



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
 - A. 98th Anniversary of Girls Scout USA Proclamation
 - B. Earth Hour Proclamation
 - C. Colorado Chapter of the American Public Works Association Award Presentation
 - D. 2010 Metropolitan Mayors' and Commissioners' Youth Award
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. Water Purchase Negotiations Agreement
 - B. Utilities Engineering Services Agreements
 - C. Quail Creek/Bull Canal Wetland Mitigation Project - Construction Contract
 - D. Swim and Fitness Center Conceptual Master Plan and Construction Documents Contract
 - E. Second Reading of Councillor's Bill No. 7 re Right-of-Way Vacation of Tennyson Street - Main St. to 120th Ave.
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Resolution No. 6 re General Fund Stabilization Reserve re Amended Policy and Establishment as a Separate Fund
 - B. Councillor's Bill No. 8 re 2009 4th Quarter Budget Supplemental Appropriation
 - C. Councillor's Bill No. 9 re City Park Playground Supplemental Appropriation
 - D. Councillor's Bill No. 10 re Gas and Electric Franchise with Public Service Company of Colorado d/b/a Xcel Energy
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
13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, FEBRUARY 22, 2010 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Boy Scouts in attendance led the Mayor, 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, Marty McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Dittman, to approve the minutes of the regular meeting of February 8, 2010, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced that immediately following this meeting, the City Council would convene in executive session to consult with the City Attorney to obtain Council's direction concerning negotiations and possible settlement of a contract dispute pursuant to § 1-11-3(C)(7) and §1-11-3(C)(8) of the Westminster Municipal Code and § 24-6-402(4)(e) of the Colorado Revised Statutes.

CITY COUNCIL COMMENTS

Mayor McNally announced that the City had recently acquired the Macy's building at the Westminster Mall. Coupled with the Trail Dust Steakhouse parcel previously purchased, the City now owned about 10 percent of the overall mall area. The properties had been acquired after the City was approached by interested sellers. The Police and Fire Departments were using the Trail Dust building as a training venue since its acquisition, and the structure was scheduled for demolition by Alpine Demolition in early March. These steps evidenced of the City's aggressive pursuit of redevelopment in accordance with an articulated vision for the site. A request for proposals had been advertised in the fall of 2009, and nine highly qualified firms had been interviewed. As a result, the City recently had entered into an exclusive negotiating agreement with Steiner & Associates and anticipated having a pre-development agreement in place within the next six months. Progress was being made and was being documented on the City's website for ease of public access. This was an exciting time and Council was pleased to make this announcement.

Mayor McNally reported that a \$10 million TIGER grant had been received by the US 36 Coalition, and members of the coalition would be traveling to Washington, DC the next day to lobby for this project to be included in the new Authorization Act for Transportation so it could be constructed. The TIGER grant would be matched with \$30 million from the Colorado Department of Transportation and an, as yet, unspecified amount from the Regional Transportation District. The project was to construct two HOV lanes for travel in both directions between Boulder and Pecos Street.

PRESENTATIONS

Councillor Briggs presented five Eagle Scouts with Certificates of Appreciation for each having completed projects at historic landmark sites throughout the City. Each Scout had organized the work crews and obtained donations of materials and specialty craft labor. Crews coordinated their work with the Westminster Historical Society or Vicky Bunsen, the City's Programs Coordinator for historic preservation efforts. Jack Kern had constructed a flagstone

plaza, a protective fence, and the cleanout of a 1880s hand-dug well at the Semper Farm; Jeffrey Stroud had repaired and rehabilitated a 1961 pumphouse at the Semper Farm; Ryan Steinhour had landscaped the entrance to Shoenberg Farm at 73rd Avenue; Devin Arkfeld had restored Shoenberg farm equipment located at the Bowles House; and Ben Droste had landscaped to improve drainage at the original City Hall structure located on the Bowles House parcel. Each Scout was present with family and friends to receive his certificate and Council's recognition.

CITIZEN COMMUNICATION

Kaaren Hardy and Laura Vandenbosch of the Historic Landmark Board added the Board's thanks to the Eagle Scouts for their contributions to the preservation of historic landmarks. Ms. Hardy also voiced gratitude to City Council for having sent members of the Board to the annual conference of Colorado Preservation, Inc.

Maria and Armando Dominguez, 10931 West 107th Place, urged Council to consider amending the City Code so that backyard chickens would be allowed in Westminster.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: acceptance of the January 2010 Financial Report; based on the City Manager's recommendation, determine that the public interest would best be served by authorizing the City Manager to execute a contract with A-1 Organics to compost biosolids at a cost not to exceed \$73,200; authorize the Mayor to execute an agreement with David Rockwell for Municipal Court Public Defender Services for the 12-month period beginning April 1, 2010, and authorize up to four one-year renewals of the agreement; authorize payment of \$135,205.78 to Intergraph Corporation for the 2010 Annual Software Maintenance Contract for the integrated Fire and Police Computer Aided Dispatch, Police Records Management System, Fire Records Management System, and Mobile computer application systems; and final passage of Councillor's Bill No. 6 on second reading appropriating loan proceeds for the City's rehabilitation of the Shoenberg Farm barn.

Mayor Pro Tem Dittman moved, seconded by Councillor Major, to remove Item 8B, 2010 Biosolids Composting Contract, for individual consideration. The motion carried.

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Major to approve the consent agenda as amended to exclude Item 8B. The motion carried unanimously.

2010 BIOSOLIDS COMPOSTING CONTRACT

Based on the City Manager's recommendation, Mayor Pro Tem Dittman moved, seconded by Councillor Major, to determine that the public interest would best be served by authorizing the City Manager to execute a contract with A-1 Organics to compost biosolids at a cost not to exceed \$73,200. Councillor Kaiser recused himself due to a potential conflict of interest, and the motion passed with six affirmative votes and one abstention.

RESOLUTION NO. 5 ESTABLISHING 2010 RECOVERY CONTRACT INTEREST RATE

It was moved by Councillor Major and seconded by Councillor Kaiser to adopt Resolution No. 5 establishing the 2010 calendar year interest rate for non-City funded public improvement recovery contracts at 5.25 percent and an interest rate of 4.31 percent for City-funded public improvements. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 7 VACATING A PORTION OF TENNYSON STREET RIGHT-OF-WAY

Councillor Winter moved to pass Councillor's Bill No. 7 on first reading to vacate a portion of Tennyson Street from Main Street to 120th Avenue. Councillor Lindsey seconded the motion and it passed unanimously at roll call.

ADJOURNMENT

There being no further business to come before the Council, it was moved by Councillor Kaiser, seconded by Major, to adjourn. The motion passed unanimously, and the meeting adjourned at 7:26 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 8, 2010

SUBJECT: Proclamation Recognizing the 98th Anniversary of Girls Scout USA

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

Recommended City Council Action

Councillor Faith Winter to present the proclamation for Girl Scout Week in the City of Westminster.

Summary Statement

- March 12, 2010, marks the 98th anniversary of the Girl Scouts of the USA.
- Locally, the Girl Scouts Peak to Peak Service Unit is honing the leadership skills of Westminster girls between the ages of 5 and 17 by building self-confidence, providing creative decision-making opportunities and promoting teamwork.
- Girl Scouts from throughout the Peak to Peak Service Unit will be present to accept the proclamation.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Girl Scouts is the largest organization for girls in the world with more than 3.5 million current members nationwide, of which 38,000 are in Colorado. For 97 years, millions of girls have been inspired with the ideals of courage, confidence, and character advocated by Girl Scout leaders. Annual Girl Scout cookie sales teach financial literacy and provide troop members the opportunity to set and achieve goals that better their troop, their community, and their scouting experience. Through its STEM Program, which stands for science, technology, engineering, and math, members are growing and learning the skills needed to assume leadership roles in our country's future.

Girl Scouts representing troops from throughout the Peak to Peak Service Unit will be present to accept the proclamation.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

WHEREAS, Friday, March 12, 2010, marks the 98th anniversary of Girl Scouts of the USA, founded in 1912 by Juliette Gordon Low in Savannah, Georgia; and,

WHEREAS, Girl Scouts, the largest organization for girls in the world, is the leading authority and advocate for girls, inspiring millions of girls and women with the highest ideals of courage, confidence and character; and,

WHEREAS, Girl Scouts is a safe place for girls to explore their world, develop an understanding and empathy for others and take action to make the world a better place; and,

WHEREAS, through leadership experiences that build self-confidence, creative decision-making skills and teamwork, girls develop real-world leadership abilities that will last them a lifetime in Girl Scouts; and,

WHEREAS, Girl Scouting is for every girl, everywhere, and is dedicated to serving members from all racial, ethnic, cultural, religious and socioeconomic groups; and,

WHEREAS, Girl Scouts of Colorado is a statewide council serving 38,000 girls, ages 5 to 17, across the state.

WHEREAS, more than 3.5 million current Girl Scout members nationwide will be celebrating 98 years of an American tradition of teaching girls an innovative program to help them succeed in the 21st century.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim March 8 through 13, 2010 to be

GIRL SCOUT WEEK

Signed this 8th day of March 2010.

Nancy McNally, Mayor



Agenda Item 6 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Earth Hour Proclamation

Prepared By: Carey Rangel, Environmental Analyst

Recommended City Council Action

Councillor Lindsey to present a proclamation to Nick Pizzuti, Environmental Advisory Board Chairperson proclaiming March 27, 2010, from 8:30 to 9:30 p.m. as Earth Hour in the City of Westminster.

Summary Statement

- The Mayor and City Council are being asked to proclaim Saturday, March 27, 2010 at 8:30 p.m. as Earth Hour.
- At 8:30 p.m. all non-essential lighting at City Hall, including the highly visible bell tower, will be turned off for one hour in observance of Earth Hour. Residents and businesses are encouraged to do the same.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Earth Hour is the World Wildlife Fund's global initiative to focus communities on the impact one hour can have on the environment. Individuals, businesses and governments are asked to turn off their lights for one hour to show their support for action on climate change.

The event began in Sydney, Australia and on March 31, 2007, 2.2 million people and 2,100 businesses turned off their lights for one hour - a massive collective effort that reduced Sydney's energy consumption by 10.2 percent for one hour. That's the equivalent effect of taking 48,000 cars off the road for a year.

Earth Hour 2010 takes place from 8:30 -9:30 p.m. Mountain Standard Time on Saturday, March 27. During this hour, Westminster households, businesses and non-emergency operations are urged to switch off lights and non-essential appliances. Westminster is one of hundreds of cities worldwide participating in this event.

The events scheduled for Earth Hour are as follows:

All non-essential lighting at City Hall including the clock tower shall be turned off for one hour beginning at 8:30 pm on Saturday, March 27, 2010.

The City Green Team and the Environmental Advisory Board will partner to educate residents interested in energy conservation by promoting the event in a press release and through the City's website.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

WHEREAS, our community is concerned with the impact of climate change and the future health and well-being of our planet and believes energy efficiency and natural resource conservation are important elements to combating climate change; and,

WHEREAS, Earth Hour is both an international and local symbolic event organized by World Wildlife Fund to raise awareness about climate change issues and to encourage businesses, individuals and government to take actions to reduce carbon emissions in their daily lives and operations; and

WHEREAS, All citizens, businesses, government agencies, and establishments can participate in this event by turning off all non-essential lighting for one hour beginning at 8:30 p.m. on Saturday, March 27, 2010 and by committing to take actions in the coming year to reduce conserve energy; and,

WHEREAS, the City of Westminster will turn off all non-essential lighting at City Hall, including lights on the clock tower, for the hour between 8:30 and 9:30 PM on Saturday, March 27, 2010 to conserve energy and raise awareness about global climate change as part of the city-wide energy conservation event.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim Saturday, March 27, 2010, 8:30 p.m. to 9:30 p.m. as

EARTH HOUR

and encourage all Westminster citizens and businesses to turn off all non-essential lighting during this time, and to commit to taking steps to conserve energy on a daily basis.

Signed this 22nd day of March 2010.

Nancy McNally, Mayor



WESTMINSTER
COLORADO

Agenda Item 6 C

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Colorado Chapter of the American Public Works Association Award

Prepared By: Mike Wong, Senior Engineer

Recommended City Council Action

City Councillor Kaiser to receive the American Public Works Association Award from Mr. Pete Adler, with City of Arvada Public Works and Treasurer of the American Public Works Association (APWA) Colorado Chapter.

Summary Statement

- Mr. Pete Adler, Treasurer of the APWA Colorado Chapter, will make a presentation of the award to the Mayor, City Council, and Department of Public Works and Utilities Staff.
- Department of Public Works and Utilities Staff are being recognized by the American Public Works Association (APWA) Colorado Chapter for receiving the Public Works Project Award in the Wastewater Treatment/Collection - Large Community category for their outstanding efforts on the 94th and Quitman Lift Station Elimination Project at the 24th Annual APWA Colorado Chapter Awards Banquet held on January 25, 2010.
- Because of this project, the City will realize a net savings of over \$1.4 million dollars in the next twenty years, inclusive of the cost of treating the additional wastewater at the Big Dry Creek Wastewater Treatment Facility (BDCWWTF), and the construction costs associated with the project.
- Project Manager Mike Wong will be accepting the award on behalf of City Staff.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Department of Public Works and Utilities Staff were recognized with a plaque at the 24th American Public Works Association (APWA) Colorado Chapter Awards Luncheon, held on January 25. The 94th and Quitman Lift Station Elimination Project received the Public Works Project Award in the Wastewater Treatment/Collection - Large Community category. Senior Engineer Mike Wong, project manager, will accept the award Monday night on behalf of the entire project team.

Since the early 1980s, the 94th and Quitman Lift Station had been used to pump wastewater flows from the area to the Metro Wastewater District (the District) for treatment via the Little Dry Creek wastewater collection system. The 2006 Westminster Infrastructure Master Plan recommended the area be served by a gravity sewer to convey the wastewater to the City's Big Dry Creek Wastewater Treatment Facility (BDCWWTF) and eliminate the lift station. The lift station was replaced by installing 4,000 feet of gravity sewer pipeline from 94th Avenue and Quitman Street to City Center Drive and Sheridan Boulevard. Wastewater flows from the area are now conveyed through the Big Dry Creek collection system to BDCWWTF through the new pipeline.

