other methods. Notwithstanding the foregoing provisions, any Interest that has become distributable for any reason may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(I) LIMITATION ON DURATION OF PAYMENTS:

(1) General rule. No distribution shall be made over a period exceeding the joint life expectancy of the Participant and the Participant's Beneficiary. To the extent distribution is made after the Participant attains the age of seventy and one-half (70-1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and the Participant's Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(2) Compliance with Code Section 401(a)(9). Notwithstanding anything in this Chapter to the contrary, all distributions from the Plan shall conform to the final regulations issued under Code Section 401(a)(9), including the incidental death benefit provisions of Code Section 401(a)(9)(G).

(J) **WITHDRAWALS**. Except as provided in Section 14-1-7(E), W.M.C., a Participant may not at any time withdraw any part of the Participant's Interest, except upon death, Total Disability, retirement or Termination of Employment as provided in this Chapter.

(K) **SPECIAL RULES FOR DISTRIBUTIONS AFTER THE PARTICIPANT'S DEATH:**

(1) Distributions commencing prior to death. If distribution of a Participant's Interest has commenced in accordance with subsection (I) of this Section and the Participant dies before his or her entire Interest has been distributed to him or her, the remaining Interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of the Participant's death.

(2) Distributions commencing after death. If a Participant dies before his or her Interest commences, the entire Interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half (70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries. If a Participant should die after receiving some part, but not all, of the Participant's Interest, the remaining balance thereof shall be distributed to the Participant's Beneficiary in a manner determined pursuant to this subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim an interest in the Participant's Interest prior to the completion of distribution of the

Participant's Interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim an interest in the Participant's Interest prior to the completion of distribution of the Participant's Interest, the remaining distribution shall be made in a manner determined pursuant to this subsection to the recipient determined pursuant to Section 14-1-6, W.M.C.

(4) Distribution to IRA of nonspouse beneficiary. A Participant's nonspouse Beneficiary may elect payment of the portion of the deceased Participant's Interest to which the Beneficiary is entitled in a direct trustee-to-trustee transfer to an individual retirement account described in Code Section 402(c)(8)(B)(i), an individual retirement annuity described in Code Section 402(c)(8)(B)(ii), or a Roth IRA described in Code Section 408A that is established to receive the Plan distribution on behalf of the Beneficiary and such transfer shall be treated as an Eligible Rollover Distribution and such individual retirement account, annuity or Roth IRA shall be treated as an inherited individual retirement account, individual retirement annuity, or Roth IRA (within the meaning of Code Sections 408(d)(3)(C) and 408A). For purposes of this Section, a trust maintained for the benefit of one or more designated Beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's required beginning date, as defined in Section 14-1-7(F), W.M.C., the required minimum distribution in the year of death may not be transferred according to this Section. The requirements of Code Section 402(c)(11) apply to distributions under this Section.

(L) **PAYMENT FOR QUALIFIED HEALTH INSURANCE PREMIUMS:** A Participant who has separated from service as a public safety officer with the City due to disability for attainment of normal retirement age, as defined in Section 14-1-6(A), W.M.C., may elect to have amounts not yet paid from the Plan paid directly to a provider of an accident or health insurance plan or a qualified long-term insurance contract to cover the cost of up to three thousand dollars (\$3,000) per year of "qualified health insurance

premiums” for the Participant and the Participant’s spouse and dependents, in accordance with Code Section 402(1). The requirements of Code Section 402(1) apply to payments under this Section.

14-1-8: CONTRIBUTIONS TO RETIREMENT MEDICAL SAVINGS ACCOUNTS: (3704)

(A) CONTRIBUTIONS TO RETIREMENT MEDICAL SAVINGS ACCOUNTS:

(1) General. Each Participant shall have the option of designating up to twenty-five percent (25%) of the Participant’s combined mandatory and City contributions made to the Trust Fund pursuant to Sections 14-1-4(A) and (C)(1), W.M.C., to be used for future medical care expenses as provided for in Code Section 401(h). Contributions designated by a Participant for future health benefits under Code Section 401(h) as described in this subsection (A)(1) shall be maintained in a separate account (the “Retirement Medical Savings Accounts”).

(2) Subordinate; Taxation. It is intended that the benefits provided by the Retirement Medical Savings Accounts shall at all times be subordinate to the retirement benefits provided by the Plan. Contributions to the Retirement Medical Savings Accounts will not be taxed upon a Participant’s retirement, Termination of Employment, death or Total Disability nor upon use for medical expenses upon a Participant’s retirement, Termination of Employment, death or Total Disability.

(3) No refunds. No refunds of contributions to a Participant’s Retirement Medical Savings Account shall be made to the Participant or the Participant’s spouse or dependents.

(4) Non-transferrable. Except as provided in subsection (B)(5) of this Section, all contributions to a Participant’s Retirement Medical Savings Account shall not be transferred and shall remain in the Retirement Medical Savings Account until such contributions are used for medical care expenses for the Participant and the Participant’s spouse and dependents.

(5) Other rules and requirements. The Retirement Medical Savings Accounts will be subject to the rules and requirements issued by the City Manager, which can be changed from time to time.

(B) DISTRIBUTIONS FROM RETIREMENT MEDICAL SAVINGS ACCOUNTS:

(1) Contributions upon retirement, termination of employment, death and Total Disability.

Contributions to a Participant's Retirement Medical Savings Account may be distributed only upon the Participant's retirement, Termination of Employment, death or Total Disability.

(2) Exclusive use. Contributions to a Participant's Retirement Medical Savings Account shall be

used exclusively to pay or reimburse qualifying medical care expenses under Code Section 213(d)(1) for the Participant and the Participant's spouse and dependents.

(3) Reimbursement application. Distributions from a Participant's Retirement Medical Savings

Account shall only be paid pursuant to a reimbursement application, which contains the provisions for determining the amount of benefits that will be paid from the Retirement Medical Savings Account and specifies the time period with respect to which benefits will be paid.

(4) Other Sources. Distributions from a Participant's Retirement Medical Savings Account may

not be made for any expense for which the Participant or the Participant's spouse or dependents receive, or are eligible to receive, payment or reimbursement from another source.

(5) Reversion to the Employer. If, with respect to a Participant's Retirement Medical Savings

Account, there is any balance remaining upon the death of the last to die of the Participant or the Participant's spouse, if any, and the satisfaction of all liabilities under the Plan to provide benefits payable from the Retirement Medical Savings Account with respect to the Participant and the Participant's spouse, then any such balance shall be returned to the Employer to be used as determined by the Employer.

(6) Distribution. Any interest in a Participant's Retirement Medical Savings Account shall be and become payable to the Participant, the Participant's spouse, or the Participant's dependent only as and to the extent provided in this Chapter. In order to receive benefits from the Retirement Medical Savings Account, the Participant must agree to provide appropriate documentation of the medical care expenditures

(C) VESTING OF RETIREMENT MEDICAL SAVINGS ACCOUNTS: A Participant's interest in the contributions made by the Participant pursuant to Section 14-1-8(A), and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times, subject to reversion in accordance with Section 14-1-8(B)(5), W.M.C.

(D) INVESTMENT OF RETIREMENT MEDICAL SAVINGS ACCOUNTS: A Participant's Retirement Medical Savings Account shall be invested in the investment options in accordance with the investment elections specified by the Participant. A Participant may change the investment of contributions and may reallocate amounts in such Participant's account among the investment options in a manner determined by the Plan custodian and subject to such provisions as the Plan Administrator may adopt. Allocation of assets among investment options is solely the responsibility of each Participant. The fact that an investment option is available for investment to Participants under the Plan shall not be construed as a recommendation for investment in that investment option.

(E) TERMINATION OF THE PLAN: Upon the termination of the Plan, the interests of all Participants in the Retirement Medical Savings Accounts shall be returned to the Employer.

14-1-9: INSURANCE COMPANY CONTRACTS: (2464 3447 3704)

(A) INSURANCE OR ANNUITY CONTRACTS:

(1) Previously purchased contracts. If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums

thereon. The Trustee shall continue to have the right to receive each payment that may be due during the Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from time to time on any such contract and to elect settlement options thereunder for the benefit of the Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) No right to purchase contracts through the Plan. A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) No new group contracts. After December 31, 1996, the City shall not purchase any new group insurance or annuity contracts for pension Participants.

(B) LIMITATIONS ON LIFE INSURANCE OR ANNUITY CONTRACTS FOR PARTICIPANTS' BENEFIT: All investments in life insurance or annuity contracts (other than "key man insurance") shall be subject to the following limitations:

(1) The aggregate premiums for such life insurance or annuity contracts, in the case of each Participant, shall be no more than thirty-five percent (35%) of the aggregate of the City's contributions allocated to him at any particular time;

(2) The Board shall direct the Trustee to convert the entire value of any such life insurance contract at or before the Participant's actual retirement to provide either cash value or periodic income, or the Board may direct the Trustee to distribute the insurance contract directly to the Participant at retirement;

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(3) In the event payment of any premium would cause aggregate premiums to exceed the limitation set forth in paragraph (1) of this subsection, then such payment shall not be made, but, on the

contrary, each insurance or annuity contract pertaining thereto shall be thereupon converted to a paid up contract, or the face amount of such contract shall be reduced to a face amount, the premium payments on which would not exceed the limitation prescribed in paragraph (1) of this subsection; and

(4) If the Board directs the Trustee to invest any portion of the Trust Fund in such insurance or annuity contracts, such investment shall be made in such a manner that the operation of this Chapter shall be fair and equitable (and nondiscriminatory) in its application to all Participants.

(C) DIVIDENDS: If dividends are paid on any contract issued by the Insurer, they shall, in the discretion of the Board, either be used to provide additional benefits under such contract or used and applied in reduction of the next premium due and payable thereon.

(D) LIMITATION OF PARTICIPANT'S RIGHTS IN INSURANCE OR ANNUITY CONTRACTS: The fact that any contract is issued or based on the life of a Participant shall not vest any right, title or interest in such contract in such Participant, except at the time or times and upon the terms and conditions especially set forth in this Chapter. Subject to the provisions of Section 14-1-9(A), W.M.C., the Trustee shall be the sole owner of all right, title and interest in and to each such contract, but the Board shall nevertheless direct the Trustee as to the exercise of all rights, options and privileges in each such contract.

(E) PROTECTIVE PROVISIONS FOR LIFE INSURANCE COMPANY: No life insurance company shall be deemed to be a party to the Plan nor shall it be responsible for the validity of the Plan. The certificate of the Trustee as to any matter may be relied upon by any life insurance company as conclusive evidence of any matters mentioned therein, and such company shall be fully protected in taking or permitting any action on the faith thereof and shall incur no liability or responsibility for so doing. No such company shall be required to examine the provisions of this Chapter or to question any act of the Trustee or the Board, nor shall such company be required to ascertain that any act of the Trustee or the Board is authorized by this Chapter.

(A) APPOINTMENT OF BOARD:

(1) General rule. The Board shall consist of five members: one shall be the current City Finance Director; one shall be appointed by the City Manager to serve at the City Manager's pleasure; and three shall be Contributing Participants elected by a majority of the voting Participants. One of the three elected members shall be an exempt employee as defined in the City's Personnel Policies and Rules. The Trustee shall serve as Chairperson of the Board.

(2) Procedures for electing the three members. The three members to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the Trustee. After the first year of the election, procedures shall be established by the Board.

(B) DUTIES AND POWERS OF THE BOARD: The Board shall be charged with the administration of the Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution, and to supply omissions and to resolve inconsistencies and ambiguities arising under the Plan. The decisions of the Board shall be conclusive and binding on all parties. In addition to the other duties and powers set forth elsewhere in the Plan, the Board also shall have the following duties and powers:

(1) Payments from and investments of the Trust Fund; Investment Advisor. The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter. The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of

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the Trust Fund as may be conferred upon it in this Chapter. The Board may employ for the Trust Fund an investment advisor ("Investment Advisor") and may rely on such Investment Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an

Investment Advisor, it shall execute any letters or agreements necessary for the employment of such Investment Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such Investment Advisor or for any acts or omissions made upon the direction or recommendation of such Investment Advisor.

(2) Enter into, execute, and terminate contracts. The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time, subject to the provisions of such contract.

(3) Investment options. If the Trustee enters into a contract at the direction of the Board that permits the right of Participants to direct the investment of their Interest in forms of investments offered, the Board shall provide the opportunity to Participants to make options as to investments. The Board shall adopt various investment options for the investment of contributions by the Participant and shall monitor and evaluate the appropriateness of the investment options offered by the Plan. The Board may remove or phase out an investment option, if the investment option has failed to meet the established evaluation criteria or for other good cause as determined by the Board. Neither the Trustee, the Board, the Plan Administrator nor the City shall be held liable for any losses or changes to a Participant's Interest that result from that Participant's choice of investment options.

(C) ORGANIZATION AND OPERATION OF BOARD: The Board may adopt such rules and procedures as it deems desirable for the conduct of its affairs, appoint one of its own members chairman, and appoint a secretary or other agents, none of whom need be a member of the Board, but any of whom may be, but need not be, an officer or Employee of the City. It may delegate to any agent such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that all matters involving investment of funds, interpretation of the Plan and settlement of disputes shall be determined by the Board. Any determination of the Board may be made by a majority of the Board at a meeting thereof, or without a meeting by a resolution or memorandum signed by all members, and shall be final and

conclusive on the City, the Trustee, all Participants and Beneficiaries claiming any rights under this Chapter, and as to all third parties dealing with the Board or with the Trustee. All notices, directions, information and other communications from the Board to the Trustee shall be in writing.

(D) MATTERS AFFECTING BOARD MEMBERS: In any matter affecting any member of the Board in an individual capacity as a Participant under this Chapter, separate and apart from such individual's status as a member of the group of Participants, such interested member shall have no authority or vote as a member of the Board in the determination of such matter, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(E) COMPENSATION AND EXPENSES OF BOARD: The members of the Board shall serve without compensation in addition to their regular City compensation. All members shall be reimbursed by the City for any necessary expenditures incurred in the discharge of their duties as members of said Board. Such reimbursement, and the compensation of all agents, counsel or other persons retained or employed by the Board, shall be fixed by the Board and shall be paid from the Trust Fund or, in the discretion of the City Manager, by the City.

(F) RECORDS OF THE BOARD: The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to

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determine the amount of vested and/or forfeitable Interests of the respective Participants, and the amount of all Plan benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-1-5(D), W.M.C. Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the

secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

(G) **IMMUNITY FROM LIABILITY:** No bond or other security shall be required of any member of the Board, except as may be otherwise required by law. No member of the Board shall be liable or responsible to any person or party for any matter or thing whatsoever, except only for such member's own gross negligence or willful misconduct.

(H) **RESIGNATION AND REMOVAL OF MEMBERS; APPOINTMENT OF SUCCESSORS:**

(1) Resignation from the Board. Any member of the Board may resign at any time by giving written notice to the other members and to the City Manager, effective as therein stated, otherwise, upon receipt of such notice.

(2) Termination of employment with the City. Whether or not the Board member remains a Participant, no Board member may remain on the Board if the individual terminates employment with the City for whatever reason.

(3) Ceasing to hold a designated position. No appointed Board member may remain on the Board if the individual ceases to hold one of the positions designated.

(4) Transfer. No elected Board member may remain on the Board as an elected member if the individual transfers, for whatever reason, to a department in which another elected Board member works.

(5) Successor Board member. Upon the death, resignation or removal of any elected Board member, a successor to complete the Board member's term shall be elected within thirty (30) days in the manner set forth in subsection (A) of this Section.

(6) Removal from the Board. A member of the Board may be removed from the Board in the manner defined in the City of Westminster Police and General Employee Pension Plan Bylaws.

14-1-11: POWERS AND DUTIES OF THE TRUSTEE: (2464 3319 3447 3584 3704)

(A) INVESTMENT OF THE TRUST FUND:

(1) Duty of the Trustee. It shall be the duty of the Trustee to hold the funds from time to time received from the City and the Participants and, subject to the direction of the Board, to manage, invest and reinvest the Trust Fund and the income therefrom pursuant to the provisions of this Chapter, without distinction between principal and income. The Trustee shall be responsible only for such sums as shall actually be received. The Trustee shall have no duty to collect any sums from the City or the Participants.

(2) Power of the Trustee. The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any federal or State governmental agency, in accordance with the following powers:

(a) The Trustee may invest in real property and all interests therein, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common trust funds or qualified pooled funds, and in life

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insurance and annuity contracts. In making investments or reinvestments, the Trustee shall not be limited by the proportion to which the investments to be made, either alone or with any property of the same or similar character then held or acquired, may bear to the entire amount of the Trust Fund, and the Trustee shall not be bound as to the character of any investment provided by any constitutional provision, statute, rule of court or custom governing the

investment of trust funds, providing only that the Trustee shall exercise the judgment and care, under the circumstances then prevailing, that people of prudence, discretion and intelligence exercise in the management of their own affairs.

(b) The Trustee, in the matter of the investment of the Trust Fund, shall be held harmless in every respect in exercising its discretion as to how much of the Trust Fund shall remain uninvested and in cash temporarily awaiting investment or for the expected cash distributions out of the Trust Fund in accordance with the provisions of this Chapter.

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the Plan, which contracts shall then become a part of the Plan. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of the Plan alone, or as Trustee of the Plan and as trustee of the City's General Employee Pension Plan in which case the funds of the two plans may be co-mingled for investment purposes.

(d) To the extent the Trustee is directed by the Board to make a particular investment, the Trustee shall be held harmless from any loss or other liability arising therefrom.

(B) ADMINISTRATIVE POWERS OF THE TRUSTEE: The Trustee shall have all powers necessary or advisable to carry out the provisions of the Plan and all inherent, implied and statutory powers now or hereafter provided by law, including specifically the power to do any of the following:

(1) To cause any securities or other property to be registered and held in its name as Trustee or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer.

(2) To sell, grant option to sell, exchange, pledge, encumber, mortgage, deed in trust or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best, and it may retain, hold, maintain or continue any securities or investments that it may hold as part of the Trust Fund for such length of time as it may deem advisable.

(3) To abandon, compromise, contest and arbitrate claims on demand; to institute, compromise and defend actions at law (but without obligation to do so), all at the risk and expense of the Trust Fund.

(4) To borrow money for this Trust, with the approval of the Board, upon such terms and conditions as the Trustee shall deem advisable, and to secure the repayment thereof by the mortgage or pledge of any asset of the Trust Fund.

(5) To vote in person or by proxy any shares of stock or rights held in the Trust Fund; to participate in reorganization, liquidation or dissolution of any corporation, the securities of which are held in the Trust Fund and to exchange securities or other property in connection therewith.

(6) To pay any amount due on any loan or advance made to the Trust Fund, all taxes of any nature levied, assessed or imposed upon the Trust Fund, except for any taxes imposed with respect to any prohibited transaction, as defined in Code Section 4975(c), and all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters.

(C) IMMUNITY OF TRUSTEE: No bond or other security shall be required of the Trustee or any successor trustee, except as otherwise provided by law. The Trustee shall not be liable for any mistake of judgment or other action taken in good faith or for any loss to the Trust Fund, unless such loss results from its gross negligence, willful misconduct or bad faith.

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(D) ADVICE OF BOARD OR COUNSEL:

(1) Advice or direction of the Board. If, at any time, the Trustee is in doubt concerning any action that it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) Advice of counsel. The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or Trustee's obligations or duties, and the Trustee shall be fully protected from any responsibility with respect to any action taken or omitted by the Trustee in good faith pursuant to the advice of such counsel.

(E) TAXES, EXPENSES AND FEES OF THE TRUSTEE. The Trustee shall charge against and pay from the Trust Fund any taxes that may be imposed upon the Trust Fund or the income thereof, or upon or with respect to the interest of any person therein that the Trustee is required to pay; provided that the Trust Fund shall not pay or assume any taxes imposed with respect to any prohibited transaction as defined in Code Section 4975(c).

(1) Reasonable expenses; attorney's fees. The reasonable expenses of the Trustee incurred in the administration of the Plan, including the fees of any corporate co-trustee that might be appointed as may be mutually agreed upon from time to time by the Trustee and the Board, and attorney's fees incurred by the Trustee, shall be chargeable to and paid by the Trust Fund, provided that the City may pay all or part of such expenses and fees in the discretion of the City Manager.

(2) All expenses incurred in the preparation and adoption of the Plan shall be paid by the City.

(F) RECORDS AND ACCOUNTS OF THE TRUSTEE: The Trustee shall keep all such records and accounts that may be necessary in the administration and conduct of this Chapter. The Trustee's records and accounts shall be open to inspection by the City, the Board, and the Participant of the Participant's own accounts, during business hours.

(1) Commingled Trust Fund. All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities and properties of any kind at any time received or held by the Trustee shall be held for investment purposes as a commingled Trust Fund. Separate accounts or records may be maintained for operational and accounting purposes, but no such account or record shall be considered as segregating any funds or property from any other funds or property contained in the commingled fund, except as otherwise provided in this Chapter.

(2) Accounting of the Trust Fund. After the close of each year of the Trust, the Trustee shall render to the City and the Board an accounting of the Trust Fund for such year. If no objections to any such accounting are filed within a period of sixty (60) days after it has been delivered to the City and the Board, it shall be deemed to have been approved and shall constitute a full and complete discharge and release to the Trustees from the City and the Board and all other persons having or claiming any interest in the Trust Fund.

(G) RESIGNATION AND REMOVAL OF TRUSTEE: The City, by action of the City Manager, may, in its discretion, appoint an additional non-voting Trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(1) Resignation. Any Trustee, other than the City Finance Director, may resign from serving as a Trustee at any time by filing with the City Manager an appropriate written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

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(2) Removal. Any Trustee, other than the City Finance Director, may be removed by the City, by action of the City Manager at any time by giving thirty (30) days notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term “Trustee” shall mean “Trustees.”

(4) Corporate co-trustee. In the event any corporate co-trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or federal, or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate co-trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

14-1-12: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN: (2464 3447 3704)

(A) CONTINUANCE OF THE PLAN NOT A CONTRACTUAL OBLIGATION OF THE CITY: It is the expectation of the City that it will continue the Plan indefinitely, but the continuance of the Plan is not assumed as a contractual obligation by the City, and the right is reserved to the City by action of its City Council to discontinue the Plan at any time. The discontinuance of the Plan by the City shall, in no event, have the effect of re-vesting any part of the Trust Fund in the City.

(B) TERMINATION OF PLAN: The Plan shall continue in full force and effect until terminated or discontinued by the City by action of its City Council. Notice of such termination shall be given to the Trustee by an instrument in writing executed by the City Manager pursuant to the action of its City Council.

(C) DISTRIBUTION OF THE TRUST FUND ON TERMINATION OF PLAN: If the Plan shall, at any time, be terminated by the terms of this Section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the Interest of each respective Participant or interest of each respective Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each

Participant or Beneficiary outright, in a lump sum cash payment, such Participant's entire Interest or Beneficiary's entire interest in the Trust Fund.

(D) AMENDMENTS TO THE PLAN:

(1) General rule. The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

(a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;

(b) Divert or use any part of the corpus or income of the Retirement Medical Savings Accounts for any purpose other than paying medical benefits under Code Section 401(h) (other than as provided in Section 14-1-8(B)(5), W.M.C.);

(c) Decrease any Participant's Interest;

(d) Discriminate in favor of Employees who are officers, persons whose principal duties consist in supervising the work of other Employees, or highly compensated employees; or

(e) Fail to comply with State statutes for voting for police pension plans.

(2) No Participant approval required. Notwithstanding anything herein to the contrary, this Chapter may be amended, if necessary, without requiring the approval of the Participants to conform to

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the provisions and requirements of the Code or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

14-1-13: MISCELLANEOUS: (2464 3319 3447 3704)

(A) **BENEFITS TO BE PROVIDED SOLELY FROM THE TRUST FUND:** All benefits payable under the Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility therefor.

(B) **NOTICES FROM PARTICIPANTS TO BE FILED WITH THE PLAN ADMINISTRATOR, THE BOARD OR THE TRUSTEE:** Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice therefor signed by the Participant on a form furnished by the Plan Administrator, the Board or the Trustee, as may be applicable, for such purpose and filed with the Plan Administrator, the Board or the Trustee, as applicable, which shall not be effective until received by the Plan Administrator, the Board or the Trustee, as applicable.

(C) **TEXT TO CONTROL:** The headings of sections and subsections are included solely for convenience or reference. If there be any conflict between such headings and the text of this Chapter, the text shall control.

(D) **LAW GOVERNING:** The Plan shall be construed under the laws of the State of Colorado and the Trustee shall be liable to account only in the courts of Colorado. All contributions received by the Trustee pursuant to this Chapter shall be deemed to have been received in Colorado.

(E) **SEVERABILITY:** In the event any provision of this Chapter shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions. On the contrary, such remaining provisions shall be fully severable and this Chapter shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

(F) **PLAN FOR EXCLUSIVE BENEFIT OF PARTICIPANTS; REVERSION PROHIBITED:** The Plan has been entered into for the exclusive benefit of the Participants and their Beneficiaries. Other than as provided in Section 14-1-8(B)(5), W.M.C., under no circumstances shall any funds contributed to or held by the Trustee hereunder at any time revert to or be used by or enjoyed by the City, nor shall any such

funds or assets at any time be used other than for the exclusive benefit of the Participants or their Beneficiaries.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

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GENERAL EMPLOYEE PENSION PLAN**CHAPTER 2**

- 14-2-1: NAME AND PURPOSE OF THE PLAN; HISTORY**
- 14-2-2: DEFINITIONS**
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- 14-2-4: CONTRIBUTIONS BY THE CITY AND PARTICIPANTS**
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- 14-2-9: INSURANCE COMPANY CONTRACTS**
- 14-2-10: GENERAL EMPLOYEE PENSION BOARD**
- 14-2-11: POWERS AND DUTIES OF THE TRUSTEE**
- 14-2-12: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN**
- 14-2-13: MISCELLANEOUS**

14-2-1: NAME AND PURPOSE OF THE PLAN; HISTORY: (2464 3319 3447 3704)

(A) The City of Westminster (the “City” or the “Employer”) does hereby establish its General Employee Pension Plan (the “Plan”), which is a qualified money purchase pension plan. The Plan is created for the exclusive benefit of the City’s eligible Employees who qualify as Participants and their Beneficiaries. The Plan is intended to qualify under Code Section 401(a) and the Trust created pursuant to the Plan is intended to be exempt under Code Section 501(a), and all provisions of the Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the

City to have the Plan comply with the provisions of the Code after the enactment of the Employee Retirement Income Security Act of 1974, except to the extent that changes to the Code apply to governmental plans.

