



REVISED 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. 2009 Colorado Colfax Marathon Relay re 1st Place Team Recognition and \$1,500 Kaiser Permanente 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. Coyote Management Plan
 - B. Change Order for the Countryside Drive Sidewalk
 - C. Police Department Cumulative Purchases Over \$50,000 in 2009
 - D. Westminster Center Park Site Amenities Contracts and Purchases
 - E. Osceola and Perry Street Sewer Replacement Engineering Contract
 - F. Reclaimed Water System 8-inch Lateral, 112th Avenue and Alcott Street Project
 - G. Bradburn Boulevard, 73rd Avenue to Turnpike Drive Trail – Construction Contract
 - H. Payment to Adams County for 120th Avenue Access to Denver International Airport
 - I. Mosquito Management IGA with Jefferson County Department of Health and Environment
 - J. Special Legal Services Contract

9. Appointments and Resignations

10. Public Hearings and Other New Business

- A. Resolution No. 35 re Westminster Public Library Meeting Room Fees
- B. Councillor's Bill No. 19 re Supplemental Appropriation for the Purchase of a Park Bench for the City Hall Plaza

11. Old Business and Passage of Ordinances on Second Reading

- A. Remove from the Table the Photovoltaic Solar Installation Pilot Program, Power Purchase Agreement
- B. Photovoltaic Solar Installation Pilot Program, Power Purchase Agreement with Mainstreet Power

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

- A. City Council

13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JUNE 22, 2009 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Tasha Sanger, metro regional winner of the Colorado Municipal League's 2009 "If I were Mayor..." essay contest, led the Council, Staff and audience in the Pledge of Allegiance. Mayor McNally introduced Ms. Sanger, who remained seated on the dais by the Mayor throughout the meeting.

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Kaiser, to approve the minutes of the regular meeting of June 8, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that the City Council would not meet on June 29, the fifth Monday of the month. Additionally, City offices would be closed on July 3 in observance of Independence Day. The community July 4th celebration would begin at 6 p.m. at City Park with a concert, food vendors, and fun activities for all ages. The celebration would culminate with the traditional fireworks display at dusk. On-site parking was limited and everyone was urged to use the shuttle service or walk to the event. The Fishing Derby for kids 15 and under also would be that day at City Park. Everyone was invited to attend and enjoy the activities of the day.

Mr. McFall requested that Item 8F on the consent agenda be removed and that consideration of the photovoltaic solar installation pilot program and power purchase agreement be tabled to the July 13 meeting.

At the conclusion of this Council meeting, the City Council would convene in executive session to discuss Northwest Corridor Transportation negotiations and strategy and provide direction and instructions to the City's negotiators as authorized by Westminster Municipal Code §1-11-3(C)(4) and (7) and §24-6-402(4)(e), Colorado Revised Statutes.

CITY COUNCIL COMMENTS

Councillor Winter invited everyone to City Council's "We're All Ears" being held in conjunction with the first concert of this year's summer series on Thursday, June 25, at City park. Opie Gone Bad would be the featured band.

Mayor Pro Tem Dittman congratulated Mr. McFall for having completed the Ride the Rockies 380-mile course the prior week. He also offered kudos to the Parks, Recreation and Library staff for organizing a marvelous summer celebration event at the Irving Street Library the previous week. Hundreds attended and enjoyed the evening get-together.

Councillor Briggs reported that he and three other Council members attended the Colorado Municipal League (CML) Annual Conference in Vail June 16-19. The concurrent sessions presented had provided valuable information for elected and appointed officials and the Mayor and Councillors had pre-selected different classes to attend to maximize coverage of all classes offered. Additionally, staff from the City Manager's office had been on hand to participate in a session on performance standards measurement and a consortium of municipalities formed by the League to equalize standards so everyone measured the same things. The venue not only provided valuable educational opportunities in a classroom setting, but also networking opportunities for participants to learn about solutions to issues common to Colorado municipalities. For example, the revenue sharing agreement between Westminster and Thornton was

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June 22, 2009 – Page 2

a resource being discussed by the Town of Windsor and the City of Fort Collins as a model to solve retail competition between the two communities amicably. Councillor Briggs appreciated the opportunity to attend the conference.

Mayor McNally praised Parks, Recreation, and Library staff for the fantastic job done in organizing the Annual Father/Daughter Tea. Watching the young girls and their fathers at the magical event compared to watching Cinderella.

The Mayor congratulated Councillor Winter, who had been elected Vice President of the Colorado Women in Municipal Government during the CML Annual Conference.

The Mayor reported on a U.S. 36 meeting earlier in the day. The conclusion of the EIS was finally in sight. She anticipated the public comment opportunity would be in late August, early September. The goal was to get into the next round of funding consideration.

PRESENTATIONS

Mayor McNally was joined by Lisa White of the Colorado Municipal League, the parents of Tasha Sanger, and the Superintendent of Schools for Jefferson County, to recognize Tasha Sanger, Mandalay Middle School student and the 2009 metro regional winner of CML's "If I were Mayor..." essay contest. Ms. Sanger read her essay and was presented a Certificate of Recognition from CML. As one of four winners throughout the state, she also had received a \$500 savings bond from ColoTrust, co-sponsor of the contest, during the CML Annual Conference in Vail.

CITIZEN COMMUNICATION

Alan Murphy, a homeowner and officer of the 79th and Lowell Homeowners' Association, was excited about renovation of Lowell Boulevard in South Westminster and thanked the Council and staff for their efforts in that regard. Additionally, as a parishioner of Holy Trinity Catholic Church, he was proud of the enhanced ambiance the church's planned improvements would contribute to the revitalization of South Westminster.

Phyllis Hassell, 7762 Meade Street, reported that Father Hilton of Holy Trinity Catholic Church had invited all members of neighboring homeowners' associations and the residents of Westminster Commons to a meeting on June 23 that the church was hosting to introduce its plans for improvement and gather neighborhood comment. She appreciated his efforts, as well as the City's efforts to beautify South Westminster.

CONSENT AGENDA

Mayor Pro Tem Dittman moved to remove from the consent agenda Item 8F pertaining to the photovoltaic solar installation pilot program and power purchase agreement with Mainstreet Power. Councillor Major seconded the motion, which carried unanimously.

The following items were submitted for Council's consideration on the consent agenda: acceptance of the May 2009 Financial Report; acceptance of the 2008 Comprehensive Annual Financial Report; ratification of a \$16,571.87 expenditure to the previously approved lease/purchase contract with Colorado Golf & Turf, Inc., and authority for Staff to pay Adams County an additional amount of \$1,406.03 for payment of Adams County sales tax on the purchase price of the golf cart replacement rental fleet, bringing the total amount of this authorization to \$17,977.90; authority for the City Manager to enter into a one-year extended warranty contract with Itronix to provide maintenance and repair services on 79 ruggedized laptops in an amount not to exceed \$60,688; authority for the City Manager to execute a change order with Greater Western Fence & Supply, Inc. in the amount of \$90,651 plus a contingency of \$5,000 for a total project budget of \$306,611 for the addition of fencing at the Big Dry Creek Wastewater Treatment Facility and authority to transfer \$95,651 from the 94th and Quitman Lift Station

Elimination account into the newly created Big Dry Creek Wastewater Treatment Facility Fencing project to fund the change order; final passage of Councillor's Bill No. 15 rezoning the Holy Trinity Catholic Church property from R-1 (Single Family Residential) to Planned Unit Development based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code had been met; final passage of Councillor's Bill No. 16 appropriating \$34,990 in the General Fund for the lease/purchase of three City Hall copiers equipped with fax machines; final passage of Councillor's Bill No. 17 authorizing a supplemental appropriation in the amount of \$543,592 reflecting the City's receipt of an Adams County Open Space Grant for Westminster Center Park; and final passage of Councillors Bill No. 18 appropriating \$952,800 to the Energy Efficiency and Conservation Block Grant Project, funded by the American Recovery and Reinvestment Act.

Mayor McNally asked if Councillors wished to remove any further items from the consent agenda for discussion purposes or separate vote. There was no request. Mayor Pro Tem Dittman moved to approve the consent agenda as amended. The motion was seconded by Councillor Major and passed unanimously.

PHOTOVOLTAIC SOLAR INSTALLATION PILOT PROGRAM, POWER PURCHASE TABLED

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Winter, to table consideration of the photovoltaic solar installation pilot program and power purchase agreement to the July 13, 2009, City Council meeting. The motion carried with all Councillors voting affirmatively.

RESOLUTION NO. 34 EXTENDING HYLAND VILLAGE SERVICE COMMITMENT AWARDS

Upon a motion by Councillor Briggs, seconded by Councillor Kaiser, the Council voted unanimously at roll call to adopt Resolution No. 34 extending the Category A-4 Service Commitment Award to the Hyland Village Traditional Mixed Use Neighborhood Development project based on a finding that the Hyland Village project meets the Westminster Municipal Code Section 11-3-2(A) 2 criteria of the City's Growth Management Program.

ADJOURNMENT

There was no further business to come before the City Council. Before entertaining a motion to adjourn the Mayor recognized Christian Femrite, a Scout who had joined the meeting in progress and was working on his Citizenship in the Community merit badge.

It was moved by Councillor Kaiser, seconded by Major, to adjourn. The motion passed unanimously, and the meeting adjourned at 7:27 p.m.

ATTEST:

City Clerk

Mayor



**W E S T M I N S T E R
C O L O R A D O**

Agenda Item 6 A

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: 2009 Colorado Colfax Marathon Relay: Recognition of 1st Place Municipal Cup Team and Presentation of \$1,500 Kaiser Permanente Award to Westminster Legacy Foundation

Prepared By: Aric Otzelberger, Management Analyst

Recommended City Council Action

Recognize City of Westminster employees on the 1st place Colorado Colfax Marathon Municipal Cup relay team and accept \$1,500 award from Kaiser Permanente for winning the Municipal Cup co-ed division. Per the award guidelines, present the \$1,500 award to the Westminster Legacy Foundation.

Summary Statement

- On May 17, 2009, the City of Westminster's Wellness Program sponsored a team comprised of Westminster City employees that competed in the 2009 Denver Post Colorado Colfax Marathon Relay. The team competed in the Municipal Cup Division of the event, which was created by the mayors of Denver, Aurora and Lakewood to spur friendly competition amongst cities in Colorado.
- The City of Westminster team took first place in the co-ed division of the event with a total time of 3 hours and 14 minutes. The team consisted of Westminster employees Dave Cotton (IT), Tara Wilson (PW&U), Sam Trevino (FIN), Sean Layfield (PR&L) and Aric Otzelberger (CMO).
- For winning the co-ed division of the Municipal Cup Relay, the City has been awarded \$1,500 by Kaiser Permanente, who was a sponsor for the event. Per Kaiser's award guidelines, the City must donate the \$1,500 to a non-profit in the local community. The City will present the \$1,500 to the Westminster Legacy Foundation.
- Tom Curriigan, President of Kaiser Permanente for the Denver Region, and Linda Morton of the Denver Post Colorado Colfax Marathon will be in attendance to present the award. A representative from the Westminster Legacy Foundation will be present as well.
- This represents the third year in a row that a City of Westminster Wellness-sponsored team has taken 1st place in a division of the Municipal Cup Relay.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

On May 17, 2009, the 4th annual Denver Post Colorado Colfax Marathon was held. The event includes a full marathon, a half marathon and a marathon relay. The marathon relay requires teams of five runners and includes five segments. The segments include two 5K (3.1 mile) legs, two 10K legs (6.2 miles) and one 12K leg (7.45 miles). Aurora Mayor Ed Tauer, Denver Mayor John Hickenlooper and Lakewood Mayor Bob Murphy invited every city and town in Colorado to compete for the 2009 Municipal Cup. The purpose of the Municipal Cup is to promote friendly competition and camaraderie with other towns and cities in Colorado while giving City employees an incentive to get some healthy exercise. The Municipal Cup was open to mayors, council members, city employees, family members and colleagues. In 2009, there were 33 teams that competed in the Municipal Cup. 27 of those teams competed in the co-ed division of the Municipal Cup.

For the third year, the City of Westminster's Wellness Program sponsored a team that competed in the co-ed division of the Municipal Cup. The City of Westminster team took first place in the co-ed division of the event with a total time of 3 hours and 14 minutes. The team consisted of Westminster employees Dave Cotton (IT), Tara Wilson (PW&U), Sam Trevino (FIN), Sean Layfield (PR&L) and Aric Ozelberger (CMO). This represents the third year in a row that a City of Westminster Wellness-sponsored team has taken 1st place in a division of the Municipal Cup Relay. In 2007, the City won the men's division and in 2008 the City won the women's division.

For winning the co-ed division of the Municipal Cup Relay, the City has been awarded \$1,500 by Kaiser Permanente, who was a sponsor for the event. Per Kaiser's award guidelines, the City must donate the \$1,500 to a non-profit in the local community. Based on Kaiser's requirements of the grant award, the City will present the \$1,500 to the Westminster Legacy Foundation. Tom Curriган, President of Kaiser Permanente for the Denver Region, and Linda Morton of the Denver Post Colorado Colfax Marathon Relay will be in attendance at the July 13 City Council meeting to present the award. A representative from the Westminster Legacy Foundation will be present as well.

The Municipal Cup victory and the Kaiser award are fruits of the City's strong Wellness Program and show the commitment that many Westminster employees have to living a healthy lifestyle.

Respectfully submitted,

J. Brent McFall
City Manager



W E S T M I N S T E R
C O L O R A D O

Agenda Item 8 A

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Coyote Management Plan

Prepared By: Rod Larsen, Park and Open Space Supervisor
Richard Dahl, Park Services Manager

Recommended City Council Action

Adopt the Coyote Management Plan for City open space properties.

Summary Statement

- City Staff has noticed an increase in the coyote population over the last three years along with an increase in calls from concerned citizens.
- Many government agencies along the Front Range have noticed an increase in coyote population and are adopting coyote management plans.
- Some municipalities have resorted to lethal control as a way of controlling the coyote population in their cities.
- Some key points of the plan are as follows:
 - To establish management practices that promote coexistence between people and coyotes.
 - The primary focus is on public education through the following:
 1. Educational brochures.
 2. Information on City website.
 3. Public Service Announcements.
 4. Educational signage at specific open space sites.
 5. Educational programs at schools.
 - Residents are encouraged to report coyote sightings with the data being used for specific management practices.
 - The plan identifies coyote hazing techniques that are designed to instill the fear of humans.
 - As a last resort, the plan does give City Staff authorization to use lethal control measures in only the most dangerous situations to humans and pets.

Expenditure Required: \$5,000

Source of Funds: Parks, Open Space and Trails Fund - Park Services 2009 Budget

Policy Issue

Should Council adopt and direct Staff to follow a Coyote Management Plan as proposed for City open space properties?

Alternatives

1. Council could direct Staff to revise the proposed Coyote Management Plan for open space properties. Staff does not recommend this as it is believed the proposed Management Plan would give Staff the appropriate options for management and control depending upon the circumstances for each site.
2. City Council could choose to not adopt the Coyote Management Plan and direct Staff to continue with existing minimal control efforts. Staff does not recommend this option as the number of coyote/human encounters continue to rise and a standing plan would help in pro-active management practices.

Background Information

Coyotes, probably the most adaptive of all wildlife species, thrive in urban settings. Food, shelter, and water are all available to coyotes and they eventually start to view humans as a provider rather than as something to fear. This loss of fear of humans can escalate to coyote/human encounters. Coyotes are dangerous predators and will hunt and kill all types of animals including domestic pets.

Over the last few years, Staff has noted a steady increase in the coyote population in many of the City of Westminster open space properties as well as developed park sites. This increase in population has also led to an increase in coyote/human encounters as well as coyote/pet encounters. Many of these encounters can be avoided if the general public is educated about coyote behavior and actions. Some Front Range municipalities have initiated lethal control actions on coyotes that have resulted in negative public reaction.

Staff has prepared a Coyote Management Plan that provides information on the biology of the coyote as well as management options. Coyotes provide a unique and beneficial quality to the ecosystem and it is not the intention of the Parks, Recreation and Libraries Department Staff to eliminate the coyote population within the City of Westminster, but to educate the public in an attempt for the coyote to co-exist with people in a safe, urban setting. The management plan as proposed would aid in this goal.

Staff has identified \$5,000 as potential costs associated with implementing the Coyote Management Plan. Staff anticipates utilizing these funds for any education programs that need funding.

The proposed Coyote Management Plan supports City Council's Strategic Plan Goals of "Safe and Secure Community" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachment



W E S T M I N S T E R

Coyote Management Plan



City of Westminster

July 13, 2009

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City of Westminster Coyote Management Plan

I. PURPOSE OF THE PLAN

The purpose of this document is to provide a management strategy to be used by staff that aims at reducing human/coyote conflicts within the City of Westminster. Public safety is the City's the number one concern, and coyotes will be managed with human safety as a priority. While the City employs educational outreach tools as the primary program in managing human/coyote conflicts, the City recognizes that there are situations where immediate control may be necessary. This plan focuses on changing and adapting the behavior of the coyote through human interaction.



II. COYOTE BIOLOGY/BEHAVIOR

Canis latrans is the scientific name for coyote and it means barking dog. They are usually less than three feet tall and have erect, pointed ears, a slender muzzle and a bushy tail. Coyotes are brownish gray with a light gray to cream-colored belly; however, color can vary from nearly black to nearly white. Male coyotes can weigh 25 to 45 pounds while female coyotes weigh 22 to 35 pounds. Coyotes usually live an average of six to eight years in the wild.

Coyotes breed in January and February and have a gestation period of approximately 63 days and the young are usually born in March, April or May. While the average coyote litter is five or six pups, the reproductive potential of female coyotes is generally connected with population density and can range from 3 pups per litter in large populations to 12 pups per litter in smaller populations. Urban coyotes may make their dens in storm drains, under storage sheds, or in holes dug in vacant lots, parks, golf courses and similar sites. Coyotes are most active at night and in early morning, but can be seen any time during the day.