The project was nominated for its achievement in eliminating a public health hazard caused by sewage overflows at the lift station that had occurred in the past. In addition to this benefit, the City was relieved of the lift station maintenance burden and associated repair and maintenance costs, and the additional wastewater flows to the BDCWWTF increased the City's supply to the reclaimed water system. The project also allowed this service area to be excluded from the Metro Wastewater District. This exclusion, approved by City Council Resolution on March 9, 2009, resulted in reduced annual payments to the Metro Wastewater District. With the reduced payments and reduced maintenance costs, the City will realize a net savings of over \$1.4 million dollars in the next twenty years. This savings includes the cost of treating the additional wastewater at BDCWWTF, plus the construction costs associated with the project.

The project was designed and managed to focus on jobsite safety, zero tolerance of sewage spill during bypass pumping and to complete the project without delay to Hyland Hills Golf Course's season opening on April 1, 2009. City of Westminster and the consulting engineer, URS Corporation, developed a project implementation plan and successfully accomplished all of these goals and objectives. The total project was completed in June 2009.

The Colorado APWA Chapter Awards Committee reviews all entries and selects the award winners. Awards are given for an individual, project, or program in eleven categories: 1) Public Works Administration, 2) Engineering/Construction Management, 3) Fleet Management/Operations, 4) Streets & Traffic-Engineering/Operations/Maintenance, 5) Solid Waste Management/Operations, 6) Drainage & Flood Control, 7) Water Treatment/Distribution, 8) Wastewater Treatment/Collection, 9) Environmental Design/Maintenance/Operations, 10) Building Code Administration/Permitting/Enforcement, and 11) Facilities Management/Maintenance. These awards are based on size of the community; small communities (1-20,000 population), medium communities (20,000-100,000 population), and large communities (over 100,000 population).

The criteria used to evaluate each nomination submittal are: 1) Innovation - Has the individual, program, or project found new methods to provide better service or improve the public lives? 2) Achievement - Did the completed project or program achieve all set goals? Did the individual achieve the desired results and have a consistent history of achievement? 3) Transferability - Are the resulting improvements and/or innovations transferable to other communities and situations? 4) Cooperation - Was there special cooperation between individuals, agencies, businesses and the general public? The APWA Colorado Chapter received sixty nominations in the eleven award categories listed above.

The Colorado Chapter APWA Award helps achieve the City Council's Strategic Plan Goal of a Financially Sustainable City Government Providing Exceptional Services through the City being recognized by its peers for excellence in design and construction of City facilities. The goals of Safe & Secure and a Beautiful and Environmentally Sensitive City are also achieved through the elimination of a potential public health hazard.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Item 6 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 8, 2010

SUBJECT: 2010 Metropolitan Mayors' and Commissioners' Youth Award

Prepared By: Aric Otzelberger, Senior Management Analyst
Jane Franzen, Administrative Secretary

Recommended City Council Action

Recognize the youth selected for the first phase of the Metropolitan Mayors' and Commissioners' Youth Award, and present certificates of achievement to: D'Andra Anthony, Mario Barrera, Dalton Brooks, Rachel Conner, Lauren Ellis, Amber Foster, Madison Krangle, Joe Kraus, Katarina Lobato, Cristian Juarez, Josephina Lieber, Leo Lucero, Julie McCawley, Anthony Martinez, Alanna Morgan, Angelica Sanchez, Sara Stroh, Joshua Tafoya and Victoria Vongphackdy.

Summary Statement

- Nineteen Westminster youths have been nominated through the Metropolitan Mayors' and Commissioners' Youth Award (MMCYA) program for municipal-level recognition.
- City Council is requested to recognize these youth privately at a reception preceding the March 8, 2010 City Council meeting and publicly during the meeting.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Metropolitan Mayors' and Commissioners' Youth Award (MMCYA) was established in 1986. This program recognizes young people in our community whose contributions and achievements might otherwise be overlooked. The award honors young people who have overcome personal adversity, created positive change in a difficult environment or have made strides beyond their limitations.

This fall, nominations were sought for youth ages 13 through 19 who have shown outstanding achievement in the areas of direct service to the community, other youth, the family or to self. All of the nominees are honored by their respective municipalities. Additionally, if a nominee is selected to continue in the awards process, he or she may be honored by his or her county, and by the entire metropolitan area. Introductory letters and nomination forms were sent to local churches in Westminster, local non-profit organizations, school principals and school counselors.

Adams County Commissioners will hold a banquet honoring youths who were selected for county-level recognition on March 26. Julie McCawley, Amber Foster, Leo Lucero, Anthony Martinez, Angelica Sanchez and Victoria Vongphackdy will be recognized at the Adams County banquet. The metro area recognition will be held on April 17. At this time, the selection process for the metro area recognition has not occurred, but Staff will communicate with City Council as to whether or not any Westminster students are selected to be recognized at the event. Jefferson County is not conducting a county-level recognition for the MMCYA program in 2010.

The individuals being recognized tonight by City Council have faced trauma with courage, emotional and physical health ailments with determination, financial hardship with resourcefulness, and challenges in school with perseverance. Due to the sensitive and confidential nature of many of the nominees' backgrounds, the MMCYA Selection Committee recommends conducting a more general recognition ceremony where descriptions of the adversity each nominee has overcome are not disclosed.

Instead, a description of the award and its criteria will be conveyed, and each nominee's name, age, school and nominator's name will be read as they receive their certificate. Additionally, City Council will host a brief reception for the nominees, nominators and their families prior to the Council meeting.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Water Purchase Negotiations Agreement

Prepared By: Michael Happe, P.E., Utilities Planning and Engineering Manager
Josh Nims, Water Resources Engineering Coordinator

Recommended City Council Action

Based on the recommendation of the City Manager, determine that the public interest will best be served by authorizing the City Manager to execute a fee agreement with Hadden Acquisitions, LLC for negotiating water share purchases in 2010 and 2011 in an amount not to exceed \$554,000.

Summary Statement

- In August of 2009, City Council gave Staff direction to move forward with the Comprehensive Water Supply Plan that requires a certain portion of the City's future water supply to be obtained through water rights purchases.
- Council was recently briefed on the water rights purchase strategy formulated by Staff and Special Water Counsel to acquire additional Farmers Reservoir and Irrigation Company (FRICO) shares for a limited amount of time. The strategy features contracting with a point-person to negotiate deals and assist with paperwork.
- Staff has performed research and explored several options in choosing a broker and formulating a contract.
- Due to Hadden Acquisitions, LLC's knowledge of water issues, familiarity with local farmers, good people skills, lack of conflicts of interest and willingness to perform the duties of the contract for a commission, Staff believes assigning this contract to Hadden Acquisitions, LLC is in the best interest of the City.
- Hadden Acquisitions' proprietor, Brice Steele, is extremely qualified and competent in water rights and irrigation company issues.
- Staff has negotiated with Hadden Acquisitions, LLC a commission of two percent (2%) of the share purchase price per share acquired for the first twenty-five (25) shares, three percent (3%) of the share purchase price per share acquired for the next twenty-five (25) shares, and four percent (4%) of the share purchase price per share acquired thereafter.
- Adequate funds are budgeted for this expense in the 2010 Water Supply Development budget approved by City Council. Should the City be so effective in acquiring shares as to deplete these funds, Staff will seek approval of additional funding for water purchases, including this broker commission.

Expenditure Required: Not to exceed \$554,000

Source of Funds: Utility Fund Capital Improvement Program - Water Supply Development

Policy Issue

Should the City contract with Hadden Acquisitions, LLC as agent on behalf of the City in connection with FRICO-Standley Lake Division share purchases in 2010 and 2011?

Alternatives

Do not contract with a broker in regards to the City's water purchase efforts. The City could devote significant Staff time and energy to advertising, seeking, negotiating and finalizing water share purchases. However, this is necessary even with a contract with a broker, and there simply may not be the resources available to meet Council's water supply goals without a broker.

The City could seek a contract with a company other than Hadden Acquisitions, LLC, but given the proprietor's familiarity with Colorado water law, Westminster's water system and local agricultural shareholders, Staff believes Hadden Acquisitions, LLC is uniquely qualified for the job.

Background Information

As an essential part of the City's Comprehensive Water Supply Plan to meet the demand of the City by buildout, the City must acquire water supply by purchasing water rights in the Clear Creek system. Purchasing water in the water-tight Front Range region will be difficult. However, Staff has developed a specific plan for the acquisition of FRICO Standley Lake shares. These shares not only provide the water yield based on the Standley Lake water rights (both direct flow and storage rights), but also carry storage space in Standley Lake.

Purchasing water shares requires significant time and effort. It requires advertisement, face-to-face negotiations, research, paperwork and most importantly, a trusting relationship between buyer and seller. After careful consideration, Staff has decided to contract these tasks out to a reputable attorney who will be able to perform them well and in a timely fashion, with the interest of the City in mind. Several Front Range water providers have chosen to contract out their water brokering in a similar fashion.

City Staff has worked with an attorney, Brice Steele, over the past decade in various ditch and irrigation companies. Staff and Mr. Steele have built a good working relationship, and he has become very familiar with the City's water supply system. Mr. Steele has no conflicting professional interests, and through his work in the water arena, he has built good relationships with several local agricultural irrigators.

Mr. Steele formed Hadden Acquisitions, LLC in 2010 and has expressed interest and willingness to assist Westminster in our water purchase strategy. If approved, Mr. Steele will be paid on a commission basis; and Staff is recommending a tiered rate of commission between 2% and 4% for the shares, increasing with the total shares acquired to compensate for the anticipated increase in effort required. Hadden Acquisitions, LLC's overall commission rate will be no greater than 3.15%. Staff performed a survey of other water providers to confirm that this is competitive with similar commissions paid to other water brokers in the Colorado water rights market, typically in the range of 5% to 7% of market price.

The agreement with Hadden Acquisitions, LLC supports City Council's goal of a Financially Sustainable City Government Providing Exceptional Services by allowing the City to effectively secure and develop a long-term water supply.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

AGREEMENT TO FURNISH NEGOTIATION AND ACQUISITION SERVICES
FOR THE PURCHASE OF WATER RIGHTS
ON BEHALF OF THE CITY OF WESTMINSTER

THIS AGREEMENT, made and entered into this ___ day of _____, 2010, between the **CITY OF WESTMINSTER** ("City"), by and through its Water and Wastewater Utility Enterprise hereinafter called the "City," and **HADDEN ACQUISITIONS, L.L.C.**, a limited liability company organized pursuant to the laws of the State of Colorado and hereinafter called the "Consultant," is as follows:

WHEREAS, the City wishes to acquire outstanding shares of stock issued by the Farmers Reservoir and Irrigation Company (Standley Division); and

WHEREAS, the City desires to engage the Consultant to render the professional negotiation and acquisition services described in this Agreement and the Consultant is qualified and willing to perform such services; and

WHEREAS, sufficient authority exists in City Charter and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the City and the Consultant agree as follows:

I. THE PROJECT

The Project consists of acquiring outstanding shares of stock issued by the Farmers Reservoir and Irrigation Company (Standley Division) from current shareholders using a one-time, non-negotiable, premium price offer approach over a 12 month period of time. The scope of services for this Project is further described in Appendix A, attached hereto and incorporated herein by this reference.

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant agrees that it will furnish all of the administrative and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and any other facilities or resources necessary to provide the services for the Project as described in Appendix A.

III. ADDITIONAL SERVICES

When authorized by the City, the Consultant agrees to furnish or obtain from others, additional professional services in connection with the Project due to changes in the scope of the Project or its design, subject to mutual agreement as to additional compensation for additional services.

IV. CONSULTANT'S FEE

The compensation for the Services shall be at two percent (2%) of the share purchase price per share acquired for the first twenty-five (25) shares, three percent (3%) of the share purchase price per share acquired for the next twenty-five (25) shares, and four percent (4%) of the share purchase price per shares acquired thereafter. The Consultant shall submit invoices to the City for services rendered during the preceding month, such invoices to be in such form and detail as shall reasonably be required by the City. The City agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices that include proof that title in the shares has been fully vested in the City.

V. COMMENCEMENT & COMPLETION OF SERVICES

The Consultant understands and agrees that time is an essential requirement of this Agreement. The Services shall be completed as soon as good practice and due diligence will permit. In any event, the Services shall be completed within twelve (12) months after the Consultant receives notice to proceed, exclusive of time lost or due to delays beyond the control of the Consultant.

VI. TERMINATION

This Agreement shall terminate at such time as the work in Section 2 is completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all work previously authorized and completed prior to the date of termination plus those amounts set forth in section IV above for any shares that have been put under contract by the Consultant and that are acquired by the City prior to the end of the 12 month term set forth in section V above. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the City information and materials as may have been accumulated by the Consultant in performing the Services included in this Agreement, whether completed or in progress. Following its early termination of this agreement the City shall have the duty and obligation to provide Consultant with a list of all shares contracted for or acquired by the City between the date of termination and the expiration of the twelve month period set forth in section V above.

VII. INSURANCE

During the course of the Services, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence. The City shall be named as an additional insured under the Consultant's Automobile coverages, providing that such insurance is primary with respect to claims made by the additional insureds, and these coverages shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees. The Consultant shall provide certificates of insurance to the City indicating compliance with this paragraph.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

IX. PROHIBITED INTEREST

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

X. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Services, the Consultant shall act as an independent contractor and not as agent of the City except to the extent the Consultant is specifically authorized to act as agent of the City.

B. Books and Records. The Consultant's books and records with respect to the Services and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the City's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Services.

C. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Services the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to the City for any loss, damages or costs incurred by the City for correction of any part of the Project which is deficient or defective as a result of any failure of the Consultant to comply with this standard.

2. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend, and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Services, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph C.2. The City may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the City on account of such injuries.

In any and all claims against the City or any of its agents or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph D.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the respective Project representatives of the City and the Consultant who will be designated by the parties promptly upon commencement of the Services.

All other notices and communications in writing required or permitted hereunder shall be delivered personally to the respective representatives of the City and the Consultant set forth below or shall be mailed by registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. Notices hereunder shall be effective three (3) days after mailing.