(B) On October 1, 1977, the City merged the assets of the Police Pension Fund and the Firefighter's Pension Fund into the restated Employee's Pension Plan. Effective January 6, 1986, the City withdrew all employees who were not police officers or firefighters from the Employee's Pension Plan by a transfer of their aggregate interest into the Plan created in this Chapter. The original plan, formerly known as the Employee's Pension Plan and Trust Agreement, was then renamed the Police and Fire Pension Plan.

(C) **PRIOR COVERAGE UNDER OTHER CITY-FUNDED PENSION PLANS:** Any Employee who was formerly a participant in the Employee's Pension Plan and Trust Agreement or the Police and Fire Pension Plan shall automatically have such interest in such plan, whether held by investment agents, the Trustee, or the City, transferred to the Plan upon becoming eligible to be a Participant in the Plan. Upon transfer of the Employee's interest without a break in municipal service, the Employee shall have the same Participant status as the Employee had under the other plan.

(D) On September 1, 2004, the City transferred the assets of the Firefighter's Pension Plan to the Fire and Police Pension Association ("FPPA") of Colorado defined benefit system and the Firefighter's Pension Plan was terminated. Participants in the Firefighter's Pension Plan became participants in the FPPA defined benefit system. Assets in the retirement medical savings account in the Firefighter's Pension Plan were transferred to the General Employee's Pension Plan for use as defined in Section 14-2-8, W.M.C.

14-2-2: DEFINITIONS: (2464 3319 3447 3584 3704) The following words, terms and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise; and further provided that the masculine gender shall include the feminine, and the singular shall include the plural.

“Beneficiary” shall mean any person or entity that, pursuant to Section 14-2-6(A), W.M.C., becomes entitled to receive all or any part of a Participant’s Interest upon the Participant’s death.

“Board” shall mean the General Employee Pension Board established in this Chapter.

“City” shall mean the City of Westminster, Colorado. The City also may be referenced in the Plan as the “Employer.”

“Civil Union Partner” shall mean an Employee’s lawful civil union partner, as determined by the laws of the jurisdiction where the union occurred until the entry of a dissolution of the union.

“Code” shall mean the Internal Revenue Code of 1986, as it may be amended, or re-enacted or replaced. Reference to a specific section of the Code shall mean the section in effect at the date of adoption of the Plan, or any successor section to such section.

“Compensation” shall mean the base pay of a Participant for services rendered to the City, excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to the Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of FTEs budgeted for their positions. For purposes of determining the compensation applicable to the limitations on annual contributions in Section 14-2-5, W.M.C., Compensation shall be as defined in Section 14-2-5(B)(5), W.M.C.

Effective January 1, 2009, (A) an individual receiving a differential wage payment (as defined by Code Section 3401(h)(2)) shall be treated as an Employee of the Employer making the payment, (B) the

differential wage payment shall be treated as compensation for purposes of Code Section 415 and any other Code section that references the definition of compensation under Code Section 415, and (C) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

“Contributing Participant” shall mean any Eligible Employee who is making contributions to the Plan, whether or not the City is contributing to the Plan on behalf of such Eligible Employee.

“C.R.S.” shall mean the Colorado Revised Statutes.

“Direct Rollover” shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

“Distributee” shall mean an Eligible Employee or former Eligible Employee. In addition, the Eligible Employee’s or former Eligible Employee’s surviving spouse and the Eligible Employee’s or former Eligible Employee’s spouse or former spouse who is the alternate payee under a QDRO are Distributees with regard to the interest of the spouse or former spouse.

“Eligible Retirement Plan” shall mean (A) an individual retirement account described in Code Section 408(a), (B) an individual retirement annuity described in Code Section 408(b), (C) an annuity plan described in Code Section 403(a), (D) a qualified trust described in Code Section 401(a), (E) an eligible plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (F) an annuity contract described in Code Section 403(b) and (G) a Roth IRA described in Code Section 408A(b). The preceding definition of Eligible Retirement Plan shall also apply in the case of a distribution from the Plan to a surviving spouse or to a spouse or former spouse who is the alternate payee under a QDRO. In the case of an Eligible Rollover Distribution from the Plan to a non-spouse beneficiary, an Eligible Retirement Plan shall mean an individual retirement account described in Code Section 408(a), individual retirement annuity described in Code Section 408(b), or a Roth IRA described in Code Section 408A(b).

“Eligible Rollover Distribution” shall mean any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (A) any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s designated Beneficiary, or for a specified period of ten (10) years or more; (B) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (C) the portion of any distribution that is not includable in gross income. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income; provided that such portion is transferred in a direct trustee-to-trustee transfer (1) to a qualified trust or to an annuity contract described in Code Section 403(b) and such trust or contract agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution that is includable in gross income and the portion of such distribution that is not so includable or (2) to an individual retirement account or annuity described in Code Section 408(a) or 408(b).

“Eligible Employee” shall mean an Employee ~~individual~~ who fills a City-authorized position or temporary intern position in a 0.5 FTE or greater, excluding individuals employed as firefighters and Police Officers, temporary employees, elected officials, independent contractors, volunteers and non-benefited full-time and part-time employees. ~~The determination of whether an individual is an Employee, an independent contractor or any other classification of worker or service provider and the determination of whether an individual is classified as a member of any particular classification of employees shall be made solely in accordance with the classifications used by the Employer and shall not be dependent on, or change due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.~~

“Employee” shall mean a person who receives monetary compensation from the City in return for present services or work performed on a non-contractual basis, or who is on a leave of absence without pay that has been approved by the General Services Director or Designee. This definition shall include all full-

time and part-time regular, administrative officers, temporary, provisional, seasonal, substitute, hourly, instructor, indexed, intern, special project, short-term disability and emergency employees. This definition shall exclude elected municipal officials, volunteer firefighters, all other volunteer personnel, and retirees from the City. The determination of whether an individual is an Employee, an independent contractor or any other classification of worker or service provider and the determination of whether an individual is classified as a member of any particular classification of employees shall be made solely in accordance with the classifications used by the Employer and shall not be dependent on, or change due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.

“Employer” shall mean the City.

“FTE” shall mean full-time equivalents.

“Full Participant” shall mean any Eligible Employee who is qualified to receive City contributions under the Plan.

“Inactive Participant” shall mean any person who has been a Contributing Participant to the Plan or a preceding pension plan of the City and who is no longer an Eligible Employee, but who has not received full distribution of all respective Interest.

“Interest” shall mean the amount of a Participant’s share in the Trust Fund, including City contributions, Employee contributions, and earnings thereon.

“Investment Advisor” shall have the meaning ascribed to it in Section 14-2-10(B)(1), W.M.C.

“OASDI” shall mean old age survivors and disability insurance.

“Participant” shall mean any Contributing Participant or Inactive Participant.

“Plan” shall mean the General Employee Pension Plan established in this Chapter and all subsequent amendments thereto.

“Plan Administrator” shall mean the person appointed by the City Manager to administer the Plan.

“Plan Year” shall mean the City’s fiscal year, which is the calendar year, and which shall also be the fiscal year of the Trust Fund established pursuant to the Plan.

“QDRO” shall mean a qualified domestic relations order as defined in Code Section 414(p).

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“Qualified Military Service” shall mean service in the uniformed services of the United States (as defined in Chapter 43 of Title 38 of the United States Code) by any individual, if such individual is entitled to re-employment rights with respect to such service.

“Retirement Medical Savings Accounts” shall have the meaning ascribed to it in Section 14-2-8(A)(1), W.M.C.

“Termination of Employment” shall mean the cessation of a person’s status as an “Employee” as defined in this Section. ~~If the person, upon Termination of Employment, becomes eligible to participate in the City’s Police Pension Plan, without a break in municipal service, that person’s Interest shall be transferred to that plan and the person shall retain status as a participant.~~ Termination due to dismissal shall become effective on the date after the employee’s grievance rights, if any, have lapsed or, if a grievance is filed, on the date of the final decision by the City.

“Total Disability” shall mean a disability that permanently renders a Contributing Participant unable to perform satisfactorily the Participant’s usual duties of employment with the City as determined by the City and that results in the Participant’s Termination of Employment with the City.

“Trust Fund” shall mean the assets of the trust established pursuant to the Plan, out of which the benefits under the Plan shall be paid, including all income of whatever nature earned by the Trust Fund and all increases in fair market value.

“Trustee” shall mean the trustee of the Trust Fund established pursuant to the Plan, who shall always be the current acting Finance Director of the City of Westminster, and any duly qualified corporate co-trustee appointed pursuant to Section 14-2-11, W.M.C., and any duly appointed and qualified successor trustees.

“W.M.C.” shall mean the Westminster Municipal Code.

14-2-3: PARTICIPATION OF ELIGIBLE EMPLOYEES: (2464 3319 3447 3704)

(A) PARTICIPANTS:

(1) Contributing Participant. Each Eligible Employee hired on or after January 6, 1986, shall become a Contributing Participant in the Plan on the date the Eligible Employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). By accepting employment with the City, each Employee shall be deemed to have consented to the terms and provisions of the Plan.

(2) Full Participant. No matter when an Eligible Employee becomes a Contributing Participant, each Eligible Employee shall become a Full Participant, eligible to receive Employer contributions on the first day of the pay period coinciding with or immediately following the date on which the Eligible Employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18), provided such Eligible Employee is still employed as an Employee on such date and has

not severed employment (as provided in subsection (4)(d) of this Section) during such twenty-two (22) month period.

(3) Last pay period of contribution. The City shall not make any contribution for the account of a Full Participant for the pay period in which such Participant's employment by the City shall terminate for any reason, unless such Participant is employed by the City on the last date of such pay period. No Participant may make contributions to the Plan pursuant to Sections 14-2-4, W.M.C., other than changes in the valuation of, or earnings on, the Participant's undistributed Interest, after Termination of Employment or loss of status as an Employee as defined in this Chapter.

(4) Determination of service. For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

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(a) Service shall include the continuous period of time an individual is employed by the City as an Eligible Employee, commencing on the date the individual is categorized as an Eligible Employee.

(b) A leave of absence without pay, other than for military service, shall be considered a break in continuous municipal service, unless municipal service is extended. Neither the City nor the Eligible Employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any Eligible Employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a Termination of Employment, provided the individual returns to the employ of the City within ninety (90) days (or such other length of time required by applicable law) of the date on which the individual

shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary Termination of Employment with the City shall be considered as a break in continuity of service; regardless of the length of the break in continuity of service, subsequent re-employment shall be deemed to be new employment, and the Employee will be subject to the eligibility requirements as if such Employee were a new Employee, whether or not such Employee was formerly a Full Participant. However, if the City reinstates an Eligible Employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all Eligible Employees and Participants in a like manner.

(B) BOARD TO DETERMINE PARTICIPANTS:

(1) Obligations of the City. The City shall deliver to the Board in writing such information from the City's records with respect to Employees and their Compensation as the Board may require, in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Information provided by the City. Any information given by the City to the Board pursuant to subsection (B) of this Section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that, whenever any Employee proves to the satisfaction of the City that such Employee's period of employment with the City or such Employee's Compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) Determination of the Board. The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all Employees, all Participants and all Beneficiaries.

14-2-4: CONTRIBUTIONS BY THE CITY AND PARTICIPANTS: (2464 3319 3360 3447 3704)

(A) CONTRIBUTIONS BY THE CITY:

(1) Determination of contribution by the City. On and after January 6, 1986, each pay period the City shall contribute to the credit of each Full Participant's account, ten and one-quarter percent (10.25%) of each Full Participant's Compensation for that pay period; provided that, during any period in which the City is required to make contributions on behalf of Participants under the Federal Insurance Contributions Act or the Social Security Act, the contribution to the Plan for each Participant shall be offset by the amount of the OASDI portion of the Social Security taxes paid by the City for such Participant. This offset shall not exceed the City contribution.

(2) Time and method of payment of contribution by the City. The contributions of the City shall be made every pay period and shall be credited to the Plan each pay period.

(B) CONTRIBUTIONS BY CONTRIBUTING PARTICIPANTS:

(1) Mandatory employee contributions.

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(a) Each Contributing Participant must contribute to the Trust Fund a percentage of such Participant's Compensation for each pay period as follows: for the pay periods commencing January 1, 1997, eight percent (8%) and for the pay periods commencing January 1, 1998, and thereafter, ten percent (10%) or, if greater, the percentage at least equal to the OASDI tax rate. During any period in which the Contributing Participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to the Plan by each Contributing Participant shall be offset by the OASDI taxes paid by the Participant, except that no offset for OASDI taxes shall reduce the mandatory contribution to the Plan for a Participant to less than two and one-half percent (2.5%) of that Contributing Participant's Compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as Employer, as provided in

Code Section 414(h), and the Participant's gross income shall be reduced by the amount of the contributions picked up by the City.

(c) Each Participant, as a condition to such Participant's employment with the City, shall be deemed to have authorized the City to reduce the Participant's Compensation by such amount from each paycheck and to transmit such amount directly to the Plan custodian, according to the provisions of this Chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the Employees, prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary contributions.

(a) Subject to the provisions of Section 14-2-5(B), W.M.C., each Contributing Participant may elect to contribute to the Trust Fund an amount that, when combined with the mandatory contributions required in paragraph (1) of this subsection (B), does not exceed the amount described in Section 14-2-5(B)(1), W.M.C.

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund, must be contributed through payroll deductions on an after-tax basis. A Contributing Participant may have the option of increasing, decreasing or terminating voluntary contributions at any time. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-2-4(F), W.M.C., shall not be considered voluntary contributions.

(3) Payment of participant contributions. The contributions of the Contributing Participant ~~Employee~~ shall be withheld every pay period and shall be credited to the Plan each pay period.

(C) RETIREMENT MEDICAL SAVINGS ACCOUNTS: See Section 14-2-8, W.M.C., for the terms and conditions relating to Retirement Medical Savings Accounts.

(D) CITY'S OBLIGATIONS:

(1) No contract of employment. The adoption and continuance of the Plan, as set forth in this Chapter, shall not be deemed to constitute a contract between the City and any Employee or Participant, nor to be consideration for, or an inducement or condition of, the City's employment of any person.

Nothing in this Chapter shall be deemed to give any Employee or Contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any Employee or Contributing Participant at any time, nor shall it be deemed to give the City the right to require the Employee or Contributing Participant to remain in its employ, nor shall it interfere with the right of any Employee or Contributing Participant to terminate employment at any time.

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(2) No liability. The City shall not incur any liability whatsoever to the Trust Fund, any Participant or any Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation, in whole or in part, of the Trust Fund.

(E) CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE: The Employer shall make all contributions to the Plan required by Code Section 414(u) that are attributable to periods of Qualified Military Service. In addition, the Employer shall allow any Participant to make mandatory Employee contributions and voluntary contributions for periods of Qualified Military Service as required by Code Section 414(u). The Employer may elect to make additional contributions based upon such Qualified Military Service, based upon Employer contributions made during the applicable period, provided such election by the Employer is made on a nondiscriminatory basis applicable to all similarly-situated Employees who have Qualified Military Service. Any contributions made under this subsection shall be subject to the provisions of Code Section 414(u) and the provisions of the Plan shall be applied

considering any such contributions as having been made during the Plan Year to which the contributions relate.

(F) ROLLOVER CONTRIBUTIONS: A Participant may transfer to the Participant's Interest all or any portion of the Participant's vested interest in the assets, including after-tax employee contributions, held under any other Eligible Retirement Plan (but excluding Roth IRAs described in Code Section 408A), subject to acceptance of such rollover contribution by the Board. The rollover contribution must be transferred to the Plan either (1) in a direct trustee-to-trustee transfer from the other Eligible Retirement Plan or (2) by the Participant within sixty (60) days after the Participant has received the vested interest from such other Eligible Retirement Plan. In such event, the assets so received shall be (a) fully vested, (b) held in a separate account and (c) administered and distributed pursuant to the provisions of the Plan concerning Employer contributions. No rollover contribution shall (x) include assets from any plan that the Board determines, in its sole discretion, would impose upon the Plan requirements as to form of distribution that would not otherwise apply hereunder or (y) contain nondeductible contributions made to such other Eligible Retirement Plan by the Participant unless the transfer to the Participant's interest is directly from the funding agent of such other Eligible Retirement Plan. An Inactive Participant may make a rollover contribution from an Eligible Retirement Plan that is a Code Section 457(b) plan only if it is the City's Code Section 457(b) plan.

14-2-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS: (2464 3319 3447 3584 3704)

(A) ALLOCATION OF EMPLOYER CONTRIBUTIONS: The contributions made by the Employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this Section.

(B) LIMITATIONS ON ALLOCATIONS:

(1) General rule. In no event may a Participant receive an allocation for any Plan Year that, when combined with contributions allocated to the Participant's Retirement Medical Savings Account (if any) and a Participant-related allocation under any other defined contribution plan established by the City, exceeds the lesser of (a) one hundred percent (100%) of the Participant's Compensation for such year or (b) fifty-one thousand dollars (\$51,000) (for the 2013 Plan Year), provided that such figure shall be adjusted as provided in Code Section 415(d). For purposes of clarification, the compensation limit referred to in clause (a) in the preceding sentence shall not apply to any contribution allocated to the Participant's Retirement Medical Savings Account, which is otherwise treated as an annual addition. For the purpose of applying the foregoing limitation, the limitation year shall be the Plan Year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

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(2) Allocations. For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and nondeductible contributions made by the Participant, provided that, for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of the Participant's Compensation for the year, or one-half (1/2) of the nondeductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the Plan Years beginning on or after January 1, 1994, allocations may not be based on Compensation in excess of the annual limitation of two hundred fifty-five thousand dollars (\$255,000) (for the 2013 Plan Year), subject to adjustment as provided for by law or regulation, for the account of any individual Participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer that is a common member with the Employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded amounts. Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, rollover contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of excess. With respect to any limitation year beginning on or after July 1, 2007, in the event an allocation would otherwise exceed the limitations of this Section (an “excess allocation”) with respect to a Participant, the Plan shall only correct the excess allocation in accordance with the Employee Plans Compliance Resolution System (“EPCRS”), as set forth in Revenue Procedure 2013-12 or any superseding guidance, including, but not limited to, the preamble of the final Section 415 Regulations.

(5) Compensation. For the purposes of applying the limitations of this subsection (B), Compensation means the total amount paid by the Employer to a Participant for services rendered to the Employer that are included in the taxable income of the Participant, including any amounts paid to the Participant by the later of (x) two and one-half (2-½) months after the Participant’s separation from employment or (y) the end of the limitation year that includes such date of the Participant’s separation from employment if, absent such separation from employment, such amounts would have been paid to the Participant while the Participant continued in employment with the Employer. For limitation years beginning after December 31, 1997, Compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a Participant under a plan established under Code Section 125, 132(f)(4), 402(g)(3), 457, 401(k) or 403(b). The “Annual Compensation” of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2012, shall not exceed two hundred fifty-five thousand dollars (\$255,000), as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(b). “Annual Compensation” means Compensation during the Plan Year or such other consecutive twelve- (12-) month period over which Compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(C) ALLOCATION OF EARNINGS, LOSSES, CHARGES AND CHANGES IN FAIR MARKET VALUE OF THE NET ASSETS OF THE TRUST FUND: Earnings and losses of the Trust Fund and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee at least quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the Interest of each such Participant bears to the aggregate dollar value of all of such Interests of all such Participants. Third party and administrative charges shall be allocated in the ratio that the total dollar value of the Interest of each such Participant bears to the aggregate dollar value of all of such Interests of all such Participants or equally to all Participants.

(D) PARTICIPANT'S ACCOUNTS: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of such Participant's current Interest resulting from any contributions made by the City, which account shall be known as the City contributions

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account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

(E) EVALUATION DATES: The regular evaluation dates of the Trust Fund shall be at least the last bank business day of each calendar quarter, at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contributions of the City and the Participants for that quarter. If an event described in Section 14-2-7

(A), W.M.C., occurs between regular evaluation dates requiring a distribution of any part of a Participant's Interest, the dollar value of such Participant's Interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of a Participant's Interest as so adjusted shall be the amount that shall be distributed to such Participant or such Participant's Beneficiary.

(F) VESTING OF PARTICIPANTS' INTERESTS:

(1) Fully vested. A Participant's Interest in the contributions made by him, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The Interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Distribution of a Participant's Interest. Any Interest shall be and become payable to a Participant or such Participant's Beneficiaries only as and to the extent provided in this Chapter; and a Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in the Participant's separate trust account, and the Participant's Beneficiary shall become entitled to distribution thereof as herein provided by virtue of the terms of this Chapter and not as a result of any transfer of said Interest or account.

(G) VESTING UPON TERMINATION OF PLAN OR DISCONTINUANCE OF CONTRIBUTIONS:

Notwithstanding the provisions of subsection (F) of this Section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the Interests of all Participants shall become fully and completely vested and nonforfeitable for all purposes.

(H) INVESTMENT OF PARTICIPANT'S INTEREST: A Participant's Interest shall be invested in the investment options in accordance with the investment elections specified by the Participant. A Participant may change the investment of contributions and may reallocate amounts in such Participant's Interest among the investment options in a manner determined by the Plan custodian and subject to such provisions as the Plan Administrator may adopt. Allocation of assets among investment options is solely the responsibility of each Participant. The fact that an investment option is available for investment to Participants under the Plan shall not be construed as a recommendation for investment in that investment option.

14-2-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY: (2464 3319 3390 3447 3584
3704)

(A) BENEFICIARIES:

(1) Designation of Beneficiaries. Each Participant shall have the right to designate one or more Beneficiaries and one or more contingent Beneficiaries to receive the Participant's Interest upon the Participant's death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation. Any Beneficiary designation shall be effective when received by the Board.

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(2) Determination of a Beneficiary when there is no designated Beneficiary. If a Participant shall fail to designate a Beneficiary before the Participant's death, or if all designated Beneficiaries or contingent Beneficiaries should die, cease to exist before the Participant's death, or if all designated Beneficiaries or contingent Beneficiaries disclaim their interests or die prior to distribution, the Board shall direct the Trustee to pay the Participant's entire Interest to the Participant's surviving spouse or Civil Union Partner (as applicable), if any, or, if none, then to the personal representative of the Participant's estate. If, however, no personal representative shall have been appointed, and no actual notice thereof has been given to the Board within one hundred twenty (120) days after the Participant's death, the Board may direct the Trustee to pay the Participant's entire Interest to such person or persons as may be entitled thereto under the intestate laws of Colorado and, in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance policies. The Beneficiary of any insurance on a Participant's life shall be determined and designated as provided in Section 14-2-9(A), W.M.C.

14-2-7: DISTRIBUTION FROM THE TRUST FUND: (2464 3319 3390 3447 3584 3704)

(A) **WHEN INTERESTS BECOME DISTRIBUTABLE AND EFFECT THEREOF:** When a Participant dies, suffers Total Disability, retires or experiences a Termination of Employment for any other reason, the Participant's Interest shall thereupon become distributable. When a Participant's Interest shall have become distributable, such Participant's Interest shall remain a part of the Trust Fund until it is distributed.

(B) **INFORMATION TO BE FURNISHED TO THE BOARD:** For the purpose of enabling the Board to determine the Participant's distributable Interest, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the Participant's Termination of Employment and other such information as is needed and requested.

(C) **DISTRIBUTION OF INTERESTS:**

(1) Insurance. If there has been an investment in life insurance for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in the Plan, obtain an absolute assignment of any such life insurance by informing the Board of such election. If said election is not exercised within thirty (30) days after the Participant's Termination of Employment and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. After December 31, 1996, no new life insurance contracts may be adopted as pension investments under the Plan.

(2) Election to defer benefits. A Participant may elect to defer the commencement of distribution of the Participant's benefit, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (F) of this Section.

(3) Distribution of Participant's Interest. Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of a Termination of Employment for any reason, shall be entitled to receive payment in one lump sum of the Participant's Interest, provided the Participant makes written demand therefor upon the Board. Notwithstanding any provision of the Plan to the contrary, if the amount of a Participant's Interest (including any rollover contributions that were made to the Plan pursuant to Section 14-2-4(F), W.M.C.) does not exceed one thousand dollars (\$1,000) at the time of a Participant's Termination of Employment for any reason, such Participant's Interest shall be automatically distributed in a cash lump sum as soon as administratively practicable after the Participant's Termination of Employment for any reason. For purposes of this subsection (C)(3), if such amount is zero, the Participant will be deemed to have received a distribution of such amount.

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(D) TRANSFERS FROM THE PLAN INTO AN ELIGIBLE RETIREMENT PLAN:

(1) The Trustee is authorized, at the direction of the Plan custodian and at the request of the Participant, to transfer the portion of such Participant's vested Interest that is an Eligible Rollover Distribution and has become distributable under subsection (A) of this Section directly to another Eligible Retirement Plan for the benefit of such Participant, provided such transfer satisfies the requirements under law for such transfers and rollover contributions and the transferee plan accepts the Participant's Eligible Rollover Distribution from the Plan.

(2) If a Participant becomes eligible to participate in the City's Police Pension Plan without a break in municipal service, that Employee's vested Interest may be transferred to the Police Pension Plan and the Employee shall become a participant of the Police Pension Plan pursuant to Title XIV, Chapter 1.