The coyote is one of the most adaptive of all wildlife species. They are found throughout North America from the remote regions of the mountains and prairies to highly urbanized areas. One of the keys to the coyote's success is its varied behavior and diet as it is an opportunistic feeder and will eat almost anything. Coyotes not only feed in the wild on deer, rodents, carrion, fruits, and insects, but also on domestic livestock, poultry, cats and dogs. Coyotes that have adapted to human population expansion or dispersed into developed suburban landscapes unoccupied by other coyotes tend to thrive in such environments. The ready supply of food, water and shelter helps coyotes survive in the suburbs and makes them tend to lose their fear of humans. Suburban coyotes have access to rodents, rabbits, household garbage, compost piles, pets, pet food, and water from ponds and landscape irrigation. Coyotes in the wild are extremely cautious of humans in areas where they are harassed, hunted or trapped.

However, in suburban areas, where they have lost their fear of humans, coyotes may associate people and their pets with an easy and dependable source of food. This has led to an increase in human/coyote as well as pet/coyote confrontations. Educating the public about coyotes and their behavior is a vital component of the Coyote Management Plan.



III. COYOTE EDUCATION OUTREACH

The education of the public is an important tool in this plan for humans and coyotes to coexist in a safe environment. The City of Westminster and the Colorado Division of Wildlife (CDOW) will work together to provide education and information to citizens on how to coexist with coyotes successfully. It will be the responsibility of the Open Space staff to organize and implement the education outreach program.

Examples of the education outreach:

1. Educational brochures will be made available in all city facilities.
2. Informational post cards will be mailed by CDOW to neighborhoods with human/coyote conflicts.
3. Coyote information will be made available to the City Edition and the City of Westminster website.
4. Coyote information will be part of the public service announcements (PSA) on Channel 8.
5. Educational human/wildlife conflict signs will be posted in appropriate parks and open spaces.
6. A link to the CDOW will be provided on the City of Westminster website.
7. Education programs for schools, HOAs, and other groups will be available by both CDOW and City of Westminster staff.

IV. COYOTE HAZING

One of the basic issues with urban coyotes is that they have lost their fear of humans. Over the years, coyotes have had more contact with humans because of habitat encroachment and food supply issues. This has led to more coyote/human conflicts and abnormal behavior of the coyote. One of the solutions to this problem is to reinstall the coyote's fear of humans again by adopting a hazing program designed to help accomplish this goal. The hazing program is one that encourages implementing harassing actions without the use of weapons or bodily harm to the coyote. Some examples of this would be shouting, clapping hands, whistles, or throwing rocks in a coyote's vicinity.

A. Coyote Hazing Techniques for Citizens

1. Shouting and clapping of hands
2. Use of a whistle or air horn
3. Running or bicycling toward a coyote
4. Throwing objects in the coyote's vicinity

V. MONITORING PROGRAM AND DEFINITIONS

One of the tools associated with this plan will be a monitoring program that would receive input from both the public and employees. The purpose of the monitoring program is to document where coyotes are frequently seen, how many coyotes are within the City of Westminster, identifying dangerous coyotes, and to give staff an understanding of where the City needs to focus the management plan.

A standard monitoring form will be available on the City of Westminster's website that explains the different types of interaction. Citizens are encouraged to call a designated telephone number in Animal Management and be directed to give specific information. This information will be compiled on a regular basis by Animal Management staff. The following definitions have been defined by CDOW as the proper terms to be used when dealing with coyote issues. They are intended to easily identify the proper interactions between humans and coyotes.

A. Interaction Definitions

1. **Observation** - Noticing tracks, scat or vocalizations of coyotes in an area.
2. **Sighting** -A visual observation of a coyote made from a distance.
3. **Encounter**- An unexpected direct meeting between a human and a coyote without incident. A coyote may be in close proximity to a human but does not create an unsafe situation.
4. **Incident** - A conflict between a human and a coyote where a coyote exhibits behavior creating an unsafe situation. A coyote may show aggression towards a human without any physical contact.
5. **Attack** – A direct, aggressive physical contact by a coyote on a human or a pet on a leash.

B. Coyote Behavior Definitions

It is important, based on the level of interaction between a coyote and a human, to identify a coyote as either a nuisance coyote or a dangerous coyote. The City of Westminster will only take lethal control actions on a dangerous coyote. These are the two terms that will be used when considering management levels.

1. Nuisance Coyote

A coyote may be defined as nuisance using the following guidelines:

- a) A coyote that has been involved in a sighting and/or encounter and,
- b) a coyote that may frequently associate with humans or human-related food sources, and may exhibit little wariness of the presence of people and,
- c) a coyote that may be preying on pets that are off leash.

2. Dangerous Coyote

A coyote may be defined as dangerous using the following guidelines:

- a) A coyote that preys on pets that are on-leash and/or on private property and,
- b) a coyote that has been involved in an incident and/or attack.

VI. CITY'S RESPONSES TO COYOTE/HUMAN INTERACTIONS

After staff has been notified of the specific coyote/human interaction, the following responses by appropriate City of Westminster staff will be implemented.

A. To Observations, Sightings, and Encounters:

1. Document caller's information.
2. Provide caller with information on urban wildlife and ways to mitigate conflicts.
3. Mail caller additional information or refer to City or state website.
4. Explain to caller the coyote hazing techniques for citizens.

B. To Incidents and Attacks:

1. Document caller's information.
2. Notify the CDOW.
3. Determine if lethal control is appropriate and initiate.
4. Notify City of Westminster's Public Information Officer with facts and information.

VII. CITY'S RESPONSE TO COYOTE/PET ENCOUNTERS

It is important for pet owners to be aware of the potential for coyote/pet interactions. Coyotes see pets as both prey and competition. Pet owners need to keep their pets on leash and under voice control at all times when in coyote habitat. There are three separate scenarios in which a pet could be attacked and/or killed by a coyote.

A. While Off Leash

Pets are required to be on a leash within the City of Westminster except at the off-leash dog parks. Even when in the off-leash dog park, pets are required to be under voice command at all times. Pets should never be allowed to run free when coyotes are present.

City of Westminster Response

The City of Westminster will not take lethal action on a coyote if a pet is attacked and/or killed while off leash. The exception may be if the attack occurred within a COW off-leash dog park.

B. While On Leash

Even when on leash, pets may be attacked and/or killed by coyotes. This will be considered an incident or attack by definition.

City of Westminster Response

If a pet is attacked and/or killed by a coyote while on leash, the City of Westminster will consider this type of aggression as an incident/attack and lethal control actions may be initiated. See section VIII.

C. While On Private Property

Pets may be attacked and/or killed while on their owner's property.

City of Westminster Response

If a pet is attacked and/or killed while on private property, the City of Westminster may consider this type of aggression by a coyote as an incident/attack and lethal control actions may be initiated. See section VIII.



VIII. LETHAL CONTROL

The City may implement a lethal control program when interactions between humans and coyotes threaten human safety. There are two different situations where lethal control of a coyote may be needed – immediate and post incident/attack.

- A. Immediate Lethal Control** – This is a situation where a coyote is jeopardizing human safety at that moment. Where coyotes are posing an immediate safety threat to humans and some type of defense is necessary at that moment, Westminster Police Officers may take immediate lethal control actions. This is a situation where a decision is made on the spot by the police officer and does not need approval by a higher authority.

B. Post-Attack Lethal Control – This is a situation where an incident/attack has already occurred. If a report of an incident/attack is verified, Staff will immediately contact CDOW and the appropriate City of Westminster personnel with the information. CDOW will have the authority to use lethal control on the specific coyote involved in the incident/attack and will carry out any lethal control actions. If CDOW cannot carry out the lethal control actions, a private contractor may be used. All information and facts will be forwarded to the City of Westminster Public Information Officer.

Lethal Control Steps

1. An incident or attack is reported by a citizen and verified by City of Westminster Staff.
2. Staff will immediately contact CDOW along with appropriate personnel in the City Manager's Office, the Police Department, and the Parks, Recreation and Libraries Department.
3. A decision may be made by CDOW and COW to use lethal actions concerning the specific dangerous coyote. CDOW will implement these lethal control actions. If CDOW is unable to perform the lethal control actions, an outside contractor may be hired. A list of available contractors will be established and on-hand for staff to use at any time needed.
4. All information will be forwarded to the City of Westminster Public Information Officer.

IX. ORDINANCES

There are both State of Colorado and City of Westminster ordinances that will be followed with the Coyote Management Plan.

State of Colorado ordinances:

33-1-106 gives the Wildlife Commission the authority to regulate the circumstances under which wildlife may be taken and to determine the disposition of usable portions of wildlife.

33-1-105(1)(h) gives the Wildlife Commission the authority to provide for destruction of any wildlife that poses a threat to public health, safety, or welfare.

33-6-107(9) permits any person, any member of such person's family, or any employee of the person to hunt, trap, or take coyotes on land owned or leased by the person without securing licenses to do so, but only when such wildlife is causing damage to crops, real or personal property, or livestock.

Wildlife Commission **Regulation 303 (A)** prohibits the relocation of coyotes without a permit. Studies have shown that relocation is not an effective solution to coyote conflicts. The Colorado Division of Wildlife (CDOW) generally will not authorize the relocation of coyotes.

33-6-205 gives federal, state, county or municipal departments of health the ability to grant an exemption to Amendment 14 to take (by use of leg hold traps, snares, instant kill body-gripping design traps or poisons) wildlife for the purpose of protecting human health and safety.

City of Westminster ordinances:

6-2-9: FIREARMS: (1224 2001 3070)

(A) It shall be unlawful for any person to intentionally, knowingly or recklessly discharge firearms, deadly weapons or destructive devices of any kind or description within the limits of the City; provided, however, that this shall not apply to police officers in the discharge of their duties.

"Firearm" shall mean any instrument or device used in the propulsion or discharge of shot, slugs, shells, cartridges, bullets or other harmful objects or projectiles by the action of gunpowder exploded or burned within it, or by the action of compressed air within it, or by the power or action of springs, and including what are commonly known as air rifles, air pistols and B-B guns.

13-1-3: USE REGULATIONS: (796 847 1889 2811) It shall be unlawful for any person to fail to comply with the following:

R) Weapons. Discharge, fire, or shoot any firearm, air gun, slingshot or bow and arrow or other projectile or projectile launching device on any park except at places designated and posted specifically for such purposes.

(S) Fauna - Disturbing Wildlife. Take, seize, molest, injure or hunt any bird, reptile, fish or animal in any park or community building, or portion thereof unless posted specifically for that purpose or with the expressed written consent of the Director, and in compliance with the game, fish and wildlife laws of the State of Colorado.



W E S T M I N S T E R
C O L O R A D O

Agenda Item 8 B

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Change Order for the Countryside Drive Sidewalk

Prepared By: Dave Downing, City Engineer

Recommended City Council Action

Authorize the City Manager to execute a change order in the amount of \$55,000 to the ongoing, citywide Concrete Replacement Program contract between the City and Keene Concrete for the purpose of constructing a concrete sidewalk along the east side of Countryside Drive to the north of 100th Avenue; and charge the expense to the appropriate account of the Department of Public Works & Utilities, Street Division operating budget.

Summary Statement

- As part of the 2009/2010 budget development process, the City Council received a citizen request for the installation of a sidewalk along the east side of Countryside Drive, north of 100th Avenue between Kettner Reservoir and Kensington Park.
- Council concurred with Staff's recommendation to utilize Jefferson County Schools Cash-In-Lieu monies to pay for the \$55,000 expense of this sidewalk.
- The funds have been transferred to the appropriate account of the Street Division operating budget, and a change order is ready for approval. With Council's authorization of this request, Keene Concrete will install the sidewalk within the next few weeks.

Expenditure Required: \$55,000

Source of Funds: Jefferson County Schools Cash-In-Lieu funds

Policy Issue

Does Council wish to proceed with the installation of a sidewalk along the east side of Countryside Drive to the north of 100th Avenue?

Alternative

Council could elect to not have this sidewalk installed. This alternative is not recommended due to the desire to ensure that students of Wayne Carle Middle School and other pedestrians have a safe means of walking along Countryside Drive to the north of the school campus.

Background Information

During public meetings for the development of the City's 2009/2010 Budget, the City Council received a request for the installation of a concrete sidewalk along the east side of Countryside Drive to the north of the Wayne Carle Middle School. Many students do not use the "soft trail" that runs adjacent to Kettner Reservoir located several feet to the east of Countryside Drive and, instead, opt to walk within the paved portion of the street. It is hoped that a new, attached sidewalk along the east side of the road will entice the students to avoid walking in the street.

Sufficient Jefferson County Schools Cash-In-Lieu funds are available to pay for the \$55,000 expense of this sidewalk. These funds were transferred to the Department of Public Works & Utilities, Street Division operating budget with the First Quarter 2009 Supplemental Appropriation. Once the requested change order is approved, Keene Concrete is available to quickly install the sidewalk before the beginning of the fall semester.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 C

W E S T M I N S T E R C O L O R A D O

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Police Department Cumulative Purchases Over \$50,000 in 2009

Prepared By: Lee Birk, Chief of Police
Sandy Schwab, Administrative Coordinator

Recommended City Council Action

Determine that the public interest will be best served by ratifying and approving police department cumulative purchases in 2009 with Thunder Mountain Harley Davidson up to a maximum of \$75,000, Public Safety Warehouse up to a maximum of \$95,000, and an Intergovernmental Agreement (IGA) assessment with North Metro Task Force up to a maximum of \$70,048.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- The police department has identified three vendors or entities where the total cumulative expenditures will exceed \$50,000 for the year 2009 and need Council authorization.
- Funds were previously appropriated in the 2009 Budget and are available in the General Fund for the purchases.

Expenditure Required: \$240,048

Source of Funds: 2009 General Fund - Police Department Operating Budget

Policy Issue

Should Council ratify and approve the cumulative purchase of commodities and an organizational assessment that total over \$50,000 in 2009?

Alternative

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

Background Information

The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000. The police department has identified three vendors or entities where the total cumulative purchases or expenses will exceed \$50,000 for the year 2009 and need Council authorization. Staff is seeking approval for the following expenditures for the calendar year 2009. Funds are available in the Police Department's General Fund budget.

The details of these purchases are as follows:

- The police department has estimated that a total of \$75,000 or less will be expended to Thunder Mountain Harley Davidson for the department's motorcycle purchases, lease, and maintenance and repair. Thunder Mountain Harley Davidson is the vendor the police department uses for the police motorcycles because they are able to provide all of the services required for the Harley motorcycles (purchase, lease, maintenance and repair, and multiple locations). Three motorcycles were purchased in 2009 for \$48,150. The lease payment for three leased motorcycles that are in the final year of a prior lease program is \$6,480. In addition to the purchase and lease costs, the department pays repair and maintenance costs for the leased and purchased motorcycles, and repair costs when the leased motorcycles are turned in. The total for these maintenance/repair costs is estimated to be \$11,370 for maintenance on the nine owned motorcycle units, and \$9,000 on maintenance and repair for the three leased motorcycle units at the end of 2009.
- The police department has estimated that a total of \$95,000 or less will be expended to Public Safety Warehouse for the calendar year 2009. Public Safety Warehouse is one of the vendors utilized by the department for uniforms and equipment for sworn personnel, accident investigators, and animal management officers. In addition to uniforms, the department also purchases equipment such as handcuffs, pepper spray, batons, duty bags, clipboards, and rolotapes. Public Safety Warehouse is the primary vendor for uniforms and equipment. The police department also purchases uniforms and equipment from Neve's Uniforms and Precinct Police Products.
- The City of Westminster (including the Jefferson County portion of Westminster) along with Adams County, the City and County of Broomfield, and the municipalities of Brighton, Commerce City, Federal Heights, Northglenn and Thornton, all participate in the North Metro Task Force (NMTF). The NMTF is a multi-jurisdictional drug task force and was established through an Intergovernmental Agreement. The NMTF operates under a Federal fiscal year, and the funding sources for the task force are through asset forfeiture seizures, grant funding, cash-in-kind funding from the participating agencies, and other variables. Westminster's allocation to the NMTF for calendar year 2009 (NMTF FY 2009) is \$60,048. The police department is also anticipating a partial payment of \$10,000 in the fourth quarter calendar year 2009 towards the commitment for the task force's FY 2010.

The City's approach to these types of collective purchases from a single vendor is to assure that purchases in excess of \$50,000 are identified in advance and brought to City Council for approval.

Respectfully submitted,

J. Brent McFall
City Manager



W E S T M I N S T E R
C O L O R A D O

Agenda Item 8 D

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Westminster Center Park Site Amenities Contracts and Purchases

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Authorize the City Manager to purchase play equipment from Landscape Structures, Inc in the amount of \$107,167, and to execute contracts with Rocky Mountain Recreation, Inc for \$33,341 for installation and with Colorado Hardscapes in the amount of \$150,000 for rock play features. Authorize the purchase of poured-in-place safety surfacing from IP Surfacing in the amount of \$48,019. Authorize the purchase of pedestrian lighting from MH Lighting in the amount of \$100,000, benches and picnic tables from Dumor for \$67,659, and authorize the purchase of miscellaneous items from separate vendors not to exceed \$37,406.

Summary Statement

- On November 24, 2008, City Council directed Staff to apply for an Adams County Open Space grant for the 2009 budget year cycle. The Adams County Advisory Board unanimously approved the funding of the project at \$543,592. Funds were awarded by the Adams County Commissioners in May 26, 2009.
- City Council approved the first supplemental appropriation for the Adams County Open Space grant on June 8, 2009, with the second reading on June 22, 2009.
- Bids were solicited, where applicable, from a variety of companies that will be providing amenities to the site.
- Amenities include various playground equipment, benches, tables, trash cans, poured-in-place safety surfacing, and signage.
- Arrow J Landscape, Inc. is the general contractor for the project and has successfully completed construction projects for the City in the past including Big Dry Creek Park and Westfield Village Park. Arrow J Landscape, Inc. will coordinate installation scheduling of all playground equipment.
- Construction of this project is scheduled to be completed by the end of 2009.

