



CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) and Citizen Presentations (Section 12) are 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 except when addressing the City Council during Section 12 of the agenda.

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

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any 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. Quarterly Insurance Claim Report: October – December 2010
 - B. 2011 Ambulance Purchase
 - C. 2011 Avaya IP PBX Phone System Purchase
 - D. 2011 Dell Server and Computer Replacement Purchases
 - E. 2011 Purchase of Network Hardware, Services and Maintenance
 - F. 2012 Marked Patrol Cars Purchase
 - G. Fleet Maintenance Cumulative Fuel Purchases of Over \$50,000
 - H. Westminster Reformed Presbyterian Church Property located at 4455 W. 112th Ave. – 2.24-acre Open Space Purchase
 - I. City Park Recreation Center Custodial Services Contract
 - J. Northwest Water Treatment Facility Membrane Expansion Contract Amendment
 - K. Water Tanks Major Repair and Replacement Project Task 2 Engineering Contract Amendment
 - L. Standley Lake Water Quality Cost Sharing Intergovernmental Agreement
 - M. Westminster Center Urban Reinvestment Project Transition Agreement
 - N. Second Reading of Councillor's Bill No. 3 re Proposed EDA with Drury Development Corporation
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Public Hearing re Amendment to the PDP in Sheridan Green PUD Lot 1 to Add an Allowed Use
 - B. Amendment to the PDP in the Sheridan Green Commercial Center PUD Lot 1 to Add an Allowed Use



- C. Resolution No. 4 re Recovery Contract Interest Rate
- D. Resolution No. 5 re Revise City Council's Rules and Regulations
- E. Councillor's Bill No. 4 re Amendments to Section 4-1-17 of the W.M.C. re Tax Refunds
- F. Councillor's Bill No. 5 re Correction of Amendments to Title V of the W.M.C. re Licensing Procedures
- G. Councillor's Bill No. 6 re Economic Development Assistance Agreement Addendum with Scottrade, Inc.
- H. Councillor's Bill No. 7 re Amend EDA with The Bedrin Organization for Murdoch's Farm and Ranch Supply Store

11. Old Business and Passage of Ordinances on Second Reading

12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session

- A. City Council
- B. Executive Session – Obtain Direction from City Council re Proposed Amendments to to Economic Development Incentive Agreement with Church Ranch Hotel Companies Pursuant to WMC 1-11-(C)(4), WMC 1-113(C)(7) and CRS 24-6-402(4)(e)

13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING (Separate Agenda)

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING (Separate Agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JANUARY 24, 2011 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Mayor Pro Tem Dittman, to approve the minutes of the regular meeting of January 10, 2011, as written. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that Monday, January 31, would be the fifth Monday of the month and the City Council would not meet.

After tonight's meeting, the Board of Directors of the Westminster Economic Development Authority would conduct a special meeting.

COUNCIL REPORTS

Councillor Briggs reported that the first lecture series associated with the City's Centennial Celebration would be held from 10 a.m. to noon on Saturday, January 29 at the Westminster Grange. The topic of the lecture would focus on explaining why Westminster's downtown was not like other cities in the metro area.

EMPLOYEE SERVICE AWARDS

Service awards were presented to City employees in recognition and celebration of their lengthy tenure and contributions to the organization. Councillor Winter presented Dean Villano and Dan Daly with certificates and service pins for 20 years of service. Mayor McNally presented checks, certificates and service pins to Mark Watters and William Hayward for 25 years of service. Councillor Major presented Katie Harberg and Eric Knopinski with certificates and service pins for 30 years of service. Mayor Pro Tem Dittman presented Gene Boespflug, Patrick Martinez, Al Wilson, Gary Pedigo, and Jim Moreland with certificates and service pins for 35 years of service.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the December 2010 Financial Report; ratify the expenditure of \$49,230 to the previously approved contract with Asphalt Specialties Company and authorize the City Manager to execute contract Change Order No. 7 with Asphalt Specialties Company, Inc. in the amount of \$49,230 for water main replacement trench patching; ratify the expenditure of \$5,398 to the previously Council-approved contract with Baker and Taylor for 2010 library materials, increasing the contract approval amount to \$155,398; authorize the purchase of rock salt from the two low quote vendors, Independent Salt Company and Envirotech Services, Inc., in an amount not to exceed \$300,000; award the bids for the purchase of Ferric Chloride to PVS Technologies, Lime to Mississippi Lime Company, 12.5% Sodium Hypochlorite to DPC Industries, and, based on the City Manager's report and recommendation, determine that the public interest would be best served by awarding 25% of the annual amount of 10% Sodium Hypochlorite to Treatment Technologies, authorizing total purchases on an as-needed basis not to exceed \$673,321, including a 10% contingency of \$61,211; authorize the purchase of asphalt materials from Aggregate Industries, Inc. and

crackseal materials from Deery American Corporation at the unit prices indicated on the bid tabulation on an as-needed basis in amounts not to exceed \$500,000 for asphalt and \$60,000 for crackseal materials; based on the City Manager's recommendation, determine that the public interest would be best served by authorizing purchases from Baker and Taylor not to exceed \$260,500; from Gale Cengage not to exceed \$60,000; and from Midwest Tapes not to exceed \$60,000; for a grand total not to exceed \$380,500 for library books and electronic resources; award the bid and authorize the City Manager to execute a contract with Low Voltage Installations, Inc. for the installation of a replacement fire station alarm notification system in the amount of \$226,616, with a construction contingency in the amount of \$14,274 and performance bond in the amount of \$7,110, for a total project budget of \$248,000; authorize the City Manager to execute a contract with Pierce Manufacturing, Inc. through their local dealer, Front Range Fire Apparatus, for the purchase of a 2011 Pierce Velocity Pump Under Cab (PUC) custom 105' aerial ladder truck in an amount not to exceed \$862,467 and authorize the trade-in of a 1996 Pierce Aerial Ladder Truck (Unit 5123) to Front Range Fire Apparatus for the amount of \$75,000; authorize the City Manager to execute a contract with EnergyCAP Inc. in an amount not to exceed \$68,370 to purchase a perpetual license and implement Utility Management Software for managing utility consumption for all City facilities; authorize the City Manager to enter into a contract amendment with Sink Combs Dethlefs in the amount of \$123,933 for additional architectural and construction services for the Swim and Fitness Center renovation and authorize transfers into the CIP project account for the Swim and Fitness Center Pool Renovation of \$534,589 from the POST Revenue Bond Funds, of \$180,170 from the Swim and Fitness Center Renovation, of \$344,000 from the Recreation Facility Major Maintenance BO&M CTF, of \$300,000 from the Recreation Center Improvement, and of \$209,534 from the Parks and Recreation Capital Reserve; authorize the City Manager to execute a contract with Ruth Cornfeld Becker, LLC in an amount not to exceed \$7,500 for special legal counsel to provide assistance with preparing policies and documents necessary for the State of Colorado's Conservation Easement Holder Certification; authorize the City Manager to sign a Special Warranty Deed transferring Lot 4 and Tracts C and D of the West Promenade land to the Westminster Promenade Owners Association, LLC and to enter into the Westminster Promenade West Termination Agreement in substantially the same form as the agreement distributed in the agenda packet; final passage on second reading of Councillor's Bill No. 1 clarifying the requirements for roof clearance of solar photovoltaic installations; and final passage on second reading Councillor's Bill No. 2 authorizing a supplemental appropriation in the amount of \$205,000 reflecting the City's receipt of an Adams County Open Space Grant for the Swim and Fitness Center Renovation.

There was no request to remove an item for individual consideration, and Councillor Major moved, seconded by Councillor Kaiser, to approve the consent agenda as presented. The motion carried.

APPOINTMENTS TO ROCKY FLATS STEWARDSHIP COUNCIL

It was moved by Councillor Lindsey and seconded by Mayor Pro Tem Dittman to reappoint Councillor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council and Water Quality Administrator Mary Fabisiak as the alternate representative. The motion carried unanimously.

RESOLUTION NO. 2 AMENDING FISCAL POLICIES REGARDING UTILITY RESERVES

Councillor Major moved to adopt Resolution No. 2 amending certain Utility Reserve Fund policies in regard to the Rate Stabilization Reserve and Capital Project Reserve. Mayor Pro Tem Dittman seconded the motion, which passed unanimously on roll call vote.

RESOLUTION NO. 3 FOR SPRING 2011 ADAMS COUNTY OPEN SPACE GRANT APPLICATIONS

It was moved by Mayor Pro Tem Dittman and seconded by Councillor Winter to adopt Resolution No. 3 authorizing the Departments of Community Development and of Parks, Recreation, and Libraries to pursue two grants totaling not more than \$312,389 from the Adams County Open Space grant program during the 2011 spring cycle for the acquisition of a portion of property from the Westminster Reformed Presbyterian Church located at 4455 West 112th Avenue for open space and for the implementation of the master plan for the Savory Farms Open Space property located at 10900 Federal Boulevard. On roll call vote, the motion carried unanimously.

COUNCILLOR’S BILL NO. 3 REGARDING DRURY DEVELOPMENT CORPORATION EDAA

Upon a motion by Councillor Briggs, seconded by Councillor Major, the Council voted unanimously on roll call vote to pass on first reading Councillor’s Bill No. 3 authorizing the City Manager to execute and implement an Economic Development Agreement with Drury Development Corporation.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Dittman and seconded by Major to adjourn. The motion carried and the meeting adjourned at 7:32 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 8 A

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Quarterly Insurance Claim Report: October - December 2010

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Accept the Fourth Quarter 2010 Insurance Claims Report.

Summary Statement

- The attached report provides detailed information on each claim including the City's claim number, date of loss, claimant's name and address, a summary of the claim, and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office on litigated claims to make sure that the interests of both the City and the citizen are addressed in each instance. The listing of the claims in this report is provided in accordance with Westminster Municipal Code 1-30-3.
- In accordance with Code provisions, the Risk Management Officer, acting as the City Manager's designee, has the authority to settle claims of less than \$30,000. However, under the City's contract with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), CIRSA acts as the City's claims adjuster and settlement of claims proceed with the concurrence of both CIRSA and the Risk Management Officer. The City retains the authority to reject any settlement recommended by CIRSA, but does so at the risk of waiving its insurance coverage for such claims.

Expenditure Required: \$ 0

Source of Funds: N/A



Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 4th quarter of 2010 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow-up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the fourth quarter of 2010, Staff has noted the following summary information:

- Eight of the 10 claims reported in the fourth quarter of 2010 are closed at this time.
- Total claims for the quarter and year-to-date breakdown by department as follows:

Department	4TH Qtr 2010			YTD
	Total Claims	Open	Closed	Total
CD	1	1	0	2
CMO	0	0	0	1
Fire	1	0	1	1
Police	2	1	1	11
PR&L	1	0	1	12
PWU - Streets	1	0	1	8
PWU - Utilities	4	0	4	9
TOTAL	10	2	8	44

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Quarterly Insurance Report

**Quarterly Insurance Report
October - December 2010**

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2010-299	10/4/2010	PD	Dan & Cynthia Engstrom	8671 Wagner Dr., Westminster CO 80031	Claimants' vehicle was damaged by a K9 dog.	\$ 911.40	Closed	Claim denied based on Colorado Governmental Immunity Act, however, claimant was paid under the City's "good neighbor" settlement program.
2010-303	10/9/2010	PWU - Util	Cheryl Byrum	10755 Miller Ct., Westminster CO 80021	Claimant alleges City staff caused a water main break that damaged her home when staff replaced a section of sidewalk in front of her home.	\$1,360.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City, however, claimant was paid under the City's "good neighbor" settlement program.
2010-328	10/15/2010	PWU - Util	QWEST c/o Claims Management Resources	615 N Classen Blvd., Oklahoma City OK 73106	Claimant alleges the City is responsible for damage to their fiber optic cable due to excavation activities at private development site	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. Qwest was referred to the project developer.
2010-342	12/1/2010	Fire	Tim Reisbeck	14 Maple Dr., Frederick CO 80530	Claimant's personal vehicle was damaged during transportation of the City's Holiday Charity Drive items.	\$ 246.61	Closed	
2010-354	12/16/2010	CD	J.F. Kalavity	14031 Washington St., Broomfield CO 80020	Claimant issued a Summons and Complaint against the cities of Westminster and Thornton demanding eminent domain proceedings be initiated to adjudicate just compensation for his property involved in the McKay Lake Drainage Project.	\$ -	Open	CIRSA policies do not provide coverage for the allegations made in this lawsuit. City will be handling the claim internally.
CLAIM SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 4th QUARTER 2010:								
2010-311	2/3/2010	PWU - Util	QWEST c/o Claims Management Resources	615 N Classen Blvd., Oklahoma City OK 73106	Claimant alleges the City is responsible for damage to their fiber optic cable due to excavation activities at a water main break.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes

2010-344	7/24/2010	PWU - Streets	Frank Vallejos	13047 Westlake Pl., Broomfield CO 80220	Claimant's attorney sent notice to the City, as well as the State of Colorado, CDOT and Adams County, alleging claimant sustained injuries and damages as the result of a car accident in a construction zone near 83rd and Sheridan.	\$ -	Closed	Claim denied based on the fact the construction project was a CDOT project and there is no evidence of negligence on the part of the City.
2010-340	9/1/2010	PD	Dean and Victoria Carbajal	605 Barbara Court Apt E, Montrose, CO 81401	Claimants filed a Summons and Complaint alleging Westminster Police officers, along with several other law enforcement agencies in Colorado, violated their constitutional rights.	\$ -	Open	CIRSA Investigating
2010-297	9/1/2010	PWU - Util	QWEST c/o Claims Management Resources	615 N Classen Blvd., Oklahoma City OK 73106	Claimant alleges the City is responsible for damage to their fiber optic cable due to excavation activities at a water main break.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2010-312	9/22/2010	PRL	John Amore	5709 W 115th Ave., Westminster CO 80020	Claimant alleges he was injured while using a weight machine at City Park Fitness Center.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
					TOTAL	\$2,518.01		



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: 2011 Ambulance Purchase

Prepared By: Rick Spahn, EMS Field Coordinator

Recommended City Council Action

Authorize the purchase of one replacement ambulance from Front Range Fire Apparatus in the amount of \$120,600 for one Ford MEDTEC ambulance.

Summary Statement

- City Council has allocated \$120,000 for 2011 in the General Capital Outlay Replacement Fund-Public Safety Tax (GCORF-PST) for the replacement of one ambulance.
- The new 2011 ambulance will replace a 2004 Ford Road Rescue ambulance (unit #5211), currently in reserve status, which has over 80,000 miles.
- Formal bids were sent to vendors in accordance with City policy and under the supervision of the City Purchasing Agent. Specifications asked that vendors provide a cost for a 2011 and 2012 ambulance. Three vendors responded. The low bidder Front Range Fire Apparatus meets bid specifications and agrees to deliver the 2011 ambulance 180 days after the signing of the contract.
- Front Range Fire Apparatus has offered \$9,000 as a trade-in value for unit #5211. They have also offered an additional savings of \$3,700 if the 2011 ambulance is prepaid in full at the time of the order. The recommended expenditure includes the deduction of the trade-in and the prepayment option.
- Summarization of cost: Bid price of \$133,300, minus \$9,000 trade-in allowance, minus \$3,700 prepayment discount, equates to a total amount of \$120,600.
- Fleet has indicated a projected savings in the 2011 GCORF-PST replacement account which would be utilized to offset the additional \$600 over the 2011 budgeted amount for this purchase.

Expenditure Required: \$120,600

Source of Funds: 2011 General Capital Outlay Replacement Fund-Public Safety Tax



Policy Issue

Should the City enter into an agreement with Front Range Fire Apparatus to purchase a Ford MEDTEC Ambulance?

Alternatives

1. Direct Staff to have the ambulance re-bid. This is not recommended because Staff does not feel a re-bid process will generate a lower purchase price.
2. Direct Staff to delay the purchase of this ambulance. Staff does not recommend this alternative. Delayed approval will result in an increase in pricing and reduced chassis availability. The purpose for seeking approval at this time is to take advantage of the availability of the 2010 Ford E450 chassis. The purchase of a 2011 GM engine/chassis would increase cost by approximately \$8,000.

Background Information

The projected life expectancy of an ambulance in Westminster has been five to six years, with three to four years of front-line service and two years as a reserve unit. A Fire Department ambulance will typically have 70,000 to 100,000 miles on it and each will have responded to over 7,000 calls by the time they are replaced.

As of 2010 first quarter, Ford Motor Company has discontinued the E450 series chassis. Front Range Fire Apparatus has indicated they have a limited supply of the 2010 Ford E450 series and have included this chassis in their proposal. Staff continues to strive for standardization and all ambulances in the Fire Department fleet are built on a Ford E450 chassis. This is beneficial to Fleet operations from a parts and maintenance perspective.

Formal bids were sent out in accordance to City policy. Bids were opened December 13, 2010, in front of the three vendors who submitted bids: Rocky Mountain Emergency Vehicles (Lifeline), Front Range Fire Apparatus (MEDTEC), and PEAK Motor Coach (Road Rescue). Vendors were able to meet or exceed the City's required specifications. Listed below are the bid prices.

Ambulance	Chassis	Bid	Trade-In	Total Price
Lifeline	Chevrolet G4500	\$150,830	\$16,000	\$134,830
MEDTEC	Ford E450	\$133,300	\$9,000	\$124,300
		<u>Prepayment Option</u>		\$120,600
Road Rescue	Chevrolet G4500	\$136,998	\$10,000	\$126,998

Front Range Fire Apparatus is the regional distributor of MEDTEC ambulances and Pierce fire apparatus. They are designated as the sole vendor of all major fire apparatus purchased by the City of Westminster. City Staff enjoys a long-term positive relationship with Front Range Fire Apparatus due to exceptional customer service, quality products and competitive pricing. Past purchases have demonstrated that Front Range Fire Apparatus continually meets or exceeds all specification requirements. In addition, they have been the low bidder for the past four years. MEDTEC ambulances continually demonstrate high quality manufacturing by holding up to the day-to-day wear and tear associated with providing emergency medical services. Front Range Fire Apparatus keeps Staff apprised of industry trends, manufacturing changes and continually works closely with Staff to ensure superior value in fire apparatus and ambulances purchases.

Staff continues to strive for standardization of the ambulance fleet and the purchase of this ambulance supports this endeavor. Significant savings in personnel training, equipping the ambulances and Fleet maintenance costs are reduced through a standardized program. Fleet Maintenance supports the purchase of a Ford MEDTEC Ambulance.

SUBJECT: 2011 Ambulance Purchase

Page 3

The purchase of the ambulance helps achieve the City of Westminster's Strategic Plan Goals of "Safe and Secure Community" and "Financially Sustainable City Government." This is accomplished by ensuring reliable equipment in order to provide care during emergency operations, and by effective cost containment/control measures for living within budget.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: 2011 Avaya IP PBX Phone System Purchase

Prepared By: David Puntenney, Information Technology Director
Scott Rope, Information Systems Manager
Dan Hord, Network Administrator

Recommended City Council Action

Find that the US General Services Administration pricing meets City Charter bidding requirements and authorize staff to proceed with 2011 calendar year purchases of replacement phone systems for Fire Stations 1-6, Mature Adult Center, Northwest Treatment Center, Brauch Property, Countryside Recreation Center, Westview Recreation Center, and the Public Safety Center, as well as license changes for City Hall through Axess Communications in an amount not to exceed \$167,000.

Summary Statement

- The City uses 24 PBX phone switches from three manufacturers to provide telephone services at City facilities.
- Staff has completed the first two phases of a three year project. New equipment has been installed at Standley Lake, Swim and Fitness Center, City Park Recreation and Fitness Centers, Municipal Court and City Hall.
- The 2011 phase will include replacement or upgrades to phone equipment located at Fire Stations 1-6, Mature Adult Center, Northwest Treatment Center, Brauch Property, Countryside Recreation Center, Westview Recreation Center and the Public Safety Center, as well as license changes for City Hall.
- Replacement parts for some of the older phone systems in the City are no longer available, so completion of this project is critical.
- The City purchases telecommunication hardware through Axess Communications at or below the US General Services Administration (GSA) contract prices, therefore meeting the City Charter bidding requirements. The prices under this GSA contract are well below what the City could achieve purchasing on its own.
- The City upgraded/replaced ten phone switches since 2006 with new Avaya systems.
- Avaya phone switches and equipment purchased during the last 3-4 years is compatible with new Avaya switches and will continue to be used and integrated into this project.
- Selection of the Avaya solution supports a major Westminster business and employer.



- A total of \$333,000 has been spent since the start of the project in 2009, and the remaining \$167,000 CIP budgeted funds will complete the project in 2011 on time and within the original CIP project budget.
- Following completion of this project, annual operating expenses for phone systems will decline by approximately \$15,000 annually.
- In February 2009, City Council authorized staff to proceed with the first and second phase of the project, which was successfully completed during 2009 and 2010.
- Axess Communications is the Value Added Reseller (VAR) for Avaya equipment and services. Further information on Axess is provided in the background section of the agenda memorandum.
- Adequate funds were budgeted and are available for this expense.

Expenditure Required: \$167,000

Source of Funds: General, Public Safety and Utility Fund Capital Improvement Project Budgets

Policy Issue

Should the City continue with phase three of the telephone system replacement project to ensure high availability, reliability, performance and capacity to support end users, while continuing to standardize on a specific vendor solution?

Alternative

Forgo the 2011 replacement of telephone systems at these locations. This alternative is not recommended for the following reasons:

1. Continued maintenance and parts for older systems are not available.
2. The City has already completed the first two phases of the project and discontinuing the project would significantly reduce or eliminate the benefits described in this agenda memo.
3. The performance and reliability of these older systems have proven unacceptable.
4. Older telephone systems do not support the standardized communications infrastructure or features that are available on newer systems.
5. The City would not benefit from increased ease of administration, lower support cost and enhanced features available with the proposed solution.