(3) If a Participant becomes eligible to participate in the FPPA system without a break in municipal service, the Participant may elect to have his/her vested Interest transferred to the FPPA system, as permitted by FPPA.

(E) WITHDRAWALS WHILE EMPLOYED: A Participant may elect to receive a distribution while still employed by the City as follows:

(1) Age 62 withdrawal. A Participant who has attained age sixty-two (62) may elect to begin distributions from the Trust Fund according to the rules described in this Section 14-2-7, W.M.C., while employed by the City, if the Participant's current annual base salary at the time of election is at least twenty-five percent (25%) less than the Participant's highest annual base salary.

(2) Age 62 withdrawal. Effective January 1, 2014, a Participant who has attained age sixty-two (62) may elect to receive a distribution of up to fifteen percent (15%) of the Participant's Interest according to the rules described in this Section 14-2-7, W.M.C., provided that the Participant irrevocably agrees to terminate employment with the City within five (5) years from receipt of this distribution.

(F) REQUIRED DISTRIBUTION COMMENCEMENT DATE: Distribution of a Participant's Interest must begin no later than April 1 of the calendar year following the later of the year the Participant attains the age of seventy and one-half (70-1/2) or the year the Participant retires.

(G) SPENDTHRIFT PROVISIONS:

(1) General rule. Except as otherwise provided in this Chapter, all amounts payable pursuant to this Chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any

other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof.

(2) QDRO. Paragraph (1) of this subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or alternate payee pursuant to a QDRO setting forth the agreement of the parties with respect to the division of benefits in compliance with Code Section 414(p) and Section 14-10-113, C.R.S. The QDRO must specifically address the division of any Retirement Medical Savings Account, if applicable. A lump sum distribution will be made pursuant to such QDRO within one hundred twenty (120) days after the date on which a certified court order approving such an agreement permitting such a distribution has been submitted to and received by the Board. Procedures for submitting a QDRO may be obtained from the Board or its delegate.

The Board shall establish such reasonable procedures as are necessary to determine the compliance of a domestic relations order with the requirements of Section 14-10-113, C.R.S., and to administer distributions under such qualified order. Such procedures may be at the discretion of the Board, including standardized forms to be used for such marital agreements and orders. A person who obtains a right to a benefit payable to a Participant pursuant to a qualified domestic relations order shall have no rights to vote in elections held pursuant to the Plan.

(H) MANNER OF DISTRIBUTION: A Participant's Interest may be distributed by one or more of the following methods:

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(1) Lump sum distribution. The Participant's Interest may be paid to the Participant or the Participant's Beneficiary by the distribution of the total balance of the Participant's Interest in one lump sum. The Participant, or the Participant's Beneficiary in the event of the Participant's death, shall have

the right to have the distribution made in a lump sum by filing a written election with the Trustee within such time as the Board shall prescribe.

(2) Installments. The Participant's Interest may be paid to the Participant or the Participant's Beneficiary in substantially equal periodic installments over a period of time not to exceed the joint life expectancy of the Participant and the Participant's Beneficiary (or until the Interest is exhausted) and not in installment frequency greater than monthly. This maximum period shall be determined under the applicable IRS Tables at the time the initial monthly installment payment becomes payable. The Participant, or the Participant's Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written election with the Trustee within such time as the Board shall prescribe.

(3) Other methods. Notwithstanding the foregoing provisions, any Interest that has become distributable for any reason may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(I) LIMITATION ON DURATION OF PAYMENTS:

(1) General rule. No distribution shall be made over a period exceeding the joint life expectancy of the Participant and the Participant's Beneficiary. To the extent distribution is made after the Participant attains the age of seventy and one-half (70-1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and the Participant's Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(2) Compliance with Code Section 401(a)(9). Notwithstanding anything in this Chapter to the contrary, all distributions from the Plan shall conform to the final regulations issued under Code Section 401(a)(9), including the incidental death benefit provisions of Code Section 401(a)(9)(G).

(J) **WITHDRAWALS:** Except as provided in Section 14-2-7(E) , W.M.C., a Participant may not at any time withdraw any part of the Participant's Interest, except upon death, Total Disability, retirement or Termination of Employment as provided in this Chapter.

(K) **SPECIAL RULES FOR DISTRIBUTIONS AFTER THE PARTICIPANT'S DEATH:**

(1) Distributions commencing prior to death. If distribution of a Participant's Interest has commenced in accordance with subsection (I) of this Section and the Participant dies before his or her entire Interest has been distributed to him or her, the remaining Interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of the Participant's death.

(2) Distributions commencing after death. If a Participant dies before his or her Interest commences, the entire Interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half

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(70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries. If a Participant should die after receiving some part, but not all, of the Participant's Interest, the remaining balance thereof shall be distributed to the Participant's Beneficiary in a manner determined pursuant to this subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim an interest in the Participant's Interest prior to the completion of distribution of the Participant's Interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim an interest in the Participant's Interest prior to the completion of distribution of the Participant's Interest, the remaining distribution shall be made in a manner determined pursuant to this subsection to the recipient determined pursuant to Section 14-2-6, W.M.C.

(4) Distribution to IRA of nonspouse beneficiary. A Participant's nonspouse Beneficiary may elect payment of the portion of the deceased Participant's Interest to which the Beneficiary is entitled in a direct trustee-to-trustee transfer to an individual retirement account described in Code Section 402(c)(8)(B)(i), an individual retirement annuity described in Code Section 402(c)(8)(B)(ii), or a Roth IRA described in Code Section 408A that is established to receive the Plan distribution on behalf of the Beneficiary and such transfer shall be treated as an Eligible Rollover Distribution and such individual retirement account, annuity or Roth IRA shall be treated as an inherited individual retirement account, individual retirement annuity, or Roth IRA (within the meaning of Code Sections 408(d)(3)(C) and 408A). For purposes of this Section, a trust maintained for the benefit of one or more designated Beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's required beginning date, as defined in Section 14-2-7(F), W.M.C., the required minimum distribution in the year of death may not be transferred according to this Section. The requirements of Code Section 402(c)(11) apply to distributions under this Section.

14-2-8: RETIREMENT MEDICAL SAVINGS ACCOUNTS: (2464 3447 3704)

(A) CONTRIBUTIONS TO RETIREMENT MEDICAL SAVINGS ACCOUNTS:

(1) General. Each Participant shall have the option of designating up to twenty-five percent (25%) of the Participant's combined mandatory and City contributions made to the Trust Fund pursuant to Sections 14-2-4(A) and (B)(1), W.M.C., to be used for future medical care expenses as provided for in Code Section 401(h). Contributions designated by a Participant for future health benefits under Code Section 401(h) as described in this subsection (A)(1) shall be maintained in a separate account (the "Retirement Medical Savings Accounts").

(2) Subordinate; Taxation. It is intended that the benefits provided by the Retirement Medical Savings Accounts shall at all times be subordinate to the retirement benefits provided by the Plan. Contributions to the Retirement Medical Savings Accounts will not be taxed upon a Participant's retirement, Termination of Employment, death or Total Disability nor upon use for medical expenses upon a Participant's retirement, Termination of Employment, death or Total Disability.

(3) No refunds. No refunds of contributions to a Participant's Retirement Medical Savings Account shall be made to the Participant or the Participant's spouse or dependents.

(4) Non-transferrable. Except as provided in subsection (B)(5) of this Section, all contributions to a Participant's Retirement Medical Savings Account shall not be transferred and shall remain in the Retirement Medical Savings Account until such contributions are used for medical care expenses for the Participant and the Participant's spouse and dependents.

(5) Other rules and requirements. The Retirement Medical Savings Accounts will be subject to the rules and requirements issued by the City Manager, which can be changed from time to time.

(B) DISTRIBUTIONS FROM RETIREMENT MEDICAL SAVINGS ACCOUNTS:

(1) Contributions upon retirement, Termination of Employment, death and Total Disability.

Contributions to a Participant's Retirement Medical Savings Account may be distributed only upon the Participant's retirement, Termination of Employment, death or Total Disability.

(2) Exclusive use. Contributions to a Participant's Retirement Medical Savings Account shall be

used exclusively to pay or reimburse qualifying medical care expenses under Code Section 213(d)(1) for the Participant and the Participant's spouse and dependents.

(3) Reimbursement application. Distributions from a Participant's Retirement Medical Savings

Account shall only be paid pursuant to a reimbursement application, which contains the provisions for determining the amount of benefits that will be paid from the Retirement Medical Savings Account and specifies the time period with respect to which benefits will be paid.

(4) Other sources. Distributions from a Participant's Retirement Medical Savings Account may

not be made for any expense for which the Participant or the Participant's spouse or dependents receive, or are eligible to receive, payment or reimbursement from another source.

(5) Reversion to the Employer. If, with respect to a Participant's Retirement Medical Savings

Account, there is any balance remaining upon the death of the last to die of the Participant or the Participant's spouse, if any, and the satisfaction of all liabilities under the Plan to provide benefits payable from the Retirement Medical Savings Account with respect to the Participant and the Participant's spouse, then any such balance shall be returned to the Employer to be used as determined by the Employer.

(6) Distribution. Any interest in a Participant's Retirement Medical Savings Account shall be and

become payable to the Participant, the Participant's spouse, or the Participant's dependent only as and to the extent provided in this Chapter. In order to receive benefits from the Retirement Medical Savings Account, the Participant must agree to provide appropriate documentation of the medical care expenditures.

(C) VESTING OF RETIREMENT MEDICAL SAVINGS ACCOUNTS: A Participant's interest in the contributions made by the Participant pursuant to Section 14-2-8(A), and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times, subject to reversion in accordance with Section 14-2-8(B)(5), W.M.C.

(D) INVESTMENT OF RETIREMENT MEDICAL SAVINGS ACCOUNTS: A Participant's Retirement Medical Savings Account shall be invested in the investment options in accordance with the investment elections specified by the Participant. A Participant may change the investment of contributions and may reallocate amounts in such Participant's account among the investment options in a manner determined by the Plan custodian and subject to such provisions as the Plan Administrator may adopt. Allocation of assets among investment options is solely the responsibility of each Participant. The fact that an investment option is available for investment to Participants under the Plan shall not be construed as a recommendation for investment in that investment option.

(E) TERMINATION OF THE PLAN: Upon the termination of the Plan, the interests of all Participants in the Retirement Medical Savings Accounts shall be returned to the Employer.

14-2-9: INSURANCE COMPANY CONTRACTS: (2464 3447 3704)

(A) INSURANCE OR ANNUITY CONTRACTS:

(1) Previously purchased contracts. If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums thereon. The Trustee shall continue to have the right to receive each payment that may be due during the

Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from time to time on any such contract and to elect settlement options thereunder for the benefit of the Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) No right to purchase contracts through the plan. A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) No new group contracts. After December 31, 1996, the City shall not purchase any new group insurance or annuity contracts for pension Participants.

(B) LIMITATIONS ON LIFE INSURANCE OR ANNUITY CONTRACTS FOR PARTICIPANTS' BENEFIT: All investments in life insurance or annuity contracts (other than "key man insurance") shall be subject to the following limitations:

(1) The aggregate premiums for such life insurance or annuity contracts, in the case of each Participant, shall be no more than thirty-five percent (35%) of the aggregate of the City's contributions allocated to him at any particular time;

(2) The Board shall direct the Trustee to convert the entire value of any such life insurance contract at or before the Participant's actual retirement to provide either cash value or periodic income, or the Board may direct the Trustee to distribute the insurance contract directly to the Participant at retirement;

(3) In the event payment of any premium would cause aggregate premiums to exceed the limitation set forth in paragraph (1) of this subsection, then such payment shall not be made, but, on the contrary, each insurance or annuity contract pertaining thereto shall be thereupon converted to a paid up contract, or the face amount of such contract shall be reduced to a face amount, the premium payments on which would not exceed the limitation prescribed in paragraph (1) of this subsection; and

(4) If the Board directs the Trustee to invest any portion of the Trust Fund in such insurance or annuity contracts, such investment shall be made in such a manner that the operation of this Chapter shall be fair and equitable (and nondiscriminatory) in its application to all Participants.

(C) DIVIDENDS: If dividends are paid on any contract issued by the Insurer, they shall, in the discretion of the Board, either be used to provide additional benefits under such contract or used and applied in reduction of the next premium due and payable thereon.

(D) LIMITATION OF PARTICIPANT'S RIGHTS IN INSURANCE OR ANNUITY CONTRACTS: The fact that any contract is issued or based on the life of a Participant shall not vest any right, title or interest in such contract in such Participant, except at the time or times and upon the terms and conditions especially set forth in this Chapter. Subject to the provisions of Section 14-2-9(A), W.M.C., the Trustee shall be the sole owner of all right, title and interest in and to each such contract, but the Board shall nevertheless direct the Trustee as to the exercise of all rights, options and privileges in each such contract.

(E) PROTECTIVE PROVISIONS FOR LIFE INSURANCE COMPANY: No life insurance company shall be deemed to be a party to the Plan nor shall it be responsible for the validity of the Plan. The certificate of the Trustee as to any matter may be relied upon by any life insurance company as conclusive evidence of any matters mentioned therein, and such company shall be fully protected in taking or permitting any action on the faith thereof and shall incur no liability or responsibility for so doing. No such company shall be required to examine the provisions of this Chapter or to question any act of the Trustee or the Board, nor shall such company be required to ascertain that any act of the Trustee or the Board is authorized by this Chapter.

14-2-10: GENERAL EMPLOYEE PENSION BOARD: (2464 3199 3447 3704)

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(A) APPOINTMENT OF BOARD:

(1) General rule. The Board shall consist of five members: one shall be the current City Finance Director; one shall be appointed by the City Manager to serve at the City Manager's pleasure; and three shall be Contributing Participants elected by a majority of the voting Participants. One of the three elected members shall be an exempt employee as defined in the City's Personnel Policies and Rules. In no case shall more than one elected member be from the same department. The Trustee shall serve as Chairperson of the Board.

(2) Procedures for electing the three members. The three members to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the Trustee. After the first year of the election, procedures shall be established by the Board.

(B) DUTIES AND POWERS OF THE BOARD: The Board shall be charged with the administration of the Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution, and to supply omissions and to resolve inconsistencies and ambiguities arising under the Plan. The decisions of the Board shall be conclusive and binding on all parties. In addition to the other duties and powers set forth elsewhere in the Plan, the Board also shall have the following duties and powers:

(1) Payments from and investments of the Trust Fund; Investment Advisor. The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter. The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of the Trust Fund as may be conferred upon it in this Chapter. The Board may employ for the Trust Fund an investment advisor ("Investment Advisor") and may rely on such Investment Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an Investment Advisor, it shall execute any letters or agreements necessary for the employment of such Investment Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall

be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such Investment Advisor or for any acts or omissions made upon the direction or recommendation of such Investment Advisor.

(2) Enter into, execute, and terminate contracts. The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time, subject to the provisions of such contract.

(3) Investment options. If the Trustee enters into a contract at the direction of the Board that permits the right of Participants to direct the investment of their Interest in forms of investments offered, the Board shall provide the opportunity to Participants to make options as to investments. The Board shall adopt various investment options for the investment of contributions by the Participant and shall monitor and evaluate the appropriateness of the investment options offered by the Plan. The Board may remove or phase out an investment option, if the investment option has failed to meet the established evaluation criteria or for other good cause as determined by the Board. Neither the Trustee, the Board, the Plan Administrator nor the City shall be held liable for any losses or changes to a Participant's Interest that result from that Participant's choice of investment options.

(C) ORGANIZATION AND OPERATION OF BOARD: The Board may adopt such rules and procedures as it deems desirable for the conduct of its affairs, appoint one of its own members chairman, and appoint a secretary or other agents, none of whom need be a member of the Board, but any of whom may be, but need not be, an officer or Employee of the City. It may delegate to any agent such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that all matters involving investment of funds, interpretation of the Plan and settlement of disputes shall be determined by

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the Board. Any determination of the Board may be made by a majority of the Board at a meeting thereof, or without a meeting by a resolution or memorandum signed by all members, and shall be final and

conclusive on the City, the Trustee, all Participants and Beneficiaries claiming any rights under this Chapter, and as to all third parties dealing with the Board or with the Trustee. All notices, directions, information and other communications from the Board to the Trustee shall be in writing.

(D) **MATTERS AFFECTING BOARD MEMBERS:** In any matter affecting any member of the Board in an individual capacity as a Participant under this Chapter, separate and apart from such individual's status as a member of the group of Participants, such interested member shall have no authority or vote as a member of the Board in the determination of such matter, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(E) **COMPENSATION AND EXPENSES OF BOARD:** The members of the Board shall serve without compensation in addition to their regular City compensation. All members shall be reimbursed by the City for any necessary expenditures incurred in the discharge of their duties as members of said Board. Such reimbursement, and the compensation of all agents, counsel or other persons retained or employed by the Board, shall be fixed by the Board and shall be paid from the Trust Fund or, in the discretion of the City Manager, by the City.

(F) **RECORDS OF THE BOARD:** The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable Interests of the respective Participants, and the amount of all Plan benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-2-5(D), W.M.C. Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

(G) IMMUNITY FROM LIABILITY: No bond or other security shall be required of any member of the Board, except as may be otherwise required by law. No member of the Board shall be liable or responsible to any person or party for any matter or thing whatsoever, except only for such member's own gross negligence or willful misconduct.

(H) RESIGNATION AND REMOVAL OF MEMBERS; APPOINTMENT OF SUCCESSORS:

(1) Resignation from the Board. Any member of the Board may resign at any time by giving written notice to the other members and to the City Manager, effective as therein stated, otherwise, upon receipt of such notice.

(2) Termination of employment with the City. Whether or not the Board member remains a Participant, no Board member may remain on the Board if the individual terminates employment with the City for whatever reason.

(3) Ceasing to hold a designated position. No appointed Board member may remain on the Board if the individual ceases to hold one of the positions designated.

(4) Transfer. No elected Board member may remain on the Board as an elected member if the individual transfers, for whatever reason, to a department in which another elected Board member works.

(5) Successor Board member. Upon the death, resignation or removal of any elected Board member, a successor to complete the Board member's term shall be elected within thirty (30) days in the manner set forth in subsection (A) of this Section.

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(6) Removal from the Board. A member of the Board may be removed from the Board in the manner defined in the City of Westminster Police and General Employee Pension Plan Bylaws.

14-2-11: POWERS AND DUTIES OF THE TRUSTEE: (2464 3199 3447 3584 3704)

(A) INVESTMENT OF THE TRUST FUND:

(1) Duty of the Trustee. It shall be the duty of the Trustee to hold the funds from time to time received from the City and the Participants and, subject to the direction of the Board, to manage, invest and reinvest the Trust Fund and the income therefrom pursuant to the provisions of this Chapter, without distinction between principal and income. The Trustee shall be responsible only for such sums as shall actually be received. The Trustee shall have no duty to collect any sums from the City or the Participants.

(2) Power of the Trustee. The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any federal or State governmental agency, in accordance with the following powers:

(a) The Trustee may invest in real property and all interests therein, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common trust funds or qualified pooled funds, and in life insurance and annuity contracts. In making investments or reinvestments, the Trustee shall not be limited by the proportion to which the investments to be made, either alone or with any property of the same or similar character then held or acquired, may bear to the entire amount of the Trust Fund, and the Trustee shall not be bound as to the character of any investment provided by any constitutional provision, statute, rule of court or custom governing the investment of trust funds, providing only that the Trustee shall exercise the judgment and care, under the circumstances then prevailing, that people of prudence, discretion and intelligence exercise in the management of their own affairs.

(b) The Trustee, in the matter of the investment of the Trust Fund, shall be held harmless in every respect in exercising its discretion as to how much of the Trust Fund shall remain uninvested and in cash temporarily awaiting investment or for the expected cash distributions out of the Trust Fund in accordance with the provisions of this Chapter.

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the Plan, which contracts shall then become a part of the Plan. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of the Plan alone, or as Trustee of the Plan and as trustee of the City's Police Pension Plan, in which case the funds of the two plans may be co-mingled for investment purposes.

(d) To the extent the Trustee is directed by the Board to make a particular investment, the Trustee shall be held harmless from any loss or other liability arising therefrom.

(B) ADMINISTRATIVE POWERS OF THE TRUSTEE: The Trustee shall have all powers necessary or advisable to carry out the provisions of the Plan and all inherent, implied and statutory powers now or hereafter provided by law, including specifically the power to do any of the following:

(1) To cause any securities or other property to be registered and held in its name as Trustee or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer.

(2) To sell, grant option to sell, exchange, pledge, encumber, mortgage, deed in trust or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best, and it may retain, hold,

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maintain or continue any securities or investments that it may hold as part of the Trust Fund for such length of time as it may deem advisable.

(3) To abandon, compromise, contest and arbitrate claims on demand; to institute, compromise and defend actions at law (but without obligation to do so), all at the risk and expense of the Trust Fund.

(4) To borrow money for this Trust, with the approval of the Board, upon such terms and conditions as the Trustee shall deem advisable, and to secure the repayment thereof by the mortgage or pledge of any asset of the Trust Fund.

(5) To vote in person or by proxy any shares of stock or rights held in the Trust Fund; to participate in reorganization, liquidation or dissolution of any corporation, the securities of which are held in the Trust Fund and to exchange securities or other property in connection therewith.

(6) To pay any amount due on any loan or advance made to the Trust Fund, all taxes of any nature levied, assessed or imposed upon the Trust Fund, except for any taxes imposed with respect to any prohibited transaction, as defined in Code Section 4975(c), and all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters.

(C) IMMUNITY OF TRUSTEE: No bond or other security shall be required of the Trustee or any successor trustee, except as otherwise provided by law. The Trustee shall not be liable for any mistake of judgment or other action taken in good faith or for any loss to the Trust Fund, unless such loss results from its gross negligence, willful misconduct or bad faith.

(D) ADVICE OF BOARD OR COUNSEL:

(1) Advice or direction of the Board. If, at any time, the Trustee is in doubt concerning any action that it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) Advice of counsel. The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or

Trustee's obligations or duties, and the Trustee shall be fully protected from any responsibility with respect to any action taken or omitted by the Trustee in good faith pursuant to the advice of such counsel.

(E) TAXES, EXPENSES AND FEES OF THE TRUSTEE: The Trustee shall charge against and pay from the Trust Fund any taxes that may be imposed upon the Trust Fund or the income thereof, or upon or with respect to the interest of any person therein that the Trustee is required to pay; provided that the Trust Fund shall not pay or assume any taxes imposed with respect to any prohibited transaction as defined in Code Section 4975(c).

(1) Reasonable expenses; attorney's fees. The reasonable expenses of the Trustee incurred in the administration of the Plan, including the fees of any corporate co-trustee that might be appointed as may be mutually agreed upon from time to time by the Trustee and the Board, and attorney's fees incurred by the Trustee, shall be chargeable to and paid by the Trust Fund, provided that the City may pay all or part of such expenses and fees in the discretion of the City Manager.

(2) All expenses incurred in the preparation and adoption of the Plan shall be paid by the City.

(F) RECORDS AND ACCOUNTS OF THE TRUSTEE: The Trustee shall keep all such records and accounts that may be necessary in the administration and conduct of this Chapter. The Trustee's records and accounts shall be open to inspection by the City, the Board, and the Participant of the Participant's own accounts, during business hours.

(1) Commingled trust fund. All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities and properties of any kind at any time received or held by the Trustee shall be held

11/13 14-2-11

14-2-12

for investment purposes as a commingled Trust Fund. Separate accounts or records may be maintained for operational and accounting purposes, but no such account or record shall be considered as segregating

any funds or property from any other funds or property contained in the commingled fund, except as otherwise provided in this Chapter.

(2) Accounting of the trust fund. After the close of each year of the Trust, the Trustee shall render to the City and the Board an accounting of the Trust Fund for such year. If no objections to any such accounting are filed within a period of sixty (60) days after it has been delivered to the City and the Board, it shall be deemed to have been approved and shall constitute a full and complete discharge and release to the Trustees from the City and the Board and all other persons having or claiming any interest in the Trust Fund.

(G) RESIGNATION AND REMOVAL OF TRUSTEE: The City, by action of the City Manager, may, in its discretion, appoint an additional non-voting Trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(1) Resignation. Any Trustee, other than the City Finance Director, may resign from serving as a Trustee at any time by filing with the City Manager an appropriate written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

(2) Removal. Any Trustee, other than the City Finance Director, may be removed by the City by action of the City Manager at any time by giving thirty (30) days' notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term "Trustee" shall mean "Trustees."

(4) Corporate co-trustee. In the event any corporate co-trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or federal, or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate co-trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

14-2-12: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN: (2464 3447 3704)

(A) CONTINUANCE OF THE PLAN NOT A CONTRACTUAL OBLIGATION OF THE CITY: It is the expectation of the City that it will continue the Plan indefinitely, but the continuance of the Plan is not assumed as a contractual obligation by the City, and the right is reserved to the City by action of its City Council to discontinue the Plan at any time. The discontinuance of the Plan by the City shall, in no event, have the effect of re-vesting any part of the Trust Fund in the City.

(B) TERMINATION OF PLAN: The Plan shall continue in full force and effect until terminated or discontinued by the City by action of its City Council. Notice of such termination shall be given to the Trustee by an instrument in writing executed by the City Manager pursuant to the action of its City Council.

11/13 14-2-12

14-2-13

(C) DISTRIBUTION OF THE TRUST FUND ON TERMINATION OF PLAN: If the Plan shall, at any time, be terminated by the terms of this Section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the Interest of each respective

Participant or interest of each respective Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each Participant or Beneficiary outright, in a lump sum cash payment, such Participant's entire Interest or Beneficiary's entire interest in the Trust Fund.