Expenditure Required: \$543,592

Source of Funds: Adams County Open Space Grant Funds

Policy Issue

Should the City proceed with construction of the playground in Westminster Center Park?

Alternative

City Council could direct Staff to reduce the scope of the project and not use the Adams County Grant funding. Staff does not recommend this option. Staff presented the Westminster Center Park Project to the Adams County Open Space Advisory Board on April 23, 2009, who recommended the entire grant request of \$543,592 to the County Commissioners. The grant was awarded to the City on June 4, 2009, and the County Commissioners are anxious to see the finished park site.

Background Information

The City of Westminster is contributing \$1,960,563 in POST Bond Funds and General Capital Improvement Funds towards the construction of the Westminster Center Park project. Great Outdoors Colorado is also providing a matching grant of \$200,000. The City's Community Enhancement Art funds will provide \$150,000 for design and construction of a lighted obelisk that will be the center piece of the plaza. These funds will allow for the infrastructure and the majority of the park to be constructed at this time. The Adams County Open Space Grant will allow for the playground area to be constructed and complete this park project.

Bids specifically for the play area have been received and will be added to the construction costs. Expenses in addition to the construction costs identified in this memorandum are for design, consulting fees, testing, play lot equipment and fixture purchases, and other miscellaneous items bring the total budget for Westminster Center Park construction to \$2,854,155.

Breakdown of Funds

POST Bonds	\$1,377,231
General Capital Improvement Fund	\$583,332
Great Outdoors Colorado Grant	\$200,000
Community Enhancement Art	\$150,000
Adams County Open Space Grant	\$543,592
TOTAL FUNDING FOR CONSTRUCTION	\$2,854,155

Professional landscape architectural services were obtained to finalize the master plan of the park that will feature two shelters, a large performance shelter, terracing, a central plaza area with three small fountains, a play area, a restroom, parking lots and a walking trail throughout the park. This special use park was designed to serve a diverse array of users and provide a visual extension from City Hall.

Staff solicited bids for a variety of play elements within the playground. Many of the play pieces are customized to promote the "Neverland" theme of the playground and will be unique to this site. The play area will meet all necessary American with Disabilities Act (ADA) requirements. Bids are as follows:

Landscape Structures received a portion of the play equipment and site amenities on behalf of the U.S. Communities Government Purchasing Program, a cooperative of state, municipal, county, special district, school district and other local government agencies. This is a competitive bid and offers greater volume and lower prices to the City than the City can obtain on its own. Westminster City Code 15-1-4-A1 specifically states that this is an acceptable form of purchasing for the City. Landscape Structures has supplied equipment for several other City parks in the past. Rocky Mountain Recreation, which represents Landscape Structures, will provide the installation of the equipment at a cost of \$33,341.

To create the “Neverland” mountain and tree house for the area, four companies who specialize in custom rock structures were solicited to provide a design with a budget of \$150,000. Three companies responded with various designs and materials. Staff selected Colorado Hardscapes based on overall design, playability of the mountain structure and their ability to provide the City with a tree house play structure.

Colorado Hardscapes	\$150,000
Eldorado Walls	\$150,000
Landscape Structures	\$150,000
Monolithic	Did not provide design

Having fountain components within the plaza area determined the type of surfacing that needed to be used within the play area. The poured-in-place safety surfacing component was solicited from the following five companies:

Children's Play Structures	No Bid
Child's Play	\$9.79 per sq ft
Imagination Play	\$9.75 per sq ft
Rocky Mountain Recreation	No Bid
Triple M	No Bid

Since each lighting manufacturer offers their own style of lighting, pedestrian lighting was selected based on design components and coloring that match with other elements within the site. MH Lighting is the selected manufacturer for the pedestrian lighting. The selected general contractor, Arrow J Landscaping, will be installing the footing bases, electrical and lighting units as part of their contract. Total purchase cost for pedestrian lights will be \$100,000.

Dumor was chosen to provide the park benches and picnic tables for the site. Although many manufacturers provide picnic tables and benches, the benches that were selected have a decorative element that is unique for this park. Total purchase cost for the picnic tables and benches is \$67,659.

Miscellaneous items, such as light bulbs, trash receptacles, dog pick up stations and miscellaneous playground components will be purchased with remaining funds of \$37,406. Staff will continue to use a competitive bid process where applicable.

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,

J. Brent McFall
City Manager



Agenda Item 8 E

W E S T M I N S T E R C O L O R A D O

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Osceola and Perry Street Sewer Replacement Engineering Contract

Prepared By: Michael C. Wong, Senior Engineer
Dan Strietelmeier, Acting Capital Projects & Budget Manager

Recommended City Council Action

Based on the report and recommendation of the City Manager, find that the public interest will best be served by authorizing the City Manager to execute a sole source agreement with URS Corporation in the amount of \$74,612 for engineering design and construction management services for the Osceola and Perry Street Sewer Replacement and authorize a contingency of \$7,461 for a total design and construction management project budget of \$82,073.

Summary Statement

- City Council is requested to approve a contract with URS Corporation for design and construction management services for the Osceola and Perry Street Sewer Replacement project.
- The 2006 URS Infrastructure Study indentified the 94th and Quitman Lift Station Elimination as the first phase and the Osceola and Perry Street Sewer Replacement as the second phase of the project. With the recent completion of the 94th and Quitman Lift Station Elimination project, Staff recommends a sole source contract with URS for the design and construction management services for the Osceola and Perry Street Sewer Replacement project.
- URS was selected for the first phase project based on qualifications and competitive cost proposal. For project continuity and schedule, Staff recommends URS be retained for the second phase project.
- The scope of work includes an engineering study for selection of the alignment and hydraulic analysis for determining the pipe size of the new sewer.
- The design of Osceola and Perry Street Sewer Replacement is anticipated to be completed in August 2009 and construction be completed by the end of 2009.

Expenditure Required: \$82,073

Source of Funds: Utility Fund Capital Improvement Program
– Sewer Line Open Cut Replacement Project

Policy Issue

Should the City execute a sole source contract with URS Corporation for design and construction management services for the Osceola and Perry Street Sewer Replacement project?

Alternatives

The City could choose from the following alternatives:

1. Reject Staff recommendation to execute a sole source contract with URS and request new proposals for the design project. The City received five proposals from consulting firms for the first phase project of 94th and Quitman Lift Station Elimination. URS was selected as the best qualified and the most cost effective firm for the work. It is unlikely that a new request for proposals would result in substantial cost saving to the City.
2. Reject Staff recommendation and not replace the existing sewer in Osceola and Perry Street. The existing sewer has adverse hydraulic grade to properly convey wastewater flows in this part of the service area. Continuing to operate the Osceola and Perry sewer under current conditions will risk public health and safety.

Staff does not recommend any of these alternatives.

Background Information

The area served by the 94th and Quitman Lift Station is located in a fully developed residential area bounded by 92nd Avenue on the south, 97th Avenue on the north, Xavier Street on the west, and Green Court on the east (see attached Osceola and Perry Street Sewer Location Map). The service area is relatively flat. In the 2006 Infrastructure Study Report prepared by URS, it identified and recommended certain improvements to this part of the service area to eliminate the risk of public health and safety including sewage backup. The first phase involved the elimination of the 94th and Quitman Lift Station by constructing a gravity sewer from the intersection of City Center Drive and Sheridan Blvd. to 94th and Perry Street. The second phase of the project is to replace the existing sewer from 95th and Osceola to 94th and Perry Street to improve its hydraulic grade and capacity.

The 94th and Quitman Lift Station Elimination was completed in May 2009. The sewage flow from the 94th and Quitman Lift Station is now being diverted to the City's Big Dry Creek Wastewater Treatment Facility for treatment. The next phase can now begin, which is replacing the existing sewer in Osceola and Perry Streets, completing all necessary improvements in this part of the service area as identified in the 2006 Infrastructure Study.

URS performed an excellent job on the 94th and Quitman Lift Station Elimination project. The project was within budget and ahead of schedule. URS was selected for the 94th and Quitman Lift Station Elimination based on qualifications and competitive billing rate. It is in the best interest of the City to complete the Osceola and Perry Sewer Replacement by the end of 2009. As time is of the essence to accomplish the sewer replacement project as scheduled and URS's familiarity with the project, Staff recommends URS be awarded sole source contract for design and construction management services.

The Osceola and Perry Street Sewer Replacement project helps to achieve the City Council's Strategic Plan goals of "Safe and Secure Community" by improving public health safety to the City's deficient sewer; "Financially Sustainable City Government" by contributing to the objective of well-maintained City facilities; and "Beautiful and Environmentally Sensitive City" by enhancing the 94th and Quitman Lift Station site and the surrounding neighborhood area in general.

Respectfully submitted,

J. Brent McFall
City Manager

Attach: Osceola and Perry Street Sewer Location Map



0 250 500 750
SCALE IN FEET

Job No. : 22241053
Prepared by : MCR
Date : 6/30/09

CITY OF WESTMINSTER
OSCEOLA AND PERRY
SEWER REPLACEMENT
PROJECT LOCATION MAP



Agenda Item 8 F

W E S T M I N S T E R C O L O R A D O

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Reclaimed Water System 8-inch Lateral, 112th Avenue and Alcott Street Project

Prepared By: Stephanie Bleiker, PE, Senior Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with R&D Pipeline Construction, Inc. in the amount of \$76,207 for the construction of the 8-inch lateral at 112th Avenue and Alcott Street Project, and authorize a construction contingency in the amount of \$7,621 for a total construction budget of \$83,828.

Summary Statement

- This project is part of the development of the Reclaimed Water System that the City has operated since 2000.
- Reclaimed water is a valuable source of water supply. Its development and use is critical to meeting Westminster's growing water demands. At build-out, the reclaimed water system will deliver 3,500 acre-feet of water a year, comprising more than 10% of the City's total water supply.
- Additional customers must be connected to the reclaimed water system in order to meet build-out water supply goals. This line extension will allow the Cedar Bridge subdivision, on the south side of 112th Avenue at Alcott Street, to connect to the reclaimed water system.
- The portion of 112th Avenue where the construction will occur lies within the City's 112th Avenue Roadway Widening Project. The intent of the project is to complete construction before the roadway widening is complete in the vicinity of 112th Avenue and Alcott Street.
- An 8-inch reclaimed water line lateral will tie into the reclaimed mainline located north of 112th Avenue and extend south into Alcott Street. The line will be protected by a casing pipe in 112th Avenue where it crosses beneath a 48-inch pipeline, which supplies raw water to the Cities of Northglenn and Thornton.
- Five pre-qualified contractors attended the mandatory pre-bid meeting. Two of the contractors submitted qualified bids on June 18, 2009. R&D Pipeline Construction Company submitted the low bid in the amount of \$76,207.
- Sufficient funds are available in the 2009 Reclaimed System Improvements Project account to cover the \$83,828 construction budget.

Expenditure Required: \$83,828

Source of Funds: Utility Fund Capital Improvements – Reclaimed System Improvements Project

Policy Issue

Should the City proceed with the construction of the 8-inch Reclaimed Water Line Lateral at 112th Avenue and Alcott Street Project?

Alternatives

The City could choose from the following alternatives:

1. Extend the reclaimed water line at a later date; however, this would result in cutting into recent roadway construction on 112th Avenue, and delay new customer connections.
2. Award the contract to another bidder; however, this would only unnecessarily increase the project costs since the low bidder is responsible and qualified to perform this work.
3. Re-bid the project as currently designed; however, the cost proposal received is within the Engineer's estimate.

Staff does not recommend any of these alternatives.

Background Information

The City has operated a reclaimed water program (Program) since 2000. Reclaimed water is a valuable source of water supply. Its development and use is critical to meeting Westminster's growing water demands. Recently, City Council approved a new water supply plan, which included expanding the reclaimed water system. At build out, it is now anticipated that the reclaimed water system will deliver 3,500 acre-feet of water a year and comprise more than 10% of the City's total water supply. In order to achieve this goal, additional customers must be connected to the reclaimed water system. As reclaimed water connections replace potable water connections, the City's potable water supply effectively increases as does its ability to supply its future potable water demands.

This project will extend reclaimed water into the Cedar Bridge subdivision in preparation for future customer connections. The project consists of tapping the existing 30" reclaimed water line near 112th Avenue and extending the 8-inch reclaimed water lateral from the north side of 112th Avenue south approximately 90-feet into the Alcott Street roadway. At its southern end the lateral will be capped for a future customer connection. In an effort to coordinate work between Public Works and Utilities and the City's Community Development Department, the 8-inch reclaimed water lateral is being constructed before the 112th Avenue Roadway Widening Project is complete. The intent is to avoid cutting into newly constructed roadway improvements associated with another one of Westminster's capital improvements projects. The new 8-inch reclaimed water line lateral will extend under 112th Avenue crossing a number of buried utilities including the Cities of Thornton's and Northglenn's raw water supply line. The 48-inch raw water pipeline has been identified by the Cities of Thornton and Northglenn as being in unstable condition and subject to breakage. Consistent with Thornton's and Northglenn's design requests, the 8-inch reclaimed water line lateral will be installed using trenchless technology where it crosses the 48-inch raw water line. It will also be installed in a casing pipe, maintaining 3-feet of vertical separation where it crosses underneath the 48-inch raw water line. As the pipeline extends beyond the 48-inch raw water line, the pipe will be installed in an open trench, capped and marked in place to provide reclaimed water service to customers located in the Cedar Bridge subdivision.

The City identified seven contractors pre-approved for the work. Of the seven contractors who were invited to bid, five contracting companies attended the mandatory pre-bid meeting. The City received two qualified construction bids on June 18, 2009. The following is a summary of the bids received:

<u>Contractor Name</u>	<u>Base Bid Amount</u>
R&D Pipeline Construction, Inc.	\$76,207
BT Construction Company	\$82,695

After thoroughly reviewing the bids and checking references, Staff is recommending the award to R&D Pipeline Construction Company who was the lowest responsible bidder.

The approximate breakdown of current funding for the project is as follows:

Item	Amount
Construction (Including Contingency)	\$83,828
Open Space Restoration	\$10,000
Street Cut Impact Fees	\$5,000
 Total	 \$98,828

The construction contract with R&D Pipeline Construction, Inc. will mark the end of the design and bidding phase. The water line construction is anticipated to be completed by August 14, 2009, with construction closeout completed by August 20, 2009.

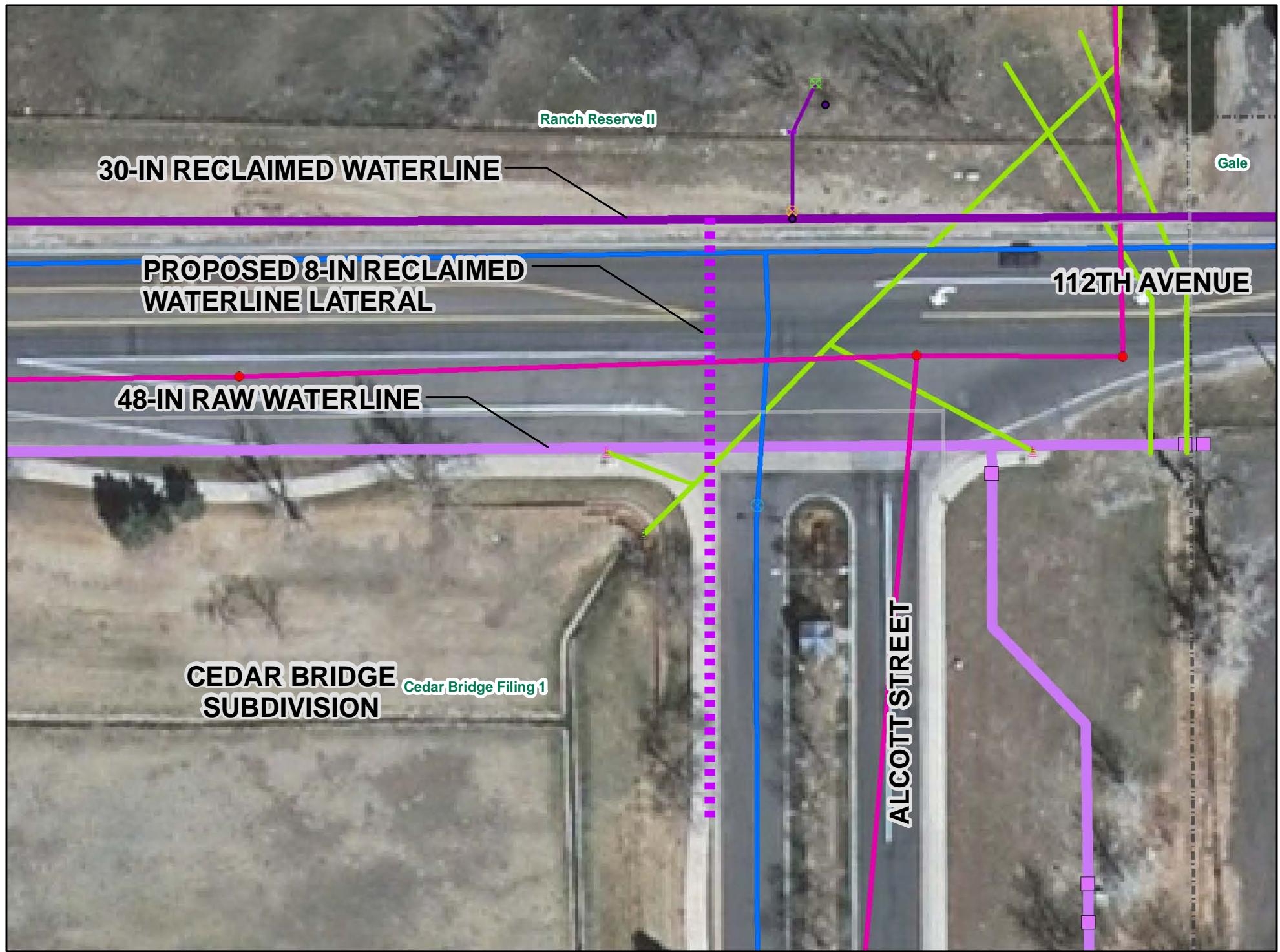
The timely completion of the 8-inch Reclaimed Water Line Lateral, 112th Avenue and Alcott Street Project will assist the City in meeting the City Council's Strategic Plan goals. The reclaimed water system assists in the creation of a "Financially Sustainable City Government" by providing efficient and cost-effective services, and by contributing to the development of a secure and long term water supply. It also creates a "Beautiful and Environmentally Sensitive City" by promoting environmentally sensitive operations. With the 8-inch reclaimed water line lateral in place, the City will be prepared to provide a future reclaimed water service connection to the Cedar Bridge subdivision without disturbing the 112th Avenue roadway and pedestrian improvements that will be completed in the near future.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Project Site Map

Reclaimed Water 8-inch Lateral at 112th Avenue & Alcott Street Project





W E S T M I N S T E R
C O L O R A D O

Agenda Item 8 G

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Bradburn Boulevard, 73rd Avenue to Turnpike Drive Trail - 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, Keene Concrete, Inc., in the amount of \$229,005.50 for the construction of the Bradburn Boulevard Trail; and authorize a construction contingency in the amount of \$33,600.