F. Assignment. The Consultant shall not assign this Agreement in whole or in part, including the Consultant's right to receive compensation hereunder, without the prior written consent of the City; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Consultant's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Consultant of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Consultant's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado and the Charter of the City of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

H. Remedies. Consultant agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000) shall not serve as a limitation on the City's right to pursue tort remedies in addition to other remedies it may have against Consultant. Such rights and remedies shall survive the Project or any termination of this Agreement.

I. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Services for the Project.

J. Subcontracting. Except subcontractors clearly identified and accepted in the Consultant's Proposal, Consultant may employ subcontractors to perform the Services only with City's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

K. Enforcement of Agreement. In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, the prevailing party in such action shall pay the other its reasonable attorney fees as determined by the Court.

L. Authorization. The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

M. Immigration Compliance. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall notify the subcontractor and the City within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Consultant shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake pre-employment screening of job applicants while performing this Agreement.

Consultant shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Consultant certifies that at the time of bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that the Consultant will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO THE DEPARTMENT OF PUBLIC WORKS AND UTILITIES, ATTENTION: JOSH NIMS.

N. Special Conditions.

1. No fee shall be due in connection with the acquisition of any share until and unless title to said share has been finally vested in the City.
2. A premium offer price shall be extended by Consultant as determined by the City.
3. All contract documents shall be subject to the review and approval of the City prior to their execution.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

HADDEN ACQUISITIONS, L.L.C.

CITY OF WESTMINSTER,
by and through its
Water and Wastewater Utility Enterprise

By: _____
Brice Steele
Managing Member

By: _____
J. Brent McFall
City Manager

Address:

Address:
4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

Title: _____

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM

By: MR McFall
City Attorney

APPENDIX A
SCOPE OF SERVICES

Hadden Acquisitions, L.L.C. (“Hadden”) will provide assistance to the City of Westminster (“City”) with regard to the acquisition of shares of stock in the Farmers Reservoir and Irrigation Company (“FRICO”) Standley Lake Division consisting of:

- Meeting with City staff and consultants with regard to strategy and other matters associated with the contemplated acquisitions
- Coordinating with City staff and consultants with regard to closings and other matters related to the contemplated acquisitions
- Meeting with shareholders/potential sellers
- Assisting in the completion of the City’s water purchase agreements
- Making City’s offer to purchase shares to shareholders
- Negotiating the terms of payments with sellers
- Scheduling and participating in closings
- Conducting due diligence consisting of:
 - o Confirming the sellers ownership of shares on FRICO’s books and the face of certificates
 - o Confirming sellers possession of original certificates
 - o Conducting basic Uniform Commercial Code (UCC) and Secretary of State on line searches for liens and other encumbrances
 - o Confirming that FRICO assessments on shares to be transferred are current
 - o Confirming, at a minimum, location of parcels on which water was historically used for irrigation.
- Assisting sellers with lost certificates in obtaining lost instrument bonds

Services, or assistance, which will not be provided by Hadden, its members or employees include but are not limited to;

- Legal advice or opinions
- Document drafting
- Engineering advice or opinions
- Tax advice or opinions

This Scope of Work assumes a premium price offer per share to FRICO shareholders and that the term of the contract between Hadden and the City is twelve (12) months.



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Utilities Engineering Services Agreements

Prepared By: Andy Walsh, P.E. Senior Engineer

Recommended City Council Action

Based on a recommendation of the City Manager, determine that the public interest will be served by authorizing the City Manager to execute contracts between the Public Work and Utilities Department and the consulting firms J&T Consulting, Inc. and The Engineering Company, each to furnish engineering services. Authorize the City Manager to execute supplemental, project specific contracts with these engineering firms. And, authorize an expenditure not to exceed a combined total of \$500,000 for these two engineering consultants over the next two years.

Summary Statement

- The Utilities Planning and Engineering Division has been reviewing and prioritizing upcoming capital improvements projects for 2010 and for the next budget cycle (2011-2012).
- The Division has identified gains in efficiencies by contracting with consulting engineers to help develop project designs, alternatives evaluations, bidding, construction observation and management.
- Requests for Proposals were sent to a short list of six engineering consultants on January 16, 2010, and all six proposals were received on January 29, 2010.
- The Requests for Proposals were reviewed by staff, and consultants were evaluated based on their prior experience on similar work, project teams' qualifications, and hourly rates. Two consulting firms were chosen by staff: J&T Consulting, Inc. and The Engineering Company.
- If approved by City Council, the Public Works and Utilities Department (Department) will be authorized to enter into standard contracts to furnish engineering services with the two consulting firms. The Department will also be authorized to enter into supplemental, project specific contracts with each consulting firm to accomplish the required design, planning and management tasks.
- The terms of the agreements will be subject to the condition that the total amount of fees billable under the engineering services contracts with both of these firms, including supplemental, project specific contracts, shall not collectively exceed \$500,000, in total, throughout the two-year contract period.
- Additional terms of the agreements will be subject to the condition that the amount of fees billable for any supplemental, project specific contract with each of the engineering firms shall not exceed \$100,000.
- There is adequate funding available in the Utility Fund Capital Project accounts to pay for these consulting services.

Expenditure Required: \$500,000

Source of Funds Utility Fund – Capital Project accounts

Policy Issue

Should City Council authorize approval for execution of agreements to furnish consulting engineering services with J&T Consulting, Inc. and The Engineering Company?

Alternatives

The City could choose from the following alternatives:

1. Award contracts to consultants other than those recommended by staff to perform engineering services.
2. Reject the concept of the proposal on-call type engineering services all together.

Staff does not recommend either of the above alternatives.

Background Information

Planning and design of utility capital projects requires a coordinated effort to assess utility needs, timing with other improvements, timing with development, and financial planning. The Utilities Planning and Engineering Division has reviewed upcoming capital improvements projects and the design and planning considerations associated with these projects. Staff has focused primarily on infrastructure needs for 2010 and 2011, but planning for longer term projects is also underway.

The Division has identified the need for assistance from consulting engineers to help plan, design and construct capital improvement projects. Tasks associated with these needs include comprehensive designs, alternatives evaluations, cost estimating, construction bidding, construction observation and construction management. Many of these tasks are specialized services from industry professionals. Alternatively, some tasks may require outside professional assistance for faster turn around when City Staff is not available. Furthermore, developing on going relationships with on-call type engineering consultants will provide consistency among staff and the consultant with the benefit for them to gain an understanding of City infrastructure and become familiar with our project design requirements. This will result in better outcomes for the City.

Immediate project needs identified by staff include the following:

- Design of approximately 650 ft. of large diameter waterline along Federal Boulevard through areas of heavy utilities. Will require work in CDOT right of way
- Relocation of a Pressure Reducing Valve (PRV) out of the floodplain in 128th Avenue due to corrosion
- Add two new PRVs to separate zone boundaries and accommodate fire flows in the Sunstream and Meadowlark Subdivisions
- Parallel and replace two existing sanitary sewer pipes with an upsized pipeline in 99th Avenue
- Realign a sanitary sewer pipeline around an existing pond
- Prepare cost estimates for projected future CIP projects

The Division has sought the assistance of qualified engineering consultants through the formal Requests for Proposals (RFP) process to perform on-call services. RFPs were sent to a short list of six engineering consultants on January 16, 2010, and all six proposals were received on January 29, 2010. Proposals were received from the following consultants:

Consultant	Hourly Rate for Anticipated Services
J&T Consulting, Inc.	\$ 87
JR Engineering	\$105
The Engineering Company	\$116
Nolte Associates, Inc.	\$120
Kennedy Jenks Consultants	\$127
S. A. Miro, Inc.	\$134

The RFPs were reviewed by staff and consultants were evaluated based on their prior experience on similar work, project teams’ qualifications and hourly rates. Based on these criteria, the two most qualified consulting firms were chosen by staff, J&T Consulting, Inc. and The Engineering Company. Staff feels that these two firms offer diverse engineering services that will meet the City’s project needs.

If approved by City Council, the Department of Public Works and Utilities will be able to enter into standard contracts to furnish engineering services with the two consulting firms of choice. Furthermore, the Department will be able to enter into supplemental, project specific contracts with each of these engineering firms to accomplish the required design, planning and management tasks.

The terms of the agreements will be subject to the condition that the total amount of fees billable under the engineering services contracts with each of these firms and the supplemental, project specific contracts shall not collectively exceed \$500,000, in total, throughout the two year contract period. Additionally, agreements will be subject to the condition that the amount of fees billable for any supplemental, project specific contract with each of the engineering firms shall not exceed \$100,000.

Staff has the ability to annually review the performance of the consultants and determine whether or not to continue contracted services with the consultants. Consultants’ hourly rates can be evaluated annually, as well, and any necessary adjustments made.

These contracting arrangements with the engineering consultants will help achieve the City Council’s Strategic Plan Goal “Financially Sustainable City Government” through the careful planning and design of the City’s infrastructure. This effort will also help maintain a “Beautiful City” and “Safe and Secure Community” by providing reliability in our sanitary sewer collection system and redundancy and fire protection through our water distribution system.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Quail Creek/Bull Canal Wetland Mitigation Project - Construction Contract

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute an agreement with the low bidder, Arrow-J Landscaping and Design, Inc., in the amount of \$75,685.85 for the construction of the Quail Creek/Bull Canal Wetland Mitigation Project and authorize a construction contingency in the amount of \$4,800.

Summary Statement

- In 2002, the City relocated a portion of Quail Creek as the most cost effective means to convey stormwaters from Huron Street to Big Dry Creek. This relocation also removed approximately three-quarters of the Mowery property, located south of 136th Avenue and east of Huron Street, from the 100-year floodplain.
- Since this relocation effort caused certain impacts to existing wetlands, mitigation measures were required in order to obtain an appropriate permit from the United States Army Corps of Engineers (COE). The mitigation measures consisted of the establishment of several new trees and bushes within the general vicinity of the creek relocation.
- In early 2009, the COE notified the City that the project mitigation had failed because only one of the new trees survived, and the plants that did grow in the mitigation wetland area are different from those defined in the original plan. The COE stated that potential fines could be levied against the City if the mitigation was not brought into compliance with the original COE permit. The challenge that City staff faced was to avoid a major, costly project because the original mitigation plan would be difficult to implement at this time due to the heavy growth of vegetation at the mitigation site.
- To avoid the potential fines, the City hired ERO Resources to modify the original mitigation plan, which has been approved by the COE.
- In November 2009, the City sent a request for bids to three firms to perform the work identified in the new plan. Two of the three bidders responded, and the low bid of \$75,685.85 was submitted by Arrow-J Landscape and Design, Inc.
- Staff is very familiar with Arrow-J Landscape and Design since this firm is currently constructing the new park across 92nd Avenue from City Hall. Staff is confident that this contractor can successfully complete the wetlands mitigation project.
- Adequate funding is available from the Stormwater Utility Fund for this expense.

Expenditure Required: \$80,485.85

Source of Funds: Stormwater Utility Fund

Policy Issue

Should the City award this contract to Arrow-J Landscaping and Design and implement the new mitigation plan?

Alternative

Council could choose to not proceed with this project at this time. Staff does not recommend this alternative since the City could face substantial fines from the COE if this mitigation work is not implemented.

Background Information

On May 14, 2001, Council authorized the City Manager to execute a professional services agreement for the preparation of plans and specifications for the relocation of Quail Creek and the Bull Canal in advance of the 136th Avenue/I-25 Interchange construction. During the environmental assessment process and preliminary design of this interchange, it became evident that it would be in the best interests of the project to separate the creek and canal relocation from the interchange construction.

The relocation of Quail Creek was the most cost effective means to convey the stormwater flows from Huron Street to Big Dry Creek. The relocation also removed approximately three-quarters of the Mowery property, located south of 136th Avenue and east of Huron Street, from the floodplain, which greatly facilitated the future development of this land. Finally, the relocation of Quail Creek provided an improved release for stormwater that had historically backed up into the channel and pond located north of 134th Avenue and west of Huron Street. This back up had resulted in many complaints from Quail Crossing Subdivision residents.

As part of the relocation project, it was necessary to remove wetland areas and reestablish them to a mitigation site located closer to the confluence of Quail Creek with Big Dry Creek. This plan required the City to obtain an individual 404 permit from the United States Army Corps of Engineers (COE). Part of the permit requirements included the provision that a certain amount of the new plants survive. In early 2009, the COE notified the City that the mitigation was not successful and that major fines could be levied against the City if the mitigation was not brought into compliance with the original permit. There are two requirements from the original permit that failed. The first was that the types and numbers of plants in the mitigation area have not survived in accordance with the planting schedule that is defined in the permit. The second is that only one of the required mitigation trees survived. To address these shortcomings, the City hired ERO Resources to prepare an amended mitigation plan due to the fact that the lack of accessibility to the original site now rendered the implementation of the original plan too costly and infeasible. The revised mitigation plan includes noxious weed removal, reseeding and tree planting in the area located immediately east of the Big Dry Creek wastewater treatment plant.

On January 28, 2010, two bids were received and opened with the following results:

FIRM	BID
Arrow-J Landscaping and Design, Inc.	\$75,685.85.
Coloco, Inc.	\$90,820.46.
T-2 Construction, Inc.	No bid
Engineer's estimate	\$68,548.

SUBJECT: Quail Creek/Bull Canal Wetland Mitigation Project - Construction Contract Page 3

City staff is very familiar with Arrow-J Landscaping and Design, Inc. This firm is currently working on the park project located on the north side of 92nd Avenue immediately across from City Hall, and staff is confident that Arrow-J is capable of performing the proposed wetlands mitigation work.

In addition to the award of the bid in the amount of \$75,685.85, staff recommends that Council establishes a \$4,800 construction contingency. This 6% contingency is adequate due to the nature of the scope of work for the project in which the deliverables are well defined.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment



Quail Creek and Bull Canal Project

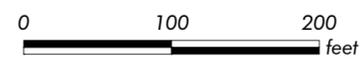
Restoration Type

-  Weed Control and Reseeding - Priority 1 (2, 7, 11, 12)
-  Weed Control and Reseeding - Priority 2 (8, 9)
- Riparian Tree and Shrub Priority 2 (as shown)
-  Weed Control and Reseeding - Priority 3 (3, 4, 6, 10, 14, 15)
-  Reseeding - Priority 4 (1, 13)

-  Shrub Planting
-  Willow Staking
-  Tree Planting

Imagery Source: 2008 City of Westminster

Figure 4
Big Dry Creek Riparian Enhancement Site
Revegetation Plan



Prepared for: City of Westminster
 File: 4402 - Figure 4 Revegetation Plan.mxd (JP)
 July 2009



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Swim and Fitness Center Conceptual Master Plan and Construction Documents Contract

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Based upon the recommendation of the City Manager, find that the public interest will be served in authorizing the City Manager to execute a contract with Sink Combs Dethlefs in the amount of \$102,874 for a facility conceptual master plan and design development, construction documents, specifications and project management for Phase I construction of the Swim and Fitness Center renovation.