(D) AMENDMENTS TO THE PLAN:

(1) General rule. The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

(a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;

(b) Divert or use any part of the corpus or income of the Retirement Medical Savings Accounts for any purpose other than paying medical benefits under Code Section 401(h) (other than as provided in Section 14-2-8(B)(5), W.M.C.);

(c) Decrease any Participant's Interest; or

(d) Discriminate in favor of Employees who are officers, persons whose principal duties consist in supervising the work of other Employees, or highly compensated employees.

(2) No Participant approval required. Notwithstanding anything herein to the contrary, this Chapter may be amended, if necessary, without requiring the approval of the Participants to conform to the provisions and requirements of the Code or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

14-2-13: MISCELLANEOUS: (2464 3319 3447 3704)

(A) BENEFITS TO BE PROVIDED SOLELY FROM THE TRUST FUND: All benefits payable under the Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility therefor.

(B) NOTICES FROM PARTICIPANTS TO BE FILED WITH THE PLAN ADMINISTRATOR, THE BOARD OR THE TRUSTEE: Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice therefor signed by the Participant on a form furnished by the Plan Administrator, the Board or the Trustee, as may be applicable, for such purpose and filed with the Plan Administrator, the Board or the Trustee, as applicable, which shall not be effective until received by the Plan Administrator, the Board or the Trustee, as applicable.

(C) TEXT TO CONTROL: The headings of sections and subsections are included solely for convenience or reference. If there be any conflict between such headings and the text of this Chapter, the text shall control.

(D) LAW GOVERNING: The Plan shall be construed under the laws of the State of Colorado and the Trustee shall be liable to account only in the courts of Colorado. All contributions received by the Trustee pursuant to this Chapter shall be deemed to have been received in Colorado.

(E) SEVERABILITY: In the event any provision of this Chapter shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions. On the contrary, such remaining provisions shall be fully severable and this Chapter shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

(F) PLAN FOR EXCLUSIVE BENEFIT OF PARTICIPANTS; REVERSION PROHIBITED: The Plan has been entered into for the exclusive benefit of the Participants and their Beneficiaries. Other than as provided in Section 14-2-8(B)(5), W.M.C., under no circumstances shall any funds contributed to or held by the Trustee hereunder at any time revert to or be used by or enjoyed by the City, nor shall any such funds or assets at any time be used other than for the exclusive benefit of the Participants or their Beneficiaries.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Resolution No. 26 re IGA with the Colorado Department of Transportation for the 120th Avenue and Federal Boulevard Intersection Improvement Project and Councillor's Bill No. 40 re Supplemental Appropriation of Federal Grant Funds

Prepared By: David W. Loseman, Assistant City Engineer

Recommended City Council Action

1. Adopt Resolution No. 26 authorizing the City Manager to execute an Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation pertaining to a federal grant for improvements to the intersection of 120th Avenue and Federal Boulevard.
2. Pass Councillor's Bill No. 40 on first reading appropriating grant monies to be received from the Colorado Department of Transportation for the improvements to the intersection of 120th Avenue and Federal Boulevard.

Summary Statement

- In September 2010, City Council authorized the submission of an application for a federal grant for improvements to the intersection of 120th Avenue and Federal Boulevard. A total amount of \$3,421,000 in federal funding was awarded for the construction costs. Local matching funds of \$1,043,000 are required to secure the federal grant. In addition, the Colorado Department of Transportation (CDOT) is preparing the design of the improvements and will contribute \$200,000 toward the construction of the project. Design, plan approval and administration of the federal funding are performed by CDOT under the terms of the attached intergovernmental agreement.
- In May 2012, the Denver Regional Council of Governments (DRCOG) requested that the City postpone the construction of this project until 2015, and City staff agreed due to workload considerations at the time. The construction of the project is now scheduled for spring 2015.
- The federal funding is received in the form of reimbursements after the City makes payments to the contractor. City Council action is necessary to appropriate the grant funds in advance through the attached ordinance. Construction is expected to be underway in the first half of 2015, and the project will be completed by winter 2015.

Expenditure Required: \$4,664,000

Source of Funds: Federal Grant Program (\$3,421,000);
CDOT contribution (\$200,000); and
General Capital Improvement Fund – 120th Avenue and Federal Boulevard
Project (\$1,043,000)

Policy Issue

Should the City enter into an Intergovernmental Agreement with CDOT to receive federal funding for the 120th Avenue and Federal Boulevard project?

Alternative

Council is not obligated to proceed with this project, but Staff recommends acceptance of the \$3,421,000 in federal money in order to secure highly desirable improvements to the heavily traveled intersection.

Background Information

In September 2010, the City Council approved the submission of an application for federal funding to assist in the design and construction of improvements to the 120th Avenue and Federal Boulevard intersection. In May 2012, DRCOG staff made a request to the City to postpone the construction of this project. City staff agreed with this request and took advantage of this delay by proceeding with the design and construction of the Ranch Creek Underpass project, which geographically overlaps the intersection project. This underpass will be constructed in early 2015, just prior to the intersection project, in order to avoid a significant asphalt patch at the location of the culvert.

The intersection project provides accommodations for six through lanes on 120th Avenue, four through lanes on Federal Boulevard, double left turn lanes for all directions and right turn lanes at all legs of the intersection. The existing eastbound to southbound sweeping right-turn lane will be removed along with one bridge on this “ramp” to provide for an expansion of the open space area and the construction of a pedestrian connection to the Big Dry Creek Trail from the west side of the creek. Curb, gutter, sidewalks and roadway lighting will be installed on both sides of 120th Avenue and Federal Boulevard along the west, south and east legs (i.e. the federal highway legs of the project) within 1,600 feet from the actual intersection. No lighting will be provided along the north leg (i.e. the City street leg of the project), but curb, gutter and sidewalk improvements will be included to make the transition to the two-lane Federal Parkway cross-section to the north of the intersection. The roadways will also be re-surfaced within the project limits, and sidewalks will be installed where none currently exist adjacent to the roadways.

The purpose of the proposed intergovernmental agreement (IGA) with CDOT is to obligate the federal funds for the project, to establish the federal requirements associated with the expenditure and to secure the City’s commitment for matching funds of \$1,043,000. The matching funds have already been appropriated in the General Capital Improvement Fund, 120th Avenue and Federal Boulevard project budget. CDOT requires that the local agency’s City Council approve a resolution (attached) that will authorize the execution of the IGA.

CDOT is preparing the design of the improvements and will contribute \$200,000 toward the construction of the project. Design, plan approval and administration of the federal funding are performed by CDOT under the terms of the attached intergovernmental agreement. CDOT’s contribution will be paid directly to the contractors and therefore is not included as part of the supplemental appropriation.

Since the federal funds are actually reimbursed after the City makes payments to a contractor as construction proceeds, it is also necessary to appropriate the amount of the federal funds, adding them to the project budget. This will be done by ordinance (attached).

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	7500.40610.0000	\$1,898,660	\$3,421,000	\$5,319,660
Total Change to Revenues			<u>\$3,421,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
120 th and Federal Intersection	81175030801.80400.8888	\$807,234	<u>\$3,421,000</u>	\$4,228,234
Total Change to Expenses			<u>\$3,421,000</u>	

This project meets Council’s Strategic Plan goals of Excellence in City Services, a Dynamic, Diverse Economy and Ease of Mobility by providing an improved transportation system utilizing outside funding sources.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments

- Resolution
- CDOT Intergovernmental Agreement
- Councillor’s Bill

RESOLUTION

RESOLUTION NO. **26**

INTRODUCED BY COUNCILLORS

SERIES OF 2014

A RESOLUTION

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) DEFINING FEDERAL AND LOCAL FUNDING OBLIGATIONS RELATING TO THE 120th AVENUE AND FEDERAL BOULEVARD INTERSECTION IMPROVEMENTS

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution as well as Sections 29-1-201, et seq., and 29-20-205, C.R.S., authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, The Intergovernmental Agreement attached to this Resolution identifies local funding obligations of the City of Westminster and federal funding obligations administered by the Colorado Department of Transportation for the 120th Avenue and Federal Boulevard Intersection Improvement Project in the City of Westminster.

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

1. The Intergovernmental Agreement between the City of Westminster and the Colorado Department of the 120th Avenue and Federal Boulevard Intersection Improvement Project Transportation pertaining to the local and federal funding obligations related to the construction of is hereby approved.
2. The City Manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement in substantially the same form as attached.

PASSED AND ADOPTED this 24th day of November, 2014.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO
Department of Transportation
Agreement
with
CITY OF WESTMINSTER

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1. PARTIES

THIS AGREEMENT is entered into by and between CITY OF WESTMINSTER (hereinafter called the “Local Agency”), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the “State” or “CDOT”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

i. Federal Authority

Pursuant to Title I, Subtitle A, Section 1108 of the “Transportation Equity Act for the 21st Century” of 1998 (TEA-21) and/or the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA.

D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement or Contract

“Agreement” or “Contract” means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

B. Agreement Funds

“Agreement Funds” means funds payable by the State to Local Agency pursuant to this Agreement.

C. Budget

“Budget” means the budget for the Work described in **Exhibit C**.

D. Consultant and Contractor

“Consultant” means a professional engineer or designer hired by Local Agency to design the Work and
“Contractor” means the general construction contractor hired by Local Agency to construct the Work.

E. Evaluation

“Evaluation” means the process of examining the Local Agency’s Work and rating it based on criteria established in §6 and **Exhibits A** and **E**.

F. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Disadvantaged Business Enterprise), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions), **Exhibit J** (Federal Requirements) and **Exhibit K** (Supplemental Federal Provisions).

G. Goods

“Goods” means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

H. Oversight

“Oversight” means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration (“FHWA”) and as it is defined in the Local Agency Manual.

I. Party or Parties

“Party” means the State or the Local Agency and “Parties” means both the State and the Local Agency

J. Work Budget

Work Budget means the budget described in **Exhibit C**.

K. Services

“Services” means the required services to be performed by the Local Agency pursuant to this Contract.

L. Work

“Work” means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and **Exhibits A** and **E**, including the performance of the Services and delivery of the Goods.

M. Work Product

“Work Product” means the tangible or intangible results of the Local Agency’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM AND EARLY TERMINATION

The Parties’ respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A**. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency’s, Consultants’, or Contractors’ employee(s) for all purposes and shall not be employees of the State for any purpose.

D. State and Local Agency Commitments

i. Design

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.
 - b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
 - c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
 - d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
 - e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
 - f) Provide final assembly of Plans and all other necessary documents.
 - g) Be responsible for the Plans' accuracy and completeness.
 - h) Make no further changes in the Plans following the award of the construction contract to contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.
- ii. Local Agency Work**
- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
 - b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:
 - (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
 - (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - (4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in Exhibit H to administer the Consultant contract.
 - (5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with Exhibit H and 23 C.F.R. 172.5(b) and (d).
 - (6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.
 - (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

- (c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

- a) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b) The Local Agency shall be responsible for the following:
 - (1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.
 - (2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).
 - (a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).
 - (b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.
 - (c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.
 - (3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.
 - (4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.
 - (a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
 - (b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

- (c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.
- (d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

E. State's Commitments

- a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**.

F. ROW and Acquisition/Relocation

- a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.
- b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.
- d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under the following categories:
 - (1) Right of way acquisition (3111) for federal participation and non-participation;
 - (2) Relocation activities, if applicable (3109);
 - (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

G. Utilities

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

- a) Railroads
 - If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:
- b) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- c) Obtain the railroad's detailed estimate of the cost of the Work.
- d) Establish future maintenance responsibilities for the proposed installation.
- e) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- f) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

H. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

I. Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

An option letter may be used to add a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

A. Option to add a phase and/or increase or decrease the total encumbrance amount.

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds remaining the same. The State may simultaneously increase and/or decrease the total encumbrance amount by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

B. Option to transfer funds from one phase to another phase.

The State may require or permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. Any transfer of funds from one phase to another is limited to an aggregate maximum of 24.99% of the original dollar amount of either phase affected by a transfer. A bilateral amendment is required for any transfer exceeding 24.99% of the original dollar amount of the phase affected by the increase or decrease.

C. Option to do both Options A and B.

The State may require the Local Agency to add a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

8. PAYMENTS

The State shall, in accordance with the provisions of this §8, pay the Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate

ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Contract Funds shall be used only for eligible costs identified herein.

D. Matching Funds

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C**. The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

E. Reimbursement of Local Agency Costs

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and

submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit C. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred).

9. ACCOUNTING

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

A. Local Agency Performing the Work

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

B. Local Agency-Checks or Draws

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

C. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

D. Local Agency-Invoices

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and shall not be submitted more often than monthly.

E. Invoicing Within 60 Days

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

D. Documents

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

11. LOCAL AGENCY RECORDS

A. Maintenance

The Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and may exercise the remedies available under this Agreement at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

12. CONFIDENTIAL INFORMATION-STATE RECORDS

The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. Nothing in this §12 shall be construed to require the Local Agency to violate the Colorado Open Records Act, C.R.S. §§ 24-72-1001 et seq.

A. Confidentiality

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

B. Notification

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency is prohibited from providing indemnification to the State pursuant to the Constitution of the State of Colorado, Article XI, Section 1, however, the Local Agency shall be responsible for any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §12.

13. CONFLICT OF INTEREST

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

A. Standard and Manner of Performance

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

B. Legal Authority – The Local Agency and the Local Agency’s Signatory

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency’s authority to enter into this Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

15. INSURANCE

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

A. The Local Agency

i. Public Entities

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to sub-contractors that are not "public entities".

B. Contractors

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker’s Compensation

Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of the Local Agency’s Contractors, Subcontractors, or Consultant’s employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products

and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §15.

16. DEFAULT-BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §18. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §17. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State

may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

ii. Payments

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify the Local Agency of the termination in accordance with §18, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

iii. Payments

If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this

Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

C. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the Local Agency's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to the Local Agency until corrections in the Local Agency's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed that due to the Local Agency's actions or inactions cannot be performed or, if performed, would be of no value to the State; provided that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of the Local Agency's employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State's option (a) obtain for the State or the Local Agency the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. If to State:

CDOT Region: 1
Markos Atamo
Project Manager
4670 Holly Street
Denver, CO 80216
303-398-6783

B. If to the Local Agency:

CITY OF WESTMINSTER
Dave Loseman
Project Manager
4800 WEST 92ND AVE
WESTMINSTER, CO 80031-6387
303-658-2125

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and

prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees and of the Local Agency is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §21 applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual

bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§25(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification - General

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Limitations of Liability

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit,

attachment, schedule, or any other name, are void and of no effect. This includes, but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

I. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein

J. Order of Precedence

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions,
- ii.** The provisions of the main body of this Agreement,
- iii.** **Exhibit A** (Scope of Work),
- iv.** **Exhibit B** (Local Agency Resolution),
- v.** **Exhibit C** (Funding Provisions),
- vi.** **Exhibit D** (Option Letter),
- vii.** **Exhibit E** (Local Agency Contract Administration Checklist),
- viii.** Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

26. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Agreements except where noted in italics.

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. INDEPENDENT CONTRACTOR.

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees. Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements]. Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services]. The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number: **15 HA1 73125**

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;">THE LOCAL AGENCY CITY OF WESTMINSTER</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</p> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.

<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Transportation</p> <p>Date: _____</p>
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28. EXHIBIT A – SCOPE OF WORK

NH 128A-006; SA 17876

Scope of Work: The project includes six through lanes on SH 287 (120th Avenue) and four through lanes on Federal Boulevard with double left turn lanes on all four legs. No raised medians are included so that the existing bridge on 120th over Big Dry Creek can be used without replacement. The existing east-bound 120th to south-bound Federal Blvd. right turn lane (outer connect ramp) will be entirely removed along with the older bridge on the ramp to open the open space area. An inner-connect ramp will be constructed. The existing ramp bridge (E-16-GA) will be used for the bike/pedestrian connection to the Big Dry Creek Trail. An overlay of the entire project limits is also included. It's assumed that the new traffic signals at the intersection can be used in their existing location. It is also assumed that no reconstruction of the 120th Bridge will be required and that no architectural enhancement to this bridge will be made. Preliminary construction cost estimate assumes asphalt paving 2" overlay of entire project and 10" full depth patch in the paved areas. The intersection includes full 10" concrete reconstruction. Curb, gutter, sidewalk (min. 6 ft. buffer from roadway will be installed at locations at 120th and Federal Boulevard within the project limits which extend 1600 feet in all directions from the intersection.) The existing street lights will be relocated and four new street lights on Federal Parkway north of 120th will be installed. The roadways will also be re-surfaced within the project limits and multi-use, grade-separated sidewalks (min. 8 ft.) will be installed where none currently exist, adjacent to the roadways.

The pedestrian bridge over Big Dry Creek, adjacent to 120th will not be constructed on this project (shown on conceptual design) as a pedestrian bridge has already been constructed (shown in survey) ~ 300' north of 120th.

This project has a planned Advertisement date of March 2015.

This project has 66% Federal funds, 20% Westminster funds and 14% CDOT funds of the current STIP amount.

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29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

NH 128A-006 (17876)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$4,276,250.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds (STP Metro @ 80%)				\$3,421,000.00
b. State Matching Funds (STP Metro @ 5%)				\$200,000.00
d. Local Agency Matching Funds (STP Metro @ 15%)				\$655,250.00
TOTAL BUDGETED FUNDS				\$4,276,250.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
b. Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a & 1b)				\$3,421,000.00
b. State Funds Budgeted (1c)				\$200,000.00
c. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$3,621,000.00
FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$4,276,250.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$4,276,250.00
*Note: Construction funds are not currently available. Construction funds will be encumbered when they become Available by an option letter or formal amendment.				
	WBS Element <<<<<>>>>	Design	3020	\$0.00
	WBS Element 17876.20.10	Const	3301	\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80% federal-aid funds (CFDA #20.205) to 5% State funds and 15% Local Agency funds, it being understood that such ratio applies only to the \$4,276,250.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$4,276,250.00, and additional federal funds are made available for the Work, the Local Agency shall pay 15% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$4,276,250.00, then the amounts of Local Agency, State and federal-aid funds will be decreased in accordance with the funding ratio described herein.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$3,621,000.00 (For CDOT accounting purposes, the federal funds of \$3,421,000.00 and the State matching funds of \$200,000.00 and the Local Agency matching funds of \$655,250.00 will be encumbered for a total encumbrance of \$4,276,250.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$500,000

If the Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding than \$500,000-Highway Funds Only

If the Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding than \$500,000-Multiple Funding Sources

If the Local Agency expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below

AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing #
			Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(*a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.*).

Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):

In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*)is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labled as follows: C-2, C-3, C-4, etc.*).

Option B (*Insert the following language for use with Option B*):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be*

made using an formal amendment)..

Option C (Insert the following language for use with Option C):

In accordance with the terms of the original Agreement (insert CMS routing # of original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (describe phase from which funds will be moved) to (describe phase to which funds will be moved) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4, etc.**; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment).

(The following language must be included on ALL options):

The total encumbrance as a result of this option and all previous options and/or amendments is now (insert total encumbrance amount), as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (indicate total budgeted funds) as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

**State Controller
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. NH 128A-006	STIP No. SDR5220	Project Code 17876	Region 1
Project Location 120 th AVE : FEDERAL BLVD			Date 4-30-14
Project Description INTERSECTION IMPROVEMENT: reconstruct intersection in concrete, widening, improvement to Federal north and south of 120th Ave, addition of through and left-turn lanes, bike path, resurfacing, and lighting.			
Local Agency Westminster		Local Agency Project Manager Dave Loseman	
CDOT Resident Engineer Markos Atamo - Acting		CDOT Project Manager Markos Atamo	
<p>INSTRUCTIONS:</p> <p>This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement		X
5.4	Conduct Design Scoping Review Meeting		X
5.5	Conduct Public Involvement	NA	NA
5.6	Conduct Field Inspection Review (FIR)		X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		X
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)		X
5.9	Obtain Utility and Railroad Agreements		X
5.10	Conduct Final Office Review (FOR)		X
5.11	Justify Force Account Work by the Local Agency	NA	NA
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items		X
5.13	Document Design Exceptions - CDOT Form 464		X
5.14	Prepare Plans, Specifications and Construction Cost Estimates		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Markos Atamo - Acting _____ CDOT Resident Engineer (Signature on File) _____ Date _____		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	NA	NA
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Dave Loseman _____ 303- 658-2125 _____ Local Agency Professional Engineer or _____ Phone number _____	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	CDOT Resident Engineer		
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task.		
	<u>Dave Loseman</u> <u>303-658-2125</u>		
	Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews		X
	Provide the name and phone number of the person responsible for this task.		
	<u>Jamal Mhareb</u> <u>303-916-1052</u>		
	CDOT Resident Engineer Phone number		
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record		X
	• Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project		
	• Update the form as work progresses	X	
	• Complete and distribute form after work is completed	X	
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products	X	
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components	X	
	• Bridge modular expansion devices (0" to 6" or greater)	X	
	• Fabrication of bearing devices	X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		X
	• Generate IAT schedule	X	
	• Schedule and provide notification		X
	• Conduct IAT		X
9.8	Approve mix designs		X
	• Concrete		X
	• Hot mix asphalt		X
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 26

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
 7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
 8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debatement. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debatement as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

37. EXHIBIT J – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i.

Compliance with Regulations

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

ii.

Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical

handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

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

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. **“Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
 - 1.1.1. Grants;
 - 1.1.2. Contracts;
 - 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
 - 1.1.4. Loans;
 - 1.1.5. Loan Guarantees;
 - 1.1.6. Subsidies;
 - 1.1.7. Insurance;
 - 1.1.8. Food commodities;
 - 1.1.9. Direct appropriations;
 - 1.1.10. Assessed and voluntary contributions; and
 - 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

 - 1.1.12. Technical assistance, which provides services in lieu of money;
 - 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 1.1.14. Any award classified for security purposes; or
 - 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
 - 1.2. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
 - 1.3. **“Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
 - 1.4. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
 - 1.5. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C;
 - 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.5.2. A foreign public entity;

- 1.5.3. A domestic or foreign non-profit organization;
 - 1.5.4. A domestic or foreign for-profit organization; and
 - 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
 - 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
 - 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
 - 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
 - 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
 - 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
 - 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
 - 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
 - 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
 - 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
 - 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

- 1.17 “**Vendor**” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
- 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
- 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
- 4.2. In the preceding fiscal year, Contractor received:
- 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor’s obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

7. Subrecipient Reporting Requirements. If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 ToSAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **40**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2014 BUDGET OF THE GENERAL CAPITAL
IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM
THE 2014 ESTIMATED REVENUES IN THE FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2014 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3655 is hereby increased by \$3,421,000. This appropriation is due to the receipt of federal grant funds from the Colorado Department of Transportation for the 120th Avenue and Federal Boulevard Intersection Improvement Project.

Section 2. The \$3,421,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10E-F, dated November 24, 2014 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$3,421,000</u>
Total	<u>\$3,421,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of November, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2014

ATTEST:

Mayor

City Clerk



Agenda Item 10 H

Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Resolution No. 27 re Contract Amendment to Intergovernmental Agreement with the Colorado Department of Transportation and Local Governments for the I-25 North Managed Lanes Project between US 36 and 120th Avenue

Prepared By: Aric Otzelberger, Assistant to the City Manager

Recommended City Council Action

Adopt Resolution No. 27 authorizing the City Manager to execute a Contract Amendment regarding the Intergovernmental Agreement with the Colorado Department of Transportation (CDOT), Adams County, Broomfield, Federal Heights, Northglenn, Thornton and Weld County pertaining to the I-25 North Managed Lanes Project.

Summary Statement

- This project, now estimated at \$60 million, will fund one new managed toll lane in each direction on I-25 between U.S. 36 and 120th Avenue. This managed lane will provide motorists a choice to carpool, take transit or pay a toll to access the lane. A \$15 million federal TIGER IV discretionary grant was awarded to this project. State, regional and local dollars are funding the remaining project cost.
- The attached Contract Amendment to the Intergovernmental Agreement (IGA) is necessary to reflect additional contributions and timing of those contributions to the project by Adams County and Northglenn, which will help replace the existing wooden fence along the highway with post and panel concrete sound walls. All parties to the agreement must approve the amendment.
- Westminster's obligations to the project do not change under this Contract Amendment. \$500,000 represents Westminster's contribution to this project. City Council appropriated \$167,000 in both 2013 and 2014, respectively, to fund the commitment. The remaining \$166,000 was recently appropriated by City Council with the 2015/2016 Budget.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City execute this Contract Amendment to the I-25 North Managed Lanes IGA?

Alternative

The City could decline to execute the Contract Amendment to the IGA. Staff does not recommend this, as the Contract Amendment does not impact the City's commitments and responsibilities under the IGA and this amendment is necessary for the project to continue moving forward with minor adjustments.

Background Information

The I-25 North Managed Lanes Project will provide meaningful relief for one of the most congested corridors in the Denver area. Peak period traffic jams currently span four hours both in the morning and evening with traffic operating at 15 miles per hour versus the posted 55-65 miles per hour. The I-25 North Managed Lanes project will fund one new managed toll lane in each direction on I-25 between U.S. 36 and 120th Avenue. This will provide a congestion-free alternative for travelers who choose to carpool, take transit or pay a toll to access the lanes. High Occupancy Vehicles (HOV) and public transit vehicles will have access to the managed lanes free of charge. Single Occupant Vehicles (SOV) will pay a toll to use the lanes. This project is the top priority for the North Area Transportation Alliance (NATA), of which the City is a member, and NATA members committed approximately \$8 million in local support to this project, or 13% of the total project cost.

The attached Contract Amendment to the IGA formalizes additional contributions and timing of those contributions being made by Adams County and Northglenn, which will help replace the existing wooden fence along the highway with post and panel concrete sound walls. Adams County is contributing an additional \$3 million and Northglenn is funding an additional \$500,000 in relation to this project component.

Westminster's obligations and \$500,000 commitment to this project do not change under this Contract Amendment. For additional context, please see the attached Agenda Memorandum from December 17, 2012, along with attachments.