Summary Statement

- On February 13, 2009, Staff submitted project applications for funds awarded under the American Recovery and Reinvestment Act (ARRA), more commonly known as “Economic Stimulus Funds.”
- Of the eight applications submitted by Staff, the City was awarded funds for the construction of the “Bradburn Boulevard, 73rd Avenue to Turnpike Drive Trail Project.”
- This federal-aid project consists of the construction of approximately 4,600 lineal feet of eight-foot wide, detached bike path, handicap ramps at all intersections and a small pedestrian bridge over the Allen Ditch. This sidewalk will be a segment of the proposed US 36 bicycle trail that will connect Boulder and Denver.
- The project construction costs are funded entirely by the ARRA, which is administered by the Colorado Department of Transportation (CDOT) on behalf of the Denver Regional Council of Governments (DRCOG) and the federal government. The federal government’s not-to-exceed allocation for this project is \$300,000. The City is responsible for the \$17,900 final design cost.
- The “Requests for Bids” for the construction of this project were advertised in the Daily Journal for three weeks, and bids were opened on June 11. Eight bids were received and opened, and the lowest bid was submitted by Keene Concrete, Inc. in the amount of \$229,005.50.
- Staff has reviewed the bids and recommends awarding this contract to Keene Concrete, Inc. in the amount of \$229,005.50. A \$33,600 contingency is also recommended.

Expenditure Required: \$262,605.50 (To be reimbursed by the federal government)

Source of Funds: General Capital Improvement Fund

Policy Issue

Should the City continue with the effort to construct a detached, eight-foot wide bike path along the east side of Bradburn Boulevard from 73rd Avenue to Turnpike Drive and enter into a construction contract with Keene Concrete, Inc.?

Alternative

Council could opt to not authorize the execution of this construction contract. This alternative is not recommended because the City is receiving a substantial amount of federal funds to construct this project which would be lost if the project was abandoned at this time.

Background Information

In January 2004, the City sponsored the preparation of a schematic plan for the Bradburn Boulevard corridor which included street, landscape and bike path improvements. More recently, the Environmental Impact Study for future US 36 improvements identified the Bradburn Boulevard corridor as the most logical link of the proposed US 36 trail system to the existing Little Dry Creek trail system.

On February 6, 2009, a call for applications was issued by DRCOG for “shovel ready” projects, meaning projects that could be under construction within 90 to 120 days. Given the constraints outlined in the application for these federal funds, the Bradburn Boulevard Bikeway project was structured to include only the bike path element since the design and construction of the landscape and street improvements could not possibly be completed within the short timeline demanded by the federal government. The aggressive timeframe for ARRA funding required the City to obtain all CDOT approvals, including right-of-way, environmental and utility clearances, quickly so that the project could be advertised for construction no later than May 15, 2009.

The design is complete and the project was advertised for construction in accordance with CDOT and ARRA requirements. Requests for bids for the construction of this project were advertised in The Daily Journal for three weeks and bids were opened on June 11. Eight contractors submitted bids, and the bid results are as follows:

<u>Contractor</u>	<u>Submitted Bid</u>
Keene Concrete, Inc.	\$229,005.50
Silva Construction	\$248,111.50
Thouett Brothers	\$274,072.24
NORAA Concrete	\$297,299.00
KECI of Colorado	\$314,931.00
Northstar Concrete	\$333,711.50
Twin Peaks	\$378,487.00
New Design Construction	\$396,192.51
Engineer's Estimate	\$310,122.00

Staff and J.F. Sato, the City’s construction engineering consultant, have reviewed the results of the bidding procedure and recommend that the low bidder, Keene Concrete, Inc., be awarded the contract for construction in the amount of \$229,005.50. Keene Concrete is currently under contract with the City for the annual concrete replacement program for the Department of Public Works & Utilities. They are pre-qualified with the CDOT and have adequate bonding capacity; therefore, Staff and J.F. Sato believe that this company is very capable of constructing this type of project. The contingency amount of \$33,600 is approximately 15% of the cost of construction which Staff believes is adequate for a project of this size and complexity.

SUBJECT: Bradburn Blvd, 73rd Avenue to Turnpike Drive Trail Project

Page 3

The construction is anticipated to begin in July or August 2009 and be completed in September 2009.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 H

W E S T M I N S T E R
C O L O R A D O

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Payment to Adams County for 120th Avenue Access to Denver International Airport

Prepared By: Dave Downing, City Engineer

Recommended City Council Action

Authorize the payment of \$108,000 to Adams County for the City's share of the cost of a regional effort to extend 120th Avenue between Quebec Street and US Highway 85 in accordance with a previous agreement between the City and the County.

Summary Statement

- In 1999, City Council Resolution No. 88 defined the City's commitment of \$88,367 to pay for a share of the initial construction of a two-lane road over the South Platte River that would provide convenient access to Denver International Airport (DIA) for Westminster residents.
- In 2002, the City committed another \$20,000 for a share of the cost to widen 120th Avenue to four lanes.
- A total of \$108,000 was allocated in the City's 2008 Capital Improvement Project budget to pay for these commitments. Council's authorization to make this payment to Adams County is requested at this time.

Expenditure Required: \$108,367

Source of Funds: General Capital Improvement Project Fund
120th Avenue Access to Denver International Airport Project (\$108,000)
and General Fund Community Development Engineering Division Budget (\$367)

Policy Issue

Should the City honor the previous commitment to participate with Adams County in the cost of the construction of the 120th Avenue access to DIA?

Alternative

While Council could elect to not honor this commitment, this alternative is strongly discouraged. It is common practice for local governments to seek participation from other entities on projects of regional benefit. Westminster residents benefit from the convenient access to DIA that is provided by the improved 120th Avenue. Furthermore, Adams County continues to be a generous supporter of City of Westminster efforts such as the 144th Avenue widening (\$685,000 contribution from the County) and the Little Dry Creek Regional Detention Pond and Park planning and design (\$150,000 contribution from the County, to date).

Background Information

The 120th Avenue extension between Quebec Street and US Highway 85 provided a transportation link over the South Platte River that did not exist prior to this decade. Upon the completion of this project, 120th Avenue became a continuous route for travelers to DIA from State Highway 93 near the foothills to Tower Road.

The total cost of the entire project was approximately \$37.3 million, which included \$19.3 million of federal funds, \$16.5 million of Adams County funding and \$1.5 million of other local funding from benefitting municipalities. Virtually all of the jurisdictions that abut this roadway financially participated in the cost of the project.

Respectfully submitted,

J. Brent McFall
City Manager



W E S T M I N S T E R
C O L O R A D O

Agenda Item 8 I

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Mosquito Management Intergovernmental Agreement with Jefferson County Department of Health and Environment

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action:

Authorize the City Manager to sign an Intergovernmental Agreement (IGA) between the City of Westminster and the Jefferson County Department of Health and Environment to reimburse the City for mosquito control expenses within the Jefferson County portion of the City for the year 2009.

Summary Statement:

- The objective of Jefferson County's public health mosquito control is to prevent the mosquito-borne transmission of diseases to humans, livestock, and domestic pets. In order to effectively deal with the continuing threat of mosquito-borne transmission of West Nile Virus and other arboviral diseases, Jefferson County, for 2009, is contracting with Colorado Otter Tail Environmental, Inc. for Integrated Mosquito Management (IMM) services within certain areas of Jefferson County.
- In December 2007, the City entered into a two-year agreement with Colorado Mosquito Control (CMC) to manage and control all mosquito populations including those capable of transmitting West Nile Virus within the boundaries of the City of Westminster.
- The City of Westminster's 2009 expenditure of mosquito control with CMC is \$46,737.
- Because the City currently performs mosquito control within Jefferson County, the County will reimburse Westminster up to \$15,540 or 50% (whichever is less) of the City's costs for those IMM services performed in the areas of Westminster that are located in Jefferson County

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City of Westminster enter into an Intergovernmental Agreement with the Jefferson County Department of Health and Environment to receive reimbursement not to exceed \$15,540 for mosquito control in that portion of the City within Jefferson County?

Alternative

Council could choose to not approve the IGA. Staff would advise against this option as additional funding for the program could offset future expenses in mosquito control for 2009 related to the West Nile Virus.

Background Information

The Jefferson County Health Department deems the threat of West Nile Virus to be serious enough to initiate a county-wide mosquito control program. As Westminster currently has a comprehensive mosquito management program (originally established in 1986), the County will reimburse the City for the cost up to and not to exceed the amount of \$15,540 to perform West Nile Virus control measures within the City of Westminster. The Department of Parks, Recreation and Libraries will be responsible to provide the County with documentation necessary to comply with the IGA Mosquito Management reimbursement program.

Participation in this IGA helps meet the City's Strategic Plan goal of "Safe and Secure Community" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

INTERGOVERNMENTAL AGREEMENT FOR COOPERATIVE
MOSQUITO MANAGEMENT PROGRAM
(Revised May 12, 2009)

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into effective as of the ___ day of _____, 2009, between the **JEFFERSON COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT**, whose address is 1801 19th Street, Golden, CO 80401, hereinafter referred to as the "Health Department"; and the **CITY OF WESTMINSTER**, a municipal corporation of the State of Colorado, with its principal office located at 4800 W. 92ND Ave., Westminster, CO, hereinafter referred to as "Westminster."

WITNESSETH:

WHEREAS, the primary objective of public health mosquito control is to prevent the mosquito-borne transmission of diseases to humans, livestock, and domestic pets, and in order to effectively deal with the continuing threat of mosquito-borne transmission of West Nile Virus and other arboviral diseases, the Health Department has contracted with OtterTail Environmental, Inc., ("OtterTail") for Integrated Mosquito Management ("IMM") services within certain areas of Jefferson County, Colorado, during the year 2009; these services shall be provided to Jefferson County and various municipalities within Jefferson County, and

WHEREAS, said IMM services are detailed in a document entitled PURCHASE OF SERVICES AGREEMENT, signed May 4, 2009 and approved by the Board of Health on April 21, 2009; a copy of which is attached hereto and incorporated herein as **Attachment A**, and

WHEREAS, Westminster has established their own contract for IMM services within the boundaries of the Westminster, and

WHEREAS, for a price to be paid by the Health Department to Westminster based on the same rate as the Health Department will pay to the OtterTail to perform the IMM services detailed in the **Attachment A**, and

WHEREAS, the parties now desire to enter into this Intergovernmental Agreement so as to memorialize their agreement with respect to their respective responsibilities regarding the provision of such IMM services within Westminster's boundaries.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **PROVISION OF IMM SERVICES WITHIN WESTMINSTER:** Upon the signing of this Intergovernmental Agreement by the parties hereto, Westminster shall direct their contractor, during the year 2009, to perform similar IMM services as those set forth in **Attachment A** for the areas of Westminster located within Jefferson County. The services and service fee do not include adulticide services. The Health Department will monitor the need for adulticiding and advise the County and all participating municipalities if an adulticide program is recommended and approved by the Board of Health and Board of County Commissioners.
2. **PROVISION OF OTHER IMM SERVICES BY WESTMINSTER:** Westminster shall designate a point of contact for communication with the Health Department; provide a copy of their contractors liability insurance indemnifying the Health Department against any liability resulting from the delivery of their contractor's IMM services; provide public education to their

citizens; coordinate with the Health Department on IMM services or concerns; and advise the Health Department, by report, of the IMM services conducted by Westminster or it's contractor within the portions of Westminster located within Jefferson County. The IMM service reports shall be submitted on a monthly basis on or before the 5th of the month effective July 2009 and ending October 2009. At a minimum the IMM service report shall address the number of larval development sites inspected, number of sites treated, and public educational activities conducted by Westminster and/or Westminster's IMM service contractor. A copy of Westminster's IMM service contract(s) shall be attached to the July report. The monthly report, with the notation "re: West Nile IGA Report", Attention: Dr. James Dale, Jefferson County Department of Health and Environment, 1801 19th Street, Golden Colorado 80401.

3. **MONITORING THE PROVISION OF IMM SERVICES:** Staff from the Health Department will monitor the work of Westminster and their IMM service contractor to ensure that the IMM services detailed in Paragraph 1 and 2 above are fulfilled. As needed, the Health Department will provide Westminster with public education information and periodic reports regarding the status of mosquito-borne diseases and vector control. Questions regarding the Health Department's IMM services shall be through Dr. James Dale, Jefferson County Department of Health and Environment, 1801 19th Street, Golden, Colorado, 80401; PHONE: 303-271- 5718; FAX: 303-271-5702; EMAIL: jdale@jeffco.us .

4. **PAYMENT OF WESTMINSTER IMM SERVICE FEE:**

(a) The Health Department agrees to pay to Westminster up to \$15,540.00 to reimburse 50% of their costs up to \$31,080.00 for IMM services provided by their contractor between June 8, 2009 and September 4, 2009 for the areas of Westminster located within Jefferson County. This amount is based on IMM service rate paid by the Health Department to OtterTail for the IMM services detailed in **Attachment A**.

(b) Should additional IMM services be provided before June 8, 2009, the Health Department agrees to pay Westminster up to \$840.00 per week, to reimburse Westminster for 50% of their costs for those IMM services performed in the areas of Westminster that are located in Jefferson County. The Health Department's maximum payment to Westminster for IMM services provided prior to June 8, 2009 shall not exceed \$2,520.00.

(c) Should additional IMM services be provided after September 4, 2009, the Health Department agrees to pay Westminster up to \$889.00 per week, to reimburse Westminster for 50 percent of their costs for those IMM services performed in the areas of Westminster that are located in Jefferson County. The Health Department's maximum payment to Westminster for IMM services provided after September 4, 2009 shall not exceed \$3,556.00.

Total reimbursement from the Health Department to Westminster for all IMM services shall not exceed \$21,616.00.

After execution of this Intergovernmental Agreement by the last party and upon receipt of July, August, and September 2009 billings from Westminster and receipt of documents outlined in paragraph 2 above, the Health Department will pay Westminster the amounts shown on the invoices not to exceed the amount(s) shown above. Billings, with a notation "re: West Nile IGA", Attention: Dr. James Dale, shall be sent to Jefferson County Department of Health and Environment, 1801 19th Street, Golden Colorado 80401.

5. **PAYMENT OF UNINCORPORATED JEFFERSON COUNTY IMM SERVICE FEE:** The Health Department will pay for and direct OtterTail to perform the IMM services within unincorporated Jefferson County as set forth in **Attachment A**.
6. **TERM:** The term of this Intergovernmental Agreement shall be from the date of signature by the last party hereunder to and until December 31, 2009.
7. **NO GUARANTEE BY THE HEALTH DEPARTMENT:** Westminster acknowledges that although the objective of the IMM services provided under Westminster's own contract or service agreement to be performed within Westminster's boundaries is to reduce the mosquito population and consequent threat of transmission of West Nile Virus, the Health Department makes no guarantee as to the effectiveness of such IMM services in achieving such objective.
8. **ENTIRE AGREEMENT:** This writing constitutes the entire Intergovernmental Agreement between the parties hereto with respect to the subject matter herein, and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.
9. **NO WAIVER OF IMMUNITY:** No portion of this Intergovernmental Agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess, nor shall any portion of this Intergovernmental Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Intergovernmental Agreement.
10. **NO THIRD PARTY BENEFICIARY ENFORCEMENT:** It is expressly understood and agreed that the enforcement of the terms and conditions of this Intergovernmental Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Intergovernmental Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Intergovernmental Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Intergovernmental Agreement shall be an incidental beneficiary only.

Signed by the parties the _____ day of _____, 2009

Jefferson County Department of Health and Environment

By: _____, By: _____,
Secretary to the Board of Health President Board of Health

ATTEST: CITY OF WESTMINSTER, a municipal corporation of the STATE OF COLORADO

By: _____, By: _____,
City/Town Clerk City Manager

APPROVED AS TO FORM:

By: Joe H. Greenfield
Asst. City Attorney

ATTACHMENT A
2009
PURCHASE OF SERVICES AGREEMENT

PURCHASE OF SERVICES AGREEMENT

This PURCHASE OF SERVICES AGREEMENT ("Agreement") made this 1st day of May, 2009, by and between the Jefferson County Department of Health and Environment ("JCDHE") and OtterTail Environmental, Inc. ("Contractor"), whose address is 10200 W. 44th Avenue, Suite 210, Wheat Ridge, CO 80033.

WHEREAS, the Contractor has been selected to provide mosquito control services; and

WHEREAS, the JCDHE wishes to retain the services of Contractor as an independent contractor and Contractor wishes to provide services to the JCDHE; and

WHEREAS, the JCDHE has authority to acquire the services described in this Agreement under the provisions of § 25-1-506, *et seq.*, C.R.S., as amended.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth hereinafter, the JCDHE and the Contractor agree as follows:

1. **SCOPE OF SERVICES**

The Contractor shall perform in a satisfactory and proper manner, as determined by the JCDHE, the services identified in the "Scope of Services, General Description and Specifications", attached to and incorporated in this Agreement by reference as ***Exhibit A***.