Background Information

The City's telephone systems are used within every department, division and facility within the City. These systems are critical to departments in order to provide internal and external customer service and to conduct critical City operations. The City uses over 1,200 telephone extensions across 32 facilities and 24 PBX switches from three manufacturers. Some of these solutions have been in place for nearly 20 years.

In 2006, the City implemented limited Voice over Internet Protocol (VoIP) technologies to assess the capabilities and reliability of the technology and to provide more advanced telecommunication features for several locations. Staff concluded that the new technology features, ease of use, more efficient administration and lower support cost provided short and long term benefit for the City. Some of the enhanced services available with the new VoIP technologies include four digit dialing between facilities, integration with the centralized voicemail system and standardization of features between facilities. In addition to the enhanced end user features provided by the Avaya VoIP solution, the standardization of systems throughout all City facilities increases the ability for IT staff to support telecommunications equipment, reducing the need for expensive support and service contracts with vendors.

The City standardized on Avaya VoIP systems for all new PBX installations since 2006. Avaya has some of the highest customer satisfaction and quality ratings in the industry. The City is very pleased with the overall performance of the Avaya systems and the support provided to the City. The first two phases of the Avaya phone system installations went very smoothly in 2009 and 2010, and staff is very pleased with the capabilities of the new system. Avaya is also a Westminster business and has worked hard to establish and maintain a good working relationship with the City over the past three years. Avaya (along with Axess) have worked diligently to ensure the City's telephone needs are addressed using the most appropriate and cost effective solution.

For customers and agencies the size of the City of Westminster, Avaya uses Value Added Resellers (VAR's) as a distributor for their products and services. The City uses Axess Communications to purchase all Avaya products and uses support engineers from both Axess and Avaya for support on product decisions and designs. Avaya also uses sales representatives to support the VAR and work with the customer and the VAR to provide access to Avaya Technical Experts when needed.

SUBJECT: 2011 Avaya IP PBX Phone System Purchase

Page 4

City Council action on this item addresses the Strategic Planning Goal of a Financially Sustainable City Government Providing Exceptional Services by maximizing the effective expenditure of funds for telecommunication infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: 2011 Dell Server and Computer Replacement Purchases

Prepared By: David Puntteney, Information Technology Director
Scott Rope, Information Systems Manager

Recommended City Council Action

Find that the Western States Contracting Alliance (WSCA) pricing meets City Charter bidding requirements and authorize Staff to proceed with 2011 calendar year purchases of desktop PCs, laptop PCs, storage hardware, computer servers, printers and software through Dell Computer Corporation in an amount not to exceed \$334,000.

Summary Statement

- The City uses 95 physical and virtual computer servers to support software applications and provide services for all departments.
- City Council authorized adequate funds in the 2011 Utility Fund, Information Technology Department operating budget, to purchase replacement servers and software.
- City Council authorized adequate funds in the appropriate 2011 Utility Fund and General Fund department's operating budgets for the purchase of departmental PCs.
- The City purchases hardware through Dell Computer below the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements.
- The City is scheduled to replace 65 laptops that will reach four years of age in 2011.
- The City will purchase up to 166 desktop PCs to replace PCs that are more than five years old, and to replace those that may fail between their fourth and fifth year of use.
- The City is scheduled to replace 3 servers and purchase additional storage capacity in 2011.
- Technology purchases and services including software maintenance, monitors, RAM and related supplies are also purchased through Dell at or below the Western States Contracting Alliance (WSCA) contract prices and are included in the total projected 2011 amount.
- Decommissioned desktop and laptop computers are donated to the 7:10 Rotary Club for the Computers for Kids Program.
- Decommissioned computer servers are occasionally relocated to the City's computer disaster recovery facility to serve as short-term recovery computers in the event of a disaster at the primary computer facility located at City Hall.

Expenditure Required: \$334,000

Source of Funds: General and Utility Fund Departmental Operating Accounts and
Utility Fund, Information Technology Department Operating Budget



Policy Issue

Should the City continue to replace aged computer servers, desktop computers, laptop computers and peripheral equipment and software to ensure high availability, performance and capacity to support software applications and users?

Alternative

Forgo the 2011 replacement of computer hardware, software and servers. This alternative is not recommended for the following reasons:

1. Continued maintenance on older servers is expensive. The City purchases new servers that include a four-year maintenance agreement.
2. Application software upgrades frequently require more processing speed and memory. Attempting to upgrade older servers to meet the demands of new applications is many times impossible, and not cost effective, especially when combined with the cost of maintaining older computer technology.
3. The expected performance and reliability of servers more than four years old is unacceptable for the City's critical applications.
4. Older desktop and laptop computers lack the processing power and reliability needed to adequately support newer applications.

Background Information

The City uses 1085 personal computers and laptops throughout all departments, representing an investment of approximately \$868,000. These computers provide access to essential software and services needed for City operations.

In 2001, the City established a PC replacement schedule of three years or four years, depending on the type of applications and performance requirements on each PC. In 2005, with the improved reliability and speed of new computers, Information Technology eliminated the three year replacement schedule, and moved all computers to a four year replacement cycle. In 2008, IT Staff evaluated the potential savings and risk associated with extending the desktop computer replacement schedule from four years to five years. Through that study, staff determined that using desktop computers for one additional year before replacement may have minimal impact and save the City over \$330,000 if continued over the next ten years. Staff has evaluated the new schedule over the last three years and it has been successful. In 2011, the City will purchase up to 166 desktop PCs to replace desktop computers that have been in use for five years, and to replace those that may fail between their fourth and fifth year of use. Additionally, 65 laptops are scheduled for replacement in 2011.

In 2006, the Information Technology Department conducted a comprehensive study of "virtualization" technology to determine how such technology could improve computer server availability and reliability while reducing the total number of servers required. Virtualization is the process of configuring an individual computer server to function as multiple virtual servers, thereby allowing multiple applications to be run on the same server. The study concluded that virtualization would result in a long term cost benefit to the City by reducing the required number of servers. In 2007, Staff began the virtualization project, and has successfully eliminated over 40 physical servers, reducing the total number of physical servers from 95 to 43. Without virtualization, the City would be replacing 8 servers in 2011. Instead, only 3 servers require replacement in 2011. Over the next 12 months, Information Technology will extend the virtualization project to eliminate another 3-5 servers. By the end of 2011, the City will be realizing an average annual net savings of \$40,000 in server replacement costs as compared to actual replacement cost in 2008.

The City's servers support applications such as Computer Aided Dispatch, Public Safety Records Management, Enterprise Resource Management, Court, Geographic Information Systems, Internet, Intranet, Utility Maintenance Management, Utility Billing, Office tools and many others. These servers are critical to departments to provide internal and external customer service and to perform core City operations. The City has established a four-year replacement for computer servers. Decommissioned servers are occasionally relocated to the City's computer disaster recovery facility to provide short term, more limited use in the event of a disaster at City Hall that would restrict access to or availability of production servers. New servers include a four-year maintenance agreement, so the City does not incur additional hardware maintenance expense during the full production life of the servers. The City has standardized on Dell computer systems, which have some of the highest customer satisfaction and quality ratings in the industry. The City is very pleased with the overall performance of Dell equipment and the support provided to the City.

The City purchases hardware through Dell Computer below the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements. The Western States Contracting Alliance (WSCA) was formed in October 1993 by the state purchasing directors from fifteen western states. The primary purpose of creating WSCA was to establish the means by which participating states could join together in cooperative multi-state contracting. WSCA membership includes Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. As a government entity within a WSCA state, the City of Westminster is eligible to use the approved agreements, and has achieved cost-effective and efficient acquisition of quality products and services through this approach.

City Council action on this item addresses the Strategic Planning Goal of a Financially Sustainable City Government Providing Exceptional Services by maximizing the effective expenditure of funds for Information Technology.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 E

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: 2011 Purchase of Network Hardware, Services and Maintenance

Prepared By: David Puntenney, Information Technology Director

Recommended City Council Action

Find that the Western States Contracting Alliance pricing meets City Charter bidding requirements and authorize Staff to proceed with 2011 calendar year purchases of network switches, transceivers, maintenance and consulting through 24/7 Networks, Incorporated in an amount not to exceed \$80,000.

Summary Statement

- The City uses Cisco network switches and other hardware to provide City network connectivity for 29 City facilities.
- The City purchases network hardware maintenance and services, including maintenance for the City's RSA two factor authentication product.
- City Council authorized adequate funds in the 2011 Utility Fund, Information Technology Department operating budget, to purchase network equipment and services.
- The City purchases network hardware through 24/7 Networks, Incorporated below the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements.
- The City replaces network equipment after four to five years of use to maintain reliability and to improve network performance.
- Adequate funds are budgeted and available for this expense.

Expenditure Required: \$80,000

Source of Funds: Utility Fund - Information Technology Department Operating Budget



Policy Issue

Should the City continue to replace aged network switches and related equipment and purchase maintenance to ensure high network availability, security, performance and capacity to support City computer users?

Alternative

Forgo the 2011 replacement of computer network hardware. This alternative is not recommended for the following reasons:

1. The expected performance and reliability of network hardware more than five years old is unacceptable for the City's operations.
2. Maintaining and upgrading the City's network infrastructure is critical to provide exceptional internal and external customer service.

Background Information

The City's network infrastructure consists of 74 network switches providing network connectivity within and between 29 City facilities. The network provides computer connectivity between computer servers, printers, desktop/laptop PCs and the Internet. Upgrading and replacing aged switch equipment is critical to the reliability, security and performance of the City network. The City uses intelligent Cisco network switches that are capable of operating at 10/100/1,000 Mbps (fast) speeds. Network switches are replaced on a four to five year schedule.

The City has used 24/7 Networks Incorporated as the vendor of choice since 2004 for products and services such as network switches, routers, transceivers, maintenance for two factor authentication, maintenance for Cisco hardware and consulting services. 24/7 Networks provides the City with a negotiated discount for Cisco hardware that is greater than the discount available through the Western States Contracting Alliance (WSCA).

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 F

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: 2012 Marked Patrol Cars Purchase

Prepared By: Jeffery H. Bowman, Fleet Manager

Recommended City Council Action

Award the bid for eight 2012 Police Department patrol vehicles to Sil-Ter Har Motors, in the amount of \$179,088.

Summary Statement

- City Council action is requested to award the bid for eight Police patrol cars, based on the City of Westminster's solicitation to eight Denver area dealerships for patrol vehicles.
- Staff is requesting that 8 of the 12 patrol cars budgeted as replacement vehicles in 2012 be ordered now because of Ford's decision to discontinue the manufacture of the Crown Victoria during 2011.
- Of the four dealerships that responded to the request for bids, Sil-Ter Har Motors submitted the lowest price. Their bid meets all of the specifications in the City's bid request.
- City Council previously approved \$290,000 in the 2012 General Capital Outlay Replacement Fund (GCORF) budget to purchase these vehicles. These funds are available in 2011 for this purchase from the General Capital Outlay Replacement Fund public safety tax account balance.

Expenditure Required: \$179,088

Source of Funds: General Capital Outlay Replacement Fund



Policy Issue

Should the City proceed with the purchase of eight Police Department patrol vehicles for 2012 by the March 1, 2011 order date cut-off?

Alternatives

1. Reject the City's recent solicitation to eight area dealerships and instruct City Staff to re-bid vehicles to additional state dealerships. This is not recommended because the recent City bid reflects a competitive bid process that provided eight dealerships the opportunity to compete fairly to provide the eleven patrol cars.
2. Purchase the Ford Crown Victoria off of the Colorado State Bid. This is not recommended, because the State Bid was written to meet general specifications for multiple jurisdictions and does not meet the vehicle standard that Westminster currently uses. There are five options included as a minimum specification on the State Bid that Westminster does not require. These differences prompted the City to conduct a separate bid process.
3. Do not purchase these eight Ford Crown Victoria 2012 replacement vehicles in 2011. This is not recommended because The Crown Victoria line of patrol cars is being discontinued in 2011. The last date to order a new Crown Victoria is March 1, 2011.

Background Information

The State of Colorado sends out a request for bids for vehicles every year to car dealers in Colorado. This bid request was sent out in September of 2010 and received responses from Colorado vendors. After carefully reviewing the bid specifications, it was determined that the bid was too broad in scope in that it included items that were not necessary, yet excluded some items that City Staff have determined should be standard. Some items included on the State Bid that the Westminster Police Department does not require are engine block heaters, carpeting, cruise control, individual key sets, trunk packs and large diameter wheel covers. After this was considered, it was determined that bids that were specific to Westminster's needs should be solicited.

As part of the 2012 Budget, City Council funded the purchase of twelve replacement patrol vehicles. The standard for Westminster Police, the Ford Crown Victoria, is being discontinued in 2011. The last build date is anticipated to be in August of 2011. The order cut-off date is March 1, 2011. 2011 will be a transitional year in the American patrol car industry. Ford will be introducing a new "Interceptor," based on a Taurus chassis, and General Motors will be introducing a new "Caprice" based on the Australian-built chassis.

Fleet Maintenance recommends that Police pre-order eight of the twelve cars budgeted for 2012 in 2011, before the cut-off date of March 1, 2011. The remaining four cars budgeted in 2012 will be purchased in 2012 as two Caprices from GM and two Interceptors from Ford. The four remaining cars will be used to determine what the preferred marked patrol car will be, based on operational considerations.

Westminster Police Department and Fleet Division recommend buying the last builds of Ford Crown Victoria patrol cars, even though the City of Westminster's light duty fleet is primarily General Motors. Ford is currently the only manufacturer who builds a body-on-frame, rear wheel drive, V8 car, specifically designed for heavy duty applications. Currently, General Motors will build a rear wheel drive V8 car in the Caprice, but not body on frame.

Staff recommends purchasing eight Ford Crown Victoria marked units on the Westminster bid at the price of \$22,386 each for eight black and white cars. The State bid price of \$23,618 per car, results in \$1,232 savings per Police patrol car over the Colorado State Bid award. A summary of the bid results is as follows:

Vendor Name	Spradley Barr Ford	Sill-Terrhar Ford	Lakewood Fordland	Phil Long Ford	Go Courtesy Ford	Burt Ford	O'Meara Ford	Brighton Ford
Patrol Price:	No Bid	\$22,386.00	\$22,606.54	\$22,619.000	No Bid	No Bid	\$22,960.00	No Bid
Discount	No Bid	Incl.	Incl.	Incl.	No Bid	No Bid	Incl.	No Bid
Warranty	No Bid	3/36 & 5/60	3/36& 5/60	3/36 & 5/60	No Bid	No Bid	3/36 & 5/60	No Bid
Extras	No Bid			No manuals	No Bid	No Bid		No Bid

The early purchase will result in a fall 2011 delivery of eight marked patrol cars. The cars will not be placed in service ahead of a normal 2012 replacement cycle. An early replacement would change the replacement cycle going forward into 2013, so even though cars would arrive in 2011, replacement would schedule will remain the same.

The actual patrol units to be replaced by the 2012 vehicle purchases will be determined based on criteria that takes into account vehicle age, maintenance costs, utilization, cost per mile to operate and depreciation. Replaced units are sent to auction; none are kept in the fleet in other capacities. There are currently 52 marked patrol units in the fleet.

This recommended purchase meets Council's Strategic Plan goals of Financially Sustainable City Government and Safe and Secure Community by keeping a highly dependable fleet of Police vehicles on the street and obtaining the best possible price for these vehicles.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Fleet Maintenance Cumulative Fuel Purchases of Over \$50,000

Prepared By: Jeffery Bowman, Fleet Manager

Recommended City Council Action

Determine that the public interest will be best served by approving Fleet Maintenance cumulative purchases in 2011 with Chief Petroleum, Gray Oil and Hill Petroleum for total fuel purchases not to exceed \$916,680 total among the three vendors.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- The Fleet Maintenance Division is buying fuel via a spot pricing method, competitively bid between three vendors. The three vendors provide unleaded gasoline and diesel fuel for use in all City of Westminster vehicles. Total aggregate deliveries from one of these three vendors, Chief Petroleum, has just exceeded \$50,000 during the first four weeks of January 2011. Staff is asking for approval of purchases not to exceed \$916,680 among all three vendors through 2011.
- For the past three years, the City was able to lock in fuel prices for periods up to six months. Westminster and other cities' staffs have been closely watching futures pricing on fuel for the past several months and have not found this pricing to be favorable.
- Adequate funds were previously appropriated in the 2011 Fleet Maintenance Commodities Fund and are available for the needed purchases.

Expenditure Required: \$916,680

Source of Funds: 2011 Fleet Maintenance Fund



Policy Issue

Should Council approve the cumulative purchase of vehicle fuel from various vendors that total over \$50,000 per vendor, but not to exceed \$916,680 in 2011?

Alternative

Do not approve the expenditures as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more prudent approach is to treat the smaller transactions as cumulative larger purchases with the vendors that are subject to Council approval.

Background Information

Fleet Maintenance uses a variety of fuel vendors to provide no-lead gasoline and #2 diesel fuel in City vehicles by Fleet personnel. The 2011 Fleet Maintenance Commodities budget contains \$916,680 in the line item for vehicle fuel. These on-going purchases include routine, competitively bid fuel deliveries.

Fleet Maintenance has three vendors that are used on a regular basis and one that has already accumulated over \$50,000 in orders during the first five weeks of 2011. These vendors are: Chief Petroleum, Gray Oil and Hill Petroleum. Chief Petroleum held the 2010 fuel contract. Fleet Maintenance Division began watching futures prices for 2011 in July 2010, but prices have not been favorable for a lock. Futures contracts for 2011 remain a preferred method for fuel purchases, but uncertainty in the market has kept futures pricing higher than anticipated for many months. Spot pricing however, has provided timely, reasonably-priced deliveries of fuel for the City. When fuel deliveries are necessary, prices are requested from three vendors and the low price for the day awards the purchase. Three tanker loads of fuel have been bid in 2011 and Chief Petroleum has won each delivery. Following is the solicitation results for each bid:

Date & Fuel Type	Vendor Price / Gal	Vendor Price / Gal	Vendor Price / Gal
1/17/11 No Lead	Chief \$2.42	Gray \$2.59	Hill \$2.47
1/21/11 #2 Diesel	Chief \$2.73	Gray \$2.79	Hill \$2.79
2/3/11 No Lead	Chief \$2.52	Gray \$2.67	Hill \$2.56

Staff anticipates that it will be purchasing fuel from all three vendors throughout the remainder of the year that will surpass \$50,000 each, but not exceed \$916,680 total.

This recommended approach to purchasing fuel helps achieve the City Council’s Strategic Plan Goals of “Safe and Secure Community” and “Financially Sustainable City Government” by providing the basic resources necessary to ensure the timely response to emergency calls and provide other City services in a cost effective manner.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Purchase of the 2.24-acre Westminster Reformed Presbyterian Church Property located at 4455 West 112th Avenue for Open Space

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Authorize the purchase of an approximately 2.24-acre portion of the Westminster Reformed Presbyterian Church property located at 4455 West 112th Avenue for open space for \$160,760 plus closing costs not to exceed \$5,000, and authorize the City Manager to execute all documents required to close on the purchase of the property.

Summary Statement

- The Westminster Reformed Presbyterian Church property has been recommended by the City's Open Space Advisory Board as a priority acquisition.
- The acquisition of a portion of this property will expand the existing Big Dry Creek Open Space corridor and preserve floodplain and upland habitat.
- Staff has negotiated the purchase of approximately 2.24 acres for a purchase price of \$160,760 or (\$1.65 per square foot).
- Staff has submitted a grant request to Adams County for 50% of the purchase price (\$80,380) plus a portion of the cost to construct a wire fence along the boundary for a total request of \$81,230. The acquisition of this property will be contingent upon receipt of a full or partial grant from Adams County.

Expenditure Required: \$160,760 plus closing costs not to exceed \$5,000

Source of Funds: Parks, Open Space, and Trails Fund (\$81,230)
Adams County Open Space (\$81,230)



Policy Issue

Does City Council approve the use of the open space funds for the purchase of the 2.24-acre parcel located at 4455 West 112th Avenue?

Alternative

City Council could choose not to authorize the acquisition or the expenditure at this time. Staff does not recommend this option because the seller is currently motivated to work with the City and staff has negotiated a fair purchase price contingent upon Council authorization.

Background Information

The City's Open Space Advisory Board has identified the back (north) portion of the Westminster Reformed Presbyterian Church property as a priority acquisition to add to the Big Dry Creek Open Space corridor. The Church will retain ownership of the front portion of the property and continue their current use of the property. The Big Dry Creek Open Space abuts the north and west side of the property. Acquiring this property for open space will protect the Big Dry Creek corridor by providing approximately 230 linear feet of property to the east of the creek. This will help to meet the City's goal of protecting at least a 1,000 foot wide open space corridor along Big Dry Creek for wildlife habitat. The existing buffer along this part of Big Dry Creek is about 500 feet in width. This acquisition will widen the buffer to 730 feet. By widening the existing buffer zone to the creek, there will be greater protection against urban runoff, which will help to protect ecological and wildlife values that are important to the City and its residents. Acquiring the back portion of this property will ensure that this area will not be developed in the future if the Church were to expand or sell the property for development.

The Big Dry Creek trail currently runs on the west side of the creek in this area. It may be appropriate at some point in the future to look at the idea of constructing a trail on the east side of the Big Dry Creek as well that would provide a direct trail connection from the existing trail head parking lot off of 112th Avenue to a well used trail located north of the Front Range Community College. This would provide for another loop trail in this area and would likely increase use of the trail head parking lot. The exact location of the trail has not yet been determined and this proposed trail has not been approved by the Parks, Open Space, and Trails committee, however if it is supported in the future, this trail would likely meander through the Church property.