Summary Statement

- The City’s Swim and Fitness Center is located at 3290 W. 76th Avenue. (See attached site photo)
- Bids were solicited from five reputable consultant companies with experience in recreational facility design. Of the five firms invited to submit a proposal, two firms declined leaving three firms that were interviewed. Sink Combs Dethlefs is the firm the interview committee selected based on experience, qualifications, customer service, and competitive pricing.
- This project will be completed in phases starting with a conceptual master plan along with the associated costs for a Phase I project that will focus on renovating the locker rooms.
- Subsequent phases will be presented to City Council as additional funds are identified.
- The construction priority for Phase I will be the renovation of the existing locker rooms to function more efficiently and provide for family changing rooms. Other areas of the facility could be part of Phase I if the budget allows.
- Sink Combs Dethlefs has successfully completed master planning and construction projects for the City including the City Park Aquatics Area Renovation and the construction of the City Park Fitness Center.

Expenditure Required: \$102,874

Source of Funds: General Fund Capital Improvements Fund
POST Bond Funds – Swim and Fit Renovation

Policy Issue

Should the City proceed with a conceptual master plan for the entire facility and construction documents for the Phase I renovation to City’s Swim and Fitness Center?

Alternatives

1. City Council could choose to not authorize the conceptual master plan and construction documents and decide to invest that money in another project. Staff does not recommend this option as this project is identified in the Parks and Recreation Master Plan and the bond proposal passed by voters in 2006.
2. City Council could direct Staff to reduce the scope of the project to only the conceptual master plan at this time. Staff does not recommend this option. During the request for proposal process, Staff evaluated all the consultants on a comprehensive design package from conceptual design through Phase I construction administration. This will allow for a cohesive project from start to finish with the selected firm.

Background Information

Originally, the Swim and Fitness Center renovation project was allocated \$1 million from the 2007 POST bond proceeds, but in April of 2009 \$750,000 was reallocated to the City Park Recreation Center Aquatics Renovation and remodel. That left \$250,000 remaining in the Swim and Fitness Center renovation Capital Improvement account. The 2008 Carryover Appropriation into FY 2009 allocated \$327,200 for the Swim and Fitness Center Expansion project to assist in building back up the budget necessary to complete the expansion project as originally proposed. These funds were from Parks and Open Space and Trails (POST) 2007 bond interest earnings accrued during 2008 of \$159,818 and \$167,382 of higher than anticipated Adams County Open Space attributable share funds. Therefore, currently there is \$577,200 in approved funds for this project.

Project Funding Sources:

\$250,000	2007 POST Bond Proceeds
\$159,818	2007 POST Bond Interest Earnings
\$167,382	Adams County Open Space Attributable Share Funds
\$577,200	Total Project Budget

This facility has had many renovations since its opening in the 1970s. With the consultant working with Staff to balance what the facility currently offers with current and future needs, a well-thought-out conceptual master plan will help direct City priorities and provide continuity between the design and construction process. With components and costs identified, Staff will be working with other possible funding sources, such as Adams County Open Space Grants, to increase funding for Phase I of the Swim and Fitness Center renovation. If Adams County grant funds are made available, the project budget and construction phasing will be adjusted accordingly.

Staff’s intention is to develop a conceptual master plan that will provide for upgraded locker room facilities and family changing rooms, evaluate the core area to eliminate the various levels that will help with accessibility for various abilities, add additional areas for party rooms, upgrade swim features, and possibly provide gymnasium, indoor track, and parking accessibility from the north and south of the facility. The construction phasing will be part of the design process.

Bids were solicited from five reputable consulting firms for this project that had a minimum of five years experience with recreational facility design and construction. The bids for conceptual master planning through construction documents and construction administration are broken down as follows based on current available funding:

Consultant Firm	Master Plan Costs	Design Phase I Development, Construction Documents and Administration Costs	Total
Sink Combs Dethlefs	\$43,532	\$59,342	\$102,874
Humphries Poli	\$80,000	\$41,933	* \$121,933
Davis Partnership	\$49,805	\$44,999	** \$94,804
Krebs Architects	No Bid	No Bid	No Bid
Bennette Wagner Grody	No Bid	No Bid	No Bid

* Humphries Poli did not include storm water management, which would add approximately \$3,800 to their contract.

** Davis Partnership did not include storm water management, reimbursable expenses or include a water specialist. These costs are unknown at this time.

Staff selected Sink Combs Dethlefs after reviewing their response to the Request for Proposals (RFP) and interviewing each of the three firms. After design costs, there will be \$474,326 available to apply towards construction. Staff will come back to City Council in the future for approval of the conceptual master plan and approval to pursue grant funding through the Adams County Open Space Grant for construction.

This project meets City Council’s Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services,” “Vibrant Neighborhoods and Commercial Areas,” and “Beautiful and Environmentally Sensitive City.”

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment

Swim and Fitness Center
3290 W. 76th Ave





**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Second Reading of Councillor’s Bill No. 7 re Right-of-Way Vacation of Tennyson Street from Main Street to 120th Avenue

Prepared By: Mikele Wright, Senior Engineer

Recommended City Council Action

Pass Councillor’s Bill No. 7 on second reading, vacating a portion of Tennyson Street from Main Street to 120th Avenue.

Summary Statement

- The property owners, Continuum Bruchez Associates, LLC, are requesting the right-of-way vacation since they own all of the property served by the street and the subject portion of the street no longer serves a public purpose.
- No easements will need to be retained across the area to be vacated since there are no public or private utility lines within the existing Tennyson Street right-of-way.
- A legal description of the right-of-way to be vacated is included in Exhibit A.
- This vacation is associated with the 23rd Amended Official Development Plan (ODP) for the Bradburn Subdivision Planned Unit Development (PUD). The property in the vicinity of the proposed street vacation will be developed as Hope Montessori Academy, a daycare facility for children six months to 12 years of age.
- City Staff has determined that the subject right-of-way is no longer needed by the City.
- State statutes require that the vacation of all rights-of-way be approved by City Council.
- This Councillor’s Bill was passed on first reading on February 22, 2010.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Ordinance with Exhibit A

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **7**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Winter - Lindsey

A BILL

FOR AN ORDINANCE VACATING NORTH TENNYSON STREET FROM MAIN STREET TO WEST 120TH AVENUE (U.S. HIGHWAY 287)

WHEREAS, Continuum Bruchez Associates, LLC, the owner of property located at North Tennyson Street from Main Street to 120th Avenue, has requested the City vacate said North Tennyson Street from Main Street to West 120th Avenue (U.S. 287) ; and

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

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

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

Section 2. The area described in Exhibit A, attached hereto and incorporated herein by this reference, is hereby vacated.

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

Section 4. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED AND PASSED ON FIRST READING AND TITLE AND PURPOSE ORDERED PUBLISHED this 22nd day of February, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of March, 2010.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

Vigil Land Consultants
SURVEYORS

480 Yuma Street ■ Denver, Colorado 80204
Off: (303) 436-9233 ■ Fax: (303) 436-9235

Date 02-19-08

Job No. 99064

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF ADAMS, STATE OF COLORADO, BEING A PORTION OF NORTH TENNYSON STREET AS SHOWN ON THE PLAT OF THREE-M TRACT AS RECORDED IN FILE NO. 12, MAP NO. 173, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6, WHENCE THE NORTHWEST CORNER THEREOF BEARS S89°57'33"W, A DISTANCE OF 2579.36 FEET; THENCE S00°19'03"E, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6, A DISTANCE OF 185.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF WEST 120th AVENUE, AND THE NORTHWEST CORNER OF LOT 2, BLOCK 15, FIRST REPLAT BRADBURN SUBDIVISION FILING NO. 1 AS RECORDED IN FILE NO. 18, MAP NO. 867 AT RECEPTION NO. C1117456, BEING THE POINT OF BEGINNING; THENCE CONTINUING S00°19'03"E, ALONG SAID EAST LINE AND THE WEST LINE OF SAID LOT 2, BLOCK 15, A DISTANCE OF 262.50 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2, BLOCK 15; THENCE S89°57'06"W, A DISTANCE OF 40.00 FEET TO A POINT ON THE EAST LINE OF LOT 2, BLOCK 1, BRADBURN SUBDIVISION FILING NO. 2 AS RECORDED IN FILE NO. 18, MAP NO. 807 AT RECEPTION NO. C1067375; THENCE N00°19'03"W, ALONG SAID EAST LINE, A DISTANCE OF 262.51 FEET TO THE NORTHEAST CORNER OF SAID LOT 2, BLOCK 1 BEING ON THE SOUTH RIGHT-OF-WAY LINE OF SAID WEST 120th AVENUE; THENCE N89°57'33"E, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING. CONTAINING 10,500 SQUARE FEET OR 0.241 ACRES MORE OR LESS.

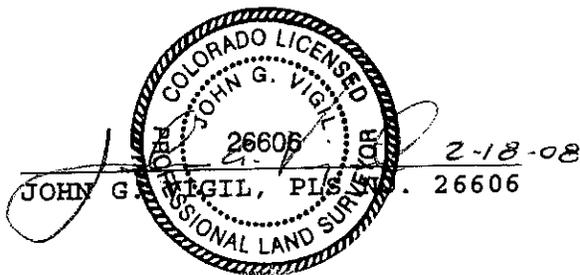


EXHIBIT A

Vigil Land Consultants

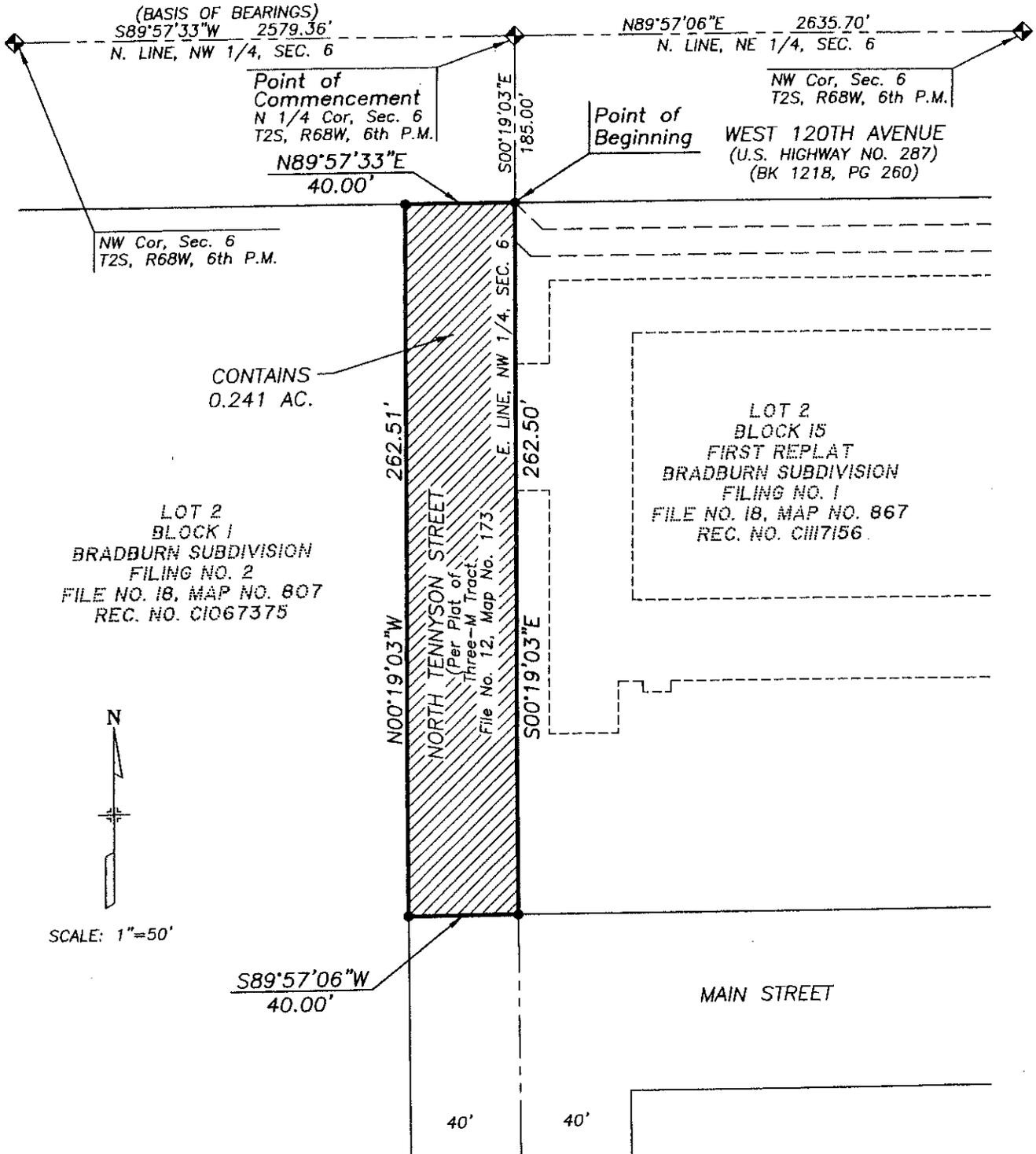
SURVEYORS

480 Yuma Street ■ Denver, Colorado 80204
Off: (303) 436-9233 ■ Fax: (303) 436-9235

Date 02-19-08

Job No. 99064

ATTACHMENT TO LEGAL DESCRIPTION - NOT A SURVEY





WESTMINSTER
COLORADO

Agenda Item 10 A&B

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Resolution No. 6 re General Fund Stabilization Reserve and Councillor's Bill No. 8 re 2009 4th Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

1. Adopt Resolution No. 6 amending the fiscal policy regarding the General Fund Stabilization Reserve, establishing it as a separate fund.
2. Pass Councillor's Bill No. 8 on first reading providing for supplemental appropriation of funds to the 2009 budget of the General, General Reserve, Utility Rate Stabilization Reserve, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds.