2. **TERM**

The term of this Agreement shall be May 1, 2009 through December 31, 2009.

3. **COMPENSATION**

The amount to be expended pursuant to this Agreement shall not exceed One Hundred Ninety Seven Thousand Fifty Seven dollars (\$197,057), which amount shall constitute the contract amount for the Thirteen-week Larval Surveillance and Control Program and the Mosquito Trapping Program (as defined in ***Exhibit A***). Such amount may be altered by mutual written consent of parties in the event either Early Season or Late Season Larval Surveillance and Control Programs (as defined in ***Exhibit A***, at the price quoted by Contractor in its Bid) are deemed necessary by JCDHE.

- a. JCDHE will reimburse the Contractor on a monthly basis as services are provided, documented, and invoiced by Contractor. Contractor services will be documented in the form proscribed by JCDHE and are subject to JCDHE approval prior to authorization for payment. The final payment will be made after the completion by Contractor and acceptance by JCDHE of all contract requirements.

b. Contractor shall submit a monthly invoice and supporting required documentation to JCDHE by the 5th of the following month of service. Failure to submit billing information in a timely manner and correct format shall result in non-payment of invoice.

c. Contractor shall be reimbursed within 14 days after receipt and approval of the invoice.

4. **WARRANTY**

a. Contractor warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature and shall be of a quality acceptable to JCDHE.

b. Unless otherwise provided herein, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use and JCDHE's mission of protecting public health and the environment.

5. **NON APPROPRIATION**

The payment of JCDHE's obligations hereunder in the fiscal years subsequent to the Agreement period is contingent upon funds for this Agreement being appropriated and budgeted. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of the execution of this Agreement, this Agreement shall terminate. JCDHE's fiscal year is the calendar year.

6. **RECORDS, REPORTS, and INFORMATION**

At such times and in such forms as the JCDHE may require, Contractor shall furnish statements, records, reports, data and information pertaining to matters covered by this Agreement. The Contractor shall maintain its records in accordance with requirements prescribed by the JCDHE. Except as otherwise authorized by the JCDHE, Contractor shall maintain such records for a period of three (3) years after receipt of final payment under this Agreement.

7. **AUDITS and INSPECTIONS**

At any time during normal business hours and as often as the JCDHE may deem necessary, Contractor shall make its records with respect to matters covered by this Agreement available for examination. Contractor shall permit the JCDHE to audit, examine, copy, and make excerpts from such records and audit all contracts, invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to this Agreement. The JCDHE may call for a certified, independent audit to be performed, at Contractor's expense, by a mutually agreed upon auditor.

8. INDEPENDENT CONTRACTOR

- a. The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Contractor affirms that it has or will secure at its own expense all personnel and materials required to perform the services detailed in *Exhibit A*. Such personnel shall not be employees of nor have any contractual relationship with the JCDHE.
- b. Services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and properly licensed or certified, as required by local, state and federal law or regulation to perform such services. Neither Contractor nor its personnel, if any, is entitled to Worker's Compensation Benefits or any other benefit of employment with Jefferson County, Colorado. Further, Contractor is obligated to pay federal and state income tax on any compensation paid pursuant to this Agreement.
- c. None of the services to be performed by Contractor under this Agreement shall be subcontracted or otherwise delegated without the prior written consent of the JCDHE. The work subcontracted shall be specified in a written agreement between Contractor and its subcontractor(s), which agreement(s) shall be subject to each provision of this Agreement.

9. NON ASSIGNMENT

The Contractor and subcontractor(s) hereto shall not assign or transfer any rights in this Agreement without the prior written consent of the JCDHE.

11. OFFICIALS NOT TO BENEFIT

No elected or employed member of JCDHE shall directly or indirectly receive or be paid any share or part of this Agreement or any benefit that may arise therefor. Contractor warrants that it has not retained any company or person (other than a bona fide employee working solely for Contractor) to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay to any company or person, (other than a bona fide employee working for Contractor), any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award of this Agreement to Contractor. Upon learning of any breach or violation of this provision, JCDHE shall have the right to terminate this Agreement with no further liability or obligation for payment.

12. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall not refuse to hire, discharge, promote, demote or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, sex, color, national origin or ancestry, disability or age.

13. ILLEGAL ALIENS – PUBLIC CONTRACTS

- a. The Contractor (entity or sole proprietor) shall execute the certification attached hereto as *Exhibit B*, in conformance with the provisions of § 8-17.5-102(1) and § 24-76.5-101, C.R.S., as amended.
- b. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract; or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract.
- c. If the Contractor obtains actual knowledge that a subcontractor performing work under this public contract knowingly employs or contracts with an illegal alien, the Contractor shall:
 - (1) Notify the subcontractor and the JCDHE within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (1), above, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- d. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to its authority.
- e. Notwithstanding any other provision of this public contract, if the Contractor violates any provision of this paragraph, the JCDHE may terminate this public contract and the Contractor shall be liable for all actual and consequential damages resulting from that termination.
- f. Except where exempted by federal law and, except as provided in § 24-76.5-103(3), C.R.S., as amended, the Contractor receiving Jefferson County funds under this

public contract must confirm that any individual natural person eighteen (18) years of age or older is lawfully present in the United States pursuant to §24~76.5-103(4), C.R.S., as amended, if such individual applies for public benefits provided under this public contract. If the Contractor has verified that the County has accomplished such confirmation prior to the effective date of this public contract, the Contractor is relieved of responsibility under this paragraph.

14. SOLE SOURCE CONTRACTS

If the Contractor has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution which including this contract in the aggregate on an annual basis are equal to or exceed the amount of \$100,000, then the following provisions apply:

- a. Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Contractor shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.
- b. Contractor further agrees that if it makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, it shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.
- c. If Contractor intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages Contractor shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.

15. STATUTES, REGULATIONS AND ORDINANCES

Contractor shall observe and comply with federal, state and local laws, regulations, rules or ordinances that affect those employed or engaged by it, the materials or equipment used or the performance of the project and shall procure any and all necessary approvals, licenses and permits all at its own expense.

16. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the JCDHE, and its officers, employees and agents, acting officially or otherwise, from any and all claims, demands, damages, and actions of any kind brought by anyone, including attorney's fees, which may arise out of or result from the negligent or willful misconduct of Contractor or its subcontractor(s) in the performance of services as set forth in this Agreement and/or the breach of any condition(s) of this Agreement. This provision shall survive the termination of this Agreement.

17. INSURANCE

The Contractor providing services under this Contract will be required to procure and maintain, at their own expense and without cost to the JCDHE, until expiration of the agreement the following insurance. The policy limits required are to be considered minimum amounts:

Commercial General Liability Insurance: Combined single limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent contractor, and contractual liability.

Worker's Compensation and Employer's Liability and Occupational Disease Coverage in accordance with Colorado law or the law of the state in which the Contractor is a resident or the firm is registered.

Comprehensive Automobile Liability Insurance, including coverage for all, owned, non-owned and rented vehicles with \$1,000,000 combined single limit for each occurrence.

JCDHE shall be named as an additional insured and the insurance policy shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to JCDHE. Certificates of insurance shall be delivered to JCDHE within fifteen (15) days of execution of the Agreement.

Contractor shall demonstrate contractual liability coverage supporting the indemnity provisions of this Agreement, either through policy language or by waiver of exclusion.

18. DOCUMENT OWNERSHIP - WORKS MADE FOR HIRE

All of the deliverable items, if any, prepared for the JCDHE under this Agreement shall belong exclusively to the JCDHE and shall be deemed to be "works made for hire" under the copyright laws of the United States. To the extent any of the deliverable items may not, by operation of law or otherwise, be works made for hire, the Contractor hereby assigns to the JCDHE the ownership of the copyright in the deliverable items, and the JCDHE shall have the right to obtain and hold in its own name, copyrights, registrations, and similar protections. The Contractor

agrees to give the JCDHE or its designee all assistance reasonably required to perfect such rights. To the extent that any pre-existing materials are contained in the deliverable items, the Contractor grants to the JCDHE an irrevocable, non-exclusive, worldwide, royalty-free license to use, execute, publish, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing materials and derivative works thereof and to authorize others to do any, some, or all of the foregoing.

19. TERMINATION FOR CAUSE

If the Contractor or the JCDHE fails to fulfill its obligations under this Agreement in a timely and proper manner or violates any of the provisions of this Agreement, the non-defaulting party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the defaulting party of such termination and specifying the effective date of termination. The defaulting party, however, shall not be relieved of liability to the non-defaulting party for damages sustained by virtue of any breach of this Agreement. In the event of default by the Contractor, the JCDHE may withhold payments due under Paragraph 3, above, for the purpose of set-off until such time as the exact amount of damages due the JCDHE from the Contractor is determined.

20. MODIFICATIONS

This Agreement may not be modified, amended or otherwise altered, unless mutually agreed upon in a writing executed by the JCDHE and the Contractor.

21. GOVERNING LAW

The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either the JCDHE or Contractor institute legal action for enforcement of any obligation contained herein, it is agreed that venue shall be in Jefferson County, Colorado.

22. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or in any circumstance shall be unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or in other circumstances shall not be effected thereby and shall be enforced to the greatest extent permitted by law.

23. NOTICES

Notices to be provided under this Agreement shall be given in writing either by hand delivery or by certified return receipt requested United States mail, to the following:

JCDHE Representative:

JCDHE
Dr. James Dale
1801 19th Street
Golden, CO 80401

Contractor:

OtterTail Environmental
Ed Fleming
10200 W 44th Ave, Ste 210
Wheat Ridge, CO 80033

24. HEADINGS

Titles and paragraph divisions are inserted in this Agreement for ease of reference and do not define, limit, or prescribe the scope or intent of the provisions of this Agreement or any part thereof.

25. AUTHORITY

Each person signing this Agreement represents and warrants that he/she is fully authorized to enter into and execute this Agreement and to bind the party represented to the provisions of this Agreement.

26. COUNTERPARTS and FACSIMILE SIGNATURES

This Agreement may be executed in counterparts, each of which shall be deemed an original. Facsimile signatures of, or on behalf of, the JCDHE or the Contractor on this Agreement and any modification hereto shall be effective for all purposes.

27. FORCE MAJEURE

Neither party shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including but not limited to strikes, riots, war, and acts of God.

28. INTEGRATION OF UNDERSTANDING

This Agreement represents the entire Agreement between the parties and supersedes all prior negotiations and representations, whether written or oral. Nothing herein shall be deemed to give anyone not a party to this Agreement any right of action against either the JCDHE or the Contractor.

Purchase of Services Agreement, OtterTail Environmental
Page 9 of 9

IN WITNESS WHEREOF, the JCDHE and the Contractor have duly executed this Agreement as of April 21, 2009 to be effective as of the date first shown above.

Jefferson County Department of Health
and Environment

Contractor:

By: Cathy Cororan
Cathy Cororan, President
Board of Health

By: Ed Fleming
ED FLEMING
Printed Name
PRESIDENT

ATTEST: Bonnie McNulty
By: Bonnie McNulty, Secretary
Board of Health

Title

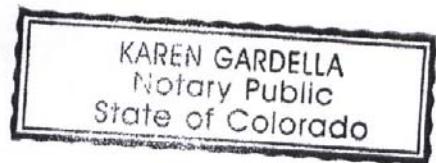
STATE OF COLORADO)
)
COUNTY OF JEFFERSON) ss.

The foregoing instrument was acknowledged before me this 21ST day of
April, 2009, by CATHY CORORAN as BOARD OF HEALTH of
Jefferson County Department of Health and Environment. PRESIDENT

My commissioner expires: My Commission Expires
July 18, 2010.

Karen Gardella

Notary Public



STATE OF COLORADO)
)
X COUNTY OF JEFFERSON) ss.

The foregoing instrument was acknowledged before me this 4TH day of
MAY, 2009, by ED FLEMING as PRESIDENT of
OTTER TAIL ENVIRONMENTAL

My commissioner expires: 4-14-2013.

Joseph L. Cox
Notary Public

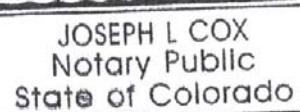


EXHIBIT A

2009

SCOPE OF WORK

GENERAL DESCRIPTION AND SPECIFICATIONS

JEFFERSON COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT
2009 INTEGRATED MOSQUITO MANAGEMENT SERVICES
SCOPE OF WORK

GENERAL DESCRIPTION AND SPECIFICATIONS

GENERAL DESCRIPTION

The service provider shall conduct an Integrated Mosquito Management (IMM) Program for Jefferson County Department of Health and Environment (JCDHE) during the spring and summer of 2009. This program will be designed and implemented to control the spread of the West Nile Virus (WNV) and other mosquito-borne diseases such as Western Equine Encephalitis (WEE) by reducing the number of disease causing mosquitoes.

The service provider shall employ established IMM principles and practices to reduce the numbers of all mosquitoes including disease causing mosquitoes in Jefferson County. These principles and practices include: identification and classification of mosquito larvae breeding habitat, surveillance of adult and larval mosquitoes, larval mosquito speciation, larval mosquito control (application of larvicides, source reduction, and/or biologic controls), and public education and outreach. Adulticiding - the killing of adult mosquitoes through aerial sprays and fogging - is not anticipated but the service provider shall maintain the capabilities to implement, manage, and / or provide properly trained staff and supervisors to conduct adulticiding if requested by JCDHE to do so.

The service provider shall provide the following IMM services within the service area:

- A. Adult Mosquito Surveillance
- B. Larval Mosquito Surveillance and Control
- C. Public Education
- D. Reporting
- E. Record Keeping
- F. Department Employee Training
- G. Board of Health Appearances
- H. Adult Mosquito Control Service

The service provider shall follow all applicable and appropriate Federal, State, and Local rules and regulations such as EPA, OSHA, FIFRA and the like pertaining to the implementation of the IMM services provided by the service provider in this Scope of Work.

The service area is generally described as the "plains" area of Jefferson County Colorado and consists of approximately 161 square miles. Specific requirements pertaining to the service area, the services to be provided, term of the contract, and the work products are described in the Specifications section of this Scope of Work.

SPECIFICATIONS

I. SERVICE AREA

The service area is generally described as the "plains" area of Jefferson County bounded by Broomfield County on the north, Chatfield State Park on the south, Sheridan Boulevard on the east, and the Hogback on the west. The 2009 Integrated Mosquito Management (IMM) Service Area Map (**Attachment A**) illustrates the service area and the known

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potential larval development (PLD) sites. A summary of the service area is provided in the table below.

<u>Area / Municipality</u>	<u>Square Miles</u>
Arvada	27.6
Golden	8.3
Lakewood	41.8
Wheat Ridge	9.6
Unincorporated Jefferson County*	73.7
Total Square Miles:	161.0

* Includes Bow Mar (0.1), Edgewater (0.7), Lakeside (0.3), Littleton (0.6), Morrison (0.7), Mountain View (0.1).

II. SERVICES TO BE PROVIDED

A. Adult Mosquito Surveillance

- 1. General Requirements For Mosquito Trapping and Surveillance**
 - a) If any mosquito trap night is cancelled, the service provider shall notify JCDHE immediately. JCDHE may require the service provider to reschedule the cancelled trap night. Service provider will not be reimbursed for cancelled trap nights.
 - b) After each trap night the service provider shall collect, identify, speciate, and count all trapped mosquitoes by methods recognized by CDC and/or the Colorado Department of Public Health and Environment (CDPHE) and report this information to JCDHE at least once per week.
 - c) All mosquito trapping activities including the submission of mosquito pool specimens shall be conducted in accordance with the protocols established in the current CDPHE Mosquito Surveillance Plan (**Attachment B**) and the West Nile Virus Mosquito Sentinel Site Guidelines (**Attachment C**). Any updates or changes to these plans will be provided by JCDHE to the service provider.
 - d) The service provider shall assume all liability for the placement and operation of any and all equipment. JCDHE shall not be responsible for any lost, damaged or stolen traps and/or equipment.
 - e) The service provider shall maintain a toll-free (in Colorado) **Mosquito Complaint Call Center** and shall accept calls from the public reporting mosquito problems and/or standing, stagnant water in the service area that may indicate the presence of PLD sites. The service provider shall maintain a log of calls received and shall summarize call and service provider response activity in weekly and annual reports.

- 2. State Mosquito Sentinel Program**

- a) The service provider shall provide all supplies, equipment and personnel to operate and maintain the Mosquito Sentinel Program for **90 trap nights** at various sites selected with the concurrence of JCDHE as follows:

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- (i) Five (5) CDC light traps within the service area. These traps shall be operated one night per week on the same day of the week for a period of 12 weeks from June 8, 2009 to August 28, 2009 for a total of 60 trap nights. These trap sites are part of the State wide surveillance system and shall be operated according to the procedures outlined in **Attachment C**.
- (ii) The Five (5) trap locations identified in a) above, shall have a second trap night each week from June 30, 2009 through August 4, 2009 (6 weeks) for a total of 30 trap nights as part of the Mosquito Sentinel Program in accordance with state guidelines.

3. JCDHE Adult Mosquito Surveillance Program

- a) The service provider shall provide all supplies, equipment and personnel to operate and maintain for up to **144 trap nights**:
 - (i) Six (6) CDC light traps at various sites within the service area. These traps shall be operated one night per week on the same day of the week for a period of 12 weeks from June 8, 2009 to August 28, 2009.
 - (ii) Six (6) gravid traps collected with the 6-CDC light traps (in paragraph a) above. These traps shall be operated one night per week on the same day of the week for a period of 12 weeks from June 8, 2009 to August 28, 2009.