The project is currently 35% complete. Full project completion is anticipated in summer 2015. CDOT has also earmarked \$55 million to continue the managed lanes north. CDOT and local governments are working through project design, environmental clearances and other issues. The terminus of the next phase of the project (Phase III) will be determined pending several issues and available budget, but it is anticipated to extend past Westminster's northern city limits.

City Council action on this item addresses the Strategic Plan Goals of "Proactive Regional Collaboration," "Ease of Mobility" and "Dynamic, Diverse Economy."

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments

- Resolution
- Contract Amendment to Intergovernmental Agreement
- December 17, 2012 Agenda Memorandum
- Original Executed Contract for Intergovernmental Agreement

RESOLUTION

RESOLUTION NO. **27**

INTRODUCED BY COUNCILLORS

SERIES OF 2014

**A RESOLUTION
AUTHORIZING AN AMENDMENT TO THE 2013 INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF WESTMINSTER, ADAMS COUNTY, CITY AND COUNTY OF
BROOMFIELD, CITY OF FEDERAL HEIGHTS, CITY OF NORTHGLENN, CITY OF
THORNTON, WELD COUNTY AND THE COLORADO DEPARTMENT OF
TRANSPORTATION (CDOT) DEFINING THE FINANCIAL AND MAINTENANCE
OBLIGATIONS RELATING TO THE
I-25 MANAGED LANES PROJECT BETWEEN US 36 AND 120TH AVENUE**

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Section 29-1-201, *et seq.*, and Section 29-20-205 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the 2013 Intergovernmental Agreement identifying funding obligations of the City of Westminster, Adams County, City and County of Broomfield, City of Federal Heights, City of Northglenn, City of Thornton, Weld County and of the Colorado Department of Transportation for the design, construction and maintenance of the I-25 Managed Lanes Project between US 36 and 120th Avenue (the "IGA") requires amendment now to reflect new funding obligations agreed to by Adams County and the City of Northglenn; and

WHEREAS, those changes do not affect the City's rights or obligations but must be memorialized by amendment to the IGA, which can only be accomplished by the written consent of all original parties to the IGA.

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

1. The amendment to the IGA to reflect the new funding obligations agreed to by Adams County and the City of Northglenn is hereby approved.
2. The City Manager is authorized to execute and the City Clerk to attest the amendment in substantially the same form as attached.

PASSED AND ADOPTED this 24th day of November, 2014.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Amendment #:1 Project #: 18695 Project Name: Managed Lanes	Original Contract Routing # 13 HA6 51029 Amendment Routing #: 14 HA1 67964 ID # 331000619
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CONTRACT AMENDMENT

1. PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between **Adams County**, 4430 South Adams County Parkway, Brighton, Colorado 80601, CDOT Vendor # 2000055, **City of Thornton**, 9500 Civic Center Drive, Thornton, Colorado 80229, CDOT Vendor # 2000088, **City and County of Broomfield**, One Descombes Drive, Broomfield, Colorado 80020, CDOT Vendor # 2000091, **City of Federal Heights**, 2380 West 90th Avenue, Federal Heights, Colorado 80221, CDOT Vendor # 2000002, **City of Northglenn**, 11701 Community Center Drive, Northglenn, Colorado 80233, CDOT Vendor # 2000004, **Weld County**, P.O. Box 758, Greeley, Colorado 80632, CDOT Vendor # 2000135, **City of Westminster**, 4800 West 92nd Avenue, Westminster, Colorado 80031, CDOT Vendor # 2000053 (hereinafter called "The Local Agencies"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Transportation, (hereinafter called "CDOT"). The Local Agencies and the State together shall be referred to as the "Parties."

2. EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the State or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse The Local Agencies for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. FACTUAL RECITALS

The Parties entered the Contract for project IM 0253-222 (18695), which consists of The Local Agencies reimbursing the State for performing a portion of work to construct one managed lane in each direction on I-25 between US 36 and 120th Avenue.

With this Amendment, Adams County and City of Northglenn will increase their contributions and extend the payment schedule accordingly. This Amendment does not alter the other parties' contributions except that the overall percentages are changed to reflect Adams County's and City of Northglenn's increased contributions.

4. CONSIDERATION

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment.

5. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6. MODIFICATIONS.

The Amendment and all prior amendments thereto, if any, are modified as follows:

A. Section 4 paragraph B of the original Contract is deleted and replaced as follows:

The Local Agencies will provide a portion of the total cost of the Work estimated to be \$8,025,000.00, which is to be funded as follows:

Contributions:

Adams County	\$4,500,000.00	56.07%
Broomfield	\$50,000.00	0.62%
Federal Heights	\$150,000.00	1.87%
Northglenn	\$1,050,000.00	13.08%
Thornton	\$1,750,000.00	21.81%
Weld County	\$25,000.00	0.31%
Westminster	\$500,000.00	6.23%
Totals	\$8,025,000.00	100.00%

Payment Schedule:

	2013	2014	2015	2016	2017	Total
Adams County	\$500,000.00	\$500,000.00	\$500,000.00	\$3,000,000.00	\$0.00	\$4,500,000.00
Broomfield	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$50,000.00
Federal Heights	\$50,000.00	\$50,000.00	\$50,000.00	\$0.00	\$0.00	\$150,000.00
Northglenn	\$183,000.00	\$183,000.00	\$184,000.00	\$250,000.00	\$250,000.00	\$1,050,000.00
Thornton	\$500,000.00	\$500,000.00	\$750,000.00	\$0.00	\$0.00	\$1,750,000.00
Weld County	\$8,300.00	\$8,300.00	\$8,400.00	\$0.00	\$0.00	\$25,000.00
Westminster	\$167,000.00	\$167,000.00	\$166,000.00	\$0.00	\$0.00	\$500,000.00
Totals	\$1,458,300.00	\$1,408,300.00	\$1,658,400.00	\$3,250,000.00	\$250,000.00	\$8,025,000.00

Any savings realized associated with Local Agencies' contributions will be applied by the percentage based on the contributions table at the final settlement of the project.

B. The first sentence of Section 4 paragraph C of the original contract is deleted and replaced as follows:

The maximum amount payable by the Local Agencies under this contract shall be \$8,025,000, in the amounts for each jurisdiction as set forth above, unless such amount is increased by an appropriate written modification to this contract executed by all of the signatories hereto before any increased cost is incurred.

7. START DATE

This Amendment shall take effect upon the date of the State's Signature.

8. ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9. AVAILABLE FUNDS

Financial obligations of the Parties hereto payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

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SIGNATURE PAGE

Agreement Routing Number 14 HA1 67964

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;">THE LOCAL AGENCY Adams County CDOT Vendor # 2000055</p> <p>By: Title:</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p> <p>Corporations: (A corporate seal or attestation is required.)</p> <p>Attest (Seal) By:</p> <p>_____</p> <p>(Corporate Secretary or Equivalent, or Town/City/County Clerk)</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</p> <p>_____</p> <p style="text-align: center;">By: Joshua Laipply, PE, Chief Engineer</p> <p>Date: _____</p>
<p style="text-align: center;">2nd The Local Agency Signature if Needed</p> <p>By: Title:</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

**THE LOCAL AGENCY
City of Thornton
CDOT Vendor # 2000088**

By: _____

Title: _____

*Signature

Date: _____

Corporations:

(A corporate seal or attestation is required.)

Attest (Seal) By: _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

THE LOCAL AGENCY
City and County of Broomfield
CDOT Vendor # 2000091

By: _____

Title: _____

*Signature

Date: _____

Corporations:
(A corporate seal or attestation is required.)

Attest (Seal) By: _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

**THE LOCAL AGENCY
City of Federal Heights
CDOT Vendor # 2000002**

By: _____

Title: _____

*Signature

Date: _____

Corporations:

(A corporate seal or attestation is required.)

Attest (Seal) By: _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

**THE LOCAL AGENCY
City of Northglenn
CDOT Vendor # 2000004**

By: _____

Title: _____

*Signature

Date: _____

Corporations:

(A corporate seal or attestation is required.)

Attest (Seal) By: _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

**THE LOCAL AGENCY
Weld County
CDOT Vendor # 2000135**

By: _____

Title: _____

*Signature

Date: _____

Corporations:

(A corporate seal or attestation is required.)

Attest (Seal) By: _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

**THE LOCAL AGENCY
City of Westminster
CDOT Vendor # 2000053**

By: _____

Title: _____

*Signature

Date: _____

Corporations:

(A corporate seal or attestation is required.)

Attest (Seal) By: _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)



ATTACHMENT B

Agenda Item 10 B

Agenda Memorandum

City Council Meeting
December 17, 2012



SUBJECT: Resolution No. 40 re Intergovernmental Agreement with the Colorado Department of Transportation for the I-25 North Managed Lanes Project between US 36 and 120th Avenue

Prepared By: Aric Otzelberger, Assistant to the City Manager

Recommended City Council Action

Adopt Resolution No. 40 authorizing the City Manager to execute an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) pertaining to the I-25 North Managed Lanes Project and authorize the payment of \$500,000 to CDOT over the three-year period, 2013-2015.

Summary Statement

- This \$44.3 million dollar project will fund one new managed toll lane in each direction on I-25 between U.S. 36 and 120th Avenue. This managed lane will provide motorists a choice to carpool, take transit or pay a toll to access the lane. A \$15 million federal TIGER IV discretionary grant was awarded to this project. State, regional and local dollars will fund the remaining project cost.
- The attached Intergovernmental Agreement (IGA) defines the financial, design, construction and maintenance responsibilities of the parties for this project. \$500,000 represents Westminster's contribution to this project and is to be paid over a period of three years per the terms of the IGA with the Colorado Department of Transportation (CDOT) being considered tonight.
- City Council appropriated \$167,000 in both 2013 and 2014, respectively, to fund the commitment to this project as part of the Adopted 2013/2014 Biennial Budget. The remaining \$166,000 proposed for 2015 will be considered with the 2015/2016 Biennial Budget development.

Expenditure Required: \$167,000 (2013), \$167,000 (2014) and \$166,000 (2015)

Source of Funds: General Capital Improvement Fund – I-25 North Managed Lanes Project

Policy Issue

Should the City execute this IGA with CDOT, which obligates the City for a total of \$500,000 towards the project’s cost?

Alternative

The City could decline to execute the IGA. Staff does not recommend this alternative given the importance of this corridor to the community and the financial commitment in principle that the City made to the project with other members of the North Area Transportation Alliance (NATA) as part of the TIGER IV federal grant application. Other funding partners on this project including Adams County, City and County of Broomfield, City of Federal Heights, City of Northglenn, City of Thornton, Weld County, the Regional Transportation District (RTD), the Denver Regional Council of Governments (DRCOG) and the Colorado Department of Transportation (CDOT). The City would also run the risk of jeopardizing the \$15 million federal TIGER IV discretionary grant already awarded to this project.

Background Information

The I-25 North Managed Lanes Project will provide meaningful relief for one of the most congested corridors in the Denver area. Peak period traffic jams currently span four hours both in the morning and evening with traffic operating at 15 miles per hour versus the posted 55-65 miles per hour. Projections for 2035 show that building a managed lane on this stretch of I-25 would shave nearly 20 minutes off the daily commute through this corridor to downtown Denver. This project is the top priority for the North Area Transportation Alliance (NATA) and NATA members committed approximately \$4.5 million in local support to this project, or 10% of the total project cost. A breakdown of financial contributions to the project is provided below:

I-25 North Managed Lanes Extension - Funding Breakdown

Source	Amount	Percentage
Federal (TIGER IV Grant)	\$15 million	34%
Federal (DRCOG - STP - Metro)	\$5 million	11%
CDOT (State Highway Funds)	\$15.5 million	35%
CDOT (FASTER Transit Funds)	\$3.5 million	8%
RTD Transit Funds	\$0.8 million	2%
Local Funds	\$4.5 million	10%
TOTAL PROJECT FUNDING	\$44.3 million	
LOCAL FUNDING BREAKDOWN		
Adams County	\$1,500,000	33%
City and County of Broomfield	\$50,000	1%
Federal Heights	\$150,000	3%
Northglenn	\$550,000	12%
Thornton	\$1,750,000	39%
Weld County	\$25,000	1%
Westminster	\$500,000	11%
TOTAL LOCAL CONTRIBUTION	\$4,525,000	

The attached IGA formalizes these contributions being made by each local entity and is based on the benefit each of these partners receive from the project. Each local government will have a three year payment schedule. The remaining financial responsibility for the design, right-of-way acquisition, construction and maintenance will be the responsibility of CDOT.

The I-25 North Managed Lanes project will fund one new managed toll lane in each direction on I-25 between U.S. 36 and 120th Avenue. This will provide a congestion-free alternative for travelers who choose to carpool, take transit or pay a toll to access the lanes. High Occupancy Vehicles (HOV) and public transit vehicles will have access to the managed lanes free of charge. Single Occupant Vehicles (SOV) will pay a toll to use the lanes.

CDOT will utilize the inside shoulder of this segment of I-25 to accommodate the new managed lanes within the existing roadway template, eliminating the need for costly right-of-way or additional paved surface. This innovative and cost-effective approach using the existing highway infrastructure will allow CDOT to complete this project two decades earlier than originally planned and at a substantially lower cost.

CDOT has completed 30% design plans for the project and is in the process of reviewing those plans with local stakeholders. Final design for the project is anticipated in April 2013, with project advertisement planned for June 2013. CDOT is planning to commence construction in late 2013 with project completion anticipated in summer 2015.

City Council action on this item addresses the Strategic Plan Goals of “Strong, Balanced Local Economy” and “Vibrant Neighborhoods In One Livable Community.”

Respectfully submitted,

J. Brent McFall
City Manager

Attachments - Resolution and Intergovernmental Agreement

RESOLUTION

RESOLUTION NO. **40**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

A RESOLUTION

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WESTMINSTER, ADAMS COUNTY, CITY AND COUNTY OF BROOMFIELD, CITY OF FEDERAL HEIGHTS, CITY OF NORTHGLENN, CITY OF THORNTON, WELD COUNTY AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) DEFINING THE FINANCIAL AND MAINTENANCE OBLIGATIONS RELATING TO THE I-25 MANAGED LANES PROJECT BETWEEN US 36 AND 120TH AVENUE

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Section 29-1-201, *et seq.*, and 29-20-205 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the Intergovernmental Agreement attached to this Resolution identifies funding obligations of the City of Westminster, Adams County, City and County of Broomfield, City of Federal Heights, City of Northglenn, City of Thornton, Weld County and of the Colorado Department of Transportation for the design, construction and maintenance of the I-25 Managed Lanes Project between US 36 and 120th Avenue.

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

1. The Intergovernmental Agreement between the City of Westminster, Adams County, City and County of Broomfield, City of Federal Heights, City of Northglenn, City of Thornton, Weld County and the Colorado Department of Transportation pertaining to the design, construction and maintenance of the I-25 Managed Lanes Project between US 36 and 120th Avenue is hereby approved.
2. The City Manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement in substantially the same form as attached.

PASSED AND ADOPTED this 17th day of December, 2012.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

(Local \$CDOTWRK)
 PROJECT IM 0253-222, (18695)
 REGION 6/(JH)

Routing # 13 HA6 51029
 SAP # 331000619

Internal CDOT Tracking- subject to change

Rev 10/03

CONTRACT

THIS CONTRACT made this ___ day of _____ 20___, by and between the State of Colorado for the use and benefit of the **Colorado Department of Transportation**, hereinafter referred to as the “State” and **Adams County**, 12200 Pecos Street, Westminster, Colorado 80234, CDOT Vendor # 5100456, **City of Thornton**, 9500 Civic Center Drive, Thornton, Colorado 80229, CDOT Vendor # 2000088, **City and County of Broomfield**, One Descombes Drive, Broomfield, Colorado 80020, CDOT Vendor # 2000091, **City of Federal Heights**, 2380 West 90th Avenue, Federal Heights, Colorado 80221, CDOT Vendor # 2000002, **City of Northglenn**, 11701 Community Center Drive, Northglenn, Colorado 80233, CDOT Vendor # 2000004, **Weld County**, P.O. Box 758, Greeley, Colorado 80632, CDOT Vendor # 2000135 and **City of Westminster**, 4800 West 92nd Avenue, Westminster, Colorado 80031, CDOT Vendor # 2000053, hereinafter referred to as the “Contractors” or the “Local Agencies”, the State and the Local Agencies together shall be referred to as the “Parties.”

RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
2. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agencies) highway system.
3. Local Agencies anticipate a project whereby the Local Agencies shall reimburse the State for performing a portion of the work to construct one managed lane in each direction on I-25 between US 36 and 120th Avenue and by the date of execution of this contract, the Local Agencies and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the project work. The Local Agencies understand that before the project work begins, the Local Agencies must receive an official written “Notice to Proceed” prior to commencing any part of the project work. The Local Agencies further understand, before the project work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agencies, in its internal review process. The Local Agencies desire to perform the project work described in form #463, as it may be revised.
4. The Local Agencies have made funds available for project IM 0253-222 (18695), which shall

consist of the Local Agencies reimbursing the State for performing a portion of the work to construct one managed lane in each direction on I-25 between US 36 and 120th Avenue, referred to as the “Project” or the “Work.” Such Work will be performed in the north Denver Colorado metro area, specifically described in **Exhibit A**.

5. The Local Agencies have funds available and desire to provide 100% of their portion of funding for the Work. (The other portion of the funding will come from federal TIGER funds.)

6. The State has estimated the total cost of the Work and the Local Agencies are prepared to provide their portion of the funding required for the Work, as evidenced by either ordinances or resolutions duly passed and adopted by the authorized representatives of the Local Agencies, which expressly authorizes the Local Agencies to enter into this contract and to expend its funds for the work under the project. A copy of the ordinances or resolutions are attached hereto and incorporated herein as **Exhibit B**.

7. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and **Exhibit B**.

8. The parties hereto desire to agree upon the division of responsibilities with regard to the project.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of the Local Agencies reimbursing the State performing the Work to construct one managed lane in each direction on I-25 between US 36 and 120th Avenue, in the north Denver Colorado metro area, Colorado, as more specifically described in **Exhibit A**.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. This contract
2. Exhibit A (Scope of Work)
3. Other Exhibits in descending order of their attachment.

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State and FHWA.

Section 4. Project Funding Provisions

A. The Parties have estimated the total cost of the Work and the Local Agencies are prepared to provide 100% of their portion of the funding for the Work, as evidenced by either ordinances or resolutions duly passed and adopted by the authorized representatives of the Local Agencies, which expressly authorizes the Local Agencies to enter into this contract and to expend its funds for the project. A copy of the ordinances or resolutions are attached hereto and incorporated herein as **Exhibit B**.

B. The Local Agencies will provide a portion of the total cost of the Work estimated to be \$4,525,000.00, which is to be funded as follows:

Contributions:

Adams County	\$1,500,000.00	33.15%
Broomfield	\$50,000.00	1.10%
Federal Heights	\$150,000.00	3.32%
Northglenn	\$550,000.00	12.15%
Thornton	\$1,750,000.00	38.68%
Weld County	\$25,000.00	.550%
Westminster	\$500,000.00	11.05%
Totals	\$4,525,000.00	100%

Payment Schedule:

	2013	2014	2015	Total
Adams County	\$500,000	\$500,000	\$500,000	\$1,500,000.00
Broomfield	\$50,000	\$0.00	\$0.00	\$50,000.00
Federal Heights	\$50,000	\$50,000	\$50,000	\$150,000.00
Northglenn	\$183,000	\$183,000	\$184,000	\$550,000.00
Thornton	\$500,000	\$500,000	\$750,000	\$1,750,000.00
Weld County	\$8,3000	\$8,300	\$8,400	\$25,000.00
Westminster	\$167,000	\$167,000	\$166,000	\$500,000.00
Totals	\$1,458,300	\$1,408,300	\$1,658,400	\$4,525,000.00

Any savings realized associated with Local Agencies' contributions will be applied by the percentage based on the contributions table at the final settlement of the project.

C. **The maximum amount payable by the Local Agencies under this contract shall be \$4,525,000.00**, in the amounts for each jurisdiction as set forth above, unless such amount is increased by an appropriate written modification to this contract executed by all of the signatories hereto before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, and by the legislative bodies of the counties and municipalities and that nothing herein shall be deemed a multi-year fiscal obligation pursuant to Colorado Constitution, Article X, Section 20. The Local Agencies will make every best effort to prioritize the Project during each of their appropriations. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by any party, provided that the terminating party or parties shall not be relieved of any obligations subject to previously appropriated funds.

Section 5. Project Payment Provisions

A. All review and approval charges are included in the Project Funding Provisions in the schedule detailed in Section 4, B of this Agreement. The Local Agencies will not reimburse the State for incurred costs beyond what is listed in the Section 4, B schedule of this Agreement.

B. If the Local Agencies are to be billed for CDOT incurred costs, the billing procedure shall be as follows:

1. Upon receipt of each bill from the State, each Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should each Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, each Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due each of the Local Agencies from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agencies fail to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agencies shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

C. The State will prepare and submit to the Local Agencies, on an annual basis no later than October 1st of the calendar year, an invoice for the amount provided in Section 4(B) Payment Schedule herein. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format.

Section 6. State and Local Agencies Commitments

The Local Agency Contract Administration Checklist in **Exhibit C** describes the Work to be performed and assigns responsibility of that Work to either the Local Agencies or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in **Exhibit C**.

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the “Construction Plans”), or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the responsible party shall comply with the following requirements, as applicable:

- a. perform or provide the Plans, to the extent required by the nature of the Work.
- b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
- c. prepare special provisions and estimates in accord with the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction.
- d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
- e. stamp the Plans produced by a Colorado Registered Professional Engineer.
- f. provide final assembly of Plans and contract documents.
- g. be responsible for the Plans being accurate and complete.
- h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Local Agency Contract Administration Checklist. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

2. If the State is the responsible party:

- a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the State Agency Project Engineer (SAPE), who shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
- b. if bids are to be let for the construction of the project, the State shall, in

conjunction with the Local Agencies, advertise the call for bids and upon concurrence by the Local Agencies will award the construction contract(s) to the low responsible bidder(s) or low responsive bidder(s) in accordance with CDOT prequalification rules found at <http://www.coloradodot.info/business/bidding/Bid%20Rules/view>.

- (1) in advertising and awarding the bid for the construction of a federal-aid project, the State shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the State/contractor shall incorporate Form 1273 in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).
 - (2) the Local Agencies have the option to concur or not concur in the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agencies must declare its concurrence or non-concurrence within 3 working days after said bids are publicly opened.
 - (3) by indicating its concurrence in such award, the Local Agencies, acting by or through its duly authorized representatives, agree to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project.
- c. If all or part of the construction work is to be accomplished by State personnel (i.e. by force account), rather than by a competitive bidding process, the State will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

Section 7. ROW Acquisition and Relocation

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agencies' and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

If right of way is purchased for a state highway, including areas of influence of the state highway, the Local Agencies shall immediately convey title to such right of way to CDOT after the Local Agencies obtain title.

Section 8. Utilities

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing that all such clearances have been obtained.

Section 9. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 10. Environmental Obligations

The State shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

Section 11. Maintenance Obligations

The State will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The State will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the State 's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 12. Record Keeping

The State shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The State shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The State shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the Local Agencies and FHWA to inspect the project and to inspect, review and audit the project records.

Section 13. Termination Provisions

This contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agencies and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. Any unspent amount associated with Local Agencies' contributions will be applied by the percentage based on the contributions table contained in Paragraph 4(B) herein.

B. Termination for Cause. If, through any cause, the Local Agencies shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agencies shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agencies of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data,

studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agencies under this contract shall, at the option of the State, become its property, and the Local Agencies shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agencies shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agencies shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agencies, and the State may withhold payment to the Local Agencies for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agencies is determined.

If after such termination it is determined, for any reason, that the Local Agencies were not in default or that the Local Agencies' action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

Section 14. Legal Authority

The Local Agencies warrants that they possess the legal authority to enter into this contract and that they have taken all actions required by their procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize their undersigned signatory to execute this contract and to bind the Local Agencies to its terms. The person(s) executing this contract on behalf of the Local Agencies warrant that such person(s) has full authorization to execute this contract.

Section 15. Representatives and Notice

The State will provide liaison with the Local Agencies through the State's Region Director, Region 6, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agencies for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 6 and the Local Agencies. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to the State:

Andy Stratton
CDOT Region 6
2000 South Holly Street
Denver, Colorado 80222
(303) 398-6746

If to Adams County:

Jeanne Shreve
Adams County
4430 South Adams County Parkway
Brighton, Colorado 80601
(720) 523-6100

If to City and County of Broomfield:

If to Federal Heights:

Kevin Standbridge
City and County of Broomfield
One DesCombes Drive
Broomfield, Colorado 80020
(303) 428-6300

Steve Durian
City of Federal Heights
2380 West 90th Avenue
Federal Heights, Colorado 80260
(303) 412-3539

If to City of Northglenn:

Brooke Svoboda
City of Northglenn
11701 Community Center Drive
P.O. Box 330061
Northglenn, Colorado 80233
(303) 450-5937

If to City of Thornton:

Joyce Hunt
City of Thornton
9500 Civic Center Drive
Thornton, Colorado 80229
(303) 538-7224

If to Weld County:

Elizabeth Relford
1111 H Street
P.O. Box 758
Greeley, Colorado 80632
(970) 304-6496

If to City of Westminster:

Aric Otzelberger
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031
(303) 658-2004

Section 16. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 17. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agencies. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agencies that any such person or entity, other than the State or the Local Agencies receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 18. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk

management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 19. Severability

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

Section 20. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 21. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 22. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agencies.