The City commissioned an appraisal that valued the parcel at \$71,767 per acre or \$1.65 per square foot for a total of \$160,760 for 2.24 acres. The 2.24-acre portion of the property consists of 0.9 acres of buildable land and 1.34 acres of unbuildable land within the 100-year floodplain and a sewer line easement. The appraised value combines the buildable and unbuildable portions of the property. To facilitate this acquisition, the Church property must be properly subdivided and re-zoned to Planned Unit Development. City Open Space and Planning staff will begin working on this process with the Church if a grant is awarded to assist with this acquisition. It is estimated that this process may take up to 5 months to complete.

City Council approved the submission of a grant to Adams County to request funds up to \$81,239 to assist with this purchase. The Adams County Open Space Advisory Board will make recommendations in April, 2011 regarding this grant request. This acquisition is contingent upon receipt of Adams County funds. If the City purchases this property for open space, it will be maintained in a natural condition and will be open to the public for passive use. The City would like to construct a fence to delineate the new property boundary and separate the public land from the Church property following the acquisition. Funds for this purchase are available from the POST Land Acquisition account.

SUBJECT: Open Space Purchase - Westminster Reformed Presbyterian Church Property Page 3

This acquisition fits with Council's goal of Beautiful and Environmentally Sensitive City by protecting the Big Dry Creek corridor and for providing wildlife habitat.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

- Vicinity Map

Westminster Reformed Presbyterian Church Open Space Acquisition

*Westfield Village
Park*

*Big Dry Creek
Open Space*

**Westminster Reformed
Presbyterian Church
Property**

**Front Range Community College/
College Hill Library**

Wolff St

Vrain St

112th Ave

Cotton Creek Park

-  Open Space
-  Parks
-  Possible Future Trail
-  Trails
-  Streets
-  Streams





Agenda Item 8 I

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: City Park Recreation Center Custodial Services Contract

Prepared By: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

Based on the recommendation from the City Manager, determine that the public interest will best be served by authorizing the City Manager to execute a contract with KG Clean Inc. in the amount of \$55,610, to provide custodial services at City Park Recreation Center for the remaining ten months of 2011.

Summary Statement

- In November 2008 City Council awarded contracts to three custodial service companies to provide janitorial services in 17 City owned facilities, with services to begin January 2009. The three companies awarded contracts were Porter Industries, DiTirro Building Service and KG Clean, Inc. The contracts included the option to extend custodial service for an additional two one-year periods based on the performance provided the previous year.
- In January 2011, Staff sent Porter Industries a 30 day notice of intent to terminate custodial services at City Park Recreation Center. This action was based on three months of Staff efforts to require Porter Industries to address custodial service related complaints received from recreation center guests. The effective date of termination of services is February 18, 2011.
- Staff has since contacted K-G Clean Inc. (which had submitted the second lowest bid during the original bid process in 2008) to negotiate the cost to provide custodial services to City Park Recreation Center for the remaining 10 months of 2011. KG Clean, Inc. submitted a very competitive cost proposal.

Expenditure Required: \$55,610

Source of Funds: General Fund –General Services Operating Budget



Policy Issue

Should Council authorize signing of a custodial services contract with KG Clean Inc. and approve expenditures for contract custodial services for the remaining 10 months of 2011.

Alternative

Do not approve remaining 10 months of expenditures for custodial services, and direct Staff to re-bid custodial services for City Park Recreation Center. Staff is not recommending this approach based on the time needed to rebid custodial services, and KG Clean Inc.'s willingness to negotiate a reduced price from their original proposal in 2008.

Background Information

In November 2008, custodial service contracts were awarded to three janitorial companies for services to begin January 1, 2009. The three companies were, DiTirro Building Service, K-G Clean, and Porter Industries. The practice of using more than one custodial service company allows the City to have two additional custodial companies available should one company be unable to deliver services meeting the standards required by the City of Westminster.

Over the past three months Staff has noticed a steady decline in cleaning performance by Porter Industries staff at City Park Recreation Center. This has resulted in numerous complaints from both guests utilizing the facility and City Staff who monitor the cleanliness of the facility each morning. Staff contacted and met with Porter Industries management on a number of occasions to express concerns regarding the Porter's daily cleaning performance. Although Porter Industries made some minimal improvement, they continue to have difficulty meeting the daily requirements in their contract cleaning specifications. In addition to cleaning concerns, Porter Industries staff left the building unsecured on two separate occasions.

On January 15, 2011, Staff sent a 30 day notice of termination of contract letter to Porter Industries. On January 18, Staff contacted KG Clean (who had submitted the 2nd lowest bid for custodial services at City Park Recreation Center during the original bid process) to inquire if they would be willing to assume custodial services for the remainder of 2011.

KG Clean has agreed to assume the remaining 10 months of custodial services at City Park Recreation center at the same 2008 contracted rate being paid to Porter Industries. Staff would also like to emphasize that KG Clean had successfully cleaned City Park Recreation Center for the six years previous to 2009 when they were outbid by Porter Industries during that custodial bid process.

Awarding KG Clean a custodial services contract achieves City Council's Strategic Plan goal of Financially Sustainable City Government by an investment in well maintained and sustainable infrastructure and facilities.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Northwest Water Treatment Facility Membrane Expansion Contract Amendment

Prepared By: Tom Settle, Water Treatment Superintendent
Kent Brugler, Senior Engineer, Utilities Planning and Engineering Division

Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest will best be served by authorizing the City Manager to execute an amendment to the design/build contract with Garney Companies, Inc. for the Northwest Water Treatment Facility Membrane Expansion project to modify the original scope of work to include the replacement of the ammonia storage tank for an additional amount not to exceed \$65,000.

Summary Statement

- Staff requests approval to modify the original scope of work for the Northwest Water Treatment Facility (NWTF) Membrane Expansion project, currently under construction by Garney Companies, Inc., to include the replacement of the failing 4,000 gallon fiberglass ammonia storage tank with a steel storage tank.
- The water treatment process uses 27-29% Aqua Ammonia as part of the potable water disinfection process and stores this chemical in the existing fiberglass storage tank that has been in service since the NWTF was constructed in 2002. Staff learned the fiberglass tank has a life expectancy of 7-8 years, while a steel tank has a life expectancy of 25 years.
- Staff noted a change in color of the tank over the past few months and began a process of investigation that resulted in a recommendation by the fiberglass resin liner manufacturer and a fiberglass tank manufacturer that the tank be removed from service and replaced.
- Staff consulted with the Garney Companies design-build team as to options and costs for replacing the tank and connecting piping, and negotiated a final scope of work and fee.
- Staff recommends adding the tank replacement work to the existing contract with Garney Companies in order to expedite the tank replacement and ensure that the NWTF is available for summer water production.
- Council-approved contingency funds are available for this additional work. The NWTF Expansion Project is over 65% complete and has less than 2% of added project costs due to approved change order expenditures to date.

Expenditure Required: \$65,000

Source of Funds: Utility Fund
– NWTF Membrane Expansion Capital Improvement Project



Policy Issue

Should Council approve the negotiated sole-source replacement of the ammonia tank as a change order to the design/build contract for the NWTF Membrane Expansion project?

Alternative

City Council could choose to pursue a normal competitive bidding process for the tank replacement.

Staff does not recommended this due to time constraints of replacing the tank before the summer water demand season and the expected added costs of contracting with a new contractor including overhead, mobilization and other similar costs that would be incurred.

Background Information

The NWTF was originally designed and constructed by the Garney Companies, Inc. team and placed into service in the spring of 2002. The facility uses the liquid chemical 27-29% Aqua Ammonia as a component of the potable water disinfection process. The ammonia is delivered to the facility in bulk truckload shipments and is stored in a 4,000 gallon fiberglass tank. Staff has observed a significant and unusual change in the color of the tank shell over the past six months that caused concern.

When the NWTF was shut down in December for work related to the membrane expansion project, the ammonia tank was drained and opened up for inspection. Staff took pictures and conducted an assessment of the interior lining using a specialized instrument for measuring fiberglass resin thickness and condition. This information was passed along to a fiberglass tank builder and the fiberglass resin liner manufacturer for interpretation. Staff has been informed by the resin manufacturer that, based on the information provided, the ammonia has degraded the liner and penetrated the structural components of the tank, indicating that there exists a high risk that the tank could begin leaking ammonia within a short period of time. The resin manufacturer confirmed that the life expectancy of the resin liner for ammonia storage tanks is 7-8 years at which time the tank would need to be re-lined, at a minimum.

Staff immediately began research on replacement costs and the best appropriate materials for ammonia storage tanks. The Semper Water Treatment Facility (WTF) also uses Aqua Ammonia that is stored in a steel tank. Research shows this material is one of the two primary metallic storage tank materials, along with stainless steel, recommended for liquid ammonia. Polyethylene is a third material that has been used for liquid ammonia storage. At the request of staff, Garney Companies provided planning cost estimates for a mild steel tank replacement and two types of polyethylene storage tanks. Polyethylene materials also have a defined life of approximately 10 years for this type of service. This polyethylene material is a known quantity for the City as the Semper WTF had this type of tank for storage of a different chemical and experienced a catastrophic failure at exactly 10 years of service. Therefore, staff does not recommend the use of polyethylene as an option. A stainless steel tank would provide similar service but would cost nearly twice as much. A steel storage tank should provide a minimum of 25 years of service without any major service requirements and is more cost effective; therefore, steel is recommended. Staff has developed a detailed scope of work and negotiated a firm price not to exceed \$65,000 for the tank replacement that is deemed fair and competitively priced.

Garney Companies, Inc. is currently under contract for the NWTF Membrane Expansion Project and is actively working at the site. Due to the timelines of the membrane project, Garney is able to efficiently incorporate the ammonia tank replacement work into their current construction schedule and should have no issue with completing all the improvements and having the facility ready for summer water production.

Council previously approved the NWTF Membrane Expansion Project for a budget of \$2,847,600 with an approved contingency of \$285,000. With the project 65% completed, approximately \$250,000 of the contingency remains. No other significant changes to the project are anticipated at this late stage in the project.

This project helps achieve two of the City Council's Strategic Plan goals: 1) Achieving a "Financially Sustainable City Government" by contributing to the objective of well-maintained and operated City facilities and 2) Contributing to a "Beautiful and Environmentally Sensitive City" by enhancing the reliability and capacity of the City's water treatment system.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Water Tanks Major Repair and Replacement Project Task 2
Engineering Contract Amendment

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

Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest would best be served by authorizing the City Manager to execute a contract amendment with Carollo Engineers, Inc. in the amount of \$53,977 to provide additional services for Task 1 of the Water Tanks Major Repair and Replacement Project.

Summary Statement

- The 2006 Utility System Infrastructure Master Plan identified the need for several improvements to the City's water storage tanks to extend the life of the tanks and improve reliability within the distribution system. Necessary improvements include structural rehabilitation, adding access manholes, and modifications to the overflow piping at several tanks to conform to Colorado Department of Health and Environment (CDPHE) regulations.
- Overall this project incorporates three main tasks: (1) Performance of a thorough evaluation of each tank and development of recommendations for specific capital improvements, (2) Design of recommended improvements, and (3) Construction management services.
- The Task 1 contract was authorized by City Council on August 9, 2010. This task was successfully executed by Carollo Engineers, Inc. and included a review of existing tank reports, site visits, dive inspections, confirming regulatory requirements, developing a maintenance program, and recommending specific repair and replacement items.
- As part of Task 1, the tanks were placed into three groups based on the priority for repairs. Four tanks were placed in the highest priority group based primarily upon the extent of rust and corrosion on the roof and roof support beams observed through dive inspections. The potential cost associated with a wholesale replacement of the roof framing system is high. As a result, supplemental dry tank investigation is warranted to refine the scope of repairs and to identify the number of existing structural components that can be rehabilitated rather than replaced.



- Staff recommends approving a contract amendment with Carollo Engineers, Inc. for the additional investigative work desired as part of Task 1. The Carollo team has been successful thus far on the project and offers competitive pricing for the proposed scope of work.
- This amendment is for additional investigation and engineering services associated with Task 1. Engineering services for Task 2 Final Design and Task 3 will be negotiated later in 2011. Funds have been budgeted in the 2010 CIP for Task 2, and in the 2011-2012 CIP for Task 3, which includes construction of the recommended improvements.
- The original Task 1 contract approved in August was for \$156,517 plus \$15,652 of contingency. This amendment is for \$53,977, which will bring the total Task 1 expenditure to \$226,146.

Expenditure Required: \$53,977

Source of Funds: Water Tanks Major Repair and Replacement CIP Account

Policy Issue

Should Council proceed with approving the engineering contract amendment with Carollo Engineers, Inc.?

Alternatives

1. City Council could not approve the contract amendment and place the project on hold. This is not recommended because this action would result in delaying the improvements to the water tanks and could result in increased maintenance and repair expenses and possible service impacts to Westminster water customers.
2. City Council could choose to request proposals for this task. This is not recommended as Staff believes that the Carollo Engineers, Inc. team provides the best value for this project. In addition, they were selected through a competitive process for this project prior to Task 1. Their project team has familiarity with the City's water tanks that will streamline key project tasks.

Staff does not recommend either of the two alternatives as Carollo Engineers, Inc. is qualified and competitive.

Background Information

The Water Tanks Major Repair and Replacement Project required an initial inspection and evaluation of each of the City's water tanks. This initial Task 1 effort is necessary to produce recommendations and a plan for completing prioritized tank repairs. Carollo Engineers, Inc. completed initial work for Task 1 of the Water Tanks Major Repair and Replacement project under a \$172,169 contract including contingency approved by City Council on August 9, 2010. The scope of work for the Carollo team included review of previous inspection reports, new tank dive inspections, tank site evaluations, and preparation of a report with recommendations for tank repair and replacement. The primary focus of the evaluations was to:

- Identify conditions that might potentially result in contamination of the water.
- Address issues related to tank access, safety and security.
- Evaluate the adequacy of the overflow at each tank and confirm overflow piping conforms to CDPHE regulations.
- Summarize the current condition of each tank structure and its protective coatings.
- Provide a program for maintenance at each tank in checklist form.
- Identify and prioritize a list of necessary tank upgrades and repairs.

The evaluations confirmed the need for repairs, the most critical of which were associated with corrosion on the load-carrying roof framing on some of the tanks. While all of the items identified in the initial evaluations are important, addressing the roof framing corrosion is the most critical in order to prevent possible roof damage; therefore, this issue was the key driver in prioritizing repairs for the four tanks listed below. Due to the size and scope of recommended construction activities anticipated for this project, improvements to the remaining tanks are anticipated to continue through a multi-year effort and will be implemented through subsequent projects. The four tanks of higher priority are:

- Northridge West
- Northridge East
- Wandering View South
- Wandering View North

These tanks have more corrosion and metal loss in their roof structure than the other tanks and require near-term repair and/or replacement of corroded elements. However, the potential cost associated with a wholesale replacement of the roof framing system is high. As a result, dry tank interior investigation is warranted. Dry tank investigation will allow for detailed analysis and measurements beyond those available during the previous dive inspection, and may be able to identify existing structural components that can be rehabilitated rather than replaced. In addition, the information gained through dry tank investigations will facilitate a more refined estimate of costs required for repair and will help finalize the scope of work required for final design.

Carollo Engineers, Inc. was selected to perform Task 1 evaluations through a competitive selection process in July 2010. As reported to City Council on August 9, 2010, the intent of this project is to negotiate subsequent contracts as the project progresses and to present those contracts to City Council for approval. Because Carollo's performance has been successful and because their cost of services is competitive, Staff recommends continuing work with the Carollo team. Staff negotiated a scope of work and competitive fee with Carollo for this next step of the project and recommends that City Council approve a contract amendment for the work.

Following completion of the dry tank investigations, a contract for Task 2 – Final Design can then be negotiated and presented to City Council. The design work is anticipated to commence this summer with construction of the repairs during the 2011-12 winter season when water demands are relatively low. Funds for the construction portion of this work have been approved as a part of the 2011-2012 Capital Improvement Plan.

The Water Tanks Major Repair and Replacement Project helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government" and "Vibrant Neighborhoods and Commercial Areas" by contributing to the objectives of well-maintained City infrastructure and facilities and maintaining neighborhood infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

- Amendment No. 1 to the Agreement

**AMENDMENT #1 TO THE
AGREEMENT BETWEEN THE
CITY OF WESTMINSTER AND CAROLLO ENGINEERS INC. FOR THE 2010 WATER
TANKS MAJOR REPAIR AND REPLACEMENT TASK 1
DATED AUGUST 10, 2010**

The City of Westminster (hereinafter referred to as "Westminster") and Carollo Engineers Inc. (hereinafter referred to as "Engineer") agree to further amend the Agreement described above as follows:

1. Article 1, ENGINEER/ARCHITECT'S SERVICES AND RESPONSIBILITIES, first paragraph, shall be amended to read:

BASIC SERVICES: The Engineer/Architect's Services consist of the services described in Appendix A – Scope of Work and APPENDIX C - 2011 WATER STORAGE TANKS MAJOR REPAIR AND REPLACEMENT PROJECT - TASK ORDER 2 AND APPENDIX D CAROLLO ENGINEERS FEE SCHEDULE DATED JANUARY 28, 2011, attached hereto and incorporated herein by this reference. These services include normal civil, structural, mechanical and electrical engineering services and any other services included as part of Basic Services.

2. Article 12, BASIS OF COMPENSATION, Section 12.1, BASIC COMPENSATION, Paragraph 12.1.1, second sentence, shall be amended to read:

12.1.1 For basic services, as described in paragraphs 1.1 through 1.6, and any other services included in Article 14 as part of Basic Services, Basic Compensation shall be at the Engineer/Architect's standard billing rates, as contained in ~~Appendix B~~ **APPENDIX D**, attached hereto and incorporated herein by this reference, including Reimbursable Expenses as described therein. The maximum amount billable under this Agreement shall not exceed ~~One Hundred Fifty-Six Thousand Five Hundred Seventeen Dollars (\$156,517.00)~~ **TWO HUNDRED TEN THOUSAND FOUR HUNDRED NINETY FOUR DOLLARS (\$210,494.00)**.

3. All other terms and conditions of this Agreement shall remain in effect.

This Amendment is dated the 15th day of February, 2011.

CAROLLO ENGINEERS, INC.

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

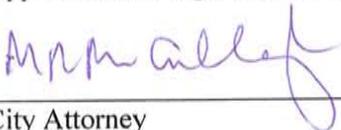
Secretary

City Clerk

(Corporate Seal,
if applicable)

(Seal)

Approved as to legal form and content:



City Attorney



Agenda Item 8 L

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Standley Lake Water Quality Cost Sharing Intergovernmental Agreement

Prepared By: Mary Fabisiak, Water Quality Administrator

Recommended City Council Action

Authorize the Mayor to sign an Intergovernmental Agreement with the Cities of Northglenn and Thornton for sharing of costs related to Standley Lake and Clear Creek water quality issues effective 2011 through 2015.

Summary Statement

- The City of Westminster currently has a Water Quality Cost-Sharing Intergovernmental Agreement (IGA) with the Cities of Northglenn and Thornton, signed in 2005. This IGA provides the mechanism for jointly sharing the costs related to pursuing water quality protection efforts for the Standley Lake water supply.
- Specific percentages are identified for calculating each City's share of the costs. The same percentages are to be used for sharing the in-kind workload of each City's laboratory operations in the monitoring programs. Since the original agreement was signed in 1998, Westminster's portion of these costs has been 45%.
- This IGA expired in December 2010. The cities of Thornton and Northglenn have already approved this IGA through their City Council process. It is recommended that Council approve the extension of this IGA through 2015 in order for Westminster, Thornton and Northglenn to continue with work currently underway as part of the monitoring efforts to protect our water supply.
- If approved, the IGA would authorize the respective City Managers or designees to enter into contracts for legal and/or consulting services for these water quality efforts. This authorization would be in accordance with Charter and ordinance provisions for each of the Cities and would be effective through 2015.
- Funds for Westminster's portion of the IGA costs have been budgeted for 2011 and 2012. Staff will address out-year funding as a part of future budget processes.

Expenditure Required: \$79,000 per year

Source of Funds: Utilities Planning and Engineering Professional Services Account 2011 and 2012 Operational Budgets



Policy Issue

Should City Council authorize the Mayor to sign an Intergovernmental Agreement with Thornton and Northglenn for sharing of costs related to Standley Lake and Clear Creek water quality issues effective for 2011 through 2015?

Alternatives

Council could choose to not enter into the IGA and address cost sharing on an item-by-item basis.

Or Council may choose to not enter into the IGA and pay 100% of costs associated with Standley Lake water quality protection efforts.

Staff does not recommend either of these alternatives. Significant benefits have been realized by sharing costs and workloads for the monitoring of Standley Lake and the Clear Creek Watershed. A recent example of this collaboration is the adoption by the Colorado Water Quality Control Commission of the Chlorophyll standard for Standley Lake.

Background Information

Standley Lake is the water supply for over 250,000 people in the Cities of Westminster, Northglenn and Thornton. The water is transported through pipelines to Westminster's two water treatment facilities and to Northglenn and Thornton's water treatment facilities.

Westminster, Northglenn and Thornton have been cooperating on the Standley Lake Watershed Water Quality Monitoring Program since the late 1980's. The additional efforts required for participating in water quality protection efforts, such as the 1988 Colorado Water Quality Control Commission hearing regarding phosphorus standards for Clear Creek, necessitated the cost-sharing IGA's first with Thornton and eventually Northglenn. These IGA's were successful in providing a framework by which the Cities could work jointly on Standley Lake water quality efforts and share the expenses. It is beneficial for the Cities to pursue watershed protection for Standley Lake to protect and improve water quality and control drinking water treatment costs. The Cities have agreed that it is valuable to renew these cost-sharing agreements due to continuing efforts necessary to protect the water quality in Standley Lake.

The existing IGA expired at the end of 2010. The City Councils for the cities of Thornton and Northglenn have already approved this IGA. Staff is requesting that Council authorize the Mayor to sign the IGA to be extended through 2015. Westminster's portion of the associated IGA costs were approved as a part of the 2011 and 2012 budget process. As the IGA is effective through 2015, Staff will continue to budget for Westminster's portion of the IGA costs in years 2013-2015.