B. Larval Mosquito Surveillance and Control

1. General Requirements For Larval Surveillance and Control

- a) The primary and priority focus of larval control will be to eliminate the mosquitoes that have the potential to transmit diseases such as WNV.
- b) Unless otherwise indicated, the larval surveillance and control activities will take place for 13 weeks between June 8, 2009 and September 4, 2009. Environmental conditions, such as weather, may indicate the need to expand larval surveillance and control activities before and/or after this time period.
- c) During the 2009 season all sites inspected during larval surveillance and control activities conducted by the service provider that are found to be breeding mosquito larvae shall be treated by the service provider with a larvicide.
- d) Each site will be inspected and classified according to the following classifications:
 - Vector mosquito breeding sites,
 - Vector and non-vector mosquito breeding sites
 - Non-vector mosquito breeding sites.
- e) All mosquito complaints shall be thoroughly investigated by the service provider and larval control shall be implemented by the service provider based a balanced evaluation of the risk of human illness, suffering, and impact on quality of life in the community associated with the concurrent mosquito infestation.

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- f) Commensurate with the start of the Larval Surveillance and Control Program the service provider shall conduct a preliminary assessment of all known PLD sites within the service area. At the end of the 2008 IMM season there were approximately **660 known PLD sites contained in the 161 square mile service area**. The 2009 IMM service area and known PLD sites are identified on the Jefferson County Integrated Mosquito Management Service Area Map (**Attachment A**). The purpose of the preliminary assessment is to determine the status of each PLD site and to classify each PLD site as "targeted" or "non-breeding". Targeted PLD sites are those sites which have the highest potential for mosquito breeding. The remaining sites shall be classified as non-breeding PLD sites or removed from the list of PLD sites if the site no longer has the potential to breed mosquitoes. Any new PLD sites identified during the initial inspection and preliminary assessment of PLD sites shall be added to the list of PLD sites and shall be classified as "targeted" or "non-breeding".
- g) Based on the 2008 end-of season PLD inventory and newly identified PLD sites in 2009, the service provider shall provide an updated PLD list and map on or before June 30, 2009. The list shall include the service provider's recommendations for additions, deletions, and/or revisions to the list of PLD sites.
- h) The contractor will continue to identify and investigate new potential breeding sites throughout the season and add new sites to the Service Map.

2. Routine Larval Surveillance And Larval Control Activities

- a) Inspect all "targeted" PLD sites at least once per week by visual observation and by dipping any standing water for mosquito larvae.
- b) Speciate larvae at every PLD site into one of the following descriptions; vector, vector and non-vector species or non-vector species.
- c) Inspect all "non-breeding" PLD sites at least once per month to determine if any changes have occurred that would warrant a re-evaluation of their status. Additional inspections over and above the routine monthly inspection of non-breeding PLD sites may be necessary based on changes in climatic conditions.
- d) Inspect strategically located storm water structures (catch basins, detention ponds, storm water inlet boxes, and the like) at least once per week for the presence of mosquito larvae if the structure is found to contain water. Storm water structures shall be inspected based on environmental conditions, such as periods of precipitation followed by warm temperatures that promote the development of mosquito larva at such structures. The results of the storm water structure inspections shall be included in the weekly totals and year to date totals in the weekly reports.
- e) Identify any additional and/or new PLD sites by documenting any areas of clogged ditches and streams, standing water, etc., that were observed during the course of conducting IMM activities. Inspect and classify each additional and/or new PLD site as a targeted or non-breeding site. All additional and/or

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new PLD sites shall be mapped and recorded, regardless of their classification. Document such features as abandoned swimming pools, clogged drains, dammed streams, and the like, which have the potential for supporting larval development, report these features to JCDHE, and work with local code enforcement officials to locate, identify, and apply the appropriate IMM measures to these sites as needed.

- f) Apply the appropriate, federally approved larval control materials, if it is determined that any PLD site is producing mosquitoes and/or mosquito larvae. This is especially important if it is determined that Culex sp. or other potential arboviral vector mosquitoes are also present.
- g) Larval control may include the application of larvicide and/or the utilization of other recognized methods of larval control such as source reduction.
- h) Use the most appropriate method for larvicide distribution, such as hand application, backpack broadcasters, All Terrain Vehicle (ATV), etc.
- i) Maintain Material Safety Data (MSD) sheets for all products used and provide such information upon request to employees, the public, and/or JCDHE.
- j) Conduct post-treatment quality control inspections within 24 to 48 hours as necessary to assure the larvae population has been controlled. JCDHE recommends a post-treatment quality control inspection goal of at least 10% and no more than 20% of the sites treated during routine inspections. If larvae are found during the post-treatment quality control inspection, a second application of control material shall be applied. These activities shall be included in the weekly activity reports. Develop a method to contact private property land owners and obtain permission to enter property to conduct IMM activities. Entry onto private property shall be by prior authorization of the owner/agent.
- k) Maintain real-time documentation of all PLD site surveillance and larval control activity and enter real-time data into a JCDHE approved electronic database. An electronic copy of the database shall be provided to JCDHE on or before November 1, 2009 and/or upon the request of JCDHE.

C. Public Education

1. The service provider shall maintain a public education website providing general information on WNV and WEE, including basic disease information, tips for personal protection, information for homeowners on standing water, aerial spraying information (if appropriate), phone numbers to call, links to other websites, etc.
2. In the event that adulticiding or aerial spraying is to be performed, the service provider shall notify all residents in the area to be sprayed who are registered in the State of Colorado Pesticide Sensitive Registry. A minimum of 3 attempts shall be made to reach these persons prior to the spraying or application. The Ultra Low Volume (ULV) insecticide application will be shut off in front of and upwind from sensitive resident's properties. The service provider shall maintain

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MSD sheets for all products used and shall provide such information upon request to employees, the public, and/or JCDHE. If adulticide spraying is required the service provider shall collaborate with JCDHE to coordinate the delivery of these services.

D. Record Keeping

The service provider shall maintain all records and documents pertaining to the services provided under this contract for a period of 3-years. By December 1, 2009 and/or upon the request of JCDHE, the service provider shall provide JCDHE with copies of any and all records and documents pertaining to the services provided under this contract in an electronic and/or hard copy format approved by JCDHE. Prior to the disposal of any JCDHE records the service provider has in its possession, the service provider shall provide JCDHE with a thirty (30) day written notice during which time JCDHE may take physical possession of same at the storage site.

E. Reporting

- 1. Weekly Report:** The service provider shall provide a weekly summary report of IMM service activities. Weekly reports shall include but not limited to:
 - a) The number of PLD site inspections and post-treatment quality control inspections performed and the number these inspections for each municipality and for the unincorporated area of the County.
 - b) The number of vector breeding sites, number of non-vector breeding sites, the number of sites that contain both vector and non-vector larvae and sites not breeding mosquitoes.
 - c) The number of larvicide applications, including products used, amount of larvicide, size of area treated, and methods of dispersal.
 - d) The number of mosquitoes caught in each light and gravid trap, including the number of the various Culex or other arboviral vector species.
 - e) The number of inspectors used and the amount of time spent conducting contract work, reported as larval inspection time, mosquito trapping time, and office or support time.
 - f) The number of complaints received, number of areas inspected because of those complaints, the findings of each inspection and actions taken.
- 2. Annual Report:** By November 15, 2009 the service provider shall provide a draft of the annual report. By December 1, 2009 the service provider shall provide the final annual report. The annual report shall be provided in a format acceptable to JCDHE both electronically and in hard copy (5 copies) and shall include but not limited to:
 - a) All surveillance activities and findings,
 - b) Total hours logged for each service activity by the service provider and its employees,
 - c) Total number of PLD sites inspected, total number of sites treated, total number of mosquito trap nights, etc.

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- d) The end of season map that illustrates the PLD sites identified and inspected during the contract season,
- e) The GIS shape files or other electronic files used to create the PLD site map,
- f) A complete list of all PLD sites and their classification. The PLD list shall include the service provider's recommendations for additions, deletions, and/or revisions to the list of PLD sites, and
- g) The number of vector, non-vector, and combination of vector, and non vector sites and non breeding sites inspected during the season.

F. Department Employee Training: Upon request the service provider shall provide training for Department employees.

G. Board of Health Appearances: Upon request the service provider shall appear before the Jefferson County Board of Health to provide updates and/or a year-end report on contract activities.

H. Adult Mosquito Control Service: In the event of a Public Health Emergency, the service provider shall assist JCDHE in the timely development and implementation of an adult mosquito control program, such as ground and/or aerial adulticide spraying. The adult mosquito control program shall be conducted in accordance with all state and federal requirements. The costs of this service and/or the adult mosquito control program are not included in this contract.

III. TERM OF SERVICE AGREEMENT

The Service Agreement shall be in effect for the period beginning May 18, 2009 through December 31, 2009. Unless otherwise indicated and directed by JCDHE to do so, all field service activities shall commence no later than June 8, 2009 and shall continue until JCDHE determines that a specific field service is no longer needed, but no later than September 4, 2009. **Environmental conditions, such as weather, may indicate the need to expand larval surveillance and control activities before and/or after this time period.**

IV. WORK PRODUCTS

Any and all maps, reports, spreadsheets, databases, geographical information system (GIS) files, newsletters and other hard copy or electronic documents generated by the service provider in fulfillment of its obligations under this contract shall be the property of JCDHE, who shall have sole and complete discretion regarding their use and distribution. All work products shall be delivered to JCDHE in a mutually agreed upon hardcopy and/or electronic format suitable for including in reports and folders. The data and weekly reports will be furnished in standard 8 1/2 by 11 inch paper. All reports will include the activity undertaken in each of the cities in the County. **All final deliverable electronic and/or hard copy records, documents, and maps pertaining to 2009 IMM services under this contract shall be delivered by December 1, 2009.**

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WORK PRODUCT DELIVERY SCHEDULE

Work Product	Delivery Date
Begin Early Season Larval Mosquito Surveillance and Control May 18 to June 5, 2009	Per JCDHE direction
Begin Regular Season Larval Mosquito Surveillance and Control	June 8, 2009
Begin Adult Mosquito Surveillance	June 8, 2009
First Weekly Report	10 calendar days after field work begins
Report findings of Preliminary Assessment of Known PLD Sites	June 30, 2009
End Adult Mosquito Surveillance	August 28, 2009
End Larval Mosquito Surveillance and Control	September 4, 2009
Begin Late Season Larval Mosquito Surveillance and Control September 7 to September 25, 2009	Per JCDHE direction
Last Weekly Report	10 calendar days after field work ends
First draft Annual Report	November 15, 2009
Final Annual Report	December 1, 2009

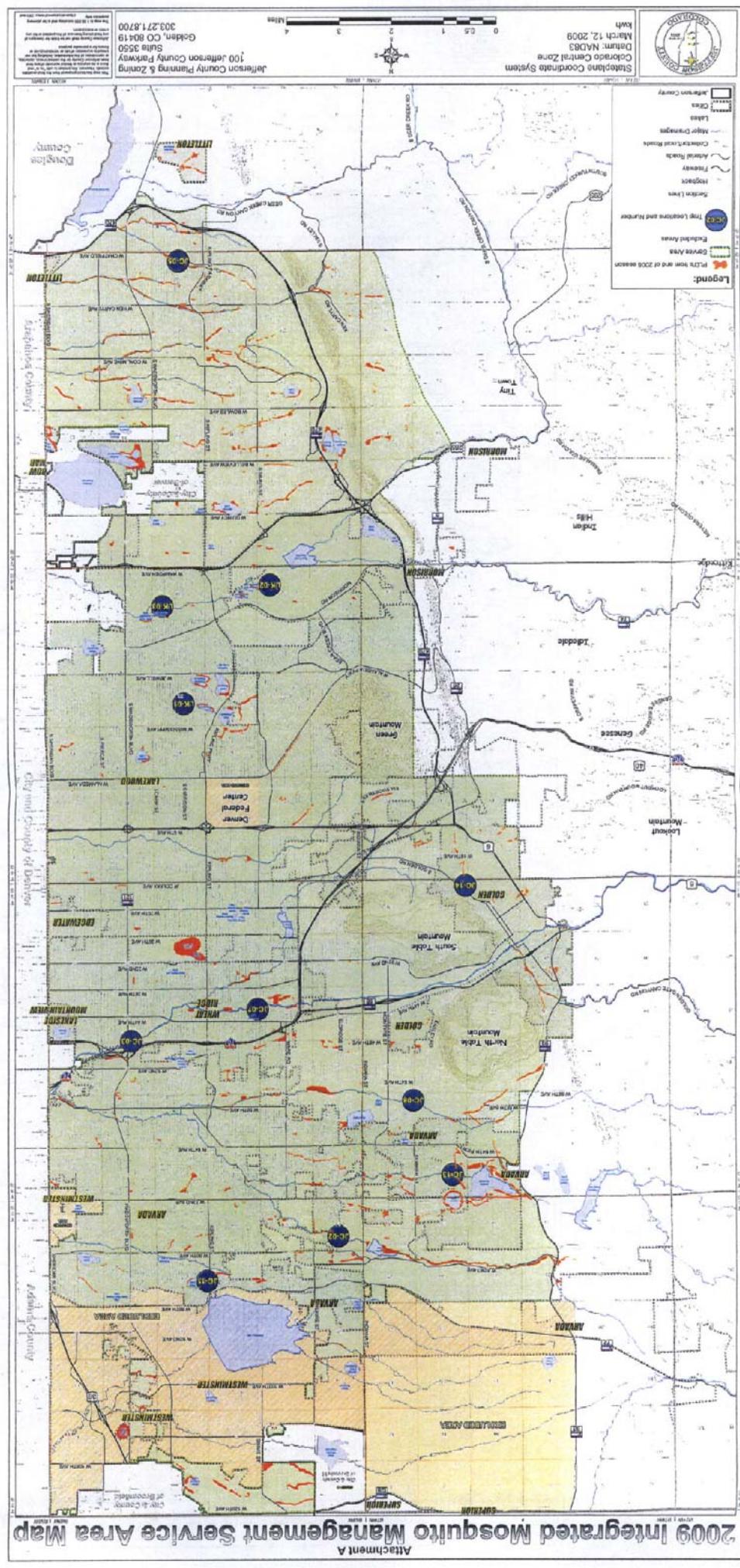
ACRONYMS

Acronym Definition

CDC	Centers for Disease Control and Prevention
CDPHE	Colorado Department of Public Health and Environment and its employees
GIS	Geographical Information Systems
IMM	Integrated Mosquito Management
JCDHE	Jefferson County Department of Health and Environment and its employees
MSD	Material Safety Data
PLD	Potential Larval Development
WEE	Western Equine Encephalitis
WNV	West Nile Virus

ATTACHMENTS

- A: Jefferson County 2009 IMM Service Contract Area Map
- B: CDPHE Mosquito Surveillance Plan (most current version)
- C: CDPHE WNV Mosquito Sentinel Guidelines (most current version)





Colorado Department
of Public Health
and Environment

2005 Mosquito Surveillance Plan

3/23/05

A. Introduction:

Mosquito trapping and testing data provide both qualitative and quantitative information on arbovirus activity and potential human risk in an area. Advances in testing mosquito pools and calculation of minimum infection rates allow an integrated system based on mosquito surveillance to comprise a large part of the arbovirus surveillance strategy. Testing will focus on *Culex* species of mosquitoes, as these are the primary human vectors.

B. Plan Description:

Mosquito testing this season will remain essentially unchanged from 2004. It will again have a three-tiered approach utilizing, once again, *sentinel*, *floater*, and *permanent* mosquito trap sites. *Sentinel* sites (see attached *Mosquito Sentinel Site Guidelines*) will act as a longitudinal system to replace chicken flocks, provide population data based on a consistent trapping protocol, and allow testing for the three arboviruses present in Colorado (Western equine, St Louis, and West Nile). *Permanent* traps are the long-term mosquito trap sites that local surveillance / control operations maintain at their own discretion, above and beyond the sentinel sites agreed to by CDPHE. *Floater* traps are those that are deployed based on current surveillance data such as positive birds and horses or human cases to provide local risk assessment, and to support local control and prevention decisions.

Sentinel Traps

Unlike sentinel chicken flocks, whose sole purpose as a surveillance tool was to detect the presence of mosquito borne viruses, mosquito sentinel sites will also provide temporal mosquito population data, species make-up, and infection rate data. In addition, the long-term baseline data that will be collected, using a standardized trapping and testing protocol, can be used to accurately compare year-to-year changes in mosquito populations. It is hoped that this approach can be sustained and provide a long-term surveillance system for arbovirus activity into the future.

Mosquitoes will be collected at the sentinel sites weekly and all pools of *Culex* species will be tested for WNV using RT-PCR. A sample of submitted pools will also be tested for Western Equine Encephalitis (WEE) and St. Louis Encephalitis (SLE) viruses. This will permit accurate mosquito infection rates to be calculated. The number of sentinel mosquito trap sites will increase slightly (21 sites) from last season (15 sites) to upgrade the level of coverage across the state. As was the case last season, the selection of *sentinel* sites will

Attachment B

be determined by geographic location and the willingness of the local health agency, MAD, etc. to assume the responsibilities of maintaining a site during this and subsequent years.

Floater Mosquito Traps

“Floater” mosquito trap testing will integrate the qualitative virus data collected from dead birds, horse and human cases with the quantitative data mosquito trapping can provide. Local agencies will decide the need for trapping in their area, which should be driven by positive virus findings using other surveillance tools (positive dead birds or horses). These trap site locations are expected to change from year to year based on local surveillance needs.

Permanent Mosquito Traps

The third category of mosquito trapping includes *permanent* mosquito trap sites that local organizations and agencies operate and maintain, usually to monitor nuisance mosquito populations. The testing of Culex pools collected from these traps depends largely upon the conditions that exist at that site. Sampling and testing criteria will be discussed below (see C. 3. c. *Mosquito testing criteria*).