Summary Statement

- Staff is proposing to amend the General Fund Stabilization Reserve policy, changing it from a sub fund within the General Reserve Fund and making it a separate fund completely.
- At the end of each quarter Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- This is the 2009 4th quarter supplemental appropriation.
- General Fund amendments:
 - \$825 Scholarships
 - \$3,554 Reimbursements
 - \$13,000 Contributions
 - \$29,922 Program Revenues
 - \$66,222 Grants
 - \$69,460 Sales & Use Taxes
- General Reserve Fund amendments:
 - \$5,149,887 Transfer
- Utility Rate Stabilization Reserve Fund amendments:
 - \$7,211,596 Carryover
- Sales & Use Tax Fund amendments:
 - \$3,308,517 Sales & Use Taxes
- Parks Open Space & Trails Fund amendments:
 - \$19,853 Rent
- General Capital Improvement Fund amendments:
 - (\$37,601) Carryover
 - (\$37,011) Grants
 - \$232,761 Sales & Use Taxes

Expenditure Required: \$16,030,985

Source of Funds: The funding sources for these budgetary adjustments include carryover, transfer, scholarships, reimbursements, contributions, grants, program revenues, sales and use taxes, and rent.

Policy Issues

1. Does City Council support amending the General Fund Stabilization Reserve (GFSR) policy, creating a separate fund?
2. Does City Council support amending the appropriations for the 2009 budget of the General, General Reserve, Utility Rate Stabilization Reserve, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds?

Alternatives

1. City Council could chose to leave the GFSR as a sub fund within the General Reserve Fund. Staff does not recommend this as having a separate and distinct fund permits closer tracking and clearer reporting for accounting and budget purposes.
2. City Council could chose not to amend the 2009 budget appropriations for the General, General Reserve, Utility Rate Stabilization Reserve, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds and to utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them with their current budget in anticipation of appropriation of these additional funds.

Background Information

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

The Finance Department received two scholarships from the Colorado Government Finance Officers Association (CGFOA). The scholarships of \$275 and \$550 were used to send Accounting division personnel to the CGFOA Annual Conference. The funds are being requested for appropriation into the Accounting career development account. (General Fund)

On August 10, 2009, Council approved the creation of the General Fund Stabilization Reserve and the appropriation of \$5,149,887 in 2008 carryover funds into the General Fund Stabilization Reserve as a sub fund of the General Reserve. In the development of the amendment to the Adopted 2010 Budget, Staff identified complications with having the General Fund Stabilization Reserve (GFSR) as a sub fund within the General Reserve Fund. As part of this agenda, Council is being asked to approve this attached resolution amending the adopted GFSR policy, establishing a separate fund for the General Fund Stabilization Reserve. Further, staff is requesting to appropriate the transfer of funds from the General Reserve Fund into the GFSR to mirror the adopted 2010 Budget. (General Reserve Fund)

Staff identified the same challenges for the Utility Reserves. As such, Staff is requesting that Council authorize the creation of a separate and distinct Utility Capital Project Reserve Fund and authorize the funds associated with this new fund, \$7,211,596, be moved from the Utility Rate Stabilization Reserve Fund. The amended 2010 Budget reflects this change but action is needed to officially create the fund and transfer the funds at this time. A resolution is not needed in this case as the original resolution adopted by City Council on October 9, 2006 allowed for this separate reserve. (Utility Rate Stabilization Fund)

On January 25, 2010, Council authorized moving funds accumulated in the City's General Capital Improvement Fund (GCIF) City Center Redevelopment Project to the Westminster Economic Development Authority (WEDA) for the City's participation in the redevelopment of the Westminster Mall site. As specified in the January 25, 2010 agenda memorandum, Staff has determined that it would be prudent to transfer the entire budget in the GCIF City Center Redevelopment project to WEDA to keep all expenses related to Westminster Center Urban Reinvestment Project (WURP) in one fund. Council is requested to approve moving expenses in 2009 of \$371,176 along with the corresponding budget from GCIF to WEDA. Moving the balance of the funds of \$7,629,154 was previously authorized by Council on January 25, 2010. Approval of this request will complete the transfer, which does not increase the appropriation in the GCIF. (General Capital Improvement Fund)

As an important element of economic development, the City sometimes utilizes Economic Development Agreements (EDAs) and Intergovernmental Agreements (IGAs) to attract and retain high quality development to provide employment opportunities and increased revenue for City service provisions. A portion of the new revenue generated from projects is utilized to fund these agreements. In the past, payments related to these agreements have been recorded as a reduction to the appropriate revenue account, thereby reflecting only the net new revenue received on the City's financial statements. The Government Accounting Standards Board (GASB) now requires the new revenues to be fully recorded as received, and the applicable rebate of revenues to be recorded as an expense. This housekeeping appropriation makes the appropriate changes to the City's budget to reflect this new requirement as follows: \$3,308,517 in the Sales and Use Tax Fund to record the Intergovernmental Agreement with the City of Thornton for the North I-25 corridor and various other EDAs involving sales and use taxes; \$232,761 in the General Capital Improvement Fund to record various EDAs involving the Accommodations Tax; \$69,460 in the General Fund to record various EDAs involving building permit and conference center fees; for a total increase of \$3,610,738 to City revenues and expenses. This new GASB requirement will necessitate annual appropriations to reflect the current year collections and remissions. (General Fund, Sales & Use Tax Fund, General Capital Improvement Fund)

The City received a contribution of \$5,000 from Siemens Building Technologies, Inc. through the company's Community Partnership program for the purpose of supporting the City's citizen recycling program. The funds are being requested for appropriation into the Building Operations and Maintenance Division's Solid Waste Collection account. (General Fund)

The Police Department was reimbursed \$600 from the Jefferson County Emergency Communications Authority Board for the Association of Public Safety Communications Officials International (APCO) and National Emergency Number Association (NENA) Conference attended by a Communications Center Supervisor. The reimbursement is for conference expenses and the funds are being requested for appropriation to the department's training account. (General Fund)

The Police Department was reimbursed \$1,287 and \$13,718 from the North Metro Task Force High Intensity Drug Tracking Area (HIDTA) grant funding for overtime incurred by the Westminster Police Department's Task Force members working on Federal HIDTA cases. The reimbursement funds are being requested for appropriation to the department's overtime account. (General Fund)

In February 2009, the Police Department applied to the State for an Edward Byrne Memorial Justice Assistance (JAG) Grant for Enhanced Intelligence Gathering equipment. The department was subsequently notified in September 2009 that the request was approved. The department, through the process of three bids, selected Tactical Systems as the vendor for the purchase of a Mobile Surveillance Robotic System. The grant reimbursement of \$24,850 is being requested for appropriation to the department's capital outlay expenditure account. (General Fund)

The Police Department received \$8,562 from the State of Colorado, Department of Transportation, for the department's participation in the Checkpoint Colorado DUI Grant Program. The grant reimburses the department for overtime incurred by officers while working this DUI enforcement program. These funds are being requested for appropriation to the department's overtime account. (General Fund)

The Police Department received \$3,780 from the State of Colorado, Department of Transportation, for the department's participation in the Fall Festival DUI Grant Program. The grant reimburses the department for overtime incurred by enforcement officers while working this DUI enforcement program. These funds are being requested for appropriation to the department's overtime account. (General Fund)

The Police Department provides police security for City of Westminster businesses or events for a fee covering the overtime costs of the police officers providing these services. The amount of contract work was greater than budgeted and, therefore, the amount budgeted for extra duty overtime was not sufficient. In order to cover the extra duty overtime expense for 2009, excess off duty police services revenue in the amount of \$23,000 is being requested for appropriation to the department's extra duty overtime account. (General Fund)

The Fire Department received reimbursement in the amount of \$2,954 from Jefferson County for personnel salaries incurred providing assistance to the Highway 72 Fire that occurred in Arvada, Colorado, on February 24, 2009. These reimbursement funds are being requested for appropriation to the department's overtime account. (General Fund)

The Fire Department received \$4,145 in class registration fees for conducting CPR training classes. The department is requesting appropriation of these funds to the EMS supplies account used to purchase supplies utilized during the classes. (General Fund)

The Fire Department received \$14,025 from the State of Colorado towards the Emergency Management Program Grant (EMPG) as a result of allocation of excess funds available at the State level. These funds are being requested for appropriation to the Emergency Management account to be used to continue developing a City of Westminster Natural Hazard Mitigation Plan. (General Fund)

Economic Development received \$8,000 in contributions from various businesses that participated in the City of Westminster 2009 Business Appreciation Event as a sponsor or exhibitor. The funds are being requested for appropriation to the Economic Development Special Promotions account and used to pay for design and printing of letters, invitations and programs, as well as postage, presentation services, lunch, awards, and miscellaneous items involved in operating the event. (General Fund)

On April 27, 2009, Council approved the appropriation of an American Recovery and Reinvestment Act (AARA) grant as part of an IGA with the Colorado Department of Transportation (CDOT) for the design and construction of the Bradburn Boulevard, 73rd Avenue to Turnpike Drive Bikeway Project. The project was completed under budget and the unused \$40,000 of this reimbursement grant must be un-appropriated at this time. (General Capital Improvement Fund)

On December 12, 2009, the Westminster Legacy Foundation awarded the City a grant in the amount of \$3,000 to fund the preparation of construction documents for the Shoenberg Farm House and Garage. This grant provides a portion of the cash match for the State Historical Fund grant awarded in June, 2009. The funds have been received and are requested to be appropriated into the Shoenberg Farm Restoration CIP. (General Capital Improvement Fund)

At various Council meetings from 2006 to 2008, Council approved the appropriation of six Colorado Historical Society grants. The six related projects were completed under budget and the unused portion of these reimbursement grants must be un-appropriated at this time as follows: \$1,120 for the historic structure assessment at Shoenberg Farms, \$378 for the preparation of preservation plans for the Wesley Chapel Cemetery, \$373 for the historic structure assessment at Shoenberg Farms, \$288 for the preparation of restoration construction documents of the Rodeo Market Façade, \$259 for the historic structure assessment of the Bowels House, \$18,088 for the restoration of the Rodeo Market Façade. With these original appropriations occurring in a prior year, carryover is being un-appropriated. (General Capital Improvement Fund)

The City agreed to enter into a License Agreement with Xcel Energy of Colorado for use of City parkland for construction of an underground electric loop for the Sheridan Green subdivision. Staff agreed to enter into this Agreement based on authority provided by the "Policies for the Use of Open Space Properties, Parklands, and other City owned Properties" adopted by Council on February 23, 2009. The \$19,853 received under the agreement is being requested for appropriation for trail and fence projects on open space properties. (Parks Open Space & Trails Fund)

On June 8, 2009, Council approved the appropriation of a Denver Regional Council of Governments (DRCOG) grant for the installation of traffic signal fiber optic communications equipment. The project was completed under budget and the unused \$11 of this reimbursement grant must be un-appropriated at this time. (General Capital Improvement Fund)

On June 11, 2007, Council approved the appropriation of a Jefferson County Open Space grant for the Standley Lake Restroom project. The project was completed under budget and the unused \$17,095 of this reimbursement grant must be un-appropriated at this time. Because the original appropriation occurred in a prior year, carryover is being un-appropriated. (General Capital Improvement Fund)

The Westminster Youth Scholarship program has benefited from the net proceeds of \$2,777 received in 2009 from community events such as 4th of July, the Holy COW Trail Stampede, art shows, etc., held in Westminster, selling First in Fun water bottles and donations from Rec Trac reimbursements. Funds from the youth scholarship program are used to award scholarships for City-sponsored recreation programs to youth who could not otherwise afford to participate. The funds are requested to be appropriated into the Youth Scholarship account. (General Fund)

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$166,683	\$29,030	\$195,713
State Grants	1000.40620.0000	63,942	37,192	101,134
Youth Scholarships	1000.41030.0528	0	2,777	2,777
General Fee Conf Ctr EDA/IGA	1000.41310.0075	0	69,460	69,460
Off Duty Police Svcs	1000.41340.0000	150,000	23,000	173,000
Off Duty Fire Svcs	1000.41340.0013	2,955	4,145	7,100
General	1000.43060.0000	395,996	6,425	402,421
Reimbursements	1000.43080.0000	60,865	2,954	63,819
Contributions	1000.43100.0000	6,240	8,000	14,240
Total Change to Revenues			\$182,983	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Special Promotions	10005340.67600.0000	\$31,091	\$8,000	\$39,091
Contract Svcs EDA/IGA	10010900.67800.0075	0	69,460	69,460
Solid Waste Collection	10012390.67300.0702	23,610	5,000	28,610
Career Development	10015220.61800.0000	4,130	825	4,955
Salaries OT-Inv Section	10020300.60400.0344	236,055	15,005	251,060
Career Dev-Comm Section	10020300.61800.0345	13,384	600	13,984
Salaries OT-Extra Duty	10020500.60400.0005	150,000	23,000	173,000
Salaries OT-Traffic	10020500.60400.0348	90,138	12,342	102,480
Other Equip-Patrol	10020500.76000.0349	85,554	24,850	110,404
Salaries	10025260.60200.0000	6,647,421	2,446	6,649,867

Salaries OT-EMS	10025260.60400.0546	97,358	508	97,866
Contract Svcs-EMPG	10025260.67800.0545	41,358	14,025	55,383
Supplies-EMS	10025260.70200.0546	7,875	4,145	12,020
Spec Promo Youth Scholar	10050760.67600.0528	13,975	2,777	16,752
Total Change to Expenses			<u>\$182,983</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF General Fund	1100.45000.0100	\$0	<u>\$5,149,887</u>	\$5,149,887
Total Change to Revenues			<u>\$5,149,887</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GFSR	110010900.79800.0120	\$0	<u>\$5,149,887</u>	\$5,149,887
Total Change to Expenses			<u>\$5,149,887</u>	

These appropriations will amend Utility Rate Stabilization Reserve Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2050.40020.0000	\$20,636,399	<u>\$7,211,596</u>	\$27,847,995
Total Change to Revenues			<u>\$7,211,596</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer Utility CPR	20510900.79800.0207	\$0	<u>\$7,211,596</u>	\$7,211,596
Total Change to Expenses			<u>\$7,211,596</u>	