The Water Quality IGA Committee manages a cooperative monitoring program that includes sampling and analyzing water samples from Clear Creek and Standley Lake. Sample collection and laboratory analysis is shared among the three cities according to the same percentages. This data is used to monitor for trends in water quality to detect any improvements or degradation in our source water. This data was also used to support the adoption of the chlorophyll standard for Standley Lake.

An IGA with Thornton and Northglenn to share costs in protecting our water supply would support the Council's Strategic Plan Goals of a Financially Sustainable City Government Providing Exceptional Services and A Beautiful and Environmentally Sensitive City by leveraging our source water protection efforts with Northglenn and Thornton, and continue to provide high-quality drinking water to our customers.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment - IGA

INTERGOVERNMENTAL AGREEMENT
AMONG THE CITIES OF NORTHGLENN, THORNTON, AND
WESTMINSTER CONCERNING SHARING OF COSTS RELATED TO
STANDLEY LAKE AND CLEAR CREEK WATER QUALITY ISSUES

THIS AGREEMENT is entered into this _____ day of _____, 20____, among the CITY OF THORNTON, hereinafter referred to as "Thornton," the CITY OF NORTHGLENN, hereinafter referred to as "Northglenn", and the CITY OF WESTMINSTER, hereinafter referred to as "Westminster" (Thornton, Northglenn, and Westminster together are hereinafter referred to as "Cities").

I. RECITALS

- A. The Cities each own rights to store water in Standley Lake and other important water rights that are essential to providing a domestic water supply to the residents of the Cities.
- B. Protection of these water rights and the water quality of these sources of domestic drinking water are of paramount importance to the Cities.
- C. Article XIV, Section 18, of the Colorado Constitution, Part 2 of Article 1 of Title 29, C.R.S., and 29-20-105, C.R.S., permit and encourage local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized functions, services, or facilities.
- D. Pursuant to an Intergovernmental Agreement dated June 28, 1989, and on August 24, 1995, December 18, 2000 and December 2005. (Prior Water Quality Agreements) the Cities have previously shared costs associated with water quality protection efforts involving Standley Lake and its tributaries.
- E. This agreement stipulates the intent of the Cities for administration of the Standley Lake Watershed Monitoring Program (Monitoring Program) which is used to protect and monitor the quality of water in Clear Creek and Standley Lake.
- F. It is beneficial and cost-effective for the Cities to mutually hire consultants and legal counsel, conduct water quality monitoring, implement water quality improvement projects, and to equitably share such costs related to water quality in Standley Lake and the Clear Creek Basin.
- G. It is prudent for the cities to execute a written agreement which sets forth the terms and guidelines for hiring consultants and legal counsel and sharing in the responsibility for the Monitoring Program.

- H. The Cities have developed the following Mission Statement. *To protect the quality of Standley Lake as a drinking water supply through the application of scientifically based and fiscally responsible management techniques. Optimize the health of Standley Lake and its watershed for current and future generations.*
- I. The Cities agree that it is mutually beneficial to cooperate with each other in order to improve the water quality in the Standley Lake Watershed by addressing stormwater flows into Standley Lake and environmental issues that may affect the high level of Standley Lake water quality.
- J. The Cities agree that it is mutually beneficial to continue joint participation in the Monitoring Program to assess the quality of water flowing into and within Standley Lake. Cooperative efforts may include costs for water quality monitoring, monitoring equipment, contract laboratory testing, legal services, consulting and engineering services, and capital costs associated with water quality improvement projects.

II. AGREEMENT

In consideration of the mutual promises and covenants in this Agreement, the Cities agree as follows:

A. Cooperative Efforts

- 1. The Cities agree to divide the staff workload of the Standley Lake Watershed Monitoring Program in the same percentages as the cost sharing percentages in Section II D 1. The Cities further agree that best efforts must be used to ensure that all monitoring data meets acceptable quality assurance/quality control (QA/QC) standards.
- 2. It is agreed that each City's participation in any particular water quality effort is strictly voluntary. Projects will not be initiated without the verbal or written consent of all three Cities.

B. Representation

- 1. The City Managers of each City will designate one representative to serve on a Standley Lake Water Quality Committee (Committee) which will be charged with administering the terms of the Agreement, developing work schedules, monitoring schedules, and budget needs for the next budget year, and evaluating the progress of the Monitoring Program. The Committee will meet quarterly, at a minimum, for the above stated purposes. At least one member of the Committee will be present at Standley Lake Operating Committee (SLOC) meetings, on a quarterly basis, to enhance communications concerning the operational and water quality aspects of Standley Lake and to provide technical support to SLOC.

C. Consultants, Technical Experts, and Legal Representation

1. The Cities hereby authorize their City Managers or designees to enter into contracts for legal, contractor and/or consulting services pursuant to this Agreement and in accordance with Charter and ordinance provisions of the Cities.
2. The Cities may mutually agree to hire consultants, technical experts, and/or legal counsel to provide additional expertise related to implementation of the Monitoring Program. Conflicts of interest will be given consideration as part of the selection process and may be the basis for not selecting any contractor/consultant/attorney. Should a conflict of interest be perceived by any City after a contract has been initiated, that City may request termination of the contractor/consultant's/attorney representation or terminate its participation in any contract at its sole discretion. Any confidential information obtained by any firm in the course of the joint representation shall remain confidential and not be used to the detriment of any City in any subsequent representation.
3. Prior to entering into any contract for consulting, technical, or legal services, the Committee shall approve in writing, the scope and amount of such contracts, which amount shall be within the Monitoring Program budget.

D. Payment Terms

1. The cost sharing ratios below shall be used for those expenses that are invoiced such as legal and consulting fees and for equipment used in the Monitoring Program. These ratios reflect negotiated levels of participation and are based on ownership and purchased storage rights.

City of Northglenn – 20%

City of Thornton – 35%

City of Westminster – 45%

The cost of in-kind work such as water sampling, laboratory testing, equipment calibration and maintenance, data processing, meeting attendance, report writing and other administrative costs cannot be assigned and carried out in strict accordance with the participation ratios identified in this section. Oversight required to adhere exactly to the participation ratios for in-kind services would be resource prohibitive. However, every attempt will be made to delegate in-kind work assignments in consideration of the participation ratios.

2. As per Section 6 of the November 28, 1994, Standley Lake Park Intergovernmental Agreement (Park Agreement), Westminster agrees to contribute \$10,000 annually to be used for water quality improvements which may include regular water quality testing and monitoring. The \$10,000 shall not be included in those costs used to apportion the participation ratios identified in section II.D I.

3. Legal counsel and technical experts or consultants hired by the Cities pursuant to this Agreement shall bill only one of the Cities. The Cities will agree, prior to contracting for legal or consulting services, which City will be billed. The billed City will in turn invoice the other Cities for reimbursement of their respective shares of the total invoiced costs. These invoiced Cities will have (30) days in which to remit payment to the City originally billed. Legal counsel and technical experts shall follow the purchasing procedures of the billed City. The billed City will not be reimbursed for administrative costs.
4. The billed City will provide, at the time of reimbursement invoicing, copies of itemized invoices from attorneys, consultants or vendors.

E. General Provisions

1. This Agreement shall be effective upon execution of this Agreement by the parties and shall terminate on December 31, 2015. Additionally, this Agreement may be terminated, at any time, for any reason, by any party, upon serving the other parties a thirty (30) day written notice of intent to terminate. The Agreement may also be terminated in the event that any party violates any of the terms of the Agreement and fails to cure the default within ten (10) days of receipt of written notice from the non-defaulting parties which specifies the nature of the default and its cure. Termination by any party shall not relieve that party of its share of costs already incurred [or committed to] by mutual agreement by the other parties pursuant to this Agreement.
2. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver of any prior, concurrent, subsequent breach of the same or any other of the terms or obligations of this Agreement. No waiver shall be effective unless made in writing.
3. This Agreement represents the entire and integrated Agreement between the parties and supersedes the Prior Water Quality Agreements. This Agreement may be amended only by a written instrument executed by the City Councils of the parties hereto.
4. If any clause, sentence, paragraph, or part of this Agreement or the application thereof to any party or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement or its application.
5. The Committee will review the Monitoring Program each year prior to each Cities budget preparation for the next fiscal year to assist with budget planning. The review will include, at a minimum:
 - Evaluation of sampling and testing schedules for all monitoring programs.

- Assignment of sampling and laboratory testing for all monitoring programs, including adjustments from the previous year's program, in accordance with the participation ratios in Section II D 1.
 - Preparation of a budget which will include an estimate of legal/technical consultation costs, special studies that may be required, and new and replacement equipment costs that will be incurred during the upcoming year.
6. No documentation and/or correspondence prepared as a joint position by the Cities or a consultant, technical expert, or legal counsel retained pursuant to this Agreement shall be distributed to third parties without prior approval from each City's designee. Each City can distribute independent documentation and/or correspondence stating their individual position, provided the documentation and/or correspondence do not imply joint concurrence or commitment by any of the signatory parties.
 7. It is expressly understood and agreed that enforcement of the terms and conditions of the Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Cities, and nothing contained in this Agreement shall be interpreted to give or allow any such claim or right of action to any other third person on such Agreement. It is the expressed intention of the Cities that any person other than the Cities receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
 8. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement, and interpretation of this Agreement. Further, venue for any and all legal action at law or in equity regarding this Agreement shall be in the Adams County District Court, State of Colorado.
 9. This Agreement does not authorize the Cities participation in any lawsuit.
 10. Any notice which may be given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing via the United States postal service, postage prepaid, to the other Cities, and unless amended by written notice, to the following:

CITY OF THORNTON
Jack Ethredge
City Manager/Utilities Director
9500 Civic Center Drive
Thornton, CO 80229

CITY OF WESTMINSTER
J. Brent McFall
City Manager
4800 West 92nd Avenue
Westminster, CO 80031

CITY OF NORTHGLENN
William Simmons
City Manager
11701 Community Center Drive
Northglenn, CO 80233

11. This Agreement may not be assigned by any party without the written consent of the other parties.
12. Three originals of this Agreement shall be signed by the parties.
13. This Agreement shall in no way obligate the Cities to budget funds to be spent pursuant to this Agreement. If a court of competent jurisdiction determines that the Agreement violates the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the parties agree that the Agreement shall immediately be converted to a one year contract, with automatic annual renewal through December 2010, unless previously terminated.

IN WITNESS WHEREOF, the parties have hereto set their hand and seal on the dates indicated below.

ATTEST:

CITY OF THORNTON

City Clerk

Jack Ethredge, City Manager

APPROVED AS TO FORM:

City Attorney

Date

ATTEST:

CITY OF NORTHGLENN

City Clerk

Joyce Downing, Mayor

APPROVED AS TO FORM:

City Attorney

Date

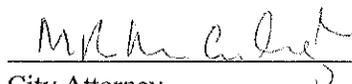
ATTEST:

CITY OF WESTMINSTER

City Clerk

Nancy McNally, Mayor

APPROVED AS TO FORM:



City Attorney

Date



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Westminster Center Urban Reinvestment Project Transition Agreement

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Authorize the City Manager to enter into a Transition Agreement with Steiner Real Estate Services, LLC in substantially the same form as the attached agreement.

Summary Statement

- On February 2, 2010 an Exclusive Negotiation Agreement (ENA) was entered into with Steiner Real Estate Services, LLC by the City and the Westminister Economic Development Authority (WEDA) to allow for the negotiation of a Redevelopment Agreement for the Westminister Center Urban Reinvestment Project (WURP).
- The ENA has now expired without a Redevelopment Agreement having been executed by Steiner, the City and WEDA.
- WEDA and the City have determined it best to no longer negotiate with Steiner concerning the WURP redevelopment agreement.
- The attached agreement establishes the non-negotiating relationship between Steiner, the City and WEDA and provides compensation for Steiner's contribution to WURP.

Expenditure Required: \$300,000

Source of Funds: WEDA - WURP CIP account



Policy Issue

Does the City want to compensate Steiner for contributions made to the WURP?

Alternative

Provide No Transition Agreement: This agreement is not required to close out negotiations between Steiner and the City. However, it does recognize the value of the Steiner work on retail anchors and other work on the project. It also provides for a smooth transition and helps assure future cooperation.

Background Information

After many months of negotiations it was determined that the City and Steiner had different approaches to proceeding with the WURP. As a result agreement could not be achieved on a Redevelopment Agreement for the WURP.

The attached Transition Agreement addresses future communications between the City and Steiner, future communications concerning the project as well as compensation for contributions Steiner made to the WURP.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Transition Agreement
- Location Map

TRANSITION AGREEMENT

This TRANSITION AGREEMENT (this “**Agreement**”) is dated as of the ____ day of _____, 2011 (the “**Effective Date**”), and is entered into by and among the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city, with offices at 4800 West 92nd Avenue, Westminster, Colorado, 80031 (the “**City**”), the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority, with offices at 4800 West 92nd Avenue, Westminster, Colorado, 80031 (“**Authority**”) and STEINER REAL ESTATE SERVICES, LLC (“**Steiner**”), an Ohio limited liability company, located at 4016 Townsfair Way, Suite 201, Columbus, Ohio, 43219, upon the terms and conditions set forth below. The City, the Authority and Steiner each are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**.”

Recitals

This Agreement is made with respect to the following facts:

A. The Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to the Act. On April 13, 2009, the City Council made a determination that the Westminster Center Urban Renewal Area (“**Plan Area**”) was a blighted area and appropriate for an urban renewal project pursuant to Part I of Article 25 of Title 31, C.R.S.

B. On April 13, 2009, the City Council approved the Westminster Center Urban Reinvestment Plan for the Plan Area (“**Plan**”). Among other things, the Plan authorizes the Authority to redevelop property within the Redevelopment Area.

C. The Plan Area includes 108 acres of real property, including the Westminster Mall (the “**Site**”).

D. The Authority previously issued a Request for Proposals for the redevelopment of the Site (the “**Project**”) from interested redevelopers. Steiner was one of a number of entities that submitted a proposal.

E. The Parties entered into a Confidentiality Agreement, dated January 13, 2010 (“**Confidentiality Agreement**”), to maintain the confidentiality of their negotiations and of the information exchanged in the course of negotiations.

F. The City and the Authority also entered into exclusive negotiations with Steiner pursuant to the Exclusive Negotiation Agreement, dated February 2, 2010 (“**ENA**”), to explore on a preliminary basis the feasibility of the Project and to negotiate further agreements related to the Project.

G. The ENA was extended by the letter agreement dated August 26, 2010, to November 3, 2010, conditioned on the performance of certain conditions. The ENA has now

expired.

H. Since the execution of the ENA, Steiner has engaged in planning and development activities in support of the Project, including, but not limited to, contacts with prospective anchor tenants, preparation of briefing books and reports relating to market areas, prospective tenants, and investigation of anticipated uses for the Site.

I. The Parties have now mutually agreed that it is in their best interests to terminate negotiations and to provide for their future association and assistance. The City and the Authority desire to recognize and compensate Steiner for its work in support of the Project.

AGREEMENT

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

1. Termination of Negotiations. The Parties agree that negotiations have terminated relative to the Project, with each party free to pursue such opportunities and relationships as each party sees fit, consistent with this Agreement.

2. Communications.

(a) The City and the Authority appreciate and recognize the valuable contributions Steiner has made to the Project. Accordingly, the City and the Authority agree to communicate to others the positive contributions of Steiner to the Project and the competence and professionalism of Steiner and its employees and to refrain from expressions regarding Steiner or its employees that are derogatory or disparaging.

(b) Steiner appreciates the opportunity to negotiate with the City and the Authority regarding the Project and recognizes the value provided by the City, City staff, and consultants. Accordingly, Steiner agrees to communicate to others the positive contributions of the City and the Authority to the Project and the competence and professionalism of the City and the Authority and their Staff and consultants and to refrain from expressions regarding the City and the Authority or their employees and consultants that are derogatory or disparaging.

(c) Each Party agree that prior to any public statements being made or issued, it will consult with the other Parties in the interest of implementing this Agreement.

3. Confidentiality. The Parties agree that the obligations of the Parties under the Confidentiality Agreement are continuing as set forth in the Confidentiality Agreement.

4. Notification of Activities. Steiner agrees that it will not participate in or undertake any activities related to a development project within the area designated on the attached Exhibit 1 for a period of eighteen (18) months without prior notification in writing to the City and the Authority. Such notification, which will be deemed confidential, proprietary information, shall include the location of the project and the type of project (e.g., power center, fashion mall).

5. Compensation. As compensation for its contributions to the Project and the commitments of Steiner contained in this Agreement, the City and the Authority agree to pay to Steiner compensation in the amount of \$300,000 within fifteen (15) days of the execution of this Agreement.

6. Notices. Notices to any party should be sent the address for notice set forth below, as amended from time to time:

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

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

Copy to: City of Westminster
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Susan F. Grafton

Steiner: Steiner Real Estate Services, LLC
4016 Townsfair Way, Suite 201
Columbus, Ohio, 43219
Attention: Yaromir Steiner

Copy to: Steiner Real Estate Services, LLC
4016 Townsfair Way, Suite 201
Columbus, Ohio, 43219
Attention: Ralph Ireland

7. Remedies. In the event of a default by either Party under this Agreement, the non-defaulting Party shall be entitled to all of its remedies at law or in equity.

8. Binding Effect. This Agreement will be binding on and inure to the benefit of the parties hereto, and their successors and assigns.

9. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

CITY:
CITY OF WESTMINSTER, COLORADO

STEINER:
STEINER REAL ESTATE SERVICES, LLC.

By: _____
J. Brent McFall, City Manager

By: _____
Yaromir Steiner
Title: _____

ATTEST:

By: _____
Linda Yeager, City Clerk

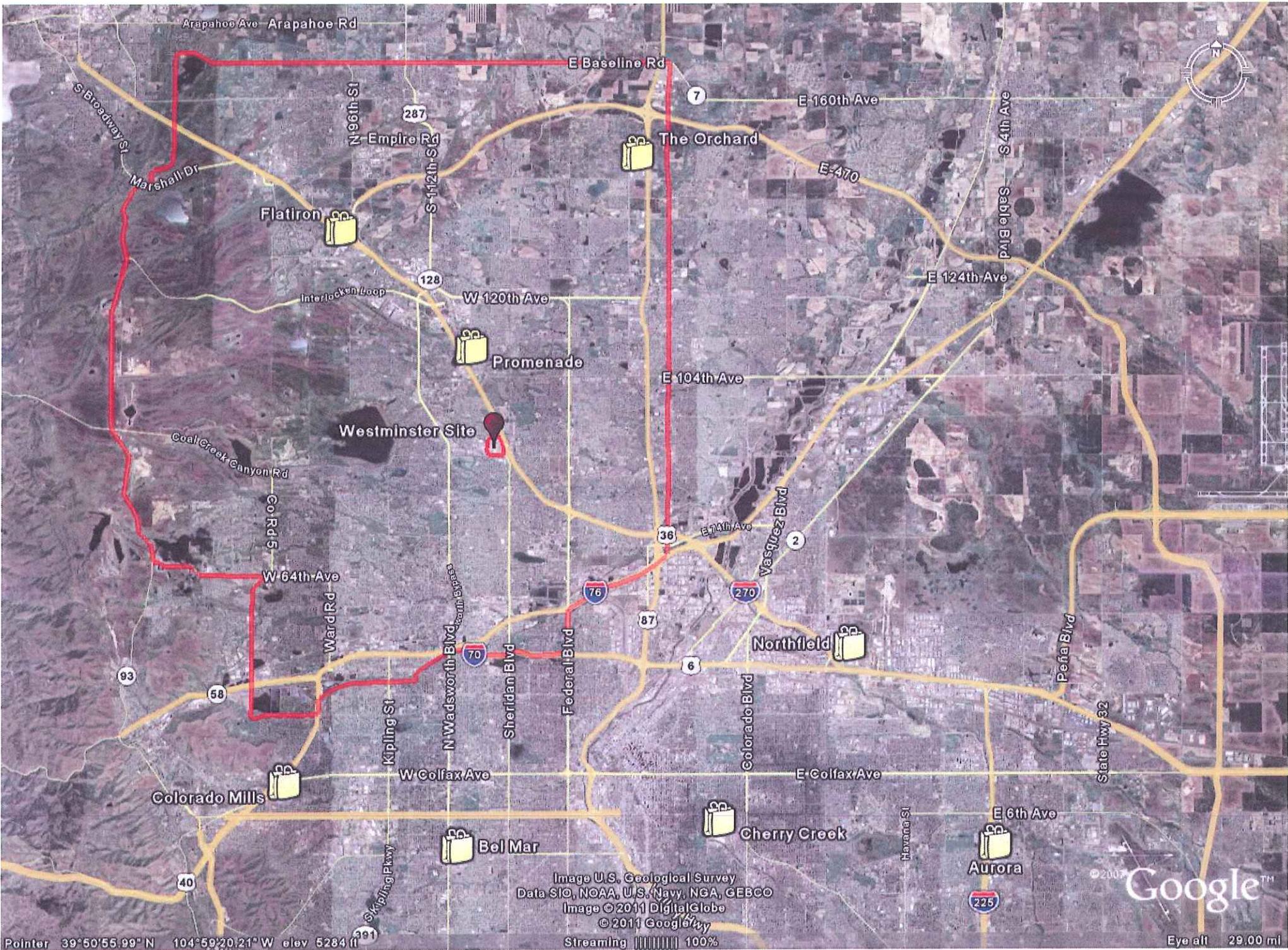
AUTHORITY:

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk





Agenda Item 8 N

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Second Reading of Councillor’s Bill No. 3 re Proposed Economic Development Assistance Agreement with Drury Development Corporation

Prepared By: Susan F. Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillor’s Bill No. 3 on second reading authorizing the City Manager to execute and implement an Economic Development Agreement with Drury Development Corporation.