Surveillance Dates to Remember

Dead bird and mosquito surveillance activities will commence **May 1st**. Initial testing will focus on dead birds as they will be a more sensitive indicator of virus activity early in the season when mosquito populations and infection rates are low. Once virus is detected in an area, mosquito testing should be used to assess the level of risk for human transmission. Dead bird testing should be limited to no more than two or three WNV+ birds from the same area (i.e., approx. 5 mi² area or 1.25 mi. radius). Further bird testing does not provide additional information and expends limited lab resources. **Unlike last season however, corvid bird specimens meeting sampling criteria will be accepted beyond the July 1st deadline date for bird testing if no other WNV + birds or other surveillance tool indicates virus activity in that area.**

All Culex spp. mosquito pools from **sentinel** trap sites will be tested using RT-PCR at the CDPHE/LSD lab in Denver. However, mosquito pools from **sentinel** traps in Moffat, Mesa, and Delta counties will be sent to and tested at the regional laboratory in Grand Junction.

Prior to July 1st, Culex mosquito pools from *floater and permanent* traps should be tested at the CDPHE Laboratory Services Division (LSD) using RT-PCR because of its greater sensitivity.

Zone Trapping: During this early trapping period (May 1st to July 1st), in an effort to stretch diagnostic resources, surveillance participants are strongly encouraged to “zone” trap their **floater** and **permanent** trap captures. That is, co-mingle, by species, Culex mosquito captures from several floater or permanent traps in a general geographic area to increase the size of pools being tested. Because early season Culex numbers are not expected to be very high until later in the season, pooling captures from several traps will reduce the number of small mosquito pools that use the same test as would a pool of 50

mosquitoes. If a positive, co-mingled pool is detected, subsequent collections specific to a trap may be submitted in order to determine which trap the positive pool came from.

After July 1st, when expanding Culex mosquito populations and increasing infection rates should offset the lower sensitivity of VecTest®, mosquitoes from these floater and permanent traps will be tested by VecTest® at the six regional laboratories. If WEE or SLE activity is observed, regional labs will be provided with multi-antigen VecTest® kits valid for all three viruses.

Participants in the surveillance program are encouraged to use limited mosquito testing resources responsibly. At this time there will be no testing quota assigned to each county. Depending on the intensity of virus activity that is detected, the risk of human exposure, planned control efforts, etc., diagnostic resources may be diverted to where they are needed most. Regional epidemiologists and CDPHE will be monitoring diagnostic resource usage, suggesting where testing is needed and curtailing usage when it's appropriate based on virus activity and the resources that are available for that region or county.

C. Plan Criteria:

1. Sentinel Mosquito Trap Sites:

a. Obligations:

- 1) Trapping Schedule: weekly from early May through September. In 2005, it is recommended that a trapping frequency of one night per week be observed, adding additional nights if needed due to inclement weather.
- 2) Each site will consist of 2 CDC CO₂ baited, light traps and one gravid trap.
- 3) Traps shall be properly maintained and baited appropriately (i.e., dry ice for light traps and straw-manure infusion for gravid traps). See "Mosquito Trapping and Handling Protocol" dated 4/29/04.
- 4) Accurate records maintained (date, # trap nights, # mosquitoes by species, Culex population density, weather conditions, etc.)
- 5) Weekly submission of *Culex* mosquito pools and data to LSD in Denver or if the pools are from Mesa, Delta, and Moffat counties, pools should be sent to the regional lab in Grand Junction.
- 6) Calculation of Infection Rates

b. Site considerations:

- 1) Care should be used in selecting a sentinel trap site so they do not have to be moved to insure continuity of data. Site should be stable and easily accessible.
- 2) Site has a history of significant *Culex* mosquito activity and close proximity to appropriate *Culex* breeding habitat
- 3) Close proximity to human populations
- 4) Availability of resting sites and protection from wind (e.g., culverts, fences, shrubbery, trees, sheds, etc.)
- 5) Away from competing sources of light (light traps) or oviposition sites (gravid traps).
- 6) Avoid areas where heavy, regular adult mosquito and/or insect control are performed.
- 7) History of past arbovirus activity.

Note: "Sentinel" trap sites should remain at the same site each season; however, traps can be moved within a general area (< 0.5 mile) of similar habitat in order

Attachment B

to improve trap performance and are not required to hang from the same tree week after week.

c. Mosquito pooling suggestions:

- 1) Sorted Culex mosquitoes of the same species from the two light traps can be co-mingled into common pools.
- 2) Sorted mosquitoes from the gravid traps **cannot** be co-mingled with the same species from light traps. They must remain segregated in separate pools.
Note: to calculate mosquito population density, take the total number of captured mosquitoes, by species, and divide by the number of trap nights.

2. **Floater Mosquito Traps**

- a. Location preferences: same as above, except that a confirmed, infected dead bird, horse, and/or human case has been reported in the area.
- b. Deployment considerations:
 - 1) Surveillance data will be used to support mosquito control activities .
 - 2) Trap(s) deployed for a minimum of two (2) weeks.
 - 3) Trap(s) operated a minimum of one night per week, adjusted to allow for inclement weather.
 - 4) Traps properly maintained and baited appropriately.
 - 5) Mosquito captures sorted and pooled. Culex species submitted to the appropriate regional lab or LSD lab for testing.
- c. Obligations:
 - 1) Trap data (e.g., trap nights, species, #'s, dates, Culex population density, weather conditions, etc.) maintained.
 - 2) Calculation of Infection Rates
 - 3) "**Zone Trapping**" see above.

3. **Permanent Mosquito Traps**

- a. Location preferences: same as those described for *sentinel* and *floater* traps.
- b. Deployment considerations: the selected location has a history of trapping at that site.
- c. Mosquito testing criteria:
 - 1) Many permanent traps have an established history and have collected an abundance of mosquito data over the years, but often have been deployed as a result of nuisance mosquito monitoring as opposed to arbovirus activity in which case, nuisance mosquito species will not be tested at this time
 - 2) Culex mosquitoes from permanent traps should be tested if the site is within 1.25 mi. of a WNV+ bird, horse or human case, a sustained increase in the Culex mosquito population is noted, and/or the site provides the only arbovirus surveillance data for that area.
- c. Obligations:
 - 1) Trap data (e.g., trap nights, spp. #'s, dates, Culex population density, weather conditions, etc.) maintained.
 - 2) Calculation of Infection Rates
 - 3) "**Zone Trapping**" see above.

Attachment C



West Nile Virus Mosquito Testing 2008 SENTINEL ZONE PROTOCOL

Sentinel Zone Concept

The goal of surveillance for mosquito-borne viruses (WNV, SLE, WEE) is to determine the human transmission risk in order to implement control and prevention strategies. To facilitate a standardized method of data collection and insure continued operation during anticipated budget reductions, the mosquito sentinel site concept was launched in 2004. Although these sites have, in general, accurately assessed West Nile Virus (WNV) activity in the region some problems have been identified. Specifically there was concern that a single site provided a poor representation of the region's mosquito populations and, more importantly, a single site was vulnerable to environmental changes that could reduce its effectiveness.

To address the problems associated with a single trap location, the sentinel site concept is being modified into a "Sentinel Zone" approach. Within a defined "sentinel zone" mosquito traps are set in strategic locations to ensure successful trapping of adequate numbers of mosquitoes throughout the WNV season. If one trap or site becomes inoperable, mosquitoes from other traps in the zone can still be tested and the poor trap site can be relocated to another location within the zone.

Following standardized trapping and testing protocols, a sentinel zone would provide data about mosquito population density, species make-up and arboviral activity that is comparable over the years. Furthermore, this approach will provide sufficient mosquito testing volume for calculating accurate infections rates to allow control decisions to be made (i.e. to spray or not to spray) in time to have a public health benefit. All *Culex* species mosquitoes collected in the sentinel zones will be tested for WNV by RT-PCR and a sample of the submitted pools will also be tested for Western equine encephalitis (WEE) and St. Louis encephalitis (SLE).

Scope of Work

- 1) Defining a zone: Local agencies can determine where a zone will be located and what geographic area it will encompass within the following parameters:
 - † A zone will be a circle with a minimum radius of 1.5 miles and a maximum radius of 5 miles
 - † The center point of the circle will be used as the geo reference point for the zone (latitude/longitude).
- 2) Trap placement: Each zone will consist of five CO₂ baited light traps. Local agencies can determine where within the zone these traps are located.
 - † Gravid traps or additional light traps can be maintained in the zone, however mosquitoes from other traps cannot be combined with the five zone traps for either testing or calculation of infection rates.
 - † The same location for each trap must be used throughout a season. However, when necessary a non-producing trap can be moved to another location within the zone although this should be minimized and occur early in the season.



- 3) **Trapping schedule:** To better reflect the WNV transmission season in Colorado AND ensure the majority of samples ($\geq 60\%$) are tested during the peak of the transmission season the following schedule will be used. This schedule will result in a total of 100 trap/nights per zone for the season. Agencies can decide which night of the week to use although the same day should be used each week when possible
 - † Weeks of June 2nd through June 23rd, 2008 – trap one night per week
 - † Weeks of June 30th through August 4th, 2008 – trap two nights per week
 - † Weeks of August 13th through August 25th, 2008 – trap one night per week
 - † Trapping after Labor Day would only be considered if virus activity remains high and sufficient lab resources remain to conduct testing.
- 4) **Mosquito Submission:** The 5 traps within the sentinel zone could be viewed as one large mosquito trap from which the pooled infection rate and vector index will be calculated to assess human risk.
 - † All female *Culex* mosquitoes trapped in a sentinel zone must be submitted to the state lab.
 - † Submit mosquitoes in separate pools by *Cx. tarsalis* and other *Culex* (i.e. *Cx. pipiens*, *Cx erythrothorax*, *Cx resturans* combined).
 - † Pool size can be up to 65 mosquitoes per vial.
CRITICAL -- the exact number of mosquitoes per vial must be recorded as this affects the infection rate calculations.
 - † *Culex* mosquitoes captured in the 5 zone traps and the captures from the 2 nights per week during the peak of the trapping period should be co-mingled into the minimum number of pools. This will extend limited testing resources.
- 5) **Data Maintenance:** Accurate records of trapping results must be maintained to allow year-to-year comparisons and monitor trends in mosquito populations. Dramatic changes in *Culex* numbers or proportions can provide an early indication of increasing human risk.
 - † It is **strongly** recommended that all mosquitoes in the traps be identified to species and that population data be maintained for all species.
 - † At a minimum, data to maintain should include: trapping dates, # mosquitoes in the zone traps, *Culex* population density by species (*Cx tarsalis* and other *Culex* at a minimum), and weather conditions on the night of mosquito trapping
 - † At the end of the season, a file with the sentinel zone data for the entire season (preferably in electronic format) must be sent to CDPHE.
- 6) **Other Considerations:**
 - † Sentinel zones should contain areas that are suitable for *Culex* mosquitoes to breed and are in close proximity to human populations.
 - † Sentinel zone traps should not be located in an area with regular, heavy spraying operations for adult mosquito or other arthropod control (orchards or agriculture areas). Areas with ongoing larvicide are OK.
 - † Traps within a zone should have an availability of mosquito resting sites and protection from wind (i.e. culverts, fences, shrubbery, trees, sheds, etc) and should be placed away from competing sources of light and carbon dioxide (e.g., a stockyard).
 - † Traps should be placed on the leeward side of obstacles if possible. For example, if the prevailing wind is generally from the west just after dusk, try to place the trap on the east side of trees, sheds, etc.

**STATE OF COLORADO
CERTIFICATION AND AFFIDAVIT
REGARDING UNAUTHORIZED IMMIGRANTS**

A. CERTIFICATION STATEMENT CRS §8-17.5-101 & 102 (HB 06-1343, SB 08-193)

The Vendor, whose name and signature appear below, certifies and agrees as follows:

1. The Vendor shall comply with the provisions of CRS 8-17.5-101 et seq. The Vendor shall not knowingly employ or contract with an unauthorized immigrant to perform work for the State or enter into a contract with a subcontractor that knowingly employs or contracts with an unauthorized immigrant.
2. The Vendor certifies that it does not now knowingly employ or contract with an illegal alien who will perform work under this contract, and that it will participate in either (i) the "E-verify Program" jointly administered by the United States Department of Homeland Security and the Social Security Administration, or (ii) the "Department Program" administered by the Colorado Department of Labor and Employment, in order to confirm the employment eligibility of all employees who are newly hired to perform work under this contract.
3. The Vendor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the Vendor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate work for breach and the Vendor shall be liable for damages to the State.

B. AFFIDAVIT CRS §24-76.5-101 (HB 06S-1023)

1. If the Vendor is a sole proprietor, the undersigned hereby swears or affirms under penalty of perjury under the laws of the State of Colorado that (check one):

- I am a United States citizen, or
- I am a Permanent Resident of the United States, or
- I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I am a sole proprietor entering into a contract to perform work for the State of Colorado. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to starting work for the State. I further acknowledge that I will comply with the requirements of CRS 24-76.5-101 et seq. and will produce the required form of identification prior to starting work. I acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under CRS 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

CERTIFIED and AGREED to this 4th day of May, 2009.

VENDOR:

OTTERTAIL ENVIRONMENTAL, INC.
Vendor Full Legal Name

BY:

Ed Remond
Signature of Authorized Representative

PRESIDENT
Title

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID DES
OTTER-1

DATE (MM/DD/YYYY)
05/05/09

PRODUCER
Cherry Creek Ins. Agency, Inc.
Suite 500
5660 Greenwood Plaza Blvd.
Greenwood Village CO 80111
Phone: 303-799-0110 Fax: 303-799-0156

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURED

Ottertail Environmental
Suite 210
10200 West 44th Avenue
Wheat Ridge CO 80033

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: The Hartford Insurance Group

22357

INSURER B: Pinnacol Assurance

41190

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSR'D	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	A	GENERAL LIABILITY				
		X COMMERCIAL GENERAL LIABILITY	34SBAPC7671	06/23/08	06/23/09	EACH OCCURRENCE \$ 2,000,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				DAMAGE TO RENTED PREMISES (EA occurrence) \$ 300,000
						MED EXP (Any one person) \$ 10,000
						PERSONAL & ADV INJURY \$ 2,000,000
						GENERAL AGGREGATE \$ 4,000,000
						PRODUCTS - COMP/OP AGG \$ 4,000,000
	A	AUTOMOBILE LIABILITY				
		ANY AUTO	34SBAPC7671	06/23/08	06/23/09	COMBINED SINGLE LIMIT (EA accident) \$ 2,000,000
		ALL OWNED AUTOS				BODILY INJURY (Per person) \$
		SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
		X HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
		X NON-OWNED AUTOS				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		ANY AUTO				OTHER THAN EA ACC \$
						AGG \$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
						\$
		<input type="checkbox"/> DEDUCTIBLE				\$
		RETENTION \$				\$
	B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	4072127	07/01/08	07/01/09	X WC STATUTORY LIMITS OTH-ER
		If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ 1,000,000
		OTHER				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The cities of Arvada, Golden, Littleton, Lakewood and Wheat Ridge are held harmless as per the insured contract.

CERTIFICATE HOLDER

CANCELLATION

Jefferson County Dept of
Health & Environment
Attn: Beth Lipscomb
1801 19th Street
Golden CO 80401

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ATTACHMENT B

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID DES
OTTER-1DATE (MM/DD/YYYY)
05/05/09

PRODUCER
 Cherry Creek Ins. Agency, Inc.
 Suite 500
 5660 Greenwood Plaza Blvd.
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A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC	34SBAPC7671	06/23/08	06/23/09	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/POP AGG \$ 4,000,000												
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	34SBAPC7671	06/23/08	06/23/09	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$												
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$												
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$												
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	4072127	07/01/08	07/01/09	<table border="1"> <tr> <td><input checked="" type="checkbox"/></td> <td>WC STATU- TORY LIMITS</td> <td>OTH- ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td colspan="2">\$ 1,000,000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td colspan="2">\$ 1,000,000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td colspan="2">\$ 1,000,000</td> </tr> </table>	<input checked="" type="checkbox"/>	WC STATU- TORY LIMITS	OTH- ER	E.L. EACH ACCIDENT	\$ 1,000,000		E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000		E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	
<input checked="" type="checkbox"/>	WC STATU- TORY LIMITS	OTH- ER															
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	OTHER																

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CANCELLATION

Jefferson County Dept Of
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 Attn: Beth Lipscomb
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 Golden CO 80401

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AUTHORIZED REPRESENTATIVE

D. Scott



W E S T M I N S T E R
C O L O R A D O

Agenda Item 8 J

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Special Legal Services Contract

Prepared By: Leslie C. Annand, Assistant City Attorney

Recommended City Council Action

Authorize the City Manager to sign contracts for legal services on an as-needed basis in a form acceptable to the City Attorney's Office with counsel selected by the City Attorney's Office to advise the Finance Director in formal tax hearings held pursuant to W.M.C. § 4-1-26.

Summary Statement

- The City's Finance Director desires legal advice on evidentiary and procedural matters during formal tax hearings.
- A formal tax hearing is currently scheduled for July 23, 2009.
- The City Attorney's Office has determined that, under the Attorneys Code of Professional Responsibility, it is not able to both represent the City and advise the Finance Director in contested hearings such as these.
- The proposed expenditure, not to exceed \$5,000, is intended to cover these services during 2009.

Expenditure Required: Not to exceed \$5,000

Source of Funds: Audit Revenue Contra Account

Policy Issue

Should the City retain special legal counsel to advise the Finance Director during sales tax hearings?

Alternative

Not hire special legal counsel. This alternative is not recommended, as the Finance Director desires legal advice on evidentiary and procedural matters during the hearings.

Background Information

The City Attorney's Office believes outside counsel is needed to advise the Finance Director on evidentiary and procedural matters in conducting formal tax hearings pursuant to W.M.C. § 4-1-26. A formal tax hearing is currently scheduled for July 23, 2009. The City Attorney's Office will be representing the City at this hearing and it would be a conflict of interest to both represent the City and advise the Finance Director. The proposed approval of \$5,000 for these services is intended to cover any other tax hearings that may arise during 2009. Funds are available for these services in the Audit Revenue Contra Account, which is the account designated for the deposit of contested tax liabilities.

Respectfully submitted,

J. Brent McFall
City Manager



**W E S T M I N S T E R
C O L O R A D O**

Agenda Item 10 A

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Resolution No. 35 re Westminster Public Library Meeting Room Fees

Prepared By: Kate Skarbek, Library Services Manager

Recommended City Council Action

Adopt Resolution No. 35 adjusting meeting room and other fees for the City's College Hill and Irving Street Libraries.