Section 23. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 24. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not resolved by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive

unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agencies mail or otherwise furnish to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agencies shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agencies shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

Adams County

Legal Name of Contracting Entity

5100456

CDOT Vendor Number

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

**STATE OF COLORADO:
JOHN W. HICKENLOOPER
GOVERNOR**

By _____
Timothy J. Harris, P.E., Chief Engineer
For Donald E. Hunt, Executive Director
Department of Transportation

CONTRACTOR:

City of Thornton

Legal Name of Contracting Entity

2000088

CDOT Vendor Number

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

CONTRACTOR:

City and County of Broomfield

Legal Name of Contracting Entity

2000091

CDOT Vendor Number

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

CONTRACTOR:

City of Federal Heights

Legal Name of Contracting Entity

2000002

CDOT Vendor Number

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

CONTRACTOR:

City of Northglenn

Legal Name of Contracting Entity

2000004

CDOT Vendor Number

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

CONTRACTOR:

Weld County

Legal Name of Contracting Entity

2000135

CDOT Vendor Number

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

CONTRACTOR:

City of Westminster

Legal Name of Contracting Entity

2000053

CDOT Vendor Number

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:

(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

**STATE CONTROLLER:
DAVID J. MCDERMOTT, CPA**

By _____

Date _____

North I-25 Managed Lanes: US 36 to 120th Avenue

Project Scope

The project is located on I-25 between US 36 just north of downtown Denver and 120th Avenue in Adams County. I-25 is the primary north-south route through Colorado, providing access to, thru, and from downtown Denver – the business, financial, government and cultural center of the state. North I-25 serves motorists traveling to the Denver area from Wyoming, neighboring Larimer and Weld Counties, and numerous Denver area suburbs. The six-mile segment of I-25 currently has three general purpose lanes in each direction. The project adds a fourth travel lane in both directions to be operated as a managed lane.

Elements of Project Scope:

Managed Lanes

- Provide one new managed lane in each direction on I-25 between US 36 and 120th Avenue utilizing existing pavement and narrowing the inside shoulder.
- Provide 2- to 4-foot-wide painted buffer to separate the managed lanes from general purpose travel.
- Maintain 8-foot-wide outside shoulders and provide additional emergency pullouts for vehicle refuge.
- Maintain 11 to 12 foot-wide lane widths and 2- to 4-foot-wide inside shoulders.
- Provide ingress and egress to the managed lanes at each major interchange.
- Provide a key link in a developing coordinated system of managed lanes by providing a functional extension of the I-25 Express Lanes and direct connection to US 36 to the west, and eventually I-270 to the southeast.
- Build a new connecting ramp to allow a seamless transition between the existing one-directional lanes and the new bi-directional lanes.

Express Bus / Transit / Carpooling

- Establish a continuous managed lane between Adams County and downtown Denver with connections to major regional transit hubs at north and south route termini. Express Bus, carpoolers and special transit patrons will use the seamless managed lanes system for a faster, more reliable trip.

Pavement Repair

- Repave the entire six-mile stretch of I-25 within the project limits currently in “poor” condition.

Noise Walls

- Construct one-mile- of new noise wall and repair three miles of existing deteriorated noise walls.

ITS/Traveler Information & Institutional Support

- Install state-of-the art tolling and Intelligent Transportation Systems (ITS) equipment and integrate it with regional traffic operations centers and a recently established North Area Transportation Alliance (NATA) TMO.
- Apply Active Transportation Demand Management (ATDM) strategies that will enhance traffic efficiency and safety. The corridor will be equipped with lane use signs (LUS) to direct traffic during congestion and incidents and back of queue warning systems along with LUS and Variable Message Signs (VMS) to alert drivers.

The managed lanes will operate 24 hours a day, 7 days a week. HOV (2+) and public transit vehicles would have access to the managed lanes free of charge, while SOVs would pay a toll to use these lanes. Toll rates would be adjusted in real time based on the amount of traffic in the managed lanes so that the lanes operate at free-flow volumes at all times of the day. During peak hours, corridor-wide tolls will be set at not less than the Regional Transportation District (RTD) Express Bus fare to ensure continued competitiveness of transit in the corridor.

Four automatic toll collection points are envisioned in each direction of travel. The operations system includes loop detectors, variable message signs, real-time digital video cameras, toll-collection and process units, and enforcement equipment to collect traffic data, disseminate real-time travel and pricing information to drivers, and support enforcement.

CDOT will utilize existing contracts in place with the Colorado State Patrol for enforcement and E-470 Public Highway Authority (E-470) for toll collection, processing, customer service and other administration operations.

**LOCAL AGENCY
ORDINANCE(S)
or
RESOLUTION (S)**

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. IM 0253-222	STIP No. SDR 7101.999	Project Code 18695	Region 06
Project Location I-25: US 36 to 120 th Avenue			Date 07/02/2012
Project Description North I-25 Managed Lanes on Existing Infrastructure			
Local Agency Adams County CDOT Resident Engineer Jay Hendrickson	Local Agency Project Manager Jeanne Shreve CDOT Project Manager Andy Stratton		
INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i> . The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement		X
5.4	Conduct Design Scoping Review Meeting		X
5.5	Conduct Public Involvement		X
5.6	Conduct Field Inspection Review (FIR)		X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		X
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)		X
5.9	Obtain Utility and Railroad Agreements		X
5.10	Conduct Final Office Review (FOR)		X
5.11	Justify Force Account Work by the Local Agency		X
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items		X
5.13	Document Design Exceptions - CDOT Form 464		X
5.14	Prepare Plans, Specifications and Construction Cost Estimates		X
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Jay Hendrickson _____ 07/02/2012 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		X
7.2	Advertise for Bids		X
7.3	Distribute "Advertisement Set" of Plans and Specifications		X
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement		X
7.5	Open Bids		X
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence		X
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract		X
7.10	Provide "Award" and "Record" Sets of Plans and Specifications		X
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor		X
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)		X
	Pre-survey		
	• Construction staking		X
	• Monumentation		X
	Partnering (Optional)		X
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)		X
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)		X
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)		X
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		X
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Jay Hendrickson _____ 303-398-6749 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications		X
	Construction inspection and documentation		X
8.6	Approve Shop Drawings		X
8.7	Perform Traffic Control Inspections		X
8.8	Perform Construction Surveying		X
8.9	Monument Right-of-Way		X
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. Jay Hendrickson _____ 303-398-6749 Local Agency Representative Phone number		X
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings		X
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders		X
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status		X
8.16	Prepare and Submit Monthly Progress Reports		X
8.17	Resolve Contractor Claims and Disputes		X
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Jay Hendrickson _____ 303-398-6749 CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting		X
9.2	Complete CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed 		X X X
9.3	Perform Project Acceptance Samples and Tests		X
9.4	Perform Laboratory Verification Tests		X
9.5	Accept Manufactured Products Inspection of structural components: <ul style="list-style-type: none"> • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices 		X X X
9.6	Approve Sources of Materials		X
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> <ul style="list-style-type: none"> • Generate IAT schedule • Schedule and provide notification • Conduct IAT 		X X X
9.8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot mix asphalt 		X X
9.9	Check Final Materials Documentation		X
9.10	Complete and Distribute Final Materials Documentation		X

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements		X
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist		X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280		X
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements		X
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire		X
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)		X
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report		X
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter		X
11.3	Advertise for Final Settlement		X
11.4	Prepare and Distribute Final As-Constructed Plans		X
11.5	Prepare EEO Certification		X
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications		X
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)		X
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer		X
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		X
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist		X

cc: CDOT Resident Engineer/Project Manager
 CDOT Region Program Engineer
 CDOT Region EEO/Civil Rights Specialist
 CDOT Region Materials Engineer
 CDOT Contracts and Market Analysis Branch
 Local Agency Project Manager



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Resolution No. 28 re City of Westminster 2015 Legislative Policy Statement

Prepared By: Ben Goldstein, Senior Management Analyst
Steve Smithers, Deputy City Manager

Recommended City Council Action

Adopt Resolution No. 28 establishing the City of Westminster 2015 Legislative Policy Statement.

Summary Statement

- The Legislative Policy Statement identifies general legislative issues of interest to the City of Westminster and articulates the City's policy principles on these issues. Staff uses the Policy Statement as direction when reviewing and analyzing bills that may have an impact on the City's interests.
- Adopting the Legislative Policy Statement will allow Staff and Council to move quickly when legislation is introduced at the Capitol. The ability to act in a timely manner increases the City's overall effectiveness when it comes to influencing legislation that affects municipalities.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council adopt the proposed City of Westminster 2015 Legislative Policy?

Alternatives

1. Do not adopt a City of Westminster 2015 Legislative Policy Statement. This is not recommended, as the adoption of a Legislative Policy Statement is an important component of the City of Westminster's legislative program.
2. Direct Staff to revise the proposed Policy Statement to reflect any additional changes that Council wishes to make.

Background Information

In 2007, City Council adopted the first City of Westminster Legislative Policy Statement. The goal of the Policy Statement is to identify general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues. These issues could have been addressed in the past at the legislature, or they could be issues that are anticipated in the future. Staff's goal for this proposed document is to be broad, yet as inclusive as possible to capture important issues to the City. There were minor edits by Staff to the 2015 Legislative Policy Statement as compared to the 2014 version.

Staff will utilize the City Council-approved Legislative Policy Statement as a guiding policy when reviewing and analyzing bills introduced in the General Assembly that may have an impact on the City. When significant legislation is identified, Staff will provide City Council with a brief summary of legislation of substance and will recommend official City positions that are consistent with the principles of the adopted Legislative Policy Statement. If Council does not express any concerns with the positions that Staff has recommended on specific bills, Staff will communicate these positions to the City's State Legislators, lobbyist, and Colorado Municipal League, and update the City's legislative scorecard posted in The Weekly and on the City's website to communicate the City's positions to the public. If a majority of City Council expresses concerns about a specific position that Staff is presenting, discussion on the item will be scheduled for a subsequent meeting with City Council, and no lobbying on the issue will take place until Council direction is received.

As State legislation can have a significant impact on the City of Westminster and its citizens, the proposed City of Westminster 2015 Legislative Policy Statement supports all eight of City Council's Strategic Plan Goals: Visionary Leadership and Effective Governance; Vibrant and Inclusive Neighborhoods; Comprehensive Community Engagement; Beautiful, Desirable, Environmentally Responsible City; Proactive Regional Collaboration; Dynamic, Diverse Economy; Excellence in City Services; and Ease of Mobility.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments

- Resolution
- Proposed Policy Statement

RESOLUTION

RESOLUTION NO. **28**

INTRODUCED BY COUNCILLORS

SERIES OF 2014

**A RESOLUTION ADOPTING THE CITY OF WESTMINSTER
2015 LEGISLATIVE POLICY STATEMENT**

WHEREAS, the City of Westminster follows legislative activity in the Colorado General Assembly very closely in order to identify any potential impacts on the City and its citizens; and

WHEREAS, due to the fast-paced nature of the State legislative process and the ever-changing language of numerous bills of substance, it is critical that the City of Westminster maintains an effective and responsive system for taking and communicating official City positions on relevant legislation; and

WHEREAS, an integral part of this system is the adoption of a City of Westminster 2015 Legislative Policy Statement, which identifies general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues; and

WHEREAS, Staff will utilize the City of Westminster 2015 Legislative Policy Statement as a guiding policy when reviewing and analyzing bills that have an impact on the City's interests; and

WHEREAS, the City of Westminster 2015 Legislative Policy Statement incorporates the City Council's Strategic Plan Goals and Objectives.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the attached City of Westminster 2015 Legislative Policy Statement is hereby adopted representing the City of Westminster's policy principles on these issues.

PASSED AND ADOPTED this 24th day of November, 2014.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER

**PROPOSED
CITY OF WESTMINSTER 2015
LEGISLATIVE POLICY STATEMENT**

November 24, 2014

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OVERVIEW

The City of Westminster's Legislative Policy Statement identifies general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues. The following policy statements are necessarily broad and by no means all-inclusive. Staff will utilize the Legislative Policy Statement as a guiding policy when reviewing and analyzing bills that have an impact on the City's interests. The City of Westminster will take Official City Positions on a limited number of significant bills. The City will have discretion in determining which specific bills to take Official City Positions. Official City Positions are not automatically assumed on bills simply that are congruent with the policy statements contained in this document. When significant legislation is identified, Staff will provide City Council with a brief summary of the substance of the legislation and a proposed Official City Position that is consistent with the principles of the Legislative Policy Statement. If Council does not express any concerns with the position, Staff will communicate this position to the City's lobbyist and update the City's legislative page on the website to communicate the City's position to the public. The City will continue to contact legislators regarding Official City Positions on specific bills throughout legislative session.

The City of Westminster welcomes the opportunity to discuss the City's legislative positions with Legislators. In addition to communication on specific bills, this Legislative Policy Statement provides a reference tool for Legislators to use when considering legislation that may impact the City of Westminster. For more information on the City's legislative program, please contact Deputy City Manager Steve Smithers at 303-658-2002 or Senior Management Analyst Ben Goldstein at 303-658-2007.

CITY OF WESTMINSTER STRATEGIC PLAN

Each year, the City of Westminster City Council reviews and recommitments the City organization to a five-year Strategic Plan. The 2014-2019 Strategic Plan identifies the City's underlying principles on which decisions are based and includes goals to be achieved through 2019. Each goal is further defined and any associated initiatives identified. The Strategic Plan reinforces long-term planning for both day-to-day operations and services, and long-term investment projects such as road construction, water distribution and sewer maintenance programs. As a statement of City Council's goals and vision for the City, the Strategic Plan helps Staff successfully plan City projects and budgets to achieve this vision and associated goals. Accordingly, the City of Westminster Legislative Policy Statement is intended to be consistent with and support City Council's Strategic Plan Goals and Initiatives.

Therefore, the City of Westminster:

- Supports legislation that is consistent with and supports the achievement of the City's Strategic Plan Goals and Initiatives.
- Opposes legislation that runs counter to or prevents the achievement of the City's Strategic Plan Goals and Initiatives.

The following is a summary of the eight goals and corresponding objectives that are identified in the City's 2014-2019 Strategic Plan.

2014 CITY OF WESTMINSTER STRATEGIC PLAN



VISIONARY LEADERSHIP & EFFECTIVE GOVERNANCE

The City of Westminster has articulated a clear vision for the future of the community. The vision is implemented through collaborative and transparent decision making.

- Secure a replacement for our retiring City Manager that has the combination of experience, knowledge, style and values that are consistent with City Council vision and organizational values; ensure a smooth transition.



VIBRANT & INCLUSIVE NEIGHBORHOODS

Westminster provides housing options for a diverse demographic citizenry, in unique settings with community identity, ownership and sense of place, with easy access to amenities, shopping and employment.

- Complete St. Anthony North Hospital (84th Avenue) impact analysis
- Create an Arts District



COMPREHENSIVE COMMUNITY ENGAGEMENT

Westminster is represented by inclusive cultural, business, nonprofit and geographic participation. Members of the community are involved in activities; they are empowered to address community needs and important community issues.

- Create an Inclusiveness Commission



BEAUTIFUL, DESIRABLE, ENVIRONMENTALLY RESPONSIBLE CITY

Westminster thoughtfully creates special places and settings. The city is an active steward, protecting and enhancing natural resources and environmental assets. The city promotes and fosters healthy communities.

- Develop and implement Open Space Master Plan
- Identify and implement alternative energy options for city facilities
- Achieve “Solar City” designation to benefit both our environment and economy



PROACTIVE REGIONAL COLLABORATION

Westminster is proactively engaged with our partners to advance the common interests of the region.

- Collaborate with counties, school districts and neighboring cities



DYNAMIC, DIVERSE ECONOMY

Westminster is a local government that fosters social, economic, and environmental vitality and cultivates and strengthens a wide array of economic opportunities.

- Construct Westminster Station and develop TOD area
- Identify and pursue FasTracks next step
- Continue North I-25 development
- Proceed with Phase I of the Westminster Center Reinvestment Project
- Advance business attraction strategy
- Encourage the development of chef-owned and/or operated restaurants
- Grow small businesses through incubation



EXCELLENCE IN CITY SERVICES

Westminster leads the region in a culture of innovation that exceeds expectations in all city services – the city is known for “the Westy Way.”

- Analyze Fire/EMS alternative service delivery
- Provide improved collaboration and communication between City Council and employees at all levels of the organization
- Improve planning and permit process to be business friendly and achieve city goals



EASE OF MOBILITY

Westminster pursues multi-modal transportation options to ensure the community is convenient, accessible and connected by local and regional transportation options through planning, collaboration, advocacy and execution. Transportation objectives include walkability, bike friendly, drivability and mass transit options.

- Enhance trail connectivity

POLICY PRINCIPLES

HOME RULE AND LOCAL CONTROL

The City of Westminster believes strongly in the principles of home rule authority and local control. Article XX of the Colorado Constitution grants home rule municipalities such as Westminster “the full right of self-government in local and municipal matters.” The City of Westminster believes that home rule authority increases the effectiveness and efficiency of local government services, enhancing the quality of life in the community and the value provided to local taxpayers.

Therefore, the City of Westminster:

- Expects State legislators to uphold and support home rule and Colorado’s tradition of local control.
- Supports legislative efforts to strengthen home rule authority of municipal governments.
- Opposes legislation that attempts to weaken municipal home rule authority and flexibility.
- Opposes legislation that mandates state intervention in matters of local concern, especially when that intervention unnecessarily or adversely affects the City’s ability to manage these matters pursuant to its home rule authority.

STATE AND FEDERAL MANDATES

Programs and regulations mandated by the State or Federal government have the potential to stretch the financial resources of the City of Westminster. If additional costs brought about by these mandated programs or regulations are not paid by the State or Federal government, they can have a direct negative impact on the City budget. This can prevent the City of Westminster from meeting the needs of residents and businesses and achieving the City’s strategic priorities.

Therefore, the City of Westminster:

- Supports the TABOR Constitutional requirement for the Colorado General Assembly to reimburse municipalities for the cost of State mandates and to make this requirement clear in State fiscal notes prepared for the General Assembly.
- Opposes unfunded State and Federal mandates that impose unfair financial burdens on municipalities and their citizens.

GOVERNMENTAL IMMUNITY

The City of Westminster recognizes that the complexity and diversity of City operations and services required to meet the needs of citizens may expose the City, its officers, and employees to liability for damage and injury. The City strongly believes that public officers and employees need to be assured that municipal liability will not impair the lawful and proper provision of necessary services to the public.

Therefore, the City of Westminster:

- Supports legislation that protects the interests of municipalities, their officers, and their employees in the lawful and proper performance of their duties and responsibilities.
- Supports legislation that discourages baseless and frivolous claims and demands made against municipalities, their officers, and their employees.
- Supports the availability of public liability insurance at reasonable costs and the ability of municipalities to reduce these costs through self-insurance.

- Opposes legislation that expands or increases municipal liability, or, conversely, further limits municipal immunity.

SALES AND USE TAX

The City of Westminster levies, administers, and collects its own sales and use taxes under its home rule authority. Sales and use tax revenue is the primary source of funding for City of Westminster services and operations, comprising over 60% of general fund revenues. Appropriate actions at Federal, State and local levels must preserve or enhance this critical local revenue.

Therefore, the City of Westminster:

- Supports legislation that maintains local control over imposition, collection and administration of sales and use taxes.
- Supports legislation that allows state and local governments to require businesses to collect state and local sales and use taxes on remote sales.
- Supports voluntary, cooperative efforts among Colorado municipalities to standardize sales and use tax practices and utilize technology for the convenience of taxpayers, the business community, and municipalities.
- Opposes legislation that preempts local authority to impose and collect sales and use taxes.
- Opposes legislation that grants jurisdictions other than the State, cities, and counties the authority to impose sales or use taxes.

GENERAL FINANCE

The City of Westminster is a full-service community. While sales and use tax revenue comprises the primary funding source for general government services, the City's wide variety of services are also funded through a balanced array of other taxes, user fees, and other financing sources. Consequently, the City of Westminster is impacted by State and Federal financial policies.

Therefore, the City of Westminster:

- Supports the continuation of existing local government financing methods and the addition of new methods for local government to support the provision of municipal services to citizens.
- Supports equitable sharing with municipalities of existing and future State revenues derived from traditional State-collected, locally shared revenues, such as the cigarette tax, Highway Users Tax Fund, and the lottery.
- Opposes State-granted exemptions or other State actions that erode municipal sales taxes, use taxes, property taxes, and other revenue sources unless the State provides adequate replacement revenues.
- Opposes State-mandated reductions to the current property tax structure without specific revenue replacement provisions.

LAND USE, DEVELOPMENT, AND REVITALIZATION

The City of Westminster works constantly to achieve the Strategic Plan Goals of "Vibrant & Inclusive Neighborhoods" and "Dynamic, Diverse Economy." The City believes that local control with land use planning contributes greatly to the achievement of this goal and the overall quality of life in the City of Westminster. In addition, the City has a Strategic Plan Goal of "Ease of Mobility." In order for redevelopment and revitalization efforts to succeed, the City feels very strongly that appropriate urban renewal tools need to be preserved and strengthened.

Therefore, the City of Westminster:

- Supports legislation that removes barriers to local land use planning and land development regulation.
- Supports appropriate legislation that facilitates the creation of Transit-Oriented Developments (TOD).
- Supports legislation to enable cooperative urban renewal projects between multiple jurisdictions.
- Supports appropriate legislation and funding that encourages and facilitates historic preservation and rehabilitation.
- Opposes legislation that prescribes comprehensive land use and other community planning at the State level.
- Opposes legislation that would inappropriately limit local government authority to impose growth impact fees.
- Opposes legislation that would unreasonably restrict the use of tax increment financing or eminent domain for redevelopment projects.

ECONOMIC DEVELOPMENT

The City of Westminster strives to develop and maintain a “Dynamic, Diverse Economy” per its Strategic Plan. Whether it is maintaining a healthy retail base or retaining and expanding targeted businesses and primary employers, the City recognizes the importance of a healthy economic climate to the overall quality of life.

Therefore, the City of Westminster:

- Supports the development of a statewide economic development strategy that addresses issues of business climate and economic direction at the State level but seeks local input and respects local control of economic development.
- Supports appropriate State tax policies and incentive programs, including enterprise zones, business incentive agreements, or other legislative initiatives, that encourage business expansion, retention, and attraction through primary job creation, investment in capital equipment, and employer facility development.
- Supports workforce development, including higher education funding, relevant pre- and post-secondary vocational training, and STEM curriculum for K-12.

WATER RESOURCES AND TREATMENT

Since the 1950’s, the City of Westminster has invested substantial public funds into the creation and protection of an independent water supply. Westminster has an obligation to provide the highest quality water and wastewater services in a financially sound, reliable, safe, and environmentally respectful manner. The City supports legislative measures to further this goal.

Therefore, the City of Westminster:

- Supports the constitutional doctrine of prior appropriation, the constitutional priority given to domestic water use, the right to purchase and change the use of water rights within the State, and supports legislation and policies to ensure fair treatment of all water rights holders.
- Supports water quality legislation that results in appropriate, cost effective water quality control regulations with measurable water quality benefits.

- Supports legislation that reasonably limits liability exposure of and protects investment in water and wastewater operations.
- Supports legislation and regulations that promote the appropriate and beneficial use of reclaimed water and wastewater biosolids.
- Supports legislation that protects water supplies from the environmental and operational impacts of aquatic nuisance species such as zebra and quagga mussels.
- Supports legislation to proactively reduce wildfire risks.
- Supports continued Federal and State funding for water and wastewater treatment infrastructure to reduce local costs and expedite construction of necessary treatment, distribution, and collection facilities to comply with Federal and State mandates.
- Supports appropriate water conservation efforts and sustainable water resources management practices by all users.
- Supports sufficient appropriations and adequate fee-based revenue so the State may continue administration of its water programs including those federally mandated water and wastewater environmental regulatory programs, such as the Safe Drinking Water and Clean Water Acts delegated to the State to administer, and can fund the protection of critical infrastructure through an equitable distribution of program costs between State general fund monies and user fees. *This is important as Staff anticipates there will probably be a bill during the 2015 Session year.*

TRANSPORTATION

The City of Westminster believes that the movement of goods and people is vital to the continued economic success of the State of Colorado and to the maintenance of the high quality of life that Coloradans enjoy. In order to preserve these, the State Legislature must be willing to make significant investments to maintain and improve the State's transportation network including roads, bridges, and other multimodal systems. With the Colorado Department of Transportation's funding challenges, municipal and county governments have taken on greater construction, maintenance, and financial responsibilities. For example, two interchanges on I-25 at 144th Avenue and 136th Avenue were built and paid for entirely by the Cities of Westminster and Thornton. The City of Westminster has demonstrated that it is willing to partner on projects, such as contributing \$3 million in betterments to the U.S. 36 Express Lanes Project and \$500,000 as part of a \$8 million local funding commitment to the North I-25 Managed Lanes project, but is against efforts to pass along additional State roadway construction or maintenance responsibilities to local governments without increased and adequate funds to meet these additional responsibilities.

Therefore, the City of Westminster:

- Supports an appropriate State-wide transportation plan that not only funds repair and maintenance needs, but also commits to network and multi-modal mobility improvements and expansions, including actions that address congestion relief in the Denver metropolitan area.
- Supports legislation to enhance transportation funding equity within the State and Denver Metropolitan Region.
- Supports equitable administration of the Colorado Department of Transportation's (CDOT) Managed Lane Policy. U.S. 36 and North I-25 are gaining capacity improvements under a tolled, HOV3+ approach, and other potential capacity improvement projects should include a toll component.
- Supports legislation and regulatory action that maintains or increases the level of funding provided by the State or passed through the State by the Federal government to transportation activities at the local level.
- Supports State and Federal investments in the U.S. 36 and North I-25 managed lanes projects. This includes CDOT RAMP funding for the extension of the I-25 managed lanes north of 120th Avenue.