Summary Statement

- This Councillor’s Bill was passed on first reading on January 24, 2011.
- Drury Hotels, LLC is a family owned business headquartered in St. Louis, Missouri, and operates over 130 hotels in 20 states (see attached).
- Drury Development Corporation, the development arm of Drury Hotels, is planning to construct a 180 room Drury Inn & Suites hotel in Westminster at the Church Ranch Boulevard and U.S. 36 interchange. Construction will begin in the second quarter of 2011 with completion anticipated in spring of 2012. The project represents a \$13.5 million investment.
- Assistance is based on the City’s desire to attract new businesses along US 36, diversify revenue sources within the City, as well as to encourage construction activity during the first half of 2011.
- Should Drury decide to cease operations in Westminster within 5 years of the approval of this EDA, the assistance would have to be reimbursed to the City by the company.
- Drury continues to evaluate the timing for development of their Westminster site in relation to other potential sites throughout the midwestern and southeastern United States.

Expenditure Required: \$392,000 (Rebates)

Source of Funds: The EDA with Drury Development Corporation will be funded through revenue received from the accommodations tax generated by this project

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **3**

SERIES OF 2011

INTRODUCED BY COUNCILLORS
Briggs - Major

**A BILL
FOR AN ORDINANCE AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT
WITH DRURY DEVELOPMENT CORPORATION**

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, Drury Development Corporation plans to construct a 180-room hotel on the Westminster Gateway site in Westminster; and

WHEREAS, a proposed Economic Development Agreement between the City and Drury Development Corporation is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with Drury Development Corporation in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

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

Section 3. 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 January, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14th day of February, 2011.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Item 10 A&B

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Public Hearing and Action on an Amendment to the Preliminary Development Plan in Sheridan Green Planned Unit Development to add as an Allowed Use “For Lot 1 Retail Consignment and/or Thrift Store with a Maximum Area of 5,000 Square Feet per such Tenant”

Prepared By: Patrick Caldwell, Planner II

Recommended City Council Action

1. Hold a public hearing.
2. Approve an amendment to the Preliminary Development Plan in the Sheridan Green Commercial Center Planned Unit Development to add as an allowed use “for Lot 1 retail consignment and/or thrift store with a maximum area of 5,000 square feet per such tenant.” This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met.

Summary Statement

- The proposed amendment to the Sheridan Green Preliminary Development Plan would allow for Lot 1 a retail consignment and/or thrift store with a maximum area of 5,000 square feet per such tenant on Lot 1 of the Sheridan Green Commercial Center. The property is located at the southwest corner of 112th Avenue and Sheridan Boulevard.
- Staff believes that the use would function like a retail store given the limitation on size (5,000 square feet).
- The City’s Comprehensive Land Use Plan (CLUP) designation is Retail Commercial and the proposed use is consistent with the Retail Commercial description. No outside collection bins for drop-off will be allowed.

Expenditure Required: \$0

Source of Funds: N/A



Planning Commission Recommendation

On January 25, 2011, the Planning Commission reviewed the request to amend the Sheridan Green PDP to add “retail consignment and/or thrift store with a maximum area of 5,000 square feet per such tenant” as an allowed use on Lot 1 of the Sheridan Green Commercial Center. The Planning Commission voted unanimously (6-0) to recommend that the City Council support the PDP amendment.

Policy Issue

Should the City approve the amendment to the Preliminary Development Plan (PDP) in the Sheridan Green Commercial Center Planned Unit Development (PUD) to add as an allowed use “retail consignment and/or thrift store with a maximum area of 5,000 square feet per such tenant” on Lot 1 of the Sheridan Green Commercial Center?

Alternative

Deny the amendment to the PDP in the Sheridan Green Commercial Center PUD to add as an allowed use “for Lot 1 retail consignment and/or thrift store with a maximum area of 5,000 square feet per such tenant” on Lot 1 of the Sheridan Green Commercial Center. This alternative would not allow a consignment or thrift store in the Sheridan Green Commercial Center PDP.

Background Information

Nature of Request

The applicant is proposing to amend the Sheridan Green Commercial Center PDP to allow a consignment and/or thrift store in a retail space.

The use would be limited to 5,000 square feet and would function like a retail store. There would be no outdoor collection or donation bins.

Background

The 11-acre Sheridan Green Commercial Center site was approved for commercial and retail use in 1972. There are 6 lots in the commercial part of the PUD. Lot 1 is approximately 1.63 acres. On Lot 1 there is one building with in-line retail space available for lease. This building was constructed in 1997. The building on Lot 1 is approximately 20,000 square feet. A convenience store is attached to the building on Lot 1, but it is located on Lot 2 as is its associated gas service area.

The proposed consignment use would apply only to the lot (Lot 1) that contains the in-line retail space. Other existing uses in the Sheridan Green Commercial Center Lot 1 include a dry cleaner, a bank, a meat market and a small restaurant.

The proposed consignment use as addressed above would meet Council’s Strategic Plan Goal of “Strong, Balanced Local Economy.” The additional allowed use permits more diverse retail operations.

Location

The subject site is located at the southwest corner of 112th Avenue and Sheridan Boulevard and is addressed as 11187 Sheridan Boulevard. The nearest residential use is 220 feet to the west, across Benton Street. Retail and office uses abut Lot 1 on the north, west, and south and east.

There are no other consignment or thrift stores in the immediate vicinity.

Surrounding Land Use and Comprehensive Land Use Plan Designations

Development Name	Zoning	CLUP Designation	Use
North: Benton Park (north of 112 th Avenue)	PUD	Office	Vacant
West: Sheridan Green Filing 5 (west of Benton Street)	PUD	R-3.5 Residential	Single Family Detached
East: Legacy Ridge Westminster Golf Course Community (east of Sheridan Blvd.)	PUD	Retail/Commercial	Vacant
South: Sheridan Green	PUD	Public Parks	City Open Space

Site Plan Information

- Traffic and Transportation: Vehicular accesses to the site are via existing right-in/right-out turn entrances on the north from 112th Avenue and from Sheridan Boulevard on the east.
- Site Design: The PDP site with Lot 1 is currently developed with a one-story in-line retail building. The building shares parking with the convenience store on Lot 2, and with an undeveloped 1.07 acre parcel called Pad A that is on the corner to the northeast of Lot 1.
- Landscape Design: The site is currently landscaped around the existing buildings with trees, shrubs, and turf.
- Architecture/Building Materials: The existing buildings are constructed of brick and block in earth colors that are tans and browns.
- Signage: Existing monument signs will remain. Building signage will be allowed per the City Code.

Municipal Code Criteria

Section 11-5-14: Standards for Approval of Planned Unit Developments, Preliminary Development Plans and Amendments to Preliminary Development Plans

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

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
Staff Comment: The proposed use would be in conformance with the City's Comprehensive Land Use Plan and the use would comply with all City Codes, ordinances and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
Staff Comment: The proposed amendment would not affect the site plan, architecture, or landscaping within the PUD.
3. Any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
Staff Comment: The proposed amendment would include a statement to clearly indicate the parameters of the use as restricted to Lot 1 and the limitation of no outside donation bins.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
Staff Comment: The proposed amendment would be compatible and harmonious with existing public and private development in the surrounding area, as its merely the addition of a new "retail" use to an existing shopping center.

5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
Staff Comment: The proposed use would function as a retail store and no significant impacts are anticipated.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
Staff Comment: The proposed use would function as a retail store and no significant impacts are anticipated.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
Staff Comment: The proposed amendment would not affect site layout or traffic flow.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.
Staff Comment: The site is fully developed and no additional right-of-way is being requested.
9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
Staff Comment: The proposed amendment would not affect existing utility systems or storm drainage facilities.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
Staff Comment: This criterion is not applicable.
11. The applicant is not in default or does not have any outstanding obligations to the City.
Staff Comment: The applicant is not in default or have any outstanding obligations to the City.

Public Notification

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

- Published Notice: Notice of public hearings scheduled before City Council shall be published and posted at least 4 days prior to the City Council hearing. Notice for the City Council hearing was published in the Westminster Window on January 27, 2011.
- Property Posting: Two signs were posted on the property on Thursday, January 27, 2011.
- Written Notice: The applicant has provided the Planning Manager with a certification that he has listed the property owners that are within 300 feet of the subject property. The required notices were mailed on Thursday, January 13, 2011.

Applicant/Property Owner

Sheridan Green Venture I, LLC
James A. Swanson
370 Saint Paul Street
Denver, Colorado 80206

Service Commitment Category – not applicable

Referral Agency Responses – not applicable

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Attachment A – Vicinity Map
- Attachment B - Criteria and Standards for Land Use Applications
- 7th Amended Preliminary Development Plan Sheridan Green Lot 1 PUD
- 10th Amended Official Development Plan Commercial Center Lot 1 Sheridan Green PUD
(PUD's are available for review in the City Clerk's Office)

Vicinity Map: Sheridan Green Subdivision



The City has made every reasonable effort to obtain and maintain his data as accurately as possible. However, the data and maps are provided without warranty of any kind, either expressed or implied. The City does not guarantee the accuracy, completeness, timeliness, or correct sequence of the data and hereby expressly disclaims any responsibility for the validity and accuracy of any data and information.



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

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

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

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.
9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

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



Agenda Item 10 C

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Resolution No. 4 re Recovery Contract Interest Rate

Prepared By: Frances A. Velasquez, Secretary

Recommended City Council Action

Adopt Resolution No. 4 establishing the 2011 calendar year interest rate for non-City funded public improvement recovery contracts at 5.25 percent and an interest rate of 5.08 percent for City-funded public improvements.

Summary Statement

- In accordance with Section 7(F) of Title XI, Chapter 6, of the City Code, Staff requests that City Council establish interest rates on recovery agreements for 2011. For the past several years, it has been City practice to add two percent to the Prime Rate for non-City funded recovery contracts. The Prime Rate on January 1, 2011, was 3.25 percent. It is proposed that the recovery interest rate for 2011 on non-City funded public improvements be the Prime Rate plus two percent, or 5.25 percent.
- Staff is proposing that the recovery interest rate on City-funded projects for 2011 be set at 5.08 percent in accordance with the average Bond Buyer 20 Index for 2010, which is consistent with the methodology used to set the rate for the past six years.

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue

Does the City Council concur with the proposed methods of assessing interest on recoveries associated with new private developments and City-funded projects?

Alternative

Council could establish a different interest rate for recovery agreements than the proposed rates. This is not recommended as the proposed rates are tied to the established indexes that provide good credibility for recovery interest paid to developers or the City.

Background Information

Several years ago, City Council established a recovery system that enables developers to recover a portion of certain costs associated with public improvements installed with their developments that also benefit adjacent, undeveloped properties. Recovery contracts are executed between the City and the developer. When subsequent development occurs in those areas benefited by the improvements and installed by the original developer, the new development is assessed its proportionate share plus interest, which is then returned to the original developer. The recovery system has also allowed the City to be reimbursed for public improvements installed by the City when subsequent private development occurred abutting the improvements.

Prior to 1993, the interest rate used in calculations for recoveries owed on City-funded public improvements was equal to that used on privately funded improvements (i.e., prime rate plus two percent). However, the actual cost of money used to fund City Capital Improvement Projects is usually less than that charged to private developers. Since the philosophy behind the City's recovery system is one of cost reimbursement, not profit making, in the past City Council has felt that it is more equitable to select an interest rate for City-funded projects that more closely approximates the actual cost of money to the City. From 1993 through 2004, Council approved the use of the Municipal Bond Index as the recovery interest rate for City projects. Because this Index is set weekly and can fluctuate greatly throughout the year, Staff proposed a different approach six years ago. In 2005, Council selected the average Bond Buyer 20 Index for the preceding year as a more representative benchmark of the City's true cost of borrowing money. Staff recommends that this method of calculating the interest rate for recoveries associated with City-funded projects be used again this year.

This authorization meets Council's Strategic Plan goals of a Financially Sustainable City Government with revenues to support defined City services and service levels as a mature City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. 4

INTRODUCED BY COUNCILLORS

SERIES OF 2011

**A RESOLUTION
ESTABLISHING THE 2011 RECOVERY CONTRACT INTEREST RATE**

WHEREAS, Section 11-6-7 (F) 1 of the Westminster Municipal Code provides that City Council shall, from time to time, establish the interest rates to be utilized for the assessment of interest costs relating to recovery costs for public improvements; and

WHEREAS, such interest rates have traditionally been calculated at the beginning of each calendar year.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the 2011 calendar year interest rate for any non-City funded public improvement recovery contract shall be 5.25 percent and the 2011 calendar year interest rate for City-funded public improvements shall be 5.08 percent.

PASSED AND ADOPTED this 14th day of February 2011.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Resolution No. 5 re Revise City Council's Rules and Regulations

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 5 amending portions of the Order of Business and Agenda Procedures set forth in Part II of the City Council's Rules and Regulations.

Summary Statement

- City Staff is recommending that the second opportunity for citizens to speak during City Council meetings, listed as "Citizen Presentations" under agenda item 12, be deleted and that associated portions of the City Council's Rules and Regulations be modified accordingly.
- Minutes of Council meetings demonstrate that whether commenting on an item on the agenda or a topic at large, citizens prefer to be heard early in a meeting rather than at the conclusion of business. The five-minute time period provided to each speaker for "Citizen Communication" under agenda item 7 has been sufficient for the vast majority of speakers to express themselves and voice their opinions while preserving the Council's ability to conduct business efficiently and effectively.
- Adoption of the attached Resolution reserves time for citizens to communicate with Council early in the meeting and eliminates confusion that citizens have expressed about the appropriate time for them to address Council.

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue

Should the City Council's Rules and Regulations about the Order of Business on regular meeting agendas and Agenda Procedure be modified?

Alternative

Council could decide not to adopt suggested modifications and leave the existing Rules and Regulations unchanged.

Background Information

In order to conduct the City's business efficiently and effectively, the City Council's Rules and Regulations include an agenda format and procedure that is adhered to consistently. Modifications to the agenda procedure are submitted for Council's consideration from time to time.

The change proposed in the attached Resolution reserves an opportunity early in regular meetings for citizens to address City Council on any issues or items except those for which a formal public hearing is required. Each speaker is allowed five minutes to address the Council, and, if they so choose, speakers can furnish pre-printed information to the City Clerk by Tuesday of the week before the meeting for distribution with the agenda packet.

This suggested modification supports City Council's Strategic Plan Goal of Vibrant Neighborhoods in One Livable Community through the objective for active civic engagement by designating one point early on the Council's agenda when citizens can communicate with City Council on matters not related to a public hearing.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment- Resolution

RESOLUTION

RESOLUTION NO. 5

INTRODUCED BY COUNCILLORS

SERIES OF 2011

**A RESOLUTION
AMENDING THE CITY COUNCIL'S RULES AND REGULATIONS
PERTAINING TO CITIZEN PRESENTATIONS**

WHEREAS, Chapter VII of the City Charter provides for the procedure and miscellaneous powers and duties of the City Council; and

WHEREAS, the City Council is entrusted with conducting the business of the City in a manner that will be most advantageous to the citizens and voters thereof; and

WHEREAS, the Order of Business on regular meeting agendas of the City Council was first adopted in Rules and Regulations via Resolution No. 27, Series 1981, and said Rules and Regulations have been amended from time to time to improve the efficiency and effectiveness of conducting the City's business in an orderly, open forum.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the following revisions to Council Procedures set forth in Part II, Section 1 and Section 2, subparagraph D, of the City Council's Rules and Regulations are hereby adopted.

PART II - COUNCIL PROCEDURE

1. **THE ORDER OF BUSINESS:** The order of business at all regular meetings of the Council, as reflected by the printed agenda, shall be transacted in the following order, unless the Council by a vote of a majority of the members present shall suspend the rules to change the order.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meeting
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
7. Citizens Communication
8. Consent Agenda
9. Appointments and Resignations
10. Public Hearings and Other New Business
11. Old Business and Passage of Ordinances on Second Reading
12. ~~Citizen Presentations (5 minutes + in length)~~, Miscellaneous Business, and Executive Session
13. Adjournment

2. **AGENDA PROCEDURES:** (Res. 84, 1997)

D. Citizens Communication: Citizens wishing to address the City Council on any issue pertaining to City business, including items appearing on the Council agenda, may do so for a maximum of five minutes under "7. Citizens Communication" except for matters that are subject to a public hearing appearing under "10. Public Hearings and Other New Business." Citizen comments related to a matter that is subject to a public hearing shall be made at the time that public comment is called by the Mayor during the public hearing.

Prior notice of a citizen's intent to speak under agenda item 7 ~~or agenda item 12~~ is not required. However, if citizens wish to have printed materials distributed to City Council in the Council agenda

packet, such materials must be received by the City Clerk no later than ~~5:00 P.M.~~ THE CLOSE OF BUSINESS on Tuesday prior to the Ceity Ceouncil meeting. Citizens speaking on the agenda under "7. Citizens Communication" will be allowed a maximum of five minutes to speak. ~~Citizens wanting to make a presentation of more than five minutes will be allowed to speak under "12. Citizen Communication, Miscellaneous Business, and Executive Session".~~ (Res. 55, 1987, 84, 1997; 16, 2006)

PASSED AND ADOPTED this 14th day of February, 2011.

ATTEST:

Mayor

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney



Agenda Item 10 E

Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Councillor's Bill No. 4 re Amendments to Section 4-1-17 of the Westminster Municipal Code Concerning Tax Refunds

Prepared By: Barb Dolan, Sales Tax Manager
Josh Pens, Tax Audit Supervisor

Recommended City Council Action

Pass Councillor's Bill No. 4 as an emergency ordinance, amending, section 4-1-17 Westminster Municipal Code concerning the procedure for obtaining refunds of trust taxes.

Summary Statement

- The Westminster Municipal Code prescribes certain requirements for obtaining refunds of taxes purportedly paid in error to the City. These requirements protect the City and its taxpayers from fraud while providing an adequate method for correcting errors and resolving disputes.
- In support of these goals, additional conditions specifically concerning taxes collected by retailer from purchasers and held in trust for the benefit of the City need to be explicitly codified immediately for the protection of the City and the taxpaying public. Such conditions will further mitigate the City's exposure to duplicate refunds and ensure that trust taxes benefit only the purchaser who paid them in error.

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue

Should the City amend Section 4-1-17 of the Westminster Municipal Code concerning tax refunds?

Alternative

Do not pass the Councillor's Bill and leave the current provisions in place. This alternative may subject the City to multiple refund claims for the same tax and may further allow retailers to benefit from the erroneous collection of tax from their customers. This alternative is not recommended.

Background Information

The Westminster Municipal Code provides certain requirements that must be met as a condition for refund of taxes purportedly paid in error to the City, including submitting a signed claim with adequate documentation within a specific period of time. The Code also includes a prohibition against making false statements as well as the assignment of refunds to persons other than the taxpayer. Most overpayments must be claimed directly by the person who actually paid the tax to the City.

In keeping with these requirements, claims for refund of sales, admissions, and accommodations taxes must come from retailers. These taxes are collected by the retailer and held in trust until they are paid to the City. Collectively, these requirements mitigate the risk of fraudulent or duplicate refunds issued, for example, both to a purchaser directly and to a retailer for refund to a purchaser.

Although trust taxes are imposed upon the purchaser, retailers have an obligation to collect tax on all taxable sales and will be held liable for improper exemption. In the case of a dispute between a retailer and a purchaser, the retailer is required to collect the tax, and the Code opens a limited window for the purchaser to bypass the retailer and come directly to the City for refund. Beyond this limit, the purchaser must seek refund through the retailer.

The City's practice has consistently been to require that retailers seeking refund of trust taxes demonstrate that such taxes have been refunded to the purchaser who paid them in error. This practice ensures that no person other than the purchaser benefits from the erroneous collection. Staff believes that the Code should explicitly require refund or credit to the purchaser as a condition of refund.

The emergency ordinance also includes an amendment further mitigating the risk of duplicate claims by specifying that a retailer will not be refunded trust taxes collected in error until the purchaser's opportunity to claim a refund is foreclosed and then only if the taxes were not previously refunded to the purchaser by the City. These changes support the strategic plan goal of a "Financially Sustainable City Government Providing Exceptional Services" by maintaining the integrity of the City's primary revenue source.

This amendment is being proposed on an emergency basis because of a known anticipated filing of a claim for refund, and because of the need to mitigate the City's exposure to duplicate refund claims, and to ensure that trust taxes inure solely to the benefit of the customer who paid them in error, in connection therewith.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Emergency Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 4

SERIES OF 2011

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN EMERGENCY ORDINANCE AMENDING SECTION 4-1-17 OF THE
WESTMINSTER MUNICIPAL CODE CONCERNING TAX REFUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 4-1-17, W.M.C., is hereby AMENDED to read as follows:

4-1-17: CLAIM FOR REFUND: No tax overpayment shall be refunded unless a Claim for Refund is signed and submitted to the City by the taxpayer.

(A) Application. An application for refund of tax shall:

- (1) Be made on a Claim for Refund form furnished by the City;
- (2) Be signed by the taxpayer; and
- (3) Include adequate documentation of the claim.

(B) Refunds to Retailers.

(1) Refunds of tax collected by a retailer are limited to those who at the time of the refund have either credited to their customer's account or have refunded to their customer the taxes paid by their customer in error, if any.

(2) Refunds of tax collected by a retailer shall not be made to such retailer until the period during which a purchaser may claim refunds of such tax has expired, and then are limited to those amounts, if any, not previously paid by the City to the purchaser pursuant to any claim made by the same.