These appropriations will amend Sales & Use Tax Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Sales Tax Return EDA/IGA	5300.40070.0075	\$0	<u>\$3,305,867</u>	\$3,305,867
Use Tax Return EDA/IGA	5300.40095.0075	0	<u>2,650</u>	2,650
Total Change to Revenues			<u>\$3,308,517</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Contract Svcs EDA/IGA	53010900.67800.0075	\$0	<u>\$3,308,517</u>	\$3,308,517
Total Change to Expenses			<u>\$3,308,517</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
General Misc Rentals	5400.43060.0540	\$0	<u>\$19,853</u>	\$19,853
Total Change to Revenues			<u>\$19,853</u>	

SUBJECT: Councillor's Bill re 2009 4th Quarter Budget Supplemental Appropriation

Page 7

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Construction	54010900.76400.0000	\$0	<u>\$19,853</u>	\$19,853
Total Change to Expenses			<u>\$19,853</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7500.40020.0000	\$2,404,034	(\$20,506)	\$2,383,528
Federal Grants	7500.40610.0000	972,982	(11)	972,971
Federal T-21 Grants	7500.40610.0019	300,000	(40,000)	260,000
Other Grants	7500.40650.0057	3,500	3,000	6,500
Carryover	7501.40020.0000	954,427	(17,095)	937,332
Acomm Tax EDA/IGA	7501.40055.0075	0	<u>232,761</u>	232,761
Total Change to Revenues			<u>\$158,149</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers WEDA	75010900.79800.0680	1,196,176	\$371,176	\$1,567,352
City Center Redevelopment	80675005040.80400.8888	8,000,330	(371,176)	7,629,154
Contract Svcs EDA/IGA	75010900.64800.0075	\$0	232,761	232,761
Traffic Signal Improvement	80175030143.80400.8888	156,353	(11)	156,342
CD Grants Historical	80675030428.80400.8888	7,525	(2,418)	5,107
Standley Lake Regional Prk	80775050747.80400.8888	18,324	(17,095)	1,229
Shoenberg Farm	80875030834.80400.8888	305,727	3,000	308,727
Bradburn Bike Trail	80975030848.80400.8888	44,750	(40,000)	4,750
CD Grants Historical	80975030855.80400.8888	23,330	<u>(18,088)</u>	5,242
Total Change to Expenses			<u>\$158,149</u>	

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

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments

RESOLUTION

RESOLUTION NO. 6

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**A RESOLUTION AUTHORIZING THE AMENDMENT OF THE CITY'S
FISCAL POLICY FOR GENERAL FUND STABILIZATION RESERVE**

WHEREAS, City Council previously adopted Resolution No. 37 approving a fiscal policy creating and establishing a General Fund Stabilization Reserve, including target funding minimum/maximum levels of reserve funds on August 10, 2009; and

WHEREAS, the fiscal policy regarding the General Fund Stabilization Reserve establishes target minimum/maximum funding levels and outlines the process for replenishing reserves; and

WHEREAS, the General Fund Stabilization Reserve is intended to serve as a stabilizer during reduced revenue collections, allowing City services to continue to be delivered despite downturns in the economy and serve as a stop gap measure in efforts to avoid utilizing the City's General Reserve Fund; and

WHEREAS, this policy formalized what the City had implemented previously during such uncertain economic times as a proactive measure to be better prepared for these situations and help minimize the impact on future budgets; and

WHEREAS, City Council continues to recognize the importance of the adoption of fiscal policies regarding General Fund Stabilization Reserve and this policy supports the City Council Strategic Plan goal of "Financially Sustainable City Government Providing Exceptional Services;" and

WHEREAS, City Council appropriated \$5,149,887 from FY 2008 Carryover from the General Fund for the creation and funding of this proposed new reserve; and

WHEREAS, this new fund was originally anticipated to operate as a sub fund within the General Reserve Fund but, for better tracking purposes, is recommended to be accounted for separately as a distinct fund.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that City Council hereby adopts an amended fiscal policy regarding the General Fund Stabilization Reserve, including its establishment as a separate fund to allow for better accounting, as attached and incorporated herein by this reference.

PASSED AND ADOPTED this 8th day of March, 2010.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney

AMENDED GENERAL FUND STABILIZATION RESERVE POLICY

Purpose: The General Fund Stabilization Reserve (“GFSR”) is intended to level the ebbs and flows of revenue collections, particularly the sales and use tax revenues, and smooth out any peaks or valleys that may result from the unpredictable nature of this primary revenue source. This fund is intended to serve as a stabilizer during reduced revenue collections, allowing City services to continue to be delivered despite downturns in the economy. It will serve as a stop gap measure in efforts to avoid utilizing the City’s General Reserve Fund. This fund may be tapped prior to, in conjunction with or as a final step after budget reductions have been made. The fund will be replenished as funds become available and economic conditions allow.

Target: When not in an economic downturn, the target amount of the General Fund Stabilization Reserve in any given year shall range from 5% to 10% of the total Sales and Use Tax Fund revenues for that year. Should the fund fall below the target amount of 5%, Staff will identify a strategy to replenish the fund from various sources once economic conditions allow and work with City Council to implement the strategy.

Relation to the General Reserve Fund: The General Reserve Fund will have funding priority in any given fiscal year to maintain a minimum reserve equal to 10% of General Fund operating expenditures (including transfers, but excluding contingency). The GFSR will operate as a separate fund, retaining a separate and distinct balance and earning interest accordingly.

Funding: The GFSR will be funded through carryover and other sources as funding is available and as economic conditions allow. Any General Fund or Sales and Use Tax Fund revenues remaining at year end (either revenues collected above the budgeted amount or as a result of expenditures being less than originally projected) shall be reviewed with carryover and allocated between operating (either budgeted and not completed or new requests), capital improvement (either existing or new project requests), General Reserve Fund and the General Fund Stabilization Reserve as appropriate.

Use: The GFSR will be utilized to fund General Fund operations, General Capital Improvement Fund projects or General Capital Outlay Replacement Fund capital outlay costs as needed should significant expenditure reductions be required to remain within available revenues. This fund may be tapped prior to, in conjunction with or as a final step after budget reductions have been made. Should economic times warrant, GFSR funds may be programmed within the upcoming budget as a means to avoid significant service reductions.

City Council Approved: August 10, 2009

City Council Amended: March 8, 2010

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **8**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2009 BUDGETS OF THE GENERAL, GENERAL RESERVE, UTILITY RATE STABILIZATION RESERVE, SALES & USE TAX, PARKS OPEN SPACE & TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General, General Reserve, Utility Rate Stabilization Reserve, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3432 are hereby increase in aggregate by \$16,030,985. This appropriation is due to the receipt of funds from carryover, scholarships, reimbursements, contributions, grants, program revenues, sales & use taxes, and rent.

Section 2. The \$16,030,985 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A&B dated March 8, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$182,983
General Reserve Fund	5,149,887
Utility Rate Stabilization Reserve Fund	7,211,596
Sales & Use Tax Fund	3,308,517
Parks Open Space & Trails Fund	19,853
General Capital Improvement Fund	<u>158,149</u>
Total	<u>\$16,030,985</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8th day of March, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of March, 2010.

ATTEST:

Mayor

City Clerk



Agenda Item 10 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Councillor's Bill No. 9 re City Park Playground Supplemental Appropriation

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Pass Councillor's Bill No. 9 on first reading authorizing a supplemental appropriation in the amount of \$150,000 reflecting the City's receipt of a Jefferson County Joint Venture Grant for the City Park Playground.

Summary Statement

- In October of 2009, Staff received City Council's approval to submit a request to Jefferson County Open Space to help fund the development of the City Park Playground. (See attached location map and concept plan) Staff presented the grant request on January 13, 2010, and the City was awarded the full request of \$150,000 by the Jefferson County Board of County Commissioners.
- The Department of Parks, Recreation and Libraries has the appropriate matching funds available in the Parks Renovation Capital Improvement Program budget.
- With the grant award, Staff will be purchasing the remaining items to complete the park. These items included playground equipment and safety surfacing, and miscellaneous items such as trash cans.
- The proposed play area has a farm theme reflecting Westminster's agricultural heritage and therefore components will be selected to promote that theme. Bids will be solicited according to City policies through the U.S. Communities Government Purchasing Program, requests for bids, and in some instances sole sourcing of an item that coordinates with the park components that is not available from other companies.

Expenditure Required: \$150,000

Source of Funds: Jefferson County Joint Venture Grant

Policy Issue

Does Council wish to continue to pursue the use of grant funds to help fund the City Park Playground project?

Alternative

Council could choose not to appropriate these grant funds. However, this is not recommended because the City and the residents will benefit from these additional funds as they will allow greater enhancements for the project and because the City has successfully used grant funds from Jefferson County Joint Open Space in the past.

Background Information

The Departments of Parks, Recreation and Libraries and Community Development have been successful in applying for and receiving grants for the development of parks, trails, and open space from a variety of sources in the past. The City has developed a strong partnership with Jefferson County. Recent Jefferson County Joint Venture grants include: a 2009 grant in the amount of \$300,000 for renovation of the aquatics area of the City Park Recreation Center, a 2008 grant for \$250,000 for the Westminster Sports Center, and \$41,407 for the Heritage Golf Course restroom.

The City Park playground site will be approximately one acre in size. The site will include a unique playground with a farm theme that can accommodate a variety of ages, along with poured-in-place surfacing, benches, and a few picnic tables. The site would be utilized year round by our citizens and also be a welcome addition to the City’s summer playground program.

This grant request and project supports the City’s Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services” and “Beautiful and Environmentally Sensitive City” by increasing revenues that support defined City projects and by providing the City with new community park space.

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Jefferson County OS Grant	7501.40630.0020	\$0	<u>\$150,000</u>	\$150,000
Total Change to Revenues			<u>\$150,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
City Park Playground	80975050851.80400.8888	\$200,000	<u>\$150,000</u>	\$350,000
Total Change to Expenses			<u>\$150,000</u>	

Respectfully submitted,

Stephen P. Smithers
Acting City Manager
Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **9**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2010 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THIS FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. is hereby increased by \$150,000. This appropriation is due to the receipt of a Jefferson County Joint Venture Grant.

Section 2. The \$150,000 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 C dated March 8, 2010, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$150,000</u>
Total	<u>\$150,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8th day of March, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of March, 2010.

ATTEST:

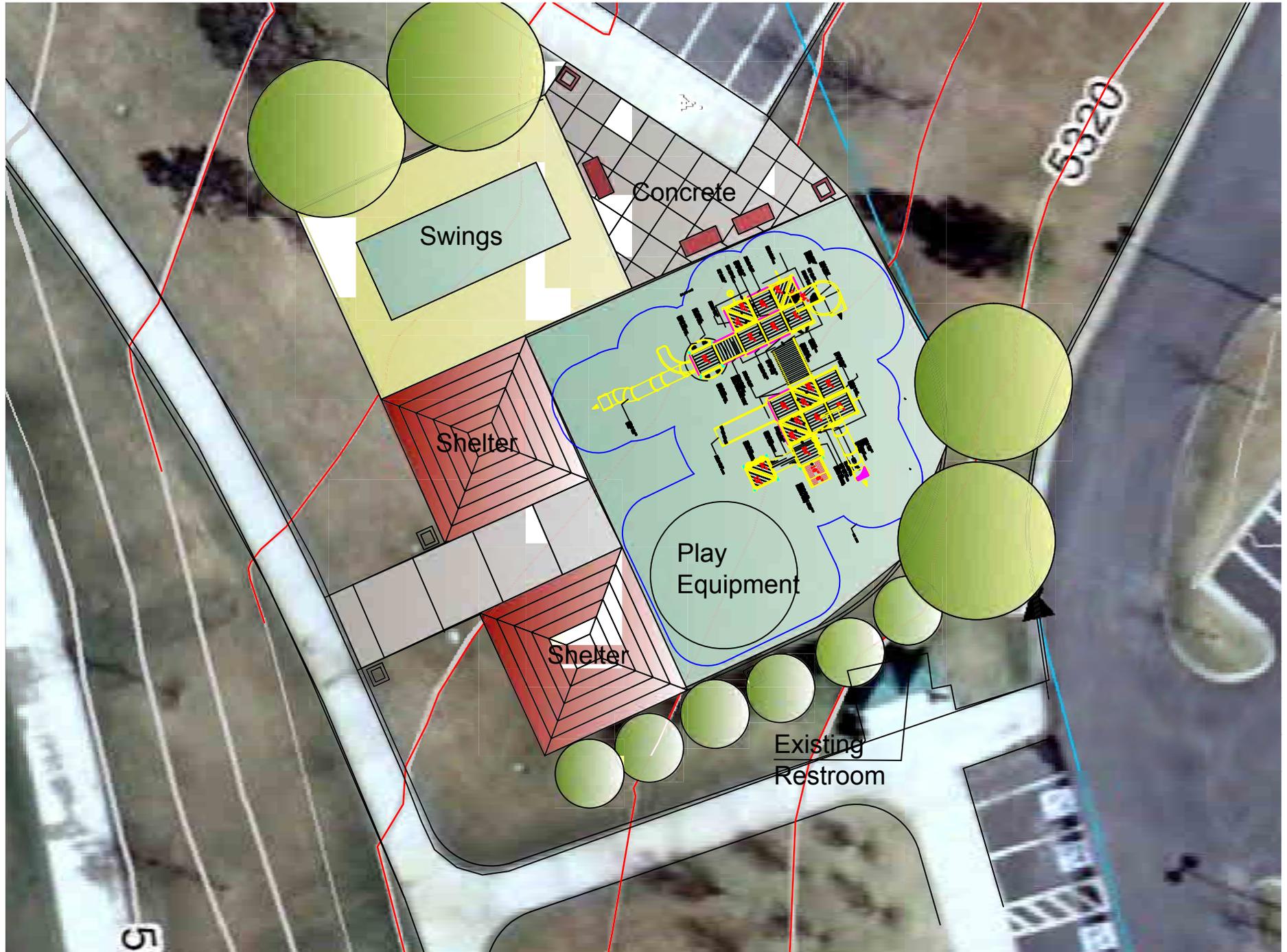
Mayor

City Clerk

City Park Playground Location Map



City Park Playground Site Plan





Agenda Item 10 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
March 8, 2010



SUBJECT: Councillor's Bill No. 10 re Gas and Electric Franchise with Public Service Company of Colorado d/b/a Xcel Energy

Prepared By: Jane Greenfield, Assistant City Attorney, on behalf of the City Staff Xcel Task Force

Recommended City Council Action

Pass Councillor's Bill No. 10 on first reading granting a gas and electric franchise to Public Service Company of Colorado, subject to execution of a final agreement regarding street and signal lighting.