- Supports State and Federal investments in addressing the bi-directional commute challenges on the existing I-25 HOT/HOV lanes.
- Supports additional funding efforts to complete the Northwest Commuter Rail Project (FasTracks) in a timely manner.
- Supports efforts to pursue a Statewide ballot issue and/or the creation of a Metropolitan Transportation District (MTD) for the Denver Metropolitan area to increase transportation funding, provided regional equity is adequately achieved for a potential project list and MTD governance structure. Multimodal improvements, including acceleration of the Northwest Commuter Rail Project, would need to be included as eligible items for potential future funding efforts.
- Supports State and Federal assistance and funding for Bus Rapid Transit (BRT) and bikeway improvements on U.S. 36. This includes efforts to complete the remaining capital commitments in FasTracks to U.S. 36 BRT, along with the acquisition of an appropriate BRT vehicle fleet for service on the corridor.
- Supports State and Federal funding assistance for the implementation of railroad crossing quiet zones. Supports legislative efforts to modify rulemaking to allow for a more attainable quiet zone crossing designation and better certainty as to the ongoing nature of quiet zone designations once investments are made in establishing those quiet zones.
- Supports Transportation Demand Management (TDM) efforts and investments for U.S. 36 and North I-25.
- Opposes any efforts to eliminate the Northwest Commuter Rail Project or to pursue other transit investments in the region that would result in further postponement of completion of this project.
- Opposes legislation to transfer maintenance responsibility of State-owned roads to municipalities without adequate short and long-term funding to meet these additional responsibilities.

TELECOMMUNICATIONS

The City of Westminster recognizes the importance of telecommunications services to economic development and the quality of life in the City. The City of Westminster supports increased competition in the cable and video market and has taken steps in preparation to work with companies who are interested in providing video service in our community. However, the City's view is that statewide franchising should not override the City's authority to ensure the best possible service to its citizens and to regulate the use of public right-of-way.

Therefore, the City of Westminster:

- Supports the retention of municipal franchising and regulatory authority over cable television systems.
- Supports legislation that preserves municipal control and autonomy over public rights-of-way and other assets, along with the right of local governments to receive fair and reasonable compensation for their use.
- Supports legislation that would reestablish municipality's ability to provide investments and incentives to provision or promote community broadband services.
- Opposes State or Federal restrictions on municipal franchising, regulatory, and taxing authority over telecommunications systems.

WORKERS' COMPENSATION

The City of Westminster recognizes that the Colorado Workers' Compensation Act was developed as a no-fault system established "to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation, recognizing that the workers' compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike." The City self-insures its Workers' Compensation program up to a certain limit and then purchases excess commercial insurance coverage to ensure the most cost effective, efficient delivery of these benefits to employees. The City is concerned about any legislation that will erode the ability of an employer to control their claim costs and inhibits an employer's ability to get competitive quotes from the market for quality insurance coverage.

Therefore, the City of Westminster:

- Supports legislation that maintains the spirit of the Colorado Workers' Compensation Act, for the protection of both Colorado employers and employees.
- Opposes legislation that creates presumptive eligibility coverage within the law.
- Opposes legislation that increases insurance premium costs to employers.
- Opposes legislation that adds administrative burdens or taxes to self-insurance programs.
- Opposes legislation that promotes litigation.

HUMAN RESOURCES

Employees are the City of Westminster's most important resource. The City is an equal opportunity employer and works to ensure excellent and fair salaries and benefits for employees, along with growth and development opportunities. Like with most other organizations, the City of Westminster's budget is continuously pressured by increasing compensation and benefit costs. The City constantly balances fair compensation and benefits with responsible expenditures of tax dollars.

Therefore, the City of Westminster:

- Supports legislation that maintains or reduces the employer and employee Fire and Police Pension Association (FPPA) pension and retiree health insurance costs.
- Opposes any legislation that interferes with a municipality's ability to determine the terms and conditions of municipal employment.
- Opposes mandated Social Security coverage for public employees, mandated benefit levels or funding standards for municipal employee pension plans, or other unreasonable burdens or restrictions in connection with the administration of municipal employee benefit plans.
- Opposes legislation that reduces current State funding of death and disability benefits for emergency services personnel or legislation that shifts the funding of this State responsibility to local governments.

OPEN SPACE

As stated in the City's Strategic Plan, Westminster works to maintain and develop a "Beautiful, Desirable, Environmentally Responsible City." Increasing and preserving open space is a high priority in the City of Westminster. As build-out approaches, the City is striving to achieve its goal of designating and maintaining 15% of the City's land area as open space and is within 1% of achieving this goal. Open space, along with trails, contribute greatly to the quality of life in the City of Westminster.

Therefore, the City of Westminster:

- Supports maintaining funding, and adding additional funding where appropriate, to State and Federal land conservation programs that will help to increase the amount of open space within the City, thereby helping to achieve the goal of “Beautiful, Desirable, Environmentally Responsible City.”
- Supports legislation that generally enables and empowers the use of conservation easements.
- Supports legislation that provides further incentives to preserve open space.

ENVIRONMENT

For the City of Westminster, the environment is a priority, as is shown in the City’s programs and services that secure clean air, water, and land. Westminster is one of the most environmentally-friendly cities in the area and has signed the U.S. Conference of Mayors Climate Protection Agreement. The City of Westminster recognizes the importance of working cooperatively with other governmental entities to implement and manage efficient, cost-effective, and scientifically-based environmental control programs. It is the intent of the City to meet or exceed compliance with all applicable environmental laws and regulations. However, the City does not support State or Federal programs that place a severe financial burden on municipalities.

Therefore, the City of Westminster:

- Supports appropriate legislation and regulations that promote pollution prevention.
- Supports legislation and regulations that provide incentives for green building and sustainable design without imposing unfunded mandates.
- Supports energy conservation efforts and appropriate legislation that accelerates the development of clean, economical energy resources and fuel-efficient technologies such as wind and solar energy, waste to energy, fuel cells, and other appropriate and effective technologies.
- Supports reasonable legislation and regulations that increase the fuel efficiency of motor vehicles.
- Supports legislation that limits liability for waste cleanup costs under Federal law where the municipality demonstrates due care and absence of fault in connection with waste disposal at a site and provides an early and fair means of settlement for municipalities named as liable parties at waste cleanup sites.
- Opposes legislation or standards that weaken current air quality standards or regulations.
- Opposes legislation that limits the ability of local government to regulate the activities of private waste or recycling collectors or to provide waste or recycling collection or processing services to citizens.

PUBLIC SAFETY

The City works diligently towards keeping citizens safe anywhere in the City. The City of Westminster recognizes the critical importance of maintaining public order, providing a safe environment, and protecting the lives and property of the citizens of Westminster. The role of the Police Department is to enforce the law in a fair and impartial manner, recognizing both the statutory and judicial limitations of police authority and the constitutional rights of all persons. The Westminster Fire Department works to minimize injuries and property losses due to fire, to provide quality emergency medical care and transport services, and to provide other services including fire inspections and emergency preparedness planning. Finally, the City of Westminster’s Municipal Court works to ensure that justice is carried out fairly and effectively.

Therefore, the City of Westminster:

POLICE

- Supports legislation that provides resources and support to victims of domestic violence.
- Supports legislation regarding the Public Safety Spectrum that support nationwide, interoperable, wireless broadband network.
- Supports legislation that protects society against Identity (ID) Theft.
- Opposes legislation that inappropriately transfers immigration and illegal alien enforcement responsibilities from the Federal government to local government and diverts local law enforcement resources from other priorities.
- Opposes legislation that restricts and limits automated license plate reader technology and data retention by law enforcement.

MUNICIPAL COURT

- Opposes legislation that limits the authority of municipalities to enforce their own ordinances in municipal courts.
- Opposes imposition of State surcharges on municipal court fines for the purpose of funding State programs.

FIRE AND EMERGENCY MEDICAL SERVICES

- Supports legislation that assists in the development of interoperable communication systems for public safety.
- Supports legislation to require the installation of appropriate fire protection systems in structures to enhance life safety and property protection.
- Supports legislation that strengthens the City's ability to prohibit the use and sale of all fireworks, along with legislation that allows counties and fire districts to prohibit and otherwise control fireworks.
- Opposes legislation that restricts the City from adopting local strategies and regulations for safely addressing hazardous materials or legislation that restricts the City's ability to review and approve the location of facilities that use or store hazardous materials or hazardous waste.



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Appointment of David R. Frankel, City Attorney

Prepared By: Debbie Mitchell, General Services Director

Recommended City Council Action

Authorize the Mayor to execute the attached employment agreement with David R. Frankel for his services as City Attorney for 2015 with an effective date of January 12, 2015, and an automatic renewal for 2016 unless terminated pursuant to the terms of the agreement.

Summary Statement

For the past six months, City Council and assigned City Staff have been closely involved in the recruitment and selection of a new City Attorney upon the retirement of the previous City Attorney.

- The process has included opening the position to the public, with publicity about the position through job advertisements in professional publications and on-line services, and a recruitment brochure distributed nationally; candidate interviews; extensive reference and background checks; and finally, the conditional offer of employment and negotiation of an employment agreement.
- City Council is being asked to take formal action on the appointment of David R. Frankel as the new City Attorney. This appointment is being made in accordance with Section 4.6 of the Westminster City Charter.
- On November 11, 2014, the Mayor, acting on behalf of City Council, provided a contingent offer of employment to Mr. David R. Frankel.
- Mr. Frankel has formally accepted the offer pending final action by City Council to execute the employment contract.
- His first day on the job as City Attorney will be January 12, 2015.

At the direction of City Council, City Staff prepared the formal offer of employment. While this Agenda Memorandum contains the major components of the employment package, as agreed upon by both parties, a more detailed employment contract must be approved by Council and is attached.

Expenditure Required: \$168,000 plus benefits

Source of Funds: General Fund – City Attorney’s Office

Policy Issue

Does City Council wish to appoint David R. Frankel to be the City of Westminster's City Attorney?

Alternative

Do not appoint David R. Frankel as City Attorney and conduct another selection process to select a new candidate for appointment. Staff does not recommend this alternative as David R. Frankel was the unanimous selection by Council. Under Section 4.6 of the Westminster City Charter, City Council has the authority to appoint the City Attorney. Based on the Council-directed selection process, David R. Frankel is being recommended for appointment as the new City Attorney for 2015 with an effective date of January 12, 2015, and an automatic renewal of 2016 unless terminated pursuant to the terms of the agreement.

Background Information

In the spring of 2014, City Attorney Marty McCulloch announced his retirement effective September 2014. Shortly thereafter, City Council authorized Staff to conduct an executive recruitment with the support of an executive committee consisting of Councillors Alberto Garcia and Emma Pinter. In June, job announcements were placed in several state, regional, and national publications as well as on-line job services. In addition, a printed job announcement and brochure were distributed nationally. From a total of 35 job applications, the selection committee selected 19 for further review. The review consisted of telephone interviews with all 19 candidates as well as video conference calls and in-person interviews with the semi-finalists. A personality and management profile was also completed on the six top semi-finalist candidates. From this extensive process, four finalists were chosen for an assessment process. One candidate withdrew and three finalists participated in the day-long event on October 28, 2014.

The finalist assessment day included interviews with City Council, an executive Staff committee, a representational group from City Attorney's Office and a group of Staff who hosted the three on a tour and lunch. Council then selected one finalist for background and reference checking.

Mr. Frankel received very favorable comments from eight references which included Thomas C Fisher, current Mesa County Administrator; Steve Acquafresca, current Mesa County Commissioner; Nina Atencio, current Senior Assistant Mesa County Attorney; Craig Springer, President of Home Loan State Bank; Clint Kinney, Snowmass Town Manager (former Fruita City Manager); Jon Peacock, Pitkin County Administrator (former Mesa County Administrator); Lyle Dechant, former Mesa County Attorney; and Rich Englehart, the Grand Junction City Manager.

As a result of this intensive recruitment and selection process, the City Council decided on November 10, 2014, to make an offer of employment to Mr. Frankel pending final action by City Council to execute the employment contract at a public meeting on November 24, 2014.

Mr. Frankel has extensive experience as an attorney. He graduated from the University of Denver, Sturm College of Law. His positions include Shareholder and Managing Partner of Frankel and Thrower, P.C. Boulder; Staff Attorney at Mesa County; Assistant County Attorney, Mesa County; and Chief Assistant County Attorney, Mesa County since 2009. Mr. Frankel has been the acting Mesa County Attorney since February 2014.

The offer of employment negotiated between City Council and Mr. Frankel has the following terms:

1. Initial base salary for services as City Attorney of \$168,000 with an annual salary negotiated in 2016 based on a contract renewal;
2. City lump sum contribution of \$18,000 to the City's 457 Deferred Compensation Plan in an account under his name. An additional contribution of \$18,000 to the City's 457 Deferred Compensation Plan in 2016 to his account based on contract renewal;
3. Participation in the City's Defined Contribution Pension Plan with employee contributions of 10% effective immediately upon employment and employer contributions of 10.25% effective in the twenty-third month of employment;
4. A six-month severance pay agreement should City Council terminate his employment agreement prior to expiration;
5. A \$400 per month car allowance;
6. The same benefit package provided to department head level positions;
7. All expenses related to participation in various national, state, and other professional associations;
8. General Leave accrual at the 10-year plus rate of 7.29 hours per pay period totaling 190 hours per year and 90 hours of holiday per year along with an initial credit of 120 hours of Administrative Leave upon appointment in 2015 with 120 hours in 2016, 80 hours in 2017 and 80 hours in 2018 subject to contract renewal;
9. Reimbursement of the cost for one housing search visit; and,
10. Reimbursement of reasonable relocation expenses that includes the cost for relocating to Westminster, including packing and moving. Mr. Frankel will be required to live within Westminster City limits within 12 months.

All of the above terms of employment, along with various other provisions related to Mr. Frankel's appointment are included in the attached employment contract.

This Staff recommendation achieves the Strategic Plan goal of "Excellence in City Services" by providing superior legal representation and executive leadership through an exceptional new City Attorney.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 12th day of January, 2015, by and between the CITY OF WESTMINSTER, State of Colorado, a municipal corporation, hereinafter called "the CITY" as party of the first part, and DAVID R. FRANKEL, hereinafter called "EMPLOYEE," as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to employ the services of DAVID R. FRANKEL, as City Attorney of the City of Westminster as provided by City Charter, Chapter IV, Section 4.13; and

WHEREAS, it is the desire of the City Council of the CITY (the "City Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to accept such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE; and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties or when the CITY may desire to otherwise terminate his employ; and

WHEREAS, EMPLOYEE has accepted employment as City Attorney of the CITY.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. DUTIES:

A. The CITY hereby agrees to begin the employment of EMPLOYEE as City Attorney of the CITY to perform the duties and functions specified in Section 4.13 of the City Charter, Chapter 16 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall prepare and submit a proposed budget for the City Attorney's Office following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

C. EMPLOYEE shall supervise the staff of the City Attorney's Office as may be authorized by the City Council. All employees of the City Attorney's Office shall be employed by the City Attorney in accordance with the provisions of Section 1-16-3 of the City Code.

D. Except as otherwise expressly provided in this Agreement, EMPLOYEE shall be subject to the City of Westminster Personnel Policies and Rules, dated July 1, 2013, as amended ("Personnel Policies and Rules").

SECTION 2. TERM:

A. It is the intent of the City Council and EMPLOYEE that EMPLOYEE will serve as City Attorney for calendar years 2015 and 2016. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of the CITY. Further, EMPLOYEE agrees not to become employed by any other employer until this Agreement is terminated. Notwithstanding the foregoing, the term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the services of EMPLOYEE at any time and for any reason, subject only to the provisions set forth in Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3, paragraph C of this Agreement.

D. This Agreement expires December 31, 2015, but shall be automatically renewed until December 31, 2016, unless terminated no later than October 31, 2015.

SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAYMENT:

A. In the event the City Council decides to terminate EMPLOYEE's employment with the CITY before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Attorney, then and in that event, the CITY agrees to give EMPLOYEE six (6) months' prior written notice or, if no such notice is given, to pay EMPLOYEE a lump sum cash payment equal to his Base Salary for the ensuing six (6) months, (the "Severance Payment"); provided however, that in the event EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, the CITY has no obligation to give notice or pay the Severance Payment.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all City employees, or in the event the CITY refuses, following written notice, to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a written suggestion by at least four (4) members of the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction and be entitled to the Severance Payment as described in subsection A of this Section 3.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY no less than ninety (90) days' notice in advance in writing, and this agreement shall terminate on the effective date of the resignation.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this Section 3.

E. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3A hereof and shall entitle EMPLOYEE to the Severance Payment described herein.

SECTION 4. SALARY AND EVALUATIONS:

A. Effective January 12, 2015, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual gross salary ("Gross Salary") of \$168,000 which consists of a base salary ("Base Salary") and the amount EMPLOYEE elects to take as deferred compensation. EMPLOYEE may elect to receive a portion of his Gross Salary in the form of a lump sum amount of deferred compensation up to the then current maximum allowed by law. The Base Salary shall be payable in installments at the same time as other employees of the CITY are paid. In addition to Base Salary the CITY agrees to contribute \$18,000 to the EMPLOYEE'S deferred compensation account in each of the years 2015 and 2016 to replace the loss of an employer contribution to the City 401 (a) pension because of ineligibility until the 23rd month of employment.

B. The CITY agrees to review EMPLOYEE'S performance annually, no later than October 31 of each year. Salary evaluation each year shall be at the discretion of the CITY.

SECTION 5. HOURS OF WORK:

A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours, in compliance with the Personnel Policies and Rules.

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the express prior approval of the City Council, and such consulting or other non-City connected business shall not constitute a conflict of any nature with EMPLOYEE'S work as City Attorney. The City Council shall be the sole judge of such conflicts, and its determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. The CITY shall pay EMPLOYEE a monthly car allowance of \$400 to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

The CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

SECTION 8. PROFESSIONAL DEVELOPMENT:

The CITY agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the City, including, but not limited to, the Colorado Bar Association, NIMLO, the Colorado Municipal League, and continuing legal education courses and seminars related to the practice of municipal law. In addition to reasonably funding educational/training programs for EMPLOYEE's professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each calendar year.

SECTION 9. GENERAL EXPENSES:

The CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

The CITY shall provide EMPLOYEE with all benefits that are provided to all Department Head level employees by the Personnel Policies and Rules; provided that when such benefits are in conflict with this Agreement, this Agreement shall control.

Additional initial employment package benefits the CITY agrees to provide include:

- General Leave accrual at the 10 year employment rate of 7.29 hours per pay period totaling 190 hours per year

- Administrative Leave available annually in the amount of 120 hours in 2015; 120 hours in 2016; 80 hours in 2017; and 80 hours in 2018 allowing for up to five weeks of holiday and vacation for the first five years of employment
- Reimbursement for home search trip and reasonable relocation expenses including packing and moving household

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter or any other law.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.

C. This agreement becomes effective on January 12, 2014, and if automatically renewed, shall be in effect through December 31, 2016.

D. . If any court determines that any provision hereof is unenforceable, it is the intention of the Parties that this Agreement shall not thereby be terminated but that the court reform this Agreement to the extent required to make it valid and enforceable, to the extent such reformation may be accomplished without materially and adversely affecting intended benefits and burdens of the Parties under this Agreement.

E. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

F. Nothing in this Agreement shall be construed as creating any multiple fiscal year obligation on the part of the CITY within the meaning of Colorado Constitution Article X, Section 20.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement both effective as of the day and year first above written.

APPROVED by Westminster City Council this 24th day of November, 2014.

ATTEST:

Herb Atchison, Mayor

City Clerk

David R. Frankel



Agenda Memorandum

City Council Meeting
November 24, 2014



SUBJECT: Second Reading of Councillor's Bill No. 35 Rezoning the Westminster Center Urban Reinvestment Plan Site to Specific Plan District

Prepared By: Natalie Winsen, Planner

Recommended City Council Action

Pass Councillor's Bill No. 35 on second reading for the rezoning of the site of the former Westminster Mall from Planned Unit Development to Specific Plan District, based on a finding that the criteria set forth in Sections 11-5-3 and 11-4-7.5 of the Westminster Municipal Code have been considered and satisfied.

Summary Statement

- This Specific Plan has been initiated by the City in cooperation with the Westminster Economic Development Authority (WEDA) pursuant to W.M.C., Section 11-5-20(D) and C.R.S., Section 31-25-112. The purpose of this Specific Plan is to aid the Authority in connection with the planning and undertaking of the Authority's urban renewal project previously designated by the Authority as the Westminster Urban Center Reinvestment Project.
- C.R.S., Section 31-25-112 of the Colorado Urban Renewal Law specifically authorized the City to cooperate with WEDA in connection with the planning and undertaking of the Authority's plans and projects, including assistance in the form of planning and zoning proposed for redevelopment by the Authority.
- This Councillor's Bill was passed on first reading by City Council on November 10, 2014.

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

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Councillor's Bill No. 35

BY AUTHORITY

ORDINANCE NO. **3745**

COUNCILLOR'S BILL NO. **35**

SERIES OF 2014

INTRODUCED BY COUNCILLORS

Seitz - Winter

**A BILL
FOR AN ORDINANCE AMENDING THE ZONING
OF THE WESTMINSTER CENTER URBAN REINVESTMENT PLAN SITE
LOCATED AT 92ND AVENUE AND HARLAN STREET, JEFFERSON COUNTY,
COLORADO, FROM PLANNED UNIT DEVELOPMENT TO SPECIFIC PLAN DISTRICT**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. The Westminster Economic Development Authority (the "Authority") has requested that the City rezone the property described in Exhibit A attached hereto (the "Property") from Planned Unit Development (PUD) to Specific Plan District (SPD) in order to facilitate the redevelopment of this approximately 108 acre site pursuant to the Westminster Center Urban Reinvestment Plan.

b. WEDA is the owner of a substantial majority of the Property. All of the Property is included in the Westminster Center Urban Reinvestment Plan that has been previously approved by the City Council.

c. C.R.S. § 31-25-112 of the Colorado Urban Renewal Law specifically authorizes the City to cooperate with the Authority in connection with the planning and undertaking of the Authority's plans and projects, including assistance in the form of planning and zoning property proposed for redevelopment by the Authority.

d. W.M.C. § 11-5-3 (B) authorizes the City to initiate a rezoning of any property in the City without the consent of the property owner when the City Council determines that the current zoning is inconsistent with one or more of the goals or objectives of the City's comprehensive land use plan, or that surrounding development is or may be adversely impacted by the current zoning.

e. The Property has been previously designated as a Focus Area in the Comprehensive Plan. As a designated Focus Area, the Comprehensive Plan and W.M.C. § 11-4-7.5 require the adoption of SPD zoning and a Specific Plan for the Property. Therefore, the current PDP zoning is inconsistent with the designation of the property as a Focus Area pursuant to the Comprehensive Plan.

f. The notice requirements of W.M.C. § 11-5-13 have been met.

g. The proposed rezoning has been referred to the Planning Commission, which body held a public hearing thereon on October 28, 2014, and has recommended approval of the request.

h. Council has completed a public hearing on the proposed rezoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code and has considered the criteria in W.M.C. § 11-5-3 and § 11-5-14.

i. Based on the evidence produced at the public hearing, City Council finds:

(A) The current zoning of the Property is inconsistent with the City's Comprehensive Land Use Plan.

(B) The proposed SPD zoning complies with all requirements of the Westminster Municipal Code, including the provisions of W.M.C. § 11-5-3 and W.M.C. § 11-4-7.5.

(C) The rezoning of the property to SPD will further the redevelopment goals and objectives of the City and the Authority as set forth in the City's Comprehensive Plan and the Westminster Center Urban Reinvestment Plan.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the Property to Specific Plan District, as depicted on Exhibit B, attached hereto and incorporated by reference.