~~(B)~~ Determination. The Finance Director shall examine the Claim for Refund and give written notice delivered in person or sent postpaid by first class mail to the last known address of the taxpayer of the amount to be refunded or denied. The determination of the Finance Director shall become final thirty (30) days from the date of personal service of the notice or the date of mailing of the notice; provided however, that within said thirty-day period, the taxpayer may petition the Finance Director in writing for a revision, modification, or cancellation of such determination in accordance with this Chapter. A taxpayer who fails to protest the determination of the Finance Director within thirty (30) days shall be forever enjoined from claiming a refund of the amounts denied therein, excepting, however, that the Finance Director may, at his sole discretion, grant leave to file a second claim in order to avoid a protest by an aggrieved taxpayer pursuant to this Chapter.

~~(C)~~ Refunds Not Assignable. The right of any person to obtain a refund pursuant to this Chapter shall not be assignable.

~~(D)~~ False Statements. It shall be unlawful for any person to make any false statement in connection with a Claim for Refund.

Section 2. Emergency. Because of the need to mitigate the City's exposure to duplicate refund claims, and to ensure that trust taxes inure solely to the benefit of the customer who paid them in error, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on February 14, 2011, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 3. The ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL, AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 14th day of February, 2011.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Councillor's Bill No. 5 re Correction of Amendments to Title V of the Westminster Municipal Code re Licensing Procedures

Prepared By: Marty McCullough, City Attorney
Tami Cannon, Legal Administrator

Recommended City Council Action

Pass Councillor's Bill No. 5 as an emergency ordinance correcting amendments to Chapters 1 and 2 of Title V of the Westminster Municipal Code concerning licensing procedures.

Summary Statement

- Title V of the Westminster Municipal Code sets forth the process and criteria for issuing and administering business licenses, sales and use tax licenses, and other licenses involving businesses that have been deemed appropriate for regulation to protect the health, safety and welfare of the City and its citizens, such as home occupations, contractors, pawn brokers, security guards, and dance halls and cabarets.
- Ordinance No. 3563, adopted on January 10, 2011, set forth a comprehensive update of Title V of the City Code, which addresses the City's licensing procedures and requirements. However, this ordinance incorporated an incorrect redline of the intended revisions to the current Chapter 1 of Title V, which sets forth the general procedures for applying for and issuing licenses pursuant to this Title.
- In addition, since the adoption of this ordinance, the City Clerk has suggested the definition of a "business" be clarified. This proposed amendment is included in the attached Councillor's Bill.

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue

Should City Council adopt an emergency ordinance correcting amendments to Chapters 1 and 2 of Title V of the Westminster Municipal Code concerning licensing procedures?

Alternative

None recommended. An amendment to the previously adopted ordinance is required to accurately set forth the amendments that Council previously supported to Chapter 1 of Title V of the Westminster Municipal Code concerning licensing procedures.

Background Information

Most chapters of Title V of the Westminster Municipal Code were amended by Ordinance No. 3563, adopted by City Council on January 10, 2011. Section 1 of that ordinance incorporated an incorrect redline of the intended revisions to Chapter 1 of Title V. The attached emergency ordinance will repeal that inaccurate rendition of the previous ordinance.

Chapter 1 of Title V includes a provision expressing City Council's intent in enacting the licensing requirements contained in Title V of the City Code. Amendments to Chapter 1 include the consolidation of the procedural provisions into this chapter. The other chapters of Title V now refer to this chapter for the procedures to be followed for denying, canceling, suspending and revoking business licenses. The procedures themselves have not substantially changed from those that currently exist in the City Code. These include the giving of notice by the City of a proposed adverse decision to the applicant or licensee, the right to request a hearing before the Special Permits and License Board, a stay of the adverse action until the requested hearing is completed, and the grounds upon which any license may be denied, canceled, suspended or revoked. In addition, the penalty for violating any chapter of Title V has been moved to Chapter 1. The other chapters of Title V now refer to Chapter 1 for this provision, but may include any additional or unique penalties, if applicable.

Finally, the attached Councillor's Bill includes a proposed revision to the definition of a "business" for the purpose of business licensing under Chapter 2 of Title V. The revision would clarify that the licensing requirement is intended to apply only to businesses that have a fixed, physical location in the City. This is consistent with how this ordinance has been historically applied by the City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **5**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN EMERGENCY ORDINANCE CORRECTING AMENDMENTS TO CHAPTER 1 OF
TITLE V AND FURTHER AMENDING SECTION 5-2-1 OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING LICENSING PROCEDURES**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1 of Ordinance No. 3563, adopted by City Council on January 10, 2011, is hereby REPEALED IN ITS ENTIRETY.

Section 2. Chapter 1 of Title V, W.M.C., is hereby AMENDED to read as follows:

**CHAPTER 1
PROCEDURES**

- 5-1-1: LEGISLATIVE INTENT AND APPLICATION OF ~~CHAPTER~~TITLE**
- 5-1-2: DEFINITIONS**
- 5-1-3: ADVERSE ACTIONS**
- 5-1-4: NOTICE OF ADVERSE ACTION**
- ~~5-1-4: EMERGENCIES~~**
- 5-1-5: APPEALS**
- 5-1-6: LICENSE DENIAL**
- ~~5-1-6:7: LICENSE CANCELLATION~~**
- ~~5-1-7:8: LICENSE SUSPENSION~~**
- ~~5-1-8:9: LICENSE REVOCATION~~**
- ~~5-1-9: HEARINGS~~**
- 5-1-10: HEARING PROCEDURES**
- 5-1-11: PENALTY; NUISANCE DECLARED**

5-1-1: LEGISLATIVE INTENT AND APPLICATION OF ~~CHAPTER~~TITLE: (1956)

~~(A) The following~~(A) City Council finds that:

(1) Licenses issued pursuant to this Title should be granted and held subject to compliance with the terms and conditions imposed by this Title and any other applicable laws;

(2) The granting and retention of any such license shall be deemed a privilege, and not a right;

(3) No license shall be issued or held contrary to the public health, safety, and welfare interests of the City and its citizens;

(4) It is in the public interest to provide for the denial, cancellation, suspension, and revocation of licenses issued pursuant to this Title in order to protect the health, safety, and welfare of the City and its citizens;

(5) This Title is enacted pursuant to the City's home-rule authority granted by Article XX, Section 6, of the Colorado Constitution; and

(6) The intent of the City Council in enacting this Title is to protect and promote the health, safety, and welfare interests of the City and its citizens through the licensing and regulation of those activities and businesses determined to pose a significant risk of harm to said interests if unlicensed and unregulated.

(B) The rules of procedure set forth in this Chapter are intended to provide a uniform, consistent, and expeditious method for conducting quasi-judicial hearings held pursuant to this Title and to afford persons due process of law. ~~The City Council or other authorized decision maker~~ The Special Permit and License Board may supplement the provisions of this Chapter by adopting further rules of procedure not inconsistent herewith.

~~(B) This~~ The rules of procedure set forth in this Chapter appliesapply whenever a hearing is required by any provision of this Title, unless another procedure is specifically providedrequired by written agreement, state statute, or other provisions of this Code. ~~Nothing in this Chapter shall be interpreted to grant any person a right to appeal or to have a hearing unless such right to appeal or be heard is otherwise granted by contract or law.~~

5-1-2: DEFINITIONS: (1956) The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(A) ~~"Adverse action" shall include denial, cancellation~~ means the, suspension, or revocation of an existing license ~~or permit~~ authorized by this Title.

~~(B) "decision maker" shall include the City Council or any other City board, commission, official or appointed hearing officer or the initial denial of an application for a license authorized to conduct a hearing pursuant to by~~ this Title.

(B) "Cancellation" means the City's administrative action of invalidating an issued license for the limited reasons set forth in this Section, which action is not considered to be an adverse action.

(C) ~~"Interested person" means any person described as "interested" by law, or any person~~ having a legally protected interest under law that is subject to potential injury in fact due to proposed final action pursuant to this Title, or any person defined as "interested" by law, or any person having a right of appeal pursuant to law or this Title. ~~"Interested person" may include a City division, department~~ also includes any employee or official charged with the responsibility to issue and enforce the provisions of this Title.

~~(D) "Law" means City charter, ordinance, rule, regulation, or code or state or federal constitutions or statute or regulation~~ (D) "Revocation" means the City's action to recall, withdraw or rescind an existing license according to the process afforded by this Title, and it excludes the administrative act of cancellation.

5-1-3: ADVERSE ACTIONS:

(A) An adverse action may be initiated by any of the following persons or entities:

(1) Any department head of the City;

(2) Any employee or official charged with the responsibility to issue and enforce the provisions of this Title.

(B) An adverse action shall be initiated by filing with the City Manager or the City Manager's designee a written request that the adverse action be taken, which shall include the facts and grounds of the proposed adverse action.

(C) An adverse action may also be taken by the City Manager on his or her own volition.

5-1-4: NOTICE OF ADVERSE ACTION: (1956)

~~(A) Except in an emergency as set forth in section 5-1-4, an An applicant shall be notified of a denial and a licensee shall be notified of a proposed cancellation, suspension or revocation of a license or permit and of the grounds for the adverse action in writing. The applicant or licensee may appeal any decision of the City Manager, the Special Permit and License Board or other decision maker to the City Council unless a different procedure is required by applicable law. The appeal shall be filed with the City Clerk in writing, stating the grounds for the appeal, within ten (10) days after the applicant or licensee is notified of the decision maker's decision. Any appeal filed later than provided in this section may not be heard unless the decision maker is satisfied, in its sole discretion, that good cause existed for the delay.~~

~~(B) Whenever notice by the City is required to be given, it shall include:~~

~~(1) The proposed adverse action; in writing.~~

~~(2) The legal authority and jurisdiction under which it is proposed to be taken; and~~

~~(3) The opportunity for any interested person to appeal such~~

~~(B) The notice of the proposed adverse action shall include:~~

~~(1) The grounds for the proposed action, or the date, time and place of any hearing that has been scheduled, if a hearing has been requested.~~

~~(C) Whenever notice is required to be given, it may be accomplished by:~~

~~(1) Personal service by hand delivery,~~

~~(2) Posting on the property subject to the adverse action;~~

~~(3) Regular first class or certified mail, or~~

~~(4) If personal service, posting on the property, and mail are not effective means of giving notice, publication once in a newspaper of general circulation in the City.~~

~~If the notice is mailed, it shall be mailed to the address shown on the license or permit, or the residential address shown on the application in question, or the address in the records of the county clerk or tax assessor or any other official custodian of public records of property ownership for any specific property in question.~~

~~(D) Any time that notice is required by law, it shall be deemed given on the date of personal service, posting of property, deposit in the United States mails, or publication.~~

~~(2) A statement that the applicant or licensee, as applicable, may request a hearing before the Special Permit and License Board by filing a request for the same not later than thirty (30) days following the date of service of the notice of the proposed adverse action.~~

~~(3) A statement that the proposed adverse action described in the notice will be stayed during the thirty (30) days in which a hearing may be requested or until a hearing has been held and a decision rendered, whichever is later; provided, however, that a finding of immediate undue risk as permitted in Section 5-1-5(C) may result in no stay.~~

~~(C) The notice of proposed adverse action may be served on the applicant or licensee, as applicable by:~~

~~(1) Personal service by hand delivery, in which case service shall be deemed complete on the date such service occurs, or~~

~~(2) By mailing a copy of the notice of proposed adverse action by first class mail to the last known address of the applicant or licensee, as applicable, or to the street address of the licensed premises, in which case service shall be deemed complete on the date of mailing. The holder of any license issued pursuant to this Title shall notify the City Clerk of any change of the holder's address for purposes of notification and service pursuant to this Chapter.~~

5-1-5: APPEALS:

(A) The applicant or licensee may appeal the notice of proposed adverse action by filing with the City Clerk in writing a request for a hearing before the Special Permit and License Board, within thirty (30) days after the applicant or licensee is notified of the proposed adverse action. The request for hearing shall specify any reasons the requesting party believes the proposed adverse action was not justified. A hearing, when requested, shall be scheduled and held within a reasonable time, and reasonable notice of the hearing shall be given to the licensee or applicant.

(B) For any applicant or licensee who fails to appeal a proposed adverse action by failing to timely file a request for a hearing in the manner provided for in this Section, the proposed adverse action shall immediately take effect, and the applicant or licensee shall thereafter be barred from appealing the adverse action before the Special Permit and License Board. Further, the failure to file a timely appeal of a proposed adverse action pursuant to this Section shall be deemed a failure to exhaust administrative remedies and a bar to judicial review.

(C) Any adverse action pursuant to this Title shall be automatically stayed upon the filing of a timely appeal pursuant to this Section; provided, however, upon a determination in writing by the City Manager that a stay of the adverse action pending the appeal would pose an immediate undue risk to the public health, safety, or welfare, the adverse action shall not be stayed and the licensee shall cease operations pursuant to the license until the appeal is finally resolved. Notice of any such determination shall be given in a manner specified in Section 5-1-4(C) above.

(D) In computing any period of time prescribed by this section, the day of the act, or default from which the designated period of time begins to run shall not be included. Section, Saturdays, Sundays, and legal holidays shall be counted as any other day.

5-1-4: EMERGENCIES: (1959)(E) Upon completion of a hearing, the Special Permit and License Board shall issue a decision within a reasonable time and according to Section 5-1-10(J) and (K).

~~(A) Prior notice and hearing concerning an adverse action shall not be required if the City Manager determines that the public health, safety, or welfare requires emergency or summary action pending a hearing. If the City Manager takes emergency action, he shall thereafter provide the notices required by section 5-1-3 and an opportunity for interested persons to be heard in a post-emergency action hearing.~~

~~(B) Nothing in this Chapter shall be deemed to prohibit the City Manager, the City Council or another decision maker from ordering interim relief to preserve the status quo pending a hearing.~~

5-1-56: LICENSE DENIAL: (1959)

~~(A) Unless otherwise limited by state law, a license application may be denied by the City Manager or the City Manager's designee based on the following grounds:~~

~~___(1)___ All applicable provisions of the City Code and state law have not been met;~~

~~___(2)___ The required fees have not been paid;~~

~~___(3)___ The application is incomplete or contains false, misleading or fraudulent statements;~~

~~___(4)___ Character of the applicant, based on his/her criminal history, to the extent such character and criminal history is within five (5) years of the date of application and is relevant to the license or permit requested by the applicant;~~

~~___(5)___ Nonconformance of the business, premises, building or land use with this Code;~~

~~___(6)___ Demand of the business for excessive City services;~~

___(7)___ Discharge, intent or proposal to discharge wastes to the sanitary sewerage system which will exceed any of the limits set forth in Title VIII, Chapter 10 of this Code;

___(8)___ Prior or ongoing violations of law in connection with the business;

___(9)___ Previous revocation or suspension of a similar license held by the applicant;

___(10)___ Any reason that would justify cancellation, suspension or revocation of a license; or

___(11)___ Any ground provided by ordinance or state statute.

5-1-7

5-1-6: LICENSE CANCELLATION: (1959)

(A)___ Unless otherwise limited by state law, a license may be administratively cancelled by the City Manager or the City Manager's designee on the ~~following~~following limited grounds:

___(1)___ The license was issued in error ~~or the issuance was illegal;~~

~~(2)___ The license was mistakenly issued to the wrong person or premises or the wrong license was issued;~~

~~(3)___ Any fee or penalty is unpaid; or~~

___(2)___ Upon written request of the licensee;

___(3)___ Upon a determination by the City, confirmed by a site visit to the business address, that the licensee has permanently ceased operating;

___(4)___ Upon grounds provided by ordinance or statute.

(B) Any administratively cancelled license may be administratively reinstated when the facts or circumstances demonstrate that the cancellation was done in error.

5-1-78: LICENSE SUSPENSION: (1959)

(A)___ Unless otherwise limited by state law, a license may be suspended, ~~with or without conditions,~~ on the following grounds:

___(1)___ ~~When any activity conducted pursuant to such license violates an ordinance or statute;~~

~~(2)___ Upon any grounds which would authorize revocation of a license except grounds which make revocation mandatory;~~

___(2)___ When any activity conducted pursuant to such license violates an ordinance or statute;

___(3)___ Upon grounds of repeated violations of this Code by the licensee; or

___(4)___ Upon grounds provided by ordinance or statute.

~~(B) Upon request of a licensee, a decision maker may condition a suspension on the payment of a fine of up to 20 percent of the licensee's estimated gross sales or revenues during the period of the proposed suspension, which estimate shall be based on sales tax returns filed by the licensee during the previous year or any other information deemed necessary by the decision maker in establishing the fine. The decision maker, in its sole discretion, may stay the proposed suspension and, after any investigation it deems necessary, grant the licensee's request if it is satisfied;~~

- ~~(1) That the public welfare would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;~~
- ~~(2) That the licensee consents to the disclosure of its business records and sales tax returns by the Director of Finance to the decision maker for the purpose of ascertaining an appropriate fine;~~
- ~~(3) That the licensee's sales tax returns are an accurate report of the licensee's gross sales during the previous year or that the level of the fine can otherwise be supported by reasonable documentation; and~~
- ~~(4) That the licensee has not had the license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years prior to the date of the effective date of the proposed suspension.~~

~~(A) **5-1-9: LICENSE REVOCATION: (1959)**~~

Unless otherwise limited by state law, a license may be revoked on the following grounds:

- ~~___~~ (1) ~~___~~ Fraud or misrepresentation or false statements in the application for the license;
- ~~___~~ (2) Failure to make timely payment of any fees, charges or penalties imposed pursuant to this Title;
- ~~___~~ (3) Fraud or misrepresentation in the course of conducting the business;
- ~~(3) ___~~
- ~~___~~ (4) Conducting the business contrary to the conditions of the license;
- ~~(4) ___~~
- ~~___~~ (5) Conducting the business in such a manner as to create a public nuisance as defined by ordinance or by statute or in a manner as to constitute a danger to the public health, safety or welfare;
- ~~(5) ___~~
- ~~___~~ (6) Conviction of any violation of federal, state or municipal law related to the operation of the licensed business;
- ~~(6) ___~~
- ~~___~~ (7) Repeated violations of one or more City ordinances at the licensee's place of business, by the licensee or patrons of the business;

~~**5-1-**~~

~~___ (8: **LICENSE REVOCATION: (1959)**)~~

- ~~(7) ___~~ Commission of an act or grounds that would have justified denial of the original application for a license;
- ~~(8) ___~~
- ~~___~~ (9) The conduct of the licensee's business consistently creates excessive need for City services and causes the City to expend public funds beyond normal requirements to protect the public health, welfare and safety;
- ~~(9) ___~~
- ~~___~~ (10) The business is of such a nature, or is operated in such a manner, that it is frequented by individuals (a) who consistently disrupt the normal and reasonable peace and tranquility of the neighborhood, or (b) who by intimidation, threat, harassment or other hostile conduct seriously disrupt any other business in the immediate neighborhood of the licensee, thereby causing such business unreasonable economic loss;
- ~~(10) ___~~
- ~~___~~ (11) The licensee fails to keep and maintain permanent records which, in accordance with accepted accounting practices as determined by the City Finance Director, are necessary for establishing the licensee's tax liability;
- ~~(11) Repeated violations~~
- ~~___~~ (12) Any violation of Title IV concerning payment of taxes;
- ~~(12) Failure to make timely payment of any fees or charges required by this Title;~~

~~_____ (13) Evidence that the licensed business has been inactive for at least three (3) months; or~~
~~(14) Upon any grounds provided by ordinance or state statute.~~

5-1-9: HEARINGS~~5-1-10: HEARING PROCEDURES:~~ (1959 2275)

~~(A) This Section shall apply to any hearing conducted pursuant to this Title.~~

~~(B) Any interested person who wishes to be heard at a public hearing shall pursuant to this Title may appear personally or be represented by legal counsel at the hearing.~~

~~(B) C) The hearing shall be conducted by the City Council or such other decision maker as may be appointed by the City Council or as provided by contract or law. Special Permit and License Board. In the case of an appeal of an adverse action, the hearing shall be de novo, and the proponent of the adverse action shall have the burden to show, by a preponderance of evidence, that the grounds for the adverse action existed at the time the adverse action was taken. The adverse action may be defended by the City Manager, or the Department Head, employee, or official who initiated the adverse action, who may be represented by the City Attorney.~~

~~(C) If, in its or his discretion, the City Council or City Manager appoints an employee of the City or any other person possessing qualifications acceptable to the appointing authority as a hearing officer, such hearing officer shall have all the authority possessed by the appointing authority to render decisions.~~

~~(D) The Special Permit and License Board may:~~

~~(D) Any decision maker authorized by this Title to conduct a public hearing has authority to:~~

~~(1) Charge~~~~(1) Establish by rule a fee for a hearing if authorized and for the purposes set forth by law;~~

~~_____ (2) Waive or refund hearing fees upon a showing of undue hardship;~~

~~_____ (3) Administer oaths and affirmations;~~

~~(4) Sign and issue~~

~~_____ (4) Issue subpoenas requiring the presence of persons and the production of documents reasonably necessary to the determination of any issue relevant to the hearing. Where the decision maker, as defined in this Chapter, is the City Council, the Mayor shall sign and issue subpoenas. Where the decision maker is a City Board or Commission, the The Chairperson thereof shall sign and issue subpoenas, and where the decision maker is an official or appointed hearing officer, the official or hearing officer shall sign and issue any such subpoenas. Subpoenas shall be enforced as provided in Section 1-22-5.~~

~~_____ (5) Rule upon offers of proof;~~

~~_____ (6) Compel testimony;~~

~~_____ (7) Receive evidence;~~

~~_____ (8) Determine all relevant issues of material fact and whether the proposed adverse action comports with the requirements of the applicable laws;~~

~~_____ (9) Dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing;~~

~~_____ (10) Regulate the course of the hearing, including setting reasonable time limits on testimony or argument and restricting duplicative or irrelevant evidence or testimony;~~