Summary Statement

- The current franchise held by Public Service Company of Colorado is due to expire on March 26, 2010. Public Service Company of Colorado d/b/a Xcel Energy (the "Company") has applied for a renewal of that franchise for a twenty year period commencing March 27, 2010. Staff has been in negotiations with the Company since May of last year and is prepared to recommend adoption of the new franchise, attached herewith.
- The franchise grants a non-exclusive right to use City streets and utility easements for the placement of Company facilities to serve City residents. The Company remains subject to the City's police powers and ordinances.
- Under the new franchise, the Company continues to pay a franchise fee equal to three percent (3%) of gross revenues and will allocate annually one percent (1%) of its revenues from its electric service to fund overhead conversion of power lines (the "undergrounding fund"), as requested by the City.
- Additional issues addressed in the proposed franchise include:
 - expanded and clarified definitions;
 - tri-annual audits of franchise fees and, if requested, the undergrounding fund;
 - required annual coordination meetings for Company projects;
 - provisions for City use of Company facilities;
 - relocation and undergrounding standards and obligations;
 - environmental and conservation commitments; and
 - the performance obligations of the Quality of Service Plan agreed to by the Company in its 2006 PUC-approved settlement with the City.
- The proposed franchise contemplates that the Company and the City will finalize a companion agreement covering street and signal lighting issues in the near future. The Company's failure to sign such agreement by June 30th would void the franchise.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should a new franchise agreement with Public Service Company of Colorado be adopted?

Alternative

The Council could elect not to adopt the proposed Ordinance. While the City would still receive an equivalent amount of revenue from the Company in the form of a 3% occupation tax, the effects of not granting the Company a new franchise would include: loss of the 1% undergrounding fund monies; less control over the Company's manner of providing service in the City; less access and less communication between City and Company personnel on construction projects; contractual enforcement rights would be lost and the City would need to resort to municipal or district court action at greater cost and inconvenience to the City. Staff does not recommend this alternative.

Background Information

The City Staff Task Force has been actively involved in negotiations with the Company representatives since the spring of 2009. As previously reported, prior to commencing negotiations the task force identified four main areas of concern with the current franchise. These were 1) undergrounding issues, 2) accountability, 3) performance standards, and 4) street lighting issues. In the area of undergrounding, the proposed franchise is a substantial improvement over the general language in the current franchise. The new franchise imposes time limits on Company responses to City requests and provision of cost estimates, creates overall completion deadlines, and requires reconciliation of actual project costs with the Company's initial cost estimates. Additionally, upon request, the Company will provide backup documentation for their cost estimates, will audit the undergrounding fund every three years, and will perform up to two independent audits of undergrounding projects annually. Regarding accountability and performance standards, the proposed franchise language contains a number of improvements over the current franchise. In particular, time limits and mandated coordination meetings are specified in the proposed franchise; in the current franchise, only "best efforts" language exists.

The Company has major revisions to their electric tariff currently pending before the Public Utilities Commission (PUC). The City is an intervenor in this PUC proceeding, along with a number of other Colorado cities, as the proposed tariff revisions affect electric utility rates as well as the City's street lighting operations and costs. The tariff hearings and post-hearing briefings have been filed by the parties and a formal ruling and order is anticipated by the end of March. Recent PUC deliberations indicate that some street lighting issues will be left for the Company and municipalities to negotiate. Because the resolution of the tariff issues may affect how street lights are managed, maintained, and billed, these issues are proposed to be addressed in a separate street lighting and traffic signal lighting agreement, the adoption of which is a condition subsequent to the franchise agreement and must occur by June 30th. While the City will be subject to any tariff adopted by the PUC, operational and performance details not covered by their ruling will be included in the agreement.

In prior updates, the City Staff Task Force has identified the issues of removal of Company facilities upon termination, the right of first refusal, and annexation of Company land, which the Company does not wish to include in the new franchise and has not included in any other recent municipal franchises. Staff has reviewed existing annexation and public utility law and believes it provides sufficient authority to address the annexation and utility removal issues. The City's commitment to a pro-active oversight of the new franchise terms should allow us to address any opportunities to acquire Company property that become available.

Based on the foregoing, Staff can recommend bringing the proposed franchise forward for adoption.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **10**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE GRANTING A GAS AND ELECTRIC FRANCHISE
TO PUBLIC SERVICE COMPANY OF COLORADO dba XCEL ENERGY**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council of the City of Westminster hereby finds:

- a. The Public Service Company of Colorado ("Public Service") was granted a franchise pursuant to the laws of the State of Colorado and the City Charter and said franchise will expire on midnight, March 26, 2010; and
- b. Public Service has applied for a renewed twenty-year gas and electric franchise; and
- c. The public interest will be served by granting a non-exclusive right to Public Service to make reasonable use of the City streets and utility easements in order that it may provide gas and electric service to the residents and businesses within the City; and
- d. All provisions of the City Charter regarding grants of franchise have been met.

Section 2. The City Council of the City of Westminster hereby grants to Public Service Company of Colorado, dba Xcel Energy, a franchise, in the form attached as Exhibit A hereto and which is herein incorporated by reference, for a period of twenty years, commencing on March 27, 2010.

Section 3. Chapter 6 of Title XVI of the Westminster Municipal Code is repealed in its entirety.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8th day of March, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of March, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Exhibit A

**FRANCHISE AGREEMENT BETWEEN THE CITY OF WESTMINSTER,
COLORADO AND PUBLIC SERVICE COMPANY OF COLORADO**

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ARTICLE 3	CITY POLICE POWERS
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ARTICLE I DEFINITIONS

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- §1.1 “City” refers to the City of Westminster, a municipal corporation of the State of Colorado.
- §1.2 “City Council” or “Council” refers to the legislative body of the City.
- §1.3 “City Facilities” refers to all facilities owned by the City including but not limited to buildings, structures including City-owned street lights, traffic signals, parking lots, parks and recreational facilities, and water, sewer, storm water, reclaimed water, telecommunication and transportation systems.
- §1.4 “Clean Energy” refers to energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.
- §1.5 “Company” refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns and including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.
- §1.6 “Company Facilities” refers to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, conduit, mains, transformers, underground lines, gas compressors, meters, meter reading devices, control equipment, gas regulator stations, Company-owned street lights, wire, cables, poles, and communication and data transfer equipment related solely to Company’s provision of gas or electric utility service.
- §1.7 “Electric Gross Revenues” refers to those amounts of money which the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue from the sale or delivery of electricity to the City as a customer of the Company.
- §1.8 “Energy Conservation” refers to the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

- §1.9 “Energy Efficiency” refers to the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.10 “Force Majeure” refers to the inability to undertake an obligation of this franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, terrorist acts, riots, acts of governmental authority, acts of God, floods, epidemics, quarantines, unavailability or shortages of labor, materials or equipment or failures or delays in delivery of materials.
- §1.11 “Gross Revenues” refers to those amounts of money which the Company receives (1) from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, (2) from the transportation of gas to its customers within the City and (3) those amounts of money, excluding expense reimbursements, which the Company receives from the use by others of Company facilities in or on Streets, Other City Property and City-owned Utility Easements within the City (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.
- §1.12 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, not including Streets and City-owned Utility Easements within the City, but including without limitation City Parks and Open Space.
- §1.13 “Private Project” refers to any project which is not covered by the definition of Public Project.
- §1.14 “Public Project” refers to (1) any public work or improvement that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, the Regional Transportation District, or the Urban Drainage and Flood Control District, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.
- §1.15 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.16 “Renewable Energy Resources” refers to wind; solar; geothermal; biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of

thirty megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

- §1.17 “Residents” refers to all persons, businesses, industries, governmental agencies, including the City unless otherwise stated, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.18 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated streets, alleys, bridges, roads, lanes, right of way easements (excluding any easements the terms of which do not permit the use thereof by public utilities), and other public rights-of-way within the City, including public highways as determined under §43-2-201, C.R.S., which are primarily used for motorized vehicle traffic. Streets shall not include Utility Easements nor Other City Property.
- §1.19 “Supporting Documentation” refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise.
- §1.20 “Tariffs” refers to those tariffs of the Company on file and in effect with the PUC.
- §1.21 “Traffic Facilities” refers to City-owned or authorized traffic signals, traffic signage or other traffic control or monitoring devices, equipment or facilities, including all associated controls, connections and other support facilities or improvements, located in, on or under any Street.
- §1.22 “Utility Easement” refers to any easement over, under, or above public or private property, dedicated to public utility companies or the City for the placement and use of utility facilities, including but not limited to Company Facilities. Utility Easement shall not include any easement that is located within the Streets.
- §1.23 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under rates approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE II
GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of City Streets and City-owned Utility Easements:

- (1) to provide Utility Service to Residents under tariffs on file with the PUC; and
- (2) to acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the City, and the applicable provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Conflicting provisions of this franchise notwithstanding, street lighting service and traffic signal lighting service within the City shall be governed by, and provided pursuant to, the terms set forth in a separate "Street Lighting and Traffic Signal Lighting Service Agreement" entered into between the parties and by tariffs on file with the Colorado PUC.

C. Company Facilities in Other City Property. Company Facilities located, as of the effective date of this franchise, in Other City Property shall be subject to the terms and conditions set forth in City license agreements, permits, or other written agreements granting the Company the right to place its Facilities in such Other City Property. To the extent that such Company use of Other City Property is not specifically addressed by separate license agreements, permits or other written agreements, but has otherwise been authorized by the City, the Company may continue such use of Other City Property under the terms of this franchise.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The right to make reasonable use of City Streets and City-owned Utility Easements to provide Utility Service to the City and its Residents under the franchise is subject to and subordinate to any City usage of said Streets and City-owned Utility Easements.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets and City-owned Utility Easements and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise unless otherwise provided herein or by separate instrument.

D. Franchise Not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term.

A. Term. This franchise shall take effect on March 27, 2010, and shall supersede any prior franchise grants to the Company by the City. This franchise shall terminate at midnight on March 26, 2030, unless extended by mutual consent.

B. Condition Subsequent. Concurrently with the approval of this franchise, the City and the Company are negotiating terms of a "Street Lighting and Traffic Signal Lighting Service Agreement" (the "Agreement"). The Agreement shall become effective on the date of its approval by City Council and in no event later than June 30, 2010. The Company shall signify its acceptance of the Agreement by executing the Agreement and delivering five (5) executed originals to the City Manager concurrently with its delivery of the executed originals of this franchise. Failure to execute and deliver the Agreement to the City in accordance with this section shall render this franchise void and of no further force and effect.

**ARTICLE III
CITY POLICE POWERS**

§3.1 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§3.2 Regulation of Streets and City-owned Utility Easements. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets and City-owned Utility Easements, including requirements for permits.

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits, and orders enacted by the City.

ARTICLE IV FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In partial consideration for the franchise, which provides for the Company's use of City Streets and City-owned Utility Easements, which are valuable public properties, and in recognition that the grant to the Company of the use of City Streets and City-owned Utility Easements is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon City Residents, not including the City, who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City Streets and City-owned Utility Easements. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents, not including the City.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the City. No franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.

C. Audit of Franchise Fee Payments.

- (1) Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings.
- (2) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.
- (3) If the results of a City audit conducted pursuant to subsection C.(2) concludes that the Company has underpaid the City by two percent (2%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all costs and expenses of the City's audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

§4.3 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax for the use of City Streets and City-owned Utility Easements.

**ARTICLE V
ADMINISTRATION OF FRANCHISE**

§5.1 City Designee. The City Manager shall designate in writing to the Company an official having full power and authority to administer the franchise. The City Manager may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name and telephone numbers of said City representatives. The City Manager may change these designations by providing written notice to the Company. The City's designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets and City-owned Utility Easements.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities.

§5.3 Coordination of Work.

A. The Company agrees to coordinate its activities in City Streets and City-owned Utility Easements with the City. The City and the Company will meet annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Streets, Other City Property or City Facilities, including but not limited to any planned City street paving project. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise, building and zoning codes, and City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

B. In addition to the foregoing meetings, the Company agrees to provide sufficient notice to the City whenever the Company initiates plans to significantly upgrade its infrastructure, including without limitation the replacement of utility poles and overhead lines, in order to allow for City input and consultation on Company work

plans prior to the time that said work plans are finalized so that the beneficial coordination described in B., above, may occur.

ARTICLE VI SUPPLY, CONSTRUCTION, AND DESIGN

- §6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents which require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.
- §6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.
- §6.3 Service to City Facilities.
- A. Transport Gas. To the extent the City is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the City for use in City facilities pursuant to separate contracts with the City.
- B. Charges to the City. No charges to the City by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the Colorado PUC over the Company's regulated intrastate electric and gas rates.
- §6.4 Restoration of Service.
- A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.
- B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets, City-owned Utility Easements or Other City Property shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets, City-owned Utility Easements or Other City Property performed or caused to be performed by the Company shall be done:

- (1) in a high-quality manner;
- (2) in a timely and expeditious manner;
- (3) in a manner which minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable laws, ordinances, and regulations.

C. No Interference with City Facilities. Company Facilities shall not interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets and City-owned Utility Easements. Company Facilities shall be installed and maintained in City Streets and City-owned Utility Easements so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets, City-owned Utility Easements and Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets and City-owned Utility Easements and Other City Property. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, public land licenses, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City Streets and City-owned Utility Easements and Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. Unless otherwise provided by law, the Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases requested by the City.

G. As-Built Drawings. Upon written request of the City designee, the Company shall provide, within 14 days of the request, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. As used in this Section, as-built drawings refers to the facility drawings as maintained in the Company's geographical information system or any equivalent Company system. The Company shall not be required to create drawings that do not exist at the time of the request.