Section 3. Upon final adoption of this ordinance, the Preliminary Development Plan for the Property, adopted on October 28, 2013, shall have no further force or effect.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of November, 2014.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of November, 2014

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

WESTMINSTER MALL
REDEVELOPMENT OVERALL
BOUNDARY

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 24, 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:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 24, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN; THENCE N44°34'47"W A DISTANCE OF 105.18 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HARLAN STREET SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG THE SAID EASTERLY LINE THE FOLLOWING EIGHT (8) CONSECUTIVE COURSES;

- 1.) 128.70 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET, A CENTRAL ANGLE OF 73°44'29" AND A CHORD WHICH BEARS N36°09'44"W A DISTANCE OF 120.00 FEET;
- 2.) THENCE N00°42'30"E A DISTANCE OF 252.68 FEET;
- 3.) THENCE 104.72 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 30°00'00" AND A CHORD WHICH BEARS N14°17'30"W A DISTANCE OF 103.53 FEET;
- 4.) THENCE N29°17'30"W A DISTANCE OF 253.49 FEET;
- 5.) THENCE 52.36 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET, A CENTRAL ANGLE OF 30°00'00" AND A CHORD WHICH BEARS N14°17'30"W A DISTANCE OF 51.76 FEET;
- 6.) THENCE N00°42'30"E A DISTANCE OF 1022.79 FEET;
- 7.) THENCE 241.91 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 360.00 FEET, A CENTRAL ANGLE OF 38°30'06" AND A CHORD WHICH BEARS N19°57'33"E A DISTANCE OF 237.39 FEET;
- 8.) THENCE N39°12'36"E A DISTANCE OF 216.41 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HARLAN STREET AND THE SOUTHERLY LINE OF WEST 92ND AVENUE RECORDED AT RECEPTION NO. F0832987; THENCE ALONG THE SAID EASTERLY LINE AND SOUTHERLY LINE OF WEST 92ND AVENUE THE FOLLOWING FOURTEEN (14) CONSECUTIVE COURSES;
- 1.) S50°48'48"E A DISTANCE OF 20.34 FEET;
- 2.) THENCE N39°11'12"E A DISTANCE OF 55.78 FEET;
- 3.) THENCE 26.01 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 16.50 FEET, A CENTRAL ANGLE OF 90°18'15" AND A CHORD WHICH BEARS N05°39'40"W A DISTANCE OF 23.40 FEET TO A POINT OF REVERSE CURVATURE;
- 4.) THENCE 208.95 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 393.50 FEET, A CENTRAL ANGLE OF 30°25'28" AND A CHORD WHICH BEARS N24°16'43"E A DISTANCE OF 206.50 FEET;
- 5.) THENCE N09°03'59"E A DISTANCE OF 16.12 FEET;
- 6.) THENCE 33.06 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 500.50 FEET, A CENTRAL ANGLE OF 03°47'05" AND A CHORD WHICH BEARS N07°10'20"E A DISTANCE OF 33.05 FEET TO A POINT OF REVERSE CURVATURE;
- 7.) THENCE 38.28 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 48.50 FEET, A CENTRAL ANGLE OF 45°13'15" AND A CHORD WHICH BEARS N27°53'25"E A DISTANCE OF 37.29 FEET;
- 8.) THENCE S89°13'00"E A DISTANCE OF 100.73 FEET;
- 9.) THENCE S89°12'30"E A DISTANCE OF 16.89 FEET;
- 10.) THENCE 51.40 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1036.00 FEET, A CENTRAL ANGLE OF 02°50'33" AND A CHORD WHICH BEARS S87°47'44"E A DISTANCE OF 51.39 FEET;
- 11.) THENCE S86°22'27"E A DISTANCE OF 303.71 FEET;
- 12.) THENCE 69.00 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1260.31 FEET, A CENTRAL ANGLE OF 03°08'13" AND A CHORD WHICH BEARS S87°56'42"E A DISTANCE OF 68.99 FEET TO A POINT OF COMPOUND CURVATURE;

13.) THENCE 8.73 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1259.00 FEET, A CENTRAL ANGLE OF 00°23'51" AND A CHORD WHICH BEARS S89°42'48"E A DISTANCE OF 8.73 FEET;

14.) THENCE S89°54'43"E A DISTANCE OF 162.21 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WEST 92ND AVENUE RECORDED AT RECEPTION NO. F1097396; THENCE ALONG SAID SOUTHERLY LINE S89°55'03"E A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WEST 92ND AVENUE RECORDED AT RECEPTION NO. F083987; THENCE ALONG SAID SOUTHERLY LINE THE FOLLOWING TWO (2) CONSECUTIVE COURSES;

1.) S00°45'31"W A DISTANCE OF 9.26 FEET;

2.) THENCE S89°16'45"E A DISTANCE OF 495.77 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF BENTON STREET AND U.S. HIGHWAY 36 RECORDED AT BOOK 2489 PAGE 903; THENCE ALONG THE SAID WESTERLY LINE THE FOLLOWING TWO (2) CONSECUTIVE COURSES;

1.) S45°07'17"E A DISTANCE OF 143.20 FEET;

2.) THENCE S15°22'31"E A DISTANCE OF 1476.62 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF BENTON STREET AND U.S. HIGHWAY 36 RECORDED AT BOOK 2489 PAGE 901; THENCE ALONG SAID WESTERLY LINE S00°05'03"W A DISTANCE OF 904.69 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 88TH AVENUE; THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING TWO (2) CONSECUTIVE COURSES;

1.) 23.73 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 90°37'27" AND A CHORD WHICH BEARS S45°23'47"W A DISTANCE OF 21.33 FEET;

2.) THENCE N89°17'30"W A DISTANCE OF 1682.39 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 88TH AVENUE RECORDED AT RECEPTION NO. 89053018; THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING THREE (3) CONSECUTIVE COURSES;

1.) N00°39'31"E A DISTANCE OF 2.10 FEET;

2.) THENCE N88°29'13"W A DISTANCE OF 135.26 FEET;

3.) THENCE N89°17'30"W A DISTANCE OF 74.75 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 107.261 ACRES (4,672,310 SQ. FT.), MORE OR

LESS. BASIS OF BEARINGS

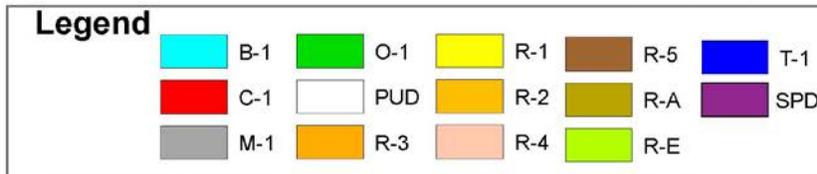
BEARINGS ARE BASED ON THE SOUTHERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN BEARING S89°17'30"E AND BEING MONUMENTED BY A FOUND 3" ALUMINUM CAP PLS #17488 AT THE SOUTH QUARTER CORNER AND A FOUND 3-1/4" ALUMINUM CAP PLS #13155 AT THE SOUTHEAST CORNER.

PREPARED BY RICHARD A. NOBBE, PLS
FOR AND ON BEHALF OF
MARTIN/MARTIN INC.
12499 W. COLFAX AVE.
LAKEWOOD, CO. 80215
(303) 431-6100
(303) 431-4028 FAX
September 25, 2013

REZONING



Current Zoning PUD



Proposed Zoning SPD

AGENDA

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
SPECIAL MEETING**

MONDAY, NOVEMBER 24, 2014

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (October 13, 2014)
- 3. Public Hearings and New Business**
 - A. Public Hearing re Amendment to 2014 Westminster Economic Development Authority Budget
 - B. Resolution No. 159 Authorizing a Supplemental Appropriation to the 2014 Budget
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, OCTOBER 13, 2014, AT 9:56 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Faith Winter, and Board Members Bruce Baker, Alberto Garcia, Emma Pinter, and Anita Seitz. Board Member Bob Briggs was absent. Also present were J. Brent McFall, Executive Director, Hilary Graham, Acting Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Pinter moved, seconded by Board Member Seitz, to approve the minutes of the meeting of July 28, 2014, as written. The motion carried unanimously.

PUBLIC HEARING TO CONSIDER 2015/2016 PROPOSED BUDGET

Mr. McFall reported that staff had no formal presentation to make and was available to answer any questions from the Authority. There were no questions.

At 9:57 p.m., the Chairperson opened the public hearing. No one wished to speak and the public hearing was closed.

RESOLUTION NO. 157 ADOPTING THE 2015/2016 BUDGET

Vice Chairperson Winter moved, seconded by Board Member Garcia, to adopt Resolution No. 157 adopting the 2015/2016 proposed budget for the Westminster Economic Development Authority as presented, including the appropriation of funds as set forth authorizing a supplemental appropriation. At roll call, the motion passed unanimously.

RESOLUTION NO. 158 RE CONTRACT AND ADMINISTRATIVE AUTHORITY

Vice Chairperson Winter moved, seconded by Board Member Seitz, to adopt Resolution No. 158 outlining the Executive Director's authority to enter into contracts and make purchases on behalf of the Westminster Economic Development Authority and to delegate these activities to appointed City of Westminster Staff in a manner consistent with practices established for the City under the Westminster Municipal Code, as it may be amended from time to time, and all current and future administrative memoranda. The roll was called, and the motion passed unanimously.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 9:58 p.m.

ATTEST:

Chairperson

Secretary

WEDA Agenda Item 3 A-B

Agenda Memorandum

Westminster Economic Development Authority Meeting
November 24, 2014



SUBJECT: Public Hearing and Resolution No. 159 re: Westminster Economic Development Authority Supplemental Appropriation to the 2014 budget

Prepared By: Karen Creager, Special Districts Accountant

Recommended Board Action

1. Hold a Public Hearing on the budget amendment for the Westminster Economic Development Authority.
2. Adopt Resolution No. 159 authorizing a supplemental appropriation to the 2014 Westminster Economic Development Authority budget.

Summary Statement

- When necessary, City Staff (Staff) prepares a resolution to appropriate unanticipated revenues and adjust the budget side of transactions that occur during the year. Typically supplemental appropriations are prepared on a periodic basis for the Westminster Economic Development Authority (WEDA) to simplify administrative procedures and reduce paper work.
- This supplemental appropriation covers activity for the 3rd Quarter 2014.
- 2014 Amendments:
 - North Huron Urban Renewal Area (URA)
 - \$1,375 Interest earnings
 - \$56,300 Property tax increment
 - \$1,509,861 Carryover
 - South Sheridan URA
 - \$ 500 Property tax increment
 - South Westminster URA
 - \$250 Property tax increment
 - Westminster Center East URA
 - \$2,450 Property tax increment
 - Holly Park URA
 - \$10 Property tax increment
- A public hearing is required pursuant to Section 29-1-108 of the Colorado Revised Statutes.

Expenditure Required: \$1,570,746

Source of Funds: Interest earnings, property tax increment and carryover from prior years

Policy Issue

Should the WEDA Board appropriate funds as set forth in the attached Resolution?

Alternatives

1. In accordance with the Compass Mortgage Corporation Loan Agreement, use of the loan proceeds is to be applied solely to capital expenditures in the North Huron URA. Interest earnings on the unspent loan proceeds carry the same restriction. Alternatively, the Board could decide to appropriate the loan proceeds not previously appropriated in 2012 along with the corresponding interest earnings to a different project in the North Huron URA instead of Orchard Parkway. This alternative is not recommended at this time as WEDA has contractually committed to reimburse the City for costs incurred for the construction of Orchard Parkway, the most immediate need in the area. If WEDA does not reimburse the City for costs incurred, the City would need to determine an alternative funding source to cover the construction of Orchard Parkway. At the time the Orchard Parkway project is completed, and if there are excess funds available, the Board could then authorize the use of those excess funds on another project in the North Huron URA.
2. Property tax increment receipts have exceeded the amount budgeted. The increment amount received from the County is net of the mandatory collection fee. Additionally, North Huron URA and Westminster Center East URA are contractually obligated to return a portion of the property tax increment to other governmental entities. The Board could decide not to appropriate unanticipated property tax increment to fund the additional fee and URA contractual obligations. However, for the reasons stated above, this alternative is not recommended.
3. The costs paid for the maintenance of the area abutting the Cheyenne Ridge subdivision could be borne by the City and not WEDA. This alternative is not recommended as these expenses are a reasonable and allowable use of the available incremental revenues in the URA. The additional costs were a direct result of the development of the Orchard Town Center.

Background Information

Carryover

When necessary, carryover, consisting of prior year excess revenues, is appropriated to supplement current year revenues. For the 3rd Quarter, carryover is requested to be appropriated for the following expenditures:

- o When the loan for North Huron was refinanced in 2012, additional project funds of \$6.5M for Orchard Parkway were included as part of the refinancing. The flow of funds for Orchard Parkway provides for the City's General Capital Improvement Fund to initially pay the cost of construction and for WEDA to reimburse those costs. The additional project funds were intentionally left unappropriated in WEDA in 2012 and preserved to be appropriated as needed for reimbursement to the City. Staff has developed a schedule for the actual cost reimbursement on a monthly basis. In order to provide the necessary budget to fund the reimbursements to the City made for the 3rd quarter, Staff is requesting appropriation of prior year loan proceeds of \$1,430,068, which are now characterized as carryover, to the Orchard Parkway Capital Improvement Project.
- o The City designed improvements to Huron Street between 128th Avenue and 150th Avenue concurrent with the planning for the City sponsored Orchard Town Center retail center at 144th Avenue and Huron Street. At the time, Huron Street was a two-lane country road and several residential subdivisions were located on the west side of Huron Street. One of these subdivisions is Cheyenne Ridge, located between 144th Avenue and about 146th Avenue. To create a wider buffer between the residential development and the planned commercial development to the east, The City shifted the alignment of Huron Street significantly to the east. This eastward shift was

greatest abutting the Cheyenne Ridge subdivision and to the north in unincorporated Adams County where “old Huron Street” was retained to provide access to existing rural homes. As part of the Huron Street project, Staff negotiated agreements with the Homeowner’s Association (HOA) of each residential development to install irrigated landscaping within the City owned Huron Street right-of-way (ROW) at no cost to the HOA if the HOA agreed to maintain it. Subsequently, the City installed the landscaping. After several years of the Cheyenne Ridge HOA incurring the maintenance costs in their area, the HOA contacted the City to request financial assistance with their obligation specifically because of unanticipated high water rates. Staff agreed to the following:

1. The City would pay the cost to replace dead plant material.
2. The City would maintain the Huron Street ROW north of 145th Way and pay to separate the irrigation systems so that the City’s irrigation north of 145th Way would not be a part of the HOA’s system. The City would also assume maintenance of this area since it is much wider than the landscaped Huron Street ROW areas abutting the other subdivisions, as a matter of parity. This work is complete at a cost of \$74,090.
3. While the City had hoped to commence the irrigation work in spring of 2014, it was ultimately delayed until the fall of 2014. Because of the delay, Staff offered to reimburse the HOA for the cost to maintain the ROW north of 145th Way for the 2014 irrigation season. The HOA submitted detailed bills for the City’s share totaling \$5,703.

Because these costs were ultimately incurred as a result of improvements made pursuant to the North Huron URA plan, it is appropriate to have WEDA pay these expenditures with available revenues generated in the URA.

Interest Earnings

The unspent project funds for Orchard Parkway described in the Carryover section above will continue to earn interest until spent. Interest earned on project funds for the 3rd quarter is \$1,375. The loan agreement specifies that the interest earned on the project funds must be spent on projects in the North Huron URA. Therefore, the interest earned in the 3rd quarter is requested to be appropriated to the Orchard Parkway project.

Property Tax Increment

When preparing the bi-annual budget for WEDA, Staff uses the preliminary assessed valuation certified by the corresponding County to estimate the property tax increment for the first budget year. Adjustments, such as new construction, are then made to the first budget year’s preliminary assessed valuation for the second budget year. The adjusted preliminary assessed valuation is used to budget the property tax increment. In 2014, the second budget year, property tax increment receipts are higher than originally budgeted, resulting in an increase in the corresponding county collection fee. Additionally, intergovernmental cooperation agreement payments tied to property tax increment receipts were also higher than budgeted. In order to provide sufficient budget for these obligations, appropriation of a portion of these unanticipated property tax increment revenues is requested. The estimated increase in fees totals \$2,710 and the estimated increase in contractual obligation payments is \$56,800.

The amendments listed in the attached resolution will bring WEDA’s accounting records up-to-date to reflect the various detailed transactions.

The action requested in this agenda memorandum relates to City Council's Strategic Plan goals of "Dynamic, Diverse Economy" and "Vibrant & Inclusive Neighborhoods." These goals are met by ensuring revenues are appropriated to expenditure accounts so the funds can be utilized as intended including continued improvements in the North I-25 development area and to operate in accordance with the various URA plans.

Respectfully submitted,

Stephen P. Smithers
Acting Executive Director

Attachment: WEDA Resolution

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **159**
SERIES OF 2014

INTRODUCED BY BOARD MEMBERS

**2014 WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
BUDGET SUPPLEMENTAL APPROPRIATION**

WHEREAS, the Westminster Economic Development Authority (WEDA) initially adopted the 2014 budget on October 8, 2012; and

WHEREAS, proper notice for this amendment was published on November 20, 2014, pursuant to the requirements of Section 29-1-106 Colorado Revised Statutes; and

WHEREAS, a public hearing for this amendment was held on November 24, 2014, pursuant to the requirements of Section 29-1-108 Colorado Revised Statutes; and

WHEREAS, as necessary a resolution to make adjustments to the budget is presented to the Board; and

WHEREAS, there are adjustments to be made to the 2014 budget; and

WHEREAS, the revenue adjustment consists of an increase of \$1,570,746; and

WHEREAS, the expense adjustment consists of an increase of \$1,570,746.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Economic Development Authority:

Section 1. The \$1,570,746 increase shall be allocated to WEDA Revenue and Expenditure accounts as described below:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	6800.40020.0183	\$1,837,931	\$1,509,861	\$3,347,792
Property tax increment	6800.40035.0183	5,958,241	56,300	6,014,541
Property tax increment	6800.40035.0184	263,650	250	263,900
Property tax increment	6800.40035.0187	3,300	10	3,310
Property tax increment	6800.40035.0189	427,583	2,450	430,033
Property tax increment	6800.40035.0190	481,017	500	481,517
Interest	6800.42520.0183	2,634	<u>1,375</u>	4,009
Total Change to Revenues			<u>\$1,570,746</u>	

EXPENDITURES

Description	Account Number	Current Budget	Amendment	Revised Budget
Contractual Svc	68010900.67800.0183	\$217,734	\$134,793	\$352,527
Contractual Svc	68010900.67800.0189	87,000	1,800	88,800
Other Fin Use	68010900.78800.0183	89,374	1,300	90,674
Other Fin Use	68010900.78800.0184	3,955	250	4,205
Other Fin Use	68010900.78800.0187	50	10	60
Other Fin Use	68010900.78800.0189	6,414	650	7,064
Other Fin Use	68010900.78800.0190	7,215	500	7,715
Appropriation Holding-Orch Pkwy	81268030997.80400.8888	2,607,464	<u>1,431,443</u>	4,038,907

Total Change to Expenses			<u>\$1,570,746</u>	
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Section 2. The resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED 24th day of November, 2014.

ATTEST:

Chairperson

Secretary

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, NOVEMBER 24, 2014

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (July 28, 2014)
- 3. Public Hearings and New Business**
 - A. Resolution No. 59 Adopting the 2015 Westminster Housing Authority Budget
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, JULY 28, 2014, AT 7:59 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Faith Winter, and Board Members Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Administrative Secretary.

MINUTES OF PRECEDING MEETING

Board Member Baker moved, seconded by Briggs, to approve the minutes of the meeting of February 24, 2014, as written and distributed. The motion carried unanimously.

RESOLUTION NO. 58 AUTHORIZING SUPPLEMENTAL APPROPRIATION TO 2014 BUDGET

Board Member Pinter moved, seconded by Seitz, to adopt Resolution No. 58 approving a supplemental appropriation to the 2014 Westminster Housing Authority Budget. Responding to questions from Board Member Baker, Mr. McFall reported that in planning for the future of this area, it was anticipated developers would annex to the City. Although a low-income project was not necessarily the focus, the conceptual plan designed would include a residential component. On roll call vote, the motion passed by a 6:1 margin with Board Member Baker voting no.

ADJOURNMENT

There being no further business to conduct, the meeting adjourned at 8:02 p.m.

Chairperson

ATTEST:

Administrative Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
November 24, 2014



SUBJECT: Resolution No. 59 re 2015 Westminster Housing Authority Budget

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Adopt Resolution No. 59 approving the 2015 Westminster Housing Authority Budget.

Summary Statement

- The proposed 2015 Westminster Housing Authority (WHA) budget of \$15,000 provides funding to cover operational and maintenance costs relative to properties owned at 7287 Lowell Boulevard and 3630 W. 73rd Avenue, collectively known as the Vehicle Service Center that houses a community theater, and 3915 W. 73rd Avenue that is the Rodeo Market Community Art Center.
- The WHA generates no substantial rental revenues from any of the properties as the buildings are made available to the South Westminster Arts Group (SWAG) at \$10 per year to promote and support arts and culture as a component of the South Westminster revitalization efforts.
- The WHA has an estimated fund balance from previous years of \$102,788 that is available to use towards operations and maintenance.
- The proposed operating budget expenses for the WHA include \$1,500 for direct costs associated with gas, electric and water utilities, and \$13,500 in contractual services to cover maintenance, insurance, support to SWAG, and repairs and other miscellaneous expenses.

Expenditure Required: \$15,000

Source of Funds: Westminster Housing Authority estimated rent revenues and prior year excess revenues

Policy Issue

Does the Board of the WHA wish to support the activities of the Westminster Housing Authority by adopting the proposed 2015 budget?

Alternative

- Reduce the proposed 2015 Westminster Housing Authority Budget. This alternative is not recommended as Staff believes the proposed funding level is essential to fully cover the cost of operations and maintenance, while continuing to support the endeavors of SWAG by making the space available for its use.
- Do not adopt the proposed 2015 Westminster Housing Authority Budget. This is not recommended as some level of funding is needed to pay for utilities, insurance, general operations and maintenance to protect the integrity of the buildings' systems and grounds regardless of occupancy of the buildings. An approved budget is necessary to provide funding for these purposes.

Background Information

The Westminster Housing Authority (WHA) was initially created as a means of constructing and operating the Westminster Commons Senior Apartments at 76th Avenue at 3180 W. 76th Avenue. The senior apartments were sold by the WHA in 2012 to Volunteers of America. However, the WHA continues to provide support towards community development and affordable housing initiatives. The WHA owns three properties at 7287 Lowell Boulevard, and 3630 and 3915 W. 73rd Avenue. The property at 3915 W. 73rd Avenue is leased to the South Westminster Arts Group (SWAG) that provides arts and cultural programs for the South Westminster community. The other two properties are being held by the WHA to be used in conjunction with a mixed use redevelopment project incorporating housing. One of the buildings is being used temporarily as a community theater until such time as a redevelopment project proceeds. Given its ownership of these properties, the WHA incurs some expenses in supporting the community development endeavors and operating and maintaining its properties.

Staff is proposing a total 2015 budget of \$15,000. Of this amount, \$1,500 is requested to cover the cost of utilities, including gas, electric and water, for the Vehicle Service Center property. The City Department of Parks, Recreation and Libraries (PRL) is assuming the responsibility for watering and maintaining of the adjacent park area effective January 1, 2015, thereby allowing the 2015 WHA budget to be adjusted downward from 2014 accordingly. The budget also reflects a collective outlay of \$13,500 for contractual services of which \$5,500 is to cover property insurance, general maintenance and repairs to all the buildings, and other incidental costs. The remaining \$8,000 for contractual services is proposed to provide reimbursement to SWAG for utility costs associated with their lease and operation of the Rodeo Market Community Arts Center. As part of its South Westminster Strategic Revitalization Plan, the City initiated an effort to promote arts as a means of attracting new residents and businesses, which resulted in the creation of the South Westminster Arts Group (SWAG). In an effort to further this initiative, the WHA has regularly agreed to lease the premises to SWAG at a nominal fee (\$10.00/year) and cover the cost for utilities, until such time as SWAG can generate sufficient operating revenues to cover such costs and higher rent. Given SWAG has yet to generate sufficient revenue, WHA in return is not expected to see any revenue generation from SWAG's use of these properties in 2015.

It is estimated that the WHA will have an estimated 2014 ending cash balance of \$102,788 that is available to fund the 2015 budget. The 2015 budget would leave the WHA with a cash balance of \$87,798, not including \$508,977 in cash proceeds remaining from the sale of the Westminster Commons senior apartments, which have not as yet been appropriated. It is proposed that these funds would be appropriated at such time as they are needed to support an affordable housing project.

Approval of the 2015 WHA budget meets the Westminster City Council's goal of supporting "Vibrant and Inclusive Neighborhoods," whereby continued WHA investment in its properties and the South Westminster community work towards promoting other private investment into the neighborhood.

Respectfully submitted,

Stephen P. Smithers
Acting Executive Director

Attachments:

- Resolution
- 2015 WHA Proposed Budget

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **59**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2014

**A RESOLUTION ADOPTING THE 2015 BUDGET FOR THE
WESTMINSTER HOUSING AUTHORITY**

WHEREAS, the Westminster Housing Authority is a political subdivision of the State of Colorado, duly organized, existing, and acting pursuant to Section 29-4-201 *et seq.* C.R.S. (the "Act"); and

WHEREAS, the Authority was created to carry out the purposes of a public housing authority pursuant to the Act; and

WHEREAS, the Westminster Housing Authority Board has not yet adopted a formal operating budget for fiscal year 2015 for the Authority; and

WHEREAS, the Westminster Housing Authority anticipates expenditures for various purposes relating to the goals of the Authority.

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Westminster Housing Authority that the attached 2015 Westminster Housing Authority Budget is hereby approved and the amounts stated therein are hereby appropriated for the fiscal year 2015.

PASSED AND ADOPTED this 24th day of November, 2014.

ATTEST:

Chairperson

Authority Secretary

APPROVED AS TO LEGAL FORM:

Authority Attorney

WESTMINSTER HOUSING AUTHORITY
2015 Proposed Budget

	<u>2013 Actual</u>	<u>2014 Budget</u>	<u>2014 Estimated</u>	<u>2015 Proposed</u>
Revenues				
Transfers from Commons	\$ 577	\$ -	\$ -	\$ -
Rental Income (Rodeo Market)	10	-	20	10
Interest	(2,635)	-	6,400	
Other			9,278	
<i>Total Operating Revenues</i>	<u>(2,048)</u>	<u>-</u>	<u>15,698</u>	<u>10</u>
Expenditures				
Administrative Fee		-	-	-
Utilities	1,555	3,000	3,000	1,500
Contractual	55,593	25,500	24,694	13,500
<i>Total Operating Activities</i>	<u>57,148</u>	<u>28,500</u>	<u>27,694</u>	<u>15,000</u>
Net Operating Surplus (Deficit)	<u>(59,196)</u>	<u>(28,500)</u>	<u>(11,996)</u>	<u>(14,990)</u>
Other Financing Sources (Uses)				
Debt Service:				
Interest expense		-		
Transfers In (out)	(2,200,000)			-
Capital Contributions	27,203			
<i>Total other financing sources (uses)</i>	<u>(2,172,797)</u>	<u>-</u>	<u>-</u>	<u>-</u>
Net change in cash balance	(2,231,993)	(28,500)	(11,996)	(14,990)
Cash balance beginning	2,868,399	95,420	623,761	102,788
Accrual and Balance Sheet Adjustments	<u>(12,645)</u>		<u>(508,977)</u> *	<u>-</u>
Cash balance ending	<u>\$ 623,761</u>	<u>\$ 66,920</u>	<u>\$ 102,788</u>	<u>\$ 87,798</u>

* The remaining portion of funds received from the sale of the Westminster Commons Senior Housing project in 2012 have not yet been appropriated. A portion of these funds was used to payoff the Brownfields loan and transferred to the Transit Oriented Development project. Staff continues to evaluate the potential use of these funds for eligible affordable housing and community-based projects. An adjustment was included for the year ending 2014 estimated balance to accurately reflect the amount of cash available at year end for future years.