~~_____ (11) Set the time and place for continued hearings;~~

~~_____ (12) Fix the time for filing of briefs and other documents;~~

- ~~___~~ (13) ~~_~~ Direct the parties to appear and confer to consider simplification of issues, admissions of facts or documents to avoid unnecessary proof, and limitation of the number of witnesses;
- ~~___~~ (14) ~~_~~ Issue appropriate orders that control the subsequent course of the proceeding;
- ~~___~~ (15) ~~_~~ Dispose of motions and procedural matters;
- ~~___~~ (16) ~~_~~ Control the decorum and conduct of the proceeding, including the reprimanding and exclusion from the hearing of any person engaging in improper or indecorous conduct; and
- ~~___~~ (17) ~~_~~ Issues general or specific regulations in furtherance of its powers enumerated in this ~~section~~Section and take any other action authorized by ordinance or by rule consistent with law.
- (E) ~~_~~ All testimony shall be taken under oath or by affirmation.
- (F) ~~_~~ It shall be unlawful for any person to fail to comply with the orders of the ~~decision maker~~Special Permit and License Board, including the failure to obey any subpoena issued pursuant to this ~~section~~Section.
- (G) ~~_~~ The proceedings of the hearing shall be recorded through tape recording, stenographic, or other verbatim reproduction, and copies of the transcriptions of the proceedings shall be available, upon payment of the reasonable costs thereof, to the parties to the hearing or any interested person.
- ~~(H) Unless otherwise provided by law, the party requesting final action has the burden of proof, and every party to the proceeding has the right to~~ (H) At the hearing, each side may present such party's case or defense by oral and evidence, documentary evidence, to submit and rebuttal evidence, and to conduct such cross examination as the Board may be required reasonably determine necessary for a full and true disclosure of the facts. The ~~decision maker~~Board may receive all or part of the evidence in written form if the interests of the parties will not be ~~prejudiced~~ substantially prejudiced and if the hearing will be expedited thereby. ~~The rules of evidence and requirements of proof and procedure shall conform to the extent practicable to those in civil nonjury cases, but when necessary to ascertain facts affecting the substantial rights of the parties to the proceeding, the decision maker~~Board may receive and consider evidence not admissible under ~~such the civil rules of evidence~~ if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The decision maker shall give effect to the rules of privilege required by law,Board may exclude incompetent and unduly repetitious evidence, and may receive documentary evidence in the form of a copy or excerpt if the copy is authenticated. ~~The decision maker shall use its experience, technical competence, and specialized knowledge in evaluating the evidence presented to it. Parties to the hearing may make objections to evidentiary offers, which shall then be noted in the record~~deemed reliable.
- ~~(I) In the absence of objection, the hearing may be conducted informally, and failure to request any procedure shall constitute a waiver thereof.~~
- ~~(J) No ex parte material or representation of any kind or any other communication outside the hearing shall be considered by the decision maker conducting the hearing~~Board unless it is fully disclosed on the hearing record and an opportunity is given for comment thereon at the hearing.
- ~~(K) J~~ The decision makerBoard may approve, deny, affirm, reverse, or approve modify, with or without conditions, any requested adverse action. The ~~decision maker~~ may issue a decision at the hearing andBoard shall issue, within a reasonable time, a final, written decision with findings of fact and conclusions of law, setting forth the grounds of the decision, based on the evidence presented at the hearing. The ~~decision maker~~Board shall serve the decision on each party to the hearing by personal service or by mailing by it first-class mail to the last address furnished to the ~~decision maker~~City Clerk pursuant to Section 5-1-4 by the party. The decision shall be deemed final and effective as to such party on the date mailed ~~or on such other date as is stated in the decision.~~

~~(L) Unless otherwise provided by law, the decision is final~~ (K) The Board's final decision shall be subject ~~only~~ to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4). No ~~defense or objection~~ground may be presented for judicial review unless it ~~is was~~ first presented to the ~~City decision maker~~Special Permit and License Board, prior to the decision thereof.

5-1-11: PENALTY; NUISANCE DECLARED:

(A) It is unlawful for any person to violate any of the provisions of this Title. Except as otherwise provided in this Title, any person found guilty of violating any of the provisions of this Title shall, upon conviction thereof, be punished by a fine pursuant to Section 1-8-1 of this Code. Each day that a violation of any of the provisions of this Title continues to exist shall be deemed a separate and distinct violation.

(B) The conduct of any activity or business in violation of this Title is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisance provided for in Chapter 4 of Title VIII of this Code.

Section 3. Section 5-2-1, W.M.C., is hereby AMENDED to read as follows:

5-2-1: DEFINITIONS: The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise: "Business" means any profit or not for profit trade, vocation, occupation, profession, enterprise, service, or commercial activity at a fixed physical premise in~~conducted within~~ the City, except that the term "business" shall not include any hobby or leisure activity not engaged in for profit, ~~or not for profit, except a or any~~ home occupation licensed as such pursuant to Chapter 3 of this Title. ~~The term "business" shall not include any hobby or leisure activity not engaged in for profit.~~

Section 4. Emergency. Because of the need to set forth accurate licensing procedures in a timely manner, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on February 14, 2011, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

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

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 14th day of February, 2011.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Councillor's Bill No. 6 re Economic Development Assistance Agreement Addendum with Scottrade, Inc.

Prepared By: John L. Hall, Business Development Officer

Recommended City Council Action

Pass Councillor's Bill No. 6 on first reading authorizing the City Manager to execute and implement an Economic Development Agreement Addendum with Scottrade, Inc. for the purpose of clarifying sales and use tax rebates on furniture and equipment purchases.

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill that authorizes the execution of the attached assistance Economic Development Assistance (EDA) Addendum with Scottrade, Inc.
- The Addendum allows for the rebate of sales tax in addition to use tax rebate on furniture and equipment.
- Changes to the EDA text (See Exhibit A) that will allow for the Sales Tax rebates are in **bold**.
- The intent of the original EDA was to provide a rebate to the company of use tax paid when purchasing furniture and equipment at move-in and for the first five years of operation. Scottrade, Inc. chose to "Shop Westminster," therefore paying sales tax instead of use tax. Since the agreement was written to apply to only use tax, the company could not receive the intended rebate.
- The Addendum will allow Scottrade, Inc. to receive sales tax rebates from purchases of furniture and fixtures as intended per the original agreement.
- The total dollar amount of the rebate does not change from the original agreement.

Expenditure Required: No change to the current amount of the original EDA

Source of Funds: The EDA with Scottrade, Inc will be funded through the rebate of permit fees, construction use tax, and equipment sales and use tax generated directly from the location of Scottrade, Inc. in the Westmoor Technology Park, located at 10955 Westmoor Drive.



Policy Issue

Does Council desire to approve the Addendum to the EDA with Scottrade, Inc. to allow them to receive both sales and use tax rebates?

Alternative

Do Nothing: One alternative is to do nothing. The result would be that Scottrade, Inc. is not able to receive any rebate on furniture and equipment, as no use tax would be paid. Thus, the intent of providing a rebate on furniture and equipment would not be met.

Background Information

The City of Westminster and Scottrade, Inc. entered into an Economic Development Agreement on February 8, 2010 for a total of \$196,215. The EDA was comprised of \$65,715 in permit fee rebates, \$77,400 in construction use tax rebates, and \$53,100 in use tax rebates on furniture and equipment.

Scottrade, Inc. made the choice to "Shop Westminster" for the purchases of some furniture and fixtures. As a result of making the purchases in the City, the company paid sales tax, not use tax, to the City and therefore was not eligible for the tax rebate. Making this minor change to the EDA will allow Scottrade, Inc. to receive a rebate of the sales tax paid and uphold the original intent of the EDA.

Staff is not recommending any change to the amount of the rebate, rather the adoption of the Addendum to include sales and use tax rebates associated with the purchase of furniture and fixtures.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Addendum to the EDA

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **6**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING AN ADDENDUM TO AN ECONOMIC
DEVELOPMENT AGREEMENT WITH SCOTTRADE, INC.**

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, the City of Westminster and Scottrade, Inc. entered into an Economic Development Agreement on February 8, 2010; and

WHEREAS, Scottrade, Inc. (Scottrade) has purchased and is occupying 200,000 square feet in Westmoor Technology Park in Westminster; and

WHEREAS, a proposed Addendum to the executed Economic Development Agreement between the City and Scottrade is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Addendum to the Economic Development Agreement with Scottrade dated February 8, 2010, in substantially the same form as the one attached as Exhibit "A," and upon execution of the Addendum to fund and implement said Addendum.

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

Section 3. 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 14th day of February, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of February, 2011.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Exhibit A

ADDENDUM TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND SCOTTRADE, INC. DATED FEBRUARY 8, 2010

The City of Westminster and Scottrade, Inc. agree to amend the Economic Development Agreement described above as follows:

1. Amend Paragraph 3 to read:

3. **Sales and Use Tax Rebate – Furniture and Fixtures.** The City will rebate 60% of the City's **Sales and Use Tax** (excludes the City's .25% Open Space and .6% Public Safety Tax) collected on the furnishings and equipment purchased during the period three months prior to the date Scottrade obtains a final Certificate of Occupancy for their new facility and for the subsequent five year period of time. This rebate will be approximately \$53,100.

2. All other terms and conditions of this Agreement shall remain in effect.

This Addendum is dated March __, 2011.

SCOTTRADE, INC.

CITY OF WESTMINSTER

By: _____
Print Name: _____
Its: _____

By: _____
J. Brent McFall
City Manager

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.



Agenda Memorandum

City Council Meeting
February 14, 2011



SUBJECT: Councillor's Bill No. 7 re Amendment of the Economic Development Agreement with The Bedrin Organization for Murdoch's Farm and Ranch Supply Store

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillor's Bill No. 7 on first reading authorizing the City Manager to execute and implement the Amended Economic Development Agreement with The Bedrin Organization for the "Murdoch's" store.

Summary Statement

- On November 22, 2010, Council approved on first reading and subsequently on second reading the Economic Development Agreement (EDA) with The Bedrin Organization to facilitate a Murdoch's Ranch & Home Supply Store.
- In the Agenda Memo and the Economic Development Agreement, it was stated that the end date for the Agreement was December 31, 2012. The date should have read December 31, 2013.
- The dollar amount of the assistance package will not be increased by this change, and all assistance will be directly generated from the "Murdoch's" store.
- Action is needed to correct this error so that the Agreement reflects the actual terms agreed upon with The Bedrin Organization.

Expenditure Required: No change to the amount of the approved EDA

Source of Funds: The approved EDA with The Bedrin Organization will be funded through sales tax generated by Murdoch's.



Policy Issue

Should the existing Economic Development Agreement be modified to reflect the originally intended date?

Alternative

Do Nothing: The date could remain as stated, causing the Agreement to last one year less than negotiated. The result, however, would not reflect the agreed upon term.

Background Information

Staff has been working with The Bedrin Organization of New Jersey, owners of the Brookhill V Shopping Center regarding strategies for filling the vacancies in this shopping center. In the fall of 2010, the Bedrins were successful in attracting Murdoch's Ranch and Home Supply to fill vacant space in the center previously occupied by Steve and Barry's. In the course of negotiations, with The Bedrin Organization asked the City to assist them in covering some of the costs of attracting Murdoch's. On December 13, 2010, City Council approved an EDA with The Bedrin Organization. It was intended that the agreement with The Bedrin Organization include a termination date of December 31, **2013**; however, the version of the agreement previously submitted to, and approved by, Council included a termination date of December 31, **2012**. The purpose of this request is to amend the termination date to reflect December 31, 2013 as agreed to in negotiations with The Bedrin Organization.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Ordinance
- Amendment to the EDA

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **7**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO AN ECONOMIC
DEVELOPMENT AGREEMENT WITH THE BEDRIN ORGANIZATION FOR A
“MURDOCH’S” STORE**

WHEREAS, the successful attraction of new businesses that fill vacant space in existing retail centers in the City of Westminster provides increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for new businesses to locate in the City; and

WHEREAS, The Bedrin Organization is leasing the former Steve and Barry’s space in Brookhill V in Westminster to Murdoch’s Farm and Ranch Supply; and

WHEREAS, the City approved an Economic Development Agreement for The Bedrin Organization on December 13, 2011; and

WHEREAS, a proposed amendment to the Economic Development Agreement between the City and The Bedrin Organization is attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Amendment to the Economic Development Agreement with The Bedrin Organization in substantially the same form as the one attached as Exhibit A, and upon execution of the Agreement to fund and implement said Agreement.

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

Section 3. 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 14th day of February, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of February, 2011.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney’s Office

Exhibit A

**AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY
OF WESTMINSTER AND THE BEDRIN ORGANIZATION
DATED DECEMBER 13, 2010**

The City of Westminster and The Bedrin Organization agree to amend the Economic Development Agreement described above as follows:

1. Amend Paragraph 1 to read:

1. Sales Tax Rebate. The City shall rebate to The Bedrin Organization 50% of the sales tax collected from Murdoch's for the period of time commencing on the date of issuance of a Certificate of Occupancy for the Murdoch's store, and ending on December 31, **2013** ("Termination Date".) Such rebate shall be payable exclusively from sales tax revenue collected by the City from Murdoch's and attributable to the imposition of the City's 3.0% general sales tax (excluding the City's .25% open space tax and .6% public safety tax). The sales tax rebate shall not continue past the Termination Date and shall be administered as follows:

2. All other terms and conditions of this Agreement shall remain in effect.

This Addendum is dated March __, 2011.

THE BEDRIN ORGANIZATION

CITY OF WESTMINSTER

By: _____
Print Name: _____
Its: _____

By: _____
J. Brent McFall
City Manager

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, FEBRUARY 14, 2011

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meetings** (January 24, 2011)
- 3. Purpose of Special WEDA Meeting is to**
 - A. Consider an agreement for special legal counsel related to the Westminster Center Urban Reinvestment Project
 - B. Consider the Westminster Center Urban Reinvestment Project Transition Agreement
- 4. Executive Session** – Discuss strategy and progress on potential acquisition of certain real property by the Westminster Economic Development Authority for the Westminster Center Urban Reinvestment Project pursuant to CRS §24-6-402 (4)(a) and (e).
- 5. Adjournment**



WESTMINSTER

February 9, 2011

Linda Yeager, WEDA Secretary
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Dear Linda:

I wish to call a special meeting of the Westminster Economic Development Authority (WEDA) for Monday, February 14, 2011, for the following purposes:

1. to consider an agreement for special legal counsel related to the Westminster Center Urban Reinvestment Project; and
2. to consider the Westminster Center Urban Reinvestment Project Transition Agreement; and
3. to convene in executive session to discuss strategy and progress on potential acquisition of certain real property by the Westminster Economic Development Authority for the Westminster Center Urban Reinvestment Project pursuant to CRS §42-6-402 (4)(a) and (e).

Sincerely,

Nancy McNally
Chair

cc: WEDA Board Members
J. Brent McFall, Executive Director

City of Westminster
Office of the
Council

4800 West 92nd Avenue
Westminster, Colorado
80031

303-658-2006
FAX 303-706-3921

Nancy McNally
Mayor

Chris Dittman
Mayor Pro Tem

Bob Briggs
Councillor

Mark Kaiser
Councillor

Mary Lindsey
Councillor

Scott Major
Councillor

Faith Winter
Councillor



CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JANUARY 24, 2011, AT 7:32 P.M.

ROLL CALL

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

CONSIDERATION OF MINUTES

Board Member Briggs moved, seconded by Kaiser, to approve the minutes of the meetings of November 15 and December 27, 2010 with no additions or corrections. The motion carried unanimously.

OFFICIAL PLACES TO POST NOTICES OF MEETINGS DESIGNATED

Vice Chairperson Dittman moved, seconded by Lindsey, to designate the bulletin board in the lobby of City Hall and the City of Westminster website as the locations for posting public notices of official meetings of the Westminster Economic Development Authority pursuant to §24-6-402 (2)(c) C.R.S. of the Colorado Open Meetings Act. The motion passed unanimously.

ADJOURNMENT

There being no other business to be considered, the meeting adjourned at 7:33 p.m.

ATTEST:

Secretary

Chairperson

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
February 14, 2011



SUBJECT: Special Legal Counsel - Westminster Center Urban Reinvestment Project

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

Recommended Board Action

Authorize the Executive Director to enter into an agreement with Murray Dahl Kuechenmeister & Renaud, LLP for work related to the Westminster Center Urban Reinvestment Project in an amount not to exceed \$120,000.

Summary Statement

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

Expenditure Required: Not to exceed \$120,000

Source of Funds: 2011 WEDA Budget
– Westminster Center Urban Reinvestment Project



Policy Issue

Should the Westminster Economic Development Authority (WEDA) retain special legal counsel to assist the City and WEDA in connection with the Westminster Center Urban Reinvestment Project?

Alternative

Do not retain this type of special legal counsel assistance or seek such assistance from another source. This alternative is not recommended given the need for specialized legal services in urban renewal law and potential eminent domain matters related to the redevelopment of the Westminster Mall site. Mr. Murray's proposed fee of \$200 per hour is well within the Denver area market for such services.

Background Information

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

Mr. Murray's expertise is in redevelopment projects pursuant to the Colorado urban renewal law. Mr. Murray has been providing a significant amount of legal work to the City and WEDA related to the negotiation and drafting of one or more WEDA redevelopment agreements with the WURP redeveloper, addressing the various leasehold interests in the Mall, and creating a marketable title to the project that is free and clear of objectionable covenants, restrictions, and easements.

Section 31-25-112 of the Colorado Urban Renewal Law expressly authorizes the City to cooperate with and aid and financially assist the Westminster Economic Development Authority in connection with the planning and undertaking of the redevelopment of the Westminster Mall site through the Authority's Westminster Center Urban Reinvestment Project.

Respectfully submitted,

J. Brent McFall
Executive Director

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
February 14, 2011



SUBJECT: Westminster Center Urban Reinvestment Project Transition Agreement

Prepared By: Susan Grafton, Economic Development Manager

Recommended Board Action

Authorize the Executive Director to enter into a Transition Agreement with Steiner Real Estate Services, LLC in substantially the same form as the attached agreement.

Summary Statement

- On February 2, 2010 an Exclusive Negotiation Agreement (ENA) was entered into with Steiner Real Estate Services, LLC by the City and the Westminster Economic Development Authority (WEDA) to allow for the negotiation of a Redevelopment Agreement for the Westminster Center Urban Reinvestment Project (WURP).
- The ENA has now expired without a Redevelopment Agreement having been executed by Steiner, the City and WEDA.
- WEDA and the City have determined it best to no longer negotiate with Steiner concerning the WURP redevelopment agreement.
- The attached agreement establishes the non-negotiating relationship between Steiner, the City and WEDA and provides compensation for Steiner's contribution to WURP.

Expenditure Required: \$300,000

Source of Funds: WEDA - WURP CIP account



Policy Issue

Does WEDA want to compensate Steiner for contributions made to the WURP?

Alternative

Provide No Transition Agreement: This agreement is not required to close out negotiations between Steiner and the City. However, it does recognize the value of the Steiner work on retail anchors and other work on the project. It also provides for a smooth transition and helps assure future cooperation.

Background Information

After many months of negotiations it was determined that the City and Steiner had different approaches to proceeding with the WURP. As a result agreement could not be achieved on a Redevelopment Agreement for the WURP.

The attached Transition Agreement addresses future communications between the City and Steiner, future communications concerning the project, as well as compensation for contributions Steiner made to the WURP.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- Transition Agreement
- Location Map

TRANSITION AGREEMENT

This TRANSITION AGREEMENT (this “**Agreement**”) is dated as of the ____ day of _____, 2011 (the “**Effective Date**”), and is entered into by and among the CITY OF WESTMINSTER, COLORADO, a Colorado home rule city, with offices at 4800 West 92nd Avenue, Westminster, Colorado, 80031 (the “**City**”), the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a Colorado urban renewal authority, with offices at 4800 West 92nd Avenue, Westminster, Colorado, 80031 (“**Authority**”) and STEINER REAL ESTATE SERVICES, LLC (“**Steiner**”), an Ohio limited liability company, located at 4016 Townsfair Way, Suite 201, Columbus, Ohio, 43219, upon the terms and conditions set forth below. The City, the Authority and Steiner each are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**.”

Recitals

This Agreement is made with respect to the following facts:

A. The Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to the Act. On April 13, 2009, the City Council made a determination that the Westminster Center Urban Renewal Area (“**Plan Area**”) was a blighted area and appropriate for an urban renewal project pursuant to Part I of Article 25 of Title 31, C.R.S.

B. On April 13, 2009, the City Council approved the Westminster Center Urban Reinvestment Plan for the Plan Area (“**Plan**”). Among other things, the Plan authorizes the Authority to redevelop property within the Redevelopment Area.

C. The Plan Area includes 108 acres of real property, including the Westminster Mall (the “**Site**”).

D. The Authority previously issued a Request for Proposals for the redevelopment of the Site (the “**Project**”) from interested redevelopers. Steiner was one of a number of entities that submitted a proposal.

E. The Parties entered into a Confidentiality Agreement, dated January 13, 2010 (“**Confidentiality Agreement**”), to maintain the confidentiality of their negotiations and of the information exchanged in the course of negotiations.

F. The City and the Authority also entered into exclusive negotiations with Steiner pursuant to the Exclusive Negotiation Agreement, dated February 2, 2010 (“**ENA**”), to explore on a preliminary basis the feasibility of the Project and to negotiate further agreements related to the Project.

G. The ENA was extended by the letter agreement dated August 26, 2010, to November 3, 2010, conditioned on the performance of certain conditions. The ENA has now

expired.

H. Since the execution of the ENA, Steiner has engaged in planning and development activities in support of the Project, including, but not limited to, contacts with prospective anchor tenants, preparation of briefing books and reports relating to market areas, prospective tenants, and investigation of anticipated uses for the Site.

I. The Parties have now mutually agreed that it is in their best interests to terminate negotiations and to provide for their future association and assistance. The City and the Authority desire to recognize and compensate Steiner for its work in support of the Project.