H. Licenses for Use of Other City Property. Notwithstanding any other provisions in this Article 6, the Company shall comply with all terms and conditions of any license granted by the City to the Company for the use of Other City Property.

§6.6 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits, the City will not require the Company to pay the fees charged for such permits when performing relocations requested by the City under Section 6.8 of this franchise and undergroundings requested by the City under Article 11 of this franchise. Upon the Company submitting an excavation and construction design plan to the City, the City shall promptly and fully advise the Company in writing of all requirements for restoration of City Streets in advance of Company excavation projects in City Streets and Other City Property based on the design submitted, if the City's restoration requirements are not addressed in publicly-available standards.

§6.7 Restoration. When the Company does any work in or affecting the City Streets, City-owned Utility Easements, or Other City Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such City Streets, City-owned Utility Easements to a condition that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, City-owned Utility Easements, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets, City-owned Utility Easements, or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration if not required by then-current City standards. If the Company fails to promptly restore the City Streets, City-owned Utility Easements, or Other City Property as required by this

Section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such City Streets, City-owned Utility Easements or Other City Property, or remove the obstruction therefrom; provided however, City actions do not interfere unreasonably with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets, City-owned Utility Easements or Other City Property, or to remove any obstructions therefrom. In the course of its restoration of City Streets, City-owned Utility Easements, or Other City Property under this Section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§6.8 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility in City Streets, City-owned Utility Easements , or in Other City Property at no cost or expense to the City whenever the City shall determine such removal, relocation, change or alteration is necessary for the completion of any Public Project. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company Facilities in the City Streets, City-owned Utility Easements, or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within two years, the subsequent relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from recovering its relocation costs and expenses from third parties.

B. Private Projects. The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.

C. Relocation Performance. The relocations set forth in Section 6.8.A of this franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the City designee requests, in writing, that the relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall receive an extension of time to complete a relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

D. Completion. Each such relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.7 of this franchise or as otherwise agreed with the City, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

E. Scope of Obligation. The relocation obligation set forth in this Section shall only apply to Company Facilities located in City Streets, City-owned Utility Easements or Other City Property.

F. Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this franchise.

G. Coordination. When requested in writing by the City or the Company, representatives of the City and the Company shall meet to share information regarding coordination of anticipated projects that will require relocation of Company Facilities in the City. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

H. Advance Notice. The City shall provide the Company with two (2) years advance notice of any planned street repaving to the extent the City has such information. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses, or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§6.9 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees.

- §6.10 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy on file with the PUC.
- §6.11 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

ARTICLE VII RELIABILITY

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe, and reliable Utility Service.
- §7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.
- §7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE VIII COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. Other than for Traffic Facilities, the Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.
- B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City

facilities shall be deemed good cause for a reasonable extension of time to complete its performance.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the City and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

D. New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this franchise and the Company's PUC tariffs.

§8.2 Adjustments To Company Facilities. The Company shall perform adjustments to Company Facilities, to accommodate City street maintenance, repair and paving operations at no cost to the City. "Adjustments to Company Facilities" means raising or lowering manholes and other appurtenances, utilizing the methodology provided by the City. At the City's request, the Company shall provide manhole extension rings to the City and/or City's Contractor for installation directly behind paving operations whenever this method for adjustment is deemed appropriate by the Company. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the City operations in accordance with City instructions and, if required, readjusts, following City maintenance, repair and paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated street maintenance or other operations that will require such adjustments to Company Facilities in Streets, City-owned Utility Easements, or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage to Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, to the extent permitted by law, the City will notify the Company within 45 days after the City has

knowledge of any such incident and will provide to the Company within a reasonable time, all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to City Interests. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law, the Company will notify the City within 45 days after the Company has knowledge of any such incident and will provide to the City within a reasonable time, all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE IX BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. The Company agrees to meet with the City's designee at least annually upon written request for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

B. Unless otherwise provided in its tariffs, the rules and regulations of the PUC, or Title 40 of the Colorado Revised Statutes, as the same may be amended, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment and for which the City has authorized payment.

C. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this agreement and the applicable tariff on file and in effect from time to time with the PUC.

D. The Company shall provide all billings and any underlying support documentation reasonably requested by the City in an editable and manipulable electronic format that is acceptable to the Company and the City.

§9.2 Payment To City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any

nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City determination of liability, the City shall make such payments to the Company pursuant to the Company's tariffs until the challenge has been finally resolved.

ARTICLE X USE OF COMPANY FACILITIES

§10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose or any other purpose consistent with City's police powers. The City will notify the Company in advance and in writing or by electronic mail of its intent to use Company facilities and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution poles. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§10.2 City Use of Company Street Lighting Poles. The City shall be allowed to use the Company's street lighting poles under the terms and conditions set forth above if it obtains prior written approval of the Company. Such approval shall not be unreasonably withheld or delayed. No such use shall be allowed if the Company determines that use of street lighting poles creates a safety issue or interferes with the Company's use of its Utility Facilities or its operations. The City shall not be required to obtain prior approval for the use of Company street lighting poles where emergency circumstances create an immediate danger to public health and safety. In that instance, the City shall notify the Company of the use of Company street lighting poles at the earliest practicable time.

The City shall be responsible for the Company's reasonable costs of determining whether the proposed use of street light poles creates a safety issue or interferes with Company Utility Facilities. The City shall not be required to remove its existing equipment or facilities from street lighting poles, unless such equipment or facilities create a safety hazard or interfere with the Company's use of those poles.

- §10.3 Third Party Use Of Company Facilities. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets and City-owned Utility Easements, to utilize Company electric distribution poles for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution poles. The Company shall not be required to permit the use of Company distribution facilities for the provision of utility service except as otherwise required by law.
- §10.4 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific written request to the Company for any such use.
- §10.5 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the City, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities.

ARTICLE XI UNDERGROUNDING OF OVERHEAD FACILITIES

- §11.1 Underground Electrical Lines in New Areas. The Company shall, upon payment to the Company of the charges provided in its tariffs, place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders. "Newly developed areas" may include areas of infill or redevelopment exceeding five acres in size.
- §11.2 Underground Conversion At Expense Of Company.
- A. Underground Fund. The Company shall budget and allocate an annual amount, equal to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by the City Designee. Except as provided in §6.8 F., no relocation expense that the Company would be required to expend pursuant to Article 6 of this franchise shall be charged to this Fund.

B. Unexpended Portion And Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any underground fund balance left accumulated under any prior franchise shall be carried over to this franchise. The City shall have no vested interest in monies allocated to the Fund and any monies in the Fund not expended at the expiration or termination of this franchise shall remain the property of the Company. At the expiration or termination of this franchise, the Company shall not be required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement To Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. The Company shall notify the City within ten (10) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The City and the Company agree to meet during the period when the Company is preparing its estimate to discuss all aspects of the project toward the end of enabling the Company to prepare an accurate cost estimate. At the City's request, the Company will provide all documentation which forms the basis of the estimate. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company estimate and authorized the Company to proceed with the project. The Company's cost estimate shall be void unless accepted by the City within 60 days after it has been transmitted to the City.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time, not to exceed 240 days from the later of the date upon which the City designee makes a written request or the date the City provides the Company the Supporting Documentation with which to complete the

project. The Company shall have ninety (90) days after receiving the City's request and Supporting Documentation to design project plans, prepare the good faith estimate, and transmit the same to the City for review. If the plans and estimate are approved by the City, the Company shall have 120 days from date of the City's authorization, plus any of the 90 unused days in preparing the good faith estimate to complete the project. The City and the Company shall agree to a longer completion date when required for large scale undergrounding projects. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise.

D. Completion/Restoration. Each such undergrounding project shall be complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this franchise, or as otherwise agreed with the City, and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

E. Report of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within 120 days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged against the Fund balance.

§11.4 Audit of Underground Fund. Upon written request of the City, but no more frequently than once every three (3) years, the Company shall audit the Fund for the City. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the City and shall reconcile the Fund consistent with the findings contained in the audit report. If the City has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the City's

reasonable satisfaction, the Company shall, at its expense, cause an independent auditor to investigate and determine the correctness of the charges to the underground fund. The independent auditor shall provide a written report containing its findings to the City and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the City.

§11.6 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

A. Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

B. Public Projects anticipated by the City.

ARTICLE XII PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, purchase, or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the

City. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities.

ARTICLE XIII MUNICIPALLY-PRODUCED UTILITY SERVICE

§13.1 Municipally-Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of Utility Service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, consistent with PUC requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not To Limit City's Rights. Nothing in this franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

ARTICLE XIV ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation and energy efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; shall invest in cost-effective environmentally-sound technologies; shall consider environmental issues in its planning and decision-making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before

December 1 of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§14.2 Conservation. The City and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective energy conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in energy conservation through newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information about these programs on the Company's website. Further, the Company will designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in energy conservation and energy efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers and Residents. The Company agrees to help the City participate in Company programs and when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall:

- (1) notify the City regarding all eligible Renewable Energy Resource programs;
- (2) provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and
- (3) advise Residents regarding eligible Renewable Energy Resource programs.

Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this agreement. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with energy conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this agreement in order to help the City achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE XV TRANSFER OF FRANCHISE

§15.1 Consent of City Required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except when the transfer is made in response to legislation or requirements of the PUC or the Federal Energy Regulatory Commission, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

§15.2 Transfer Fee. In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE XVI CONTINUATION OF UTILITY SERVICE

§16.1 Continuation of Utility Service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities pending resolution of the disposition of the system unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City

arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company's tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets, City-owned Utility Easements and Other City Property. Only upon receipt of written notice from the City stating that the City has adequate alternative Utility Service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE XVII INDEMNIFICATION AND IMMUNITY

§17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.

§17.2 Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§4-10-101, C.R.S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE XVIII BREACH

§18.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed and neither will take any legal action independently to secure modification of this franchise.

However, Company reserves the right to seek a change in its tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise, if a party (the “breaching party”) to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

- (1) specific performance of the applicable term or condition; and
- (2) recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a “material breach”), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets, City-owned Utility Easements and Other City Property.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this franchise.

D. No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

**ARTICLE XIX
AMENDMENTS**

- §19.1 Proposed Amendments. At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.
- §19.2 Effective Amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

**ARTICLE XX
EQUAL OPPORTUNITY**

- §20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.
- §20.2 Employment.
- A. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.
- B. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.
- C. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations,

utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

D. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training, and leadership programs.

E. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.

F. The Company shall identify and consider women, persons of color and other under represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

A. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

**ARTICLE XXI
MISCELLANEOUS**

§21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this franchise.

§21.3 Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

§21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by first class mail, email or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

Mayor of Westminster
City of Westminster
4800 W. 92nd Avenue
Westminster, CO 80031

and

City Manager
City of Westminster
4800 W. 92nd Avenue
Westminster, CO 80031

With a copy to:

City Attorney
City of Westminster
4800 W. 92nd Avenue
Westminster, CO 80031

To the Company:

Regional Vice President, Customer and Community Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

§21.5 Examination Of Records.

A. The parties agree that a duly authorized representative of the City shall have the right to examine any books, documents, papers, and records of the Company reasonably related to the Company's compliance with the terms and conditions of this franchise. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the City, that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the City pursuant to the terms of this section. "Privileged communication" means any communication that would not be discoverable due to the attorney client privilege or any other privilege that is generally recognized in Colorado, including but not limited to the work product privilege. The work product privilege shall include information developed by the Company in preparation for PUC proceedings.

B. With respect to any information requested by the City which the Company identifies as "Confidential" or "Proprietary":

- (1) The City will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;
- (2) The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this franchise;

- (3) The information shall only be made available to City employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection B;
- (4) The information shall be held by the City for such time as is reasonably necessary for the City to address the franchise issue(s) that generated the request, and shall be returned to the Company when the City has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the City may maintain the information until such issues are fully and finally concluded.

C. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this franchise, the City will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third party confidential information provided by the Company pursuant to this franchise without first conferring with the Company. The Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

D. Unless otherwise agreed between the Parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.

§21.6 Other Information. Upon written request, the Company shall provide the City Manager or the City Manager's designee with:

- (1) Copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission;
- (2) A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

(3) Maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request; and

(4) A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.7 List of Utility Property. The Company shall provide the City, upon request not more than every two (2) years, a list of utility related property owned or leased by the Company within the City. All such records must be kept for a minimum of four (4) years.

§21.8 Payment of Taxes and Fees.

A. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this agreement ("Impositions"), provided that Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

B. The City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC.

§21.9 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.10 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.

§21.11 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

§21.12 Severability. Should any one or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

§21.13 Force Majeure. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to Force Majeure, as defined herein.

§21.14 Earlier Franchises Superseded. This franchise shall constitute the only franchise between the City and the Company for the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.

§21.15 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise.

§21.16 Calculation of Time. Any reference to time limits measured in days, shall be presumed to be calendar days, and not business days unless otherwise provided herein.

§21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Jefferson County, State of Colorado.

§21.18 Payment Of Expenses Incurred By City In Relation To Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this franchise, including the publication of notices, publication of ordinances, and photocopying of documents.

§21.19 Incremental Costs. The parties acknowledge that PUC rules, regulations and final decisions may require that incremental costs of complying with certain provisions of this franchise be borne by customers of the Company who are located within the City

§21.20 Change of Franchise Fee.

A. The Company shall report to the City, within sixty days, the execution or change of any franchise under which a municipality receives a franchise fee greater than is provided for herein or in which the undergrounding fund is greater than established in Section 11.2. herein.

B. Once each year the City Council may, by ordinance, change the franchise fee and the undergrounding fund percentage to that provided under any municipal franchise entered into by the Company in Colorado, after first giving thirty days' notice to the Company.

§21.21 Writing to Include Electronic Mail. Whenever either party is required to provide written notice or approval to the other under the provisions of this franchise, the requirement may be satisfied by a properly addressed electronic mail.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and year first above written.

CITY OF WESTMINSTER

ATTEST:

Clerk of the City of Westminster

Nancy McNally, Mayor, City of Westminster

APPROVED AS TO FORM:

Attorney for the City of Westminster

“CITY”

**PUBLIC SERVICE COMPANY OF
COLORADO**

By: _____
Jay Herrmann
Regional Vice President,
Customer and Community Services

Attest: _____
Asst. Secretary

“COMPANY”