AGREEMENT

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

1. Termination of Negotiations. The Parties agree that negotiations have terminated relative to the Project, with each party free to pursue such opportunities and relationships as each party sees fit, consistent with this Agreement.

2. Communications.

(a) The City and the Authority appreciate and recognize the valuable contributions Steiner has made to the Project. Accordingly, the City and the Authority agree to communicate to others the positive contributions of Steiner to the Project and the competence and professionalism of Steiner and its employees and to refrain from expressions regarding Steiner or its employees that are derogatory or disparaging.

(b) Steiner appreciates the opportunity to negotiate with the City and the Authority regarding the Project and recognizes the value provided by the City, City staff, and consultants. Accordingly, Steiner agrees to communicate to others the positive contributions of the City and the Authority to the Project and the competence and professionalism of the City and the Authority and their Staff and consultants and to refrain from expressions regarding the City and the Authority or their employees and consultants that are derogatory or disparaging.

(c) Each Party agree that prior to any public statements being made or issued, it will consult with the other Parties in the interest of implementing this Agreement.

3. Confidentiality. The Parties agree that the obligations of the Parties under the Confidentiality Agreement are continuing as set forth in the Confidentiality Agreement.

4. Notification of Activities. Steiner agrees that it will not participate in or undertake any activities related to a development project within the area designated on the attached Exhibit 1 for a period of eighteen (18) months without prior notification in writing to the City and the Authority. Such notification, which will be deemed confidential, proprietary information, shall include the location of the project and the type of project (e.g., power center, fashion mall).

5. Compensation. As compensation for its contributions to the Project and the commitments of Steiner contained in this Agreement, the City and the Authority agree to pay to Steiner compensation in the amount of \$300,000 within fifteen (15) days of the execution of this Agreement.

6. Notices. Notices to any party should be sent the address for notice set forth below, as amended from time to time:

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

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

Copy to: City of Westminster
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Susan F. Grafton

Steiner: Steiner Real Estate Services, LLC
4016 Townsfair Way, Suite 201
Columbus, Ohio, 43219
Attention: Yaromir Steiner

Copy to: Steiner Real Estate Services, LLC
4016 Townsfair Way, Suite 201
Columbus, Ohio, 43219
Attention: Ralph Ireland

7. Remedies. In the event of a default by either Party under this Agreement, the non-defaulting Party shall be entitled to all of its remedies at law or in equity.

8. Binding Effect. This Agreement will be binding on and inure to the benefit of the parties hereto, and their successors and assigns.

9. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

CITY:
CITY OF WESTMINSTER, COLORADO

STEINER:
STEINER REAL ESTATE SERVICES, LLC.

By: _____
J. Brent McFall, City Manager

By: _____
Yaromir Steiner
Title: _____

ATTEST:

By: _____
Linda Yeager, City Clerk

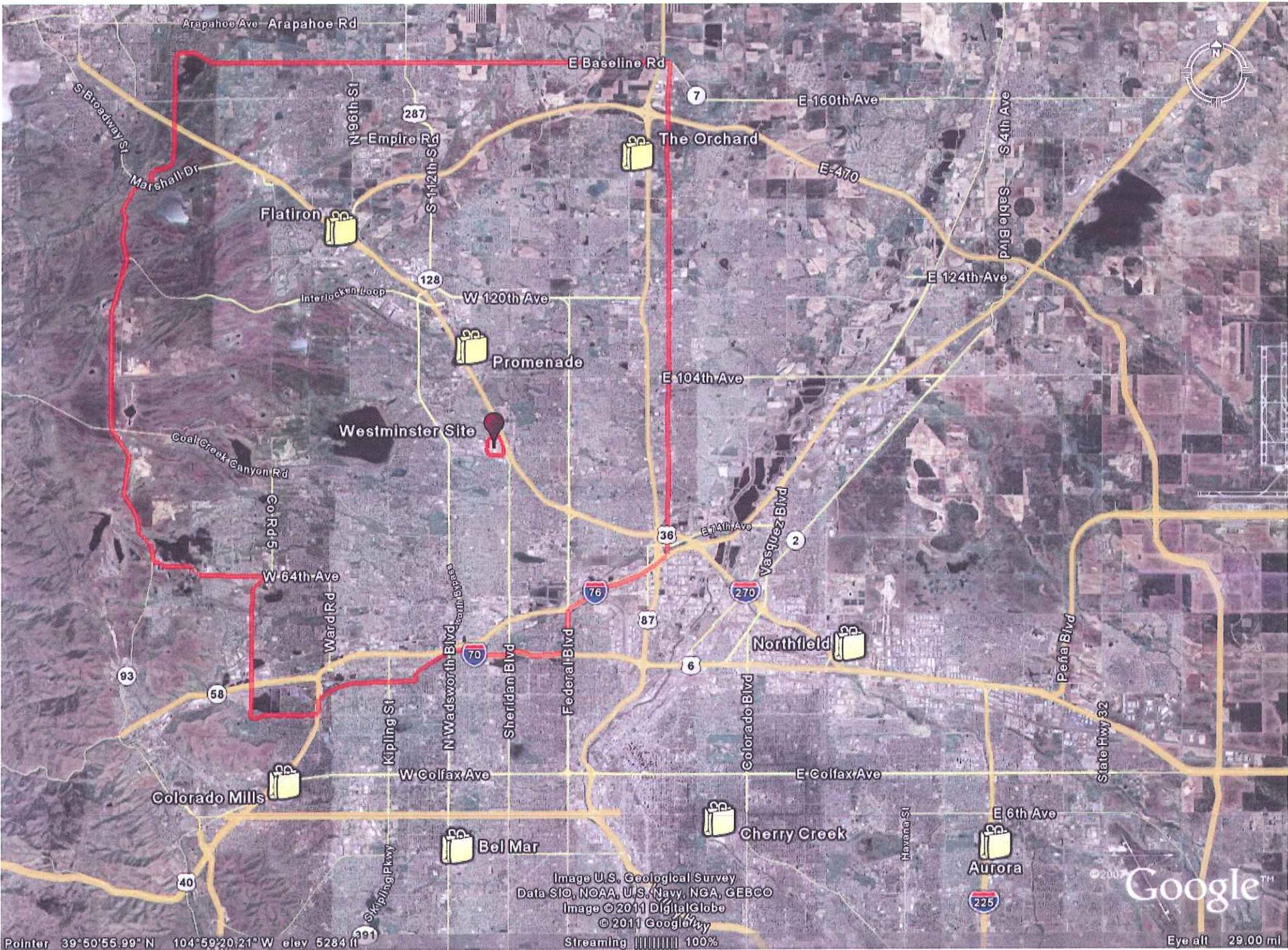
AUTHORITY:

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, Executive Director/Secretary

ATTEST:

By: _____
Linda Yeager, Authority Clerk



AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, FEBRUARY 14, 2011

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (January 10, 2011)
- 3. Purpose of Special WHA Meeting is to**
 - A. Consider Resolution No. 42 authorizing a lease to the South Westminster Arts Group to occupy the Rodeo Super Market building
 - B. Consider forgiveness of 2010 utility balance due from the South Westminster Arts Group
- 4. Adjournment**



WESTMINSTER

February 7, 2011

Linda Yeager, WHA Secretary
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Dear Linda:

I wish to call a special meeting of the Westminster Housing Authority (WHA) for Monday, February 14, 2011, for the following purposes:

1. to consider a Resolution authorizing a lease to the South Westminster Arts Group; and
2. to consider forgiveness of 2010 utility balance due from the South Westminster Arts Group.

Sincerely,

Nancy McNally
Chair

cc: WHA Board Members
J. Brent McFall, Executive Director

City of Westminster
Office of the
Council

4800 West 92nd Avenue
Westminster, Colorado
80031

303-658-2006
FAX 303-706-3921

Nancy McNally
Mayor

Chris Dittman
Mayor Pro Tem

Bob Briggs
Councillor

Mark Kaiser
Councillor

Mary Lindsey
Councillor

Scott Major
Councillor

Faith Winter
Councillor



CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, JANUARY 10, 2011 AT 7:11 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Dittman, and Members Briggs, Kaiser, and Lindsey. Members Major and Winter were absent and excused. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney for the Authority, and Linda Yeager, Secretary.

MINUTES OF PRECEDING MEETING

Member Briggs moved, seconded by Dittman, to accept the minutes of the meeting of September 13, 2010 as written and distributed. The motion carried unanimously.

OFFICIAL PLACES TO POST PUBLIC NOTICES DESIGNATED

It was moved by Member Kaiser, seconded by Dittman, to designate the bulletin board in the lobby of City Hall and the City of Westminster website as the locations for posting public notices of official meetings of the Westminster Housing Authority pursuant to §24-6-402 (2)(c) C.R.S. of the Colorado Open Meetings Act. The motion passed unanimously.

RESOLUTION NO. 41 RE 2011 AND WESTMINSTER COMMONS BUDGETS

Vice Chairperson Dittman moved, seconded by Kaiser, to adopt Resolution No. 41 approving the 2011 Westminster Housing Authority Budget and the 2011 Westminster Commons Senior Housing Project Budget. At roll call, the motion passed unanimously.

ADJOURNMENT:

There being no further business to conduct, it was moved by Kaiser, seconded by Dittman to adjourn. The motion carried and the meeting adjourned at 7:13 p.m.

Chairperson

ATTEST:

Secretary

WHA Agenda Item 3 A&B

Agenda Memorandum

Westminster Housing Authority Meeting
February 14, 2011



SUBJECT: Resolution No. 42 re South Westminster Arts Group Lease of Rodeo Market Building, 3915 West 73rd Avenue

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

1. Adopt Resolution No. 42 authorizing the Chairperson to execute a one-year lease for the South Westminster Arts Group to occupy the Rodeo Super Market building, located at 3915 West 73rd Avenue.
2. Authorize forgiveness of payment by SWAG for the utility balance due from 2010.

Summary Statement

- The Westminster Housing Authority (WHA) Board is requested to approve a lease between the Authority and the South Westminster Arts Group (SWAG) to occupy the Rodeo Market building, located at 3915 West 73rd Avenue. The lease amount is proposed to be \$1.00 per year.
- SWAG will use the space to facilitate cultural activities such as art shows, meetings and programming that support the growth of non-profit cultural activities and arts businesses in South Westminster.
- At year end, SWAG will be responsible for reimbursing the WHA for the cost of utilities in excess of \$7,500 for use of the Rodeo Building at 3915 West 73rd Avenue.
- The lease agreement would be for one year.
- SWAG is seeking forgiveness of a utility balance from 2010 in the amount of \$2,420.47 given its inability to secure non-profit status from the IRS in 2010, which has affected their ability to apply for and secure funding from several sources of grants.

Expenditure Required: \$9,920.47

Source of Funds: 2010 WHA Budget -- \$2,420.47
2011 WHA Budget -- \$7,500.00



Policy Issue

Should the Westminster Housing Authority continue to lease the Rodeo Super Market building, a Westminster historic landmark, to the non-profit South Westminster Arts Group (SWAG) for \$1.00 per year and cover a significant proportion of the cost to maintain water, sewer, heat, and electrical utilities and provide minor maintenance?

Alternatives

1. Do not lease the premises to SWAG. This alternative is not recommended given the tremendous strides SWAG has made in attracting artistic talent, raising community goodwill, and promoting activities. A failure to release the premises could result in the demise of the organization.
2. Lease the premises with a required higher financial contribution from SWAG. This alternative is not recommended because SWAG is attempting to establish a higher level of cultural activity using only existing minimal resources. If it is required to pay higher rent and utility costs, a lease would be financially infeasible at this time.

Background Information:

In an effort to increase non-profit arts-related activity in the City, staff has worked to create arts business incubator opportunities by identifying potential spaces in which arts activities could be conducted on a temporary or permanent basis. City staff has also worked with local artists to incorporate the South Westminster Arts Group (SWAG), a community-based arts network. The goals of SWAG include:

- Establishing a network of artists, arts supporters and art supportive businesses for communication, advocacy, and identification of needs, and progress toward solutions for the creative community.
- Promoting and fostering a population of creative workers by encouraging them to reside or work in the historic, established South Westminster neighborhood, in order to better meet mutual goals.
- Focusing on diversity, tolerance and inclusiveness in order to strengthen the arts community and help it to serve the needs of its supporters and audience, and providing an influential voice for all facets of the community.
- Maintaining a commitment to public service through education, outreach, public artistic endeavors and other means of connecting with the larger community.
- Showcasing the strength and diversity of the arts community.

Local artists have shown their enthusiasm about the gallery by participating in many activities including art shows, classes and meetings, and utilization of community studio space over the past year.

SWAG has been operating for three years, with just over one year having been operated out of the Rodeo Market building. Previous operations were conducted out of the “community theater” building at 73rd Avenue and Lowell Boulevard. SWAG has been instrumental in bringing a community theatre to the neighborhood and organizing an artist cooperative that has hosted many arts shows since September 2008. Now that two new art galleries have opened nearby, the new galleries and the SWAG artist cooperative have initiated the City’s first monthly “art walks,” which started on September 4th.

SWAG has filed with the Internal Revenue Service for its tax-exempt status and is awaiting a favorable determination by the IRS. The IRS failure to provide SWAG a non-profit status continues to hamper its ability to apply for and receive more financially sustainable grants such as from the Denver area Scientific and Cultural Facilities District. This obstacle has significantly limited its revenues needed to fully cover operational costs. However, SWAG has been successful in obtaining small grants to help fund some of its activities. Its board of directors continues to work diligently to build the organization's capacity.

The Westminster Housing Authority acquired the property at 3915 West 73rd Avenue in 2005 with the proposed concept of establishing a community arts center. The property is zoned C-1, which zone permits the uses conducted by SWAG. The WHA and City of Westminster have been paying for utilities for the building since its acquisition.

In 2010, SWAG entered into a lease with the WHA to use the Rodeo Market building for \$1.00 for the year and the cost of utilities in excess of \$5,000. At the time the lease was signed, it was anticipated that SWAG would receive its 501(c)3 non-profit designation from the IRS. With this designation, SWAG would then be eligible to pursue many grant sources to help fund its operations. While working diligently towards securing the non-profit status, SWAG was not granted the designation by the IRS in 2010 and continues to haggle with the IRS. Failure to secure the non-profit status substantially affected SWAG's ability to pursue grants from a number of sources in 2010. As a result, SWAG operated on a financial shoestring in 2010. This has left SWAG with the inability to pay the utility balance of \$2,420.47 which is due to the WHA pursuant to the 2010 lease. Consequently, SWAG is requesting that the required utility payment for 2010 be forgiven. The 2010 WHA Budget had adequate funds to cover the cost of this request.

Given its continued funding challenges, SWAG is seeking to again lease the Rodeo Market building for \$1.00 in 2011. In addition, SWAG is requesting that the amount of funds provided by the WHA to cover utilities be increased to \$7,500 thereby reducing the financial burden on SWAG should their efforts for gaining 501(c)3 non-profit status be delayed. The approved 2011 WHA Budget has adequate funds to accommodate this utility increase. Under the lease, SWAG would now be responsible to reimburse the WHA for any utility expense above \$7,500 at the end of the year. SWAG will further be required to carry its own liability insurance even though the WHA will continue to provide coverage through CIRSA.

SWAG continues to pursue the non-profit designation and has confidence that it will receive such status in 2011, allowing SWAG to thereafter to pay a higher rent and cover a higher portion of the utilities beginning in 2012.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- Resolution
- Lease Agreement
- Exhibit 1

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **42**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2011

**A RESOLUTION
APPROVING A LEASE BETWEEN THE WESTMINSTER HOUSING AUTHORITY AND THE
SOUTH WESTMINSTER ARTS GROUP FOR THE RODEO SUPER MARKET, LOCATED AT
3915 WEST 73RD AVENUE**

WHEREAS, the Westminster Housing Authority owns property located at 3915 West 73rd Avenue (“the Premises”); and

WHEREAS, the South Westminster Arts Group is a non-profit organization dedicated to promoting community arts activities and providing an incubator for artists’ businesses; and

WHEREAS, the South Westminster Arts Group proposes to use the Premises to promote community arts activities, including art shows, meetings, classes and programming that support the growth of non-profit cultural activity and artists’ businesses; and

WHEREAS, the attached Lease Agreement has been proposed to allow the South Westminster Arts Group to lease the Premises.

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Westminster Housing Authority that the Chairperson is hereby authorized to execute and the Authority Clerk to attest the attached Lease Agreement, or a substantially similar form of Lease Agreement as approved by the Authority Attorney.

PASSED AND ADOPTED this 14th day of February, 2011.

Nancy McNally, Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

Secretary

Authority Attorney

LEASE AGREEMENT

This **Lease** is made between the **WESTMINSTER HOUSING AUTHORITY**, a Colorado public housing authority (hereinafter called "Lessor" or "Authority"), and **SOUTH WESTMINSTER ARTS GROUP**, a Colorado nonprofit corporation (hereinafter called "Lessee" or "SWAG").

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

- 1. Premises.** The Premises consist of the building located at 3915 West 73rd Avenue.
- 2. Term and Rent.** Lessor demises the above Premises for a term of one year, commencing 12:00 a.m. on January 1, 2011, terminating 12:00 a.m. on January 1, 2012, or sooner as provided herein (hereinafter, the "Term"), for a nominal rent payment for the Term in the sum of One Dollar (\$1.00), and for other good and valuable consideration described below and in Exhibit 1.
- 3. Use.** Lessee shall use and occupy the Premises for activities and functions specifically related to the purpose and mission of the South Westminster Arts Group. The Premises shall be used for no other purpose unless approved in writing by the Lessor.
- 4. Utilities, Care and Maintenance of Premises.**
 - a. Lessee's responsibilities: Lessee acknowledges and accepts the Premises in their as-is condition. Lessee shall, at its own expense and at all times during the Term of this Lease, maintain the Premises in good and safe condition, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for the routine care and maintenance of the interior of the Premises of a housekeeping nature, including custodial and janitorial services, normal and reasonable cleaning, and the replacement of all consumable or expendable items such as light bulbs, cleaning, bathroom and office supplies and all items brought into the Premises by the Lessee. The Lessee shall be responsible for utility costs as defined in item 8.
 - b. Lessor's responsibilities: The Lessor shall be responsible for utilities as defined in item 8, but not to exceed \$7,500. The Lessor shall be responsible for all general repairs relative to the principal structure of the Premises, including roofing, plumbing, mechanical and electrical equipment. Minor interior repairs, not to exceed \$500 in cost can be submitted to the City of Westminster Building Operations and Maintenance Department and will be handled subject to the availability of City staff. Minor repairs in excess of \$500 shall be made by Lessor only upon approval of the Executive Director of the Authority.
- 5. Alterations.** Lessee shall not, without first obtaining the prior written consent of Authority staff, make any interior alterations, additions, or improvements to the principal structure of the Premises. Lessee shall not make any changes to the exterior of the Premises. In particular, the south elevation is a historic restoration funded in 2009 by the State Historical Fund. As a result of this funding and the local historic landmark designation, no alterations, including signage, may be made to any part of the exterior of the building without permission from both the Westminster Historic Landmark Board and the State Historical Fund.
- 6. Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.
- 7. Assignment and Subletting.** Lessee shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Lessor, which shall be granted or refused in Lessor's sole discretion. Any such assignment or subletting without Lessor's consent shall be void and, at the option of the Lessor, grounds for Lessor's forthwith termination of this Lease.
- 8. Utilities.** The Lessor shall provide and pay for utility charges as they become due, including those for heat, electricity, water and sewer for the 2011 year only as outlined in section 4.b. The Lessee shall reimburse the Lessor for costs incurred above \$7,500 for utilities pertaining to electrical, gas, water and sanitary sewer service. Such utility cost reimbursement shall be due from the Lessee to Lessor by no

later than December 31, 2011. All applications and connections for other services desired by Lessee for the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for such charges as they become due, including those for cable, Internet, alarm and telephone services.

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

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

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

12. Insurance.

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

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

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

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

15. Lessor's Remedies on Default. If Lessee defaults in the performance of any of the covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within ten (10) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such ten (10) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this Lease on not less than twenty (20) days' notice to Lessee. On the date specified in such notice, the Term of this Lease shall terminate, and Lessee shall then quit and surrender the Premises to Lessor, without extinguishing Lessee's liability. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any Term shall be deemed a waiver.

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

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

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

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

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

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

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

Signed as of this ___ day of _____, 2011.

WESTMINSTER HOUSING AUTHORITY

SOUTH WESTMINSTER ARTS GROUP

By: _____
Nancy McNally, Chairperson

By: _____
Debbie Teter, Chair

Attest: _____
Authority Clerk

Attest: _____

APPROVED AS TO LEGAL FORM:

Authority Attorney

EXHIBIT 1

As further consideration for the use of the Premises, SWAG agrees to operate the building pursuant to the following public purposes:

1. The Premises are located in a low and moderate-income neighborhood, in which revitalization activities and projects are a City priority. The Westminster Housing Authority is permitted by state law to own a community center that supports its affordable housing goals. SWAG is expected to operate the Premises for the benefit of the neighborhood, keeping in mind the diversity of the neighborhood, including incomes, ethnicity, age and abilities.
2. Goals for use of the Premises may include:
 - a. Community use and access.
 - b. Providing resources and programming to support the careers of emerging creative professionals.
 - c. Providing opportunities for users of the building to engage in volunteerism and community service.
 - d. Educational opportunities for both youth and adults
 - e. Promotion of a variety of cultural and creative activities including, but not limited to, visual arts, music, digital art and video, historic preservation, ethnic cultural programming and other projects and activities of interest to the inhabitants of the neighborhood.
3. SWAG is expected to coordinate its events and activities with neighboring landowners and businesses in order to manage parking and other impacts efficiently and with consideration of all concerned.
4. SWAG is expected to keep the exterior of the Premises clean and free of weeds, including the plaza area to the east of the building. The exterior grounds for which SWAG is responsible is shown below.



Exhibit 1