Summary Statement

- Staff is recommending the adjustment of meeting room fees for the Irving Street Library. Fees were previously established when Irving Street Library opened five years ago. At that time, the fees were set to match those of the meeting rooms at the College Hill Library.
- Staff is also recommending establishing an LCD projector rental fee for non-profit groups, explained in the background section of this report.
- The College Hill Library meeting room fees are set by Front Range Community College. As determined by the College, the College Hill Library meeting room fees are being changed to eliminate the non-profit rate. Non-profits will be charged the same as businesses.
- Library Staff has reviewed the College's proposed changes, as well as the meeting room rates at other City facilities, including recreation centers, to create what Staff believes to be a bridge between the two organizations for the Irving Street meeting room.
- Study rooms at both facilities would remain free of charge, with no reservations.
- These fee increases (and in the case of Irving Street, one fee is actually reduced) exceed the City Manager's authority to adjust fees per W.M.C. section 13-2-7(D), thus requiring City Council approval.
- If approved, the Irving Street Library meeting room fees are recommended to go into effect on August 1, 2009.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council accept Staff's recommended meeting room fees and LCD projector fees for the Irving Street Library?

Alternative

City Council could direct Staff to leave the Irving Street meeting room fees as is. Staff does not recommend this, however, as the proposed room rental fees will bridge the difference between the College Hill Library meeting room fees as established by Front Range Community College and other nearby City facilities such as The MAC.

Background Information

In 2008, the library meeting rooms at both College Hill Library and the Irving Street Library generated \$6,612.25 for the City. Library revenues collected at the College Hill Library are split with Front Range Community College since staff from both agencies set up the rooms, provide equipment and arrange and rearrange the schedule as people call to revise their plans. Revenues from the Irving Street Library meeting room came to \$360 and were not split with the College.

The actual cost of operating the meeting rooms far exceeds the amount of revenue generated. In the last two years, Staff has seen an increase in competition for the meeting rooms. Staff believes this is partially due to the Westminster Public Library having lower meeting room fees than surrounding facilities. This difference is no doubt related to the fact that Westminster Public Library rates have not been increased in more than eight years, resulting in under-pricing for the area.

Currently, there is a two-tiered pricing structure with the larger meeting rooms at College Hill and Irving Street Libraries renting for \$10 per hour to 501(c)(3) organizations and \$40 per hour to all others. This two-tiered pricing structure has generated a great deal of paperwork for Staff to track, preserve, and secure once organizations submit proof of their non-profit status. Therefore, Staff recommends eliminating the special rate for non-profits to be consistent with the College Hill Library fees. In addition, Staff is recommending lowering the flat fee at Irving Street (see attached chart).

In 2008, the Irving Street Library meeting room was rented 13 times by 7 different outside organizations – one was a business, while the others were non-profit organizations. Of the \$360 generated, eight of the rentals were for one hour only. As of May 15, 2009, the Irving Street Library meeting room has been rented by two outside organizations only eight times; one was a business and one was a non-profit. Staff, therefore, believes that the rate change will have minimal impact on the community, while still allowing the rooms to be affordable, available, and in line with other City facilities.

Staff proposes that LCD projector rentals remain the same for businesses, with non-profits being charged the business rate. Previously, non-profits were not charged for projector rentals. For four hours or less, the charge will be \$50 and for more than four hours the charge will be \$100. LCD use involves Automation Service Staff members meeting with the group's representative to be certain the laptop is compatible, that the connection works, and that Staff remains on call throughout the meeting.

For comparative purposes, the nearest facility to the Irving Street Library that has rooms for rent is The MAC, which rents the single multipurpose room with a capacity of 35 for \$35 per hour for businesses. The MAC has a \$25 hourly non-profit rate for that room.

The Department of Parks, Recreation and Libraries offers the Community Room at the Westminster Sports Center free of charge to nonprofit organizations and community groups who cannot afford the nonprofit rates at the recreation centers. This offer has some restrictions that limit bookings to occasional use not to exceed once per month. This proposal was reviewed at the City Council Study Session held on June 15, 2009, with Council's concurrence to be placed on a regular City Council Meeting agenda for approval.

This fee adjustment meets City Council's Strategic Plan Goal of "Financially Sustainable City Government" by providing the City with additional revenues while continuing to make available affordable meeting rooms for users.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments – Fee Comparison Chart
Resolution and Fee Schedule

Meeting Room Fee Comparisons
July 13, 2009

Comparable Facilities	Max. Capacity	Non-Profit Rate	Business Rate
The MAC	35	\$25/hr	\$35/hr
The MAC	70	\$35/hr	\$50/hr
City Park Recreation Center	25	\$25/hr	\$35/hr
Swim and Fitness Center	60	\$25/hr	\$35/hr
Broomfield Public Library, Room A	45	\$30/hr	\$40/hr
Broomfield Public Library, Room B	36	\$30/hr	\$40/hr

RESOLUTION

RESOLUTION NO. 35

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**RESOLUTION ADJUSTING MEETING ROOM AND OTHER FEES FOR THE CITY'S
COLLEGE HILL AND IRVING STREET LIBRARIES**

WHEREAS, it is the intent of the City Council to adjust fees to provide a fair recovery percentage and reduce the subsidy level at the library facilities; and

WHEREAS, fees for the College Hill Library are established by the Front Range Community College; and

WHEREAS, it is the intent of the City Council to adjust fees to provide library meeting room rates that are consistent at both City of Westminster libraries.

NOW, THEREFORE, be it resolved by the City Council of the City of Westminster, Colorado that the meeting room and other fees at the College Hill Library and the Irving Street Library shall be as set forth in the attached fee schedule.

PASSED AND ADOPTED this 13th day of July, 2009.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

Westminster Public Library Meeting Room Fee Schedule
July 13, 2009

College Hill and Irving St. Libraries	Max. Capacity	Current Non-Profit	Proposed Non-Profit	Current Business	Proposed Business
L211	50-80	\$10/hr	\$60/hr	\$40/hr	\$60/hr
L107	30-50	\$10/hr	\$50/hr	\$40/hr	\$50/hr
L200	20	\$10/hr	\$40/hr	\$30/hr	\$40/hr
L167	15	\$5/hr	\$20/hr	\$10/hr	\$20/hr
L263	10	\$5/hr	\$15/hr	\$10/hr	\$15/hr
Irving Street Meeting Room	30-50	\$10/hr	\$25/hr	\$40/hr	\$25/hr
LCD Projector Fees - <=4 hrs	N/A	No charge	\$50	\$50	\$50
LCD Projector Fees - >=4 hrs	N/A	No charge	\$100	\$100	\$100



Agenda Item 10 B

W E S T M I N S T E R C O L O R A D O

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Councillor's Bill No. 19 re Supplemental Appropriation for the Purchase of a Park Bench for the City Hall Plaza

Prepared By: Debbie Mitchell, Human Resources Manager
Tami Noonig, Administrative Secretary

Recommended City Council Action

Pass Councillor's Bill No. 19 on first reading providing for supplemental appropriation of funds to the 2009 Budget of the General Fund.

Summary Statement

- The Employee Advisory Committee (EAC) is a committee that provides employees with another means for participation in the City organization. This committee facilitates communications among different employee groups and between the City management and it also increases the employees' understanding of decisions regarding personnel policies. The committee is comprised of a representative from each of the City departments and the City Attorney's Office and City Manager's Office. Debbie Mitchell, Human Resources Manager, chairs this committee. The EAC meets on a regular basis throughout the year to review important Citywide issues as well as changes in the City's benefits and the bi-annual pay plan.
- During the February 26, 2009, EAC meeting, various issues were discussed regarding the parking area for citizens who are mobility impaired and the challenging distance between the location of the handicapped parking to the front doors of City Hall.
- Discovering that no funds were available due to lean budget times, EAC decided to hold a bake sale fundraiser at City Hall.
- On May 19, 2009, a bake sale was held. A total of \$1240 was raised to purchase a park bench. The Parks Division will take care of the location and installation of the park bench.
- Some EAC members will be present at this meeting.

Expenditure Required: \$1,240

Source of Funds: The funding source for this expenditure includes the receipt of contributed funds from the sale of baked goods and donations made by City employees and visitors to City Hall

Policy Issue

Does City Council support amending the appropriation for the 2009 Budget of the General Fund?

Alternative

The alternative would be to not amend the 2009 Budget appropriation for the General Fund and utilize these funds for other purposes. Staff does not recommend this alternative as the Parks, Recreation & Libraries Department has already incurred this expense for the purchase of the park bench and has covered this in their current budget in anticipation of appropriation of the funds.

Background Information

The Employee Advisory Committee (EAC) is a committee that facilitates communications among different employee groups and with the City Manager. The EAC also increases the employees' understanding of final decisions regarding personnel policies. This committee is chaired by Debbie Mitchell, Human Resources Manager, and is comprised of a representative from each of the City departments and the City Attorney's Office and City Manager's Office. This committee is very proactive in addressing a variety of issues and concerns that are brought to them by other employees in each of their departments. The purchase of the park bench for the City Hall plaza area, a rest stop for those walking from the handicap parking to the front doors to City Hall, is a great example of the types of issues that are brought to the group and the problem solving that this Citywide employee group takes on.

On February 26, 2009, the committee had a discussion regarding the location of the handicap parking area to the front doors of City Hall. Although there are benefits to having the nice courtyard in front of Westminster City Hall, the distance can be a long walk for those who are mobility impaired. A variety of options were discussed and the group decided to pursue the purchase of a park bench as a resting location for citizens challenged by the walk.

Upon finding out, that because of budget constraints, no funds were available for the City to purchase this bench, it was decided that other funds would have to be obtained. The EAC came up with an idea to hold a bake sale. On May 19, 2009, a bake sale was held from 7:30 am to 10:00 am and sufficient funds were raised to purchase the park bench and get it installed. This is demonstrative of the sense of ownership that this employee group displays within the organization.

This appropriation will amend the General Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Contributions	1000.43100.0000	\$5,000	\$1,240	\$6,240
Total Change to Revenues			<u>\$1,240</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Park Services	10050550.71800.0000	\$48,320	\$1,240	\$49,560
Total Change to Expenses			<u>\$1,240</u>	

This adjustment will bring the City's accounting records up-to-date to reflect this transaction. The purchase of this park bench helps achieve City Council's Strategic Plan Goals of "Beautiful and Environmentally Sensitive City" as it contributes to the park-like atmosphere of City Hall grounds and courtyard.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **19**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE AMENDING THE 2009 BUDGET OF THE GENERAL FUND AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED
REVENUES IN THE FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Fund, initially appropriated by Ordinance No. 3432 are hereby increased in aggregate by \$1,240. This appropriation is due to the receipt of contributed funds from the sale of baked goods and donations received by the Employee Advisory Committee for the purchase of a park bench for the City Hall Plaza.

Section 2. The \$1,240 increase shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 B dated July 13, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$1,240
Total	<u>\$1,240</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 13th day of July, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of July, 2009.

ATTEST:

Mayor

City Clerk



Agenda Item 11 A&B

W E S T M I N S T E R C O L O R A D O

Agenda Memorandum

City Council Meeting
July 13, 2009



SUBJECT: Photovoltaic Solar Installation Pilot Program, Power Purchase Agreement with Main Street Power

Prepared By: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

1. Remove the Photovoltaic Solar Installation Pilot Program, Power Purchase Agreement with Main Street Power from the table in order to consider the item for action.
2. Authorize the City Manager to sign a Power Purchase Agreement with Main Street Power Company in substantially the same form as attached, to permit the installation of photovoltaic solar panels having a total maximum power of 270.9 kilowatt hours (kWh), and to purchase renewable energy generated directly from the solar PV systems, and, in addition, to obtain an option to purchase the photovoltaic system.

Summary Statement

- During the recent strategic planning retreat, City Council expressed interest in the possible use of renewable energy, specifically Photovoltaic (PV) solar power generating systems. Council's interest coincides with work already completed by Staff over the last year while working with Main Street Power and Simple Solar.
- In recent years, the cost effectiveness of installing solar systems has improved substantially due to advances in the technology and the availability of Xcel Energy rebates and Federal and State tax incentives.
- Since December of 2008, Staff has been working in good faith with Main Street Power reviewing facility utility invoices, electrical consumption and potential facilities where solar installations could be accomplished.
- In early May 2009, a Letter of Intent was signed with Main Street Power to complete in-depth facility site evaluations and to begin structural and electrical engineering required for preparation of the Power Purchase Agreement (PPA) and any future building permits, which would be required for the installation of roof mounted solar arrays. This work was completed without the expenditure of City funds.
- With Main Street Power's structural and electrical engineering complete and potential facilities identified, Staff is recommending the installation of a 270.9 kWh in total energy from PV solar systems on the roofs of the Municipal Service Center Administration Building, City Park Recreation Center, West View Recreation Center and the Public Safety Center.

Expenditure Required: No additional expenditures required for the first five years; beginning in year six, the City may, at its option, stay in the current PPA program or purchase the systems outright at its then fair market value estimated to be \$708,000

Source of Funds: Specific funding source for potential acquisition in year six to be determined at a later date; annual power purchases will be made from operating budgets in the same manner as purchases from Xcel Energy

Policy Issue:

Should City Council authorize the City Manager to enter into a Power Purchase Agreement with Main Street Power for the installation of solar systems on City facilities, which includes an option to purchase the system after five years, and the subsequent purchase of electricity generated from the solar panel installation?

Alternative:

Do not proceed with Main Street Power solar installations with use of a Power Purchase Agreement and direct Staff to continue investigating other renewable energy opportunities and potential financing options.

Staff is not recommending this action based on the present limited amount of Xcel Energy solar rebates, renewable energy credits and federal tax incentives, all of which are needed for providing the City with the lowest possible per kilowatt energy price. In addition, Staff believes Main Street Power Company has negotiated in good faith over the last six months to provide the City with a kW cost comparable to or lower than that of the City and County of Broomfield, Denver International Airport, and the City of Lafayette.

Background Information:

As Council is aware, energy costs in Colorado continue to rise and strain the City's budget. Over the last year, Staff has been researching the use of solar energy to help offset increases in future electrical rates and as an added benefit, reduction of carbon emissions. With the continued likelihood of future electrical increases, the City has grown increasingly aware of the economic, environmental, and societal benefits of taking a lead role in implementation of renewable energy, particularly distributed photovoltaic (PV) installations. Recently, solar energy's cost premiums have declined as a result of technology improvements and an increase in the cost of traditional energy generation. At the same time, a nationwide public policy focus on carbon-free, renewable energy has created a wide range of financial incentives to lower the costs of installing PV even further. These changes have led to increases in the availability of capital for solar projects, and tremendous creativity in the development of third-party ownership structures or power purchase agreements (PPA).

In November 2008 while investigating solar potential, Staff was asked by a City Green Team member to meet with and review a solar proposal they had received from Simple Solar on a proposed solar installation at Legacy Ridge Golf Course Maintenance Building. Although the facility roof was not aligned correctly for full use of a solar system, Staff from Simple Solar continued working with City Staff on viable options. One of the options proposed by Simple Solar was to erect or build a covered carport for maintenance equipment storage that could be aligned on the property to make full use of sunlight that would then produce enough energy to make the project financially feasible. This project is under review for future solar energy generation potential and not included within this proposed PPA.

In February 2009, Staff began checking Simple Solar's references for similar completed solar projects. Some of the completed PV solar projects included Mesa Elementary School in Boulder, Colorado Springs School District 11 and Boulder municipal buildings. Staff also contacted the City of Aurora where Main Street Power is a finalist to provide solar photovoltaic panel design, installation and Power Purchase financing on a variety of sites. Main Street Power has reached agreements with the City of Lafayette and Colorado University Real Estate Operations on solar installations with use of a PPA. In April 2009, Main Street Power announced the partnership with Simple Solar bringing together the experience and innovation for creating Power Purchase Agreements by Main Street Power and solar technology and installation services provided by Simple Solar.

In early May 2009, after review by the City Attorney's Office, a Letter of Intent was signed with Main Street Power (MSP). Signing the Letter of Intent allowed the City and MSP to work under mutually exclusive good faith negotiations to complete an agreement on general terms until June 30, 2009 under no financial obligation. During this period MSP completed site evaluations, individual facility structural and electrical engineering, and preparation of a draft PPA for the City's review.

In addition, with the signing of the Letter of Intent, and after local engineering was completed, MSP applied for renewable energy credits (REC's) and Xcel Energy rebates through Xcel Energy's Solar Reward Program that have now been approved. MSP also had its out of State investor and third party engineers fly in and inspect the site. These steps were needed for MSP to pursue its financing agreement, and complete the actions required in the final PPA.

Staff from the City's Department Finance Department completed a solar panel project analysis for cash flow on the proposed 270.9 kW system and calculates an approximate cumulative first year cash savings of approximately \$15,000. The estimated amount of \$15,000 is the actual savings based on the reduced kW costs generated by the PV system as compared to what would potentially have been paid to Xcel Energy.

Using the City's Municipal Service Center as an example; it is estimated the 97.65 kW solar panel installation will produce approximately 23% of the required electrical load of the building operations. Under the terms of the PPA, the City will be required to purchase the clean energy generated by the solar system, however, at the reduced kilowatt cost of \$0.058. Staff estimates an approximate first year savings of \$2,500 from power generated by the 97.65 kWh system installed on the Municipal Service Center roof. In addition, as Xcel Energy rates continue to rise, savings will increase over the term of the PPA that are not reflected within these projected savings.

Four facilities are proposed to have PV solar systems installed through this pilot project. The size of each system and estimated reduction in carbon generating energy consumption are as follows:

Facility	Size of Solar Array kW System	Projected Solar Usage (% Reduction of Xcel Energy consumption)
Municipal Service Center Administration Building	97.65	23%
City Park Recreation Center	75.60	6%
West View Recreation Center	47.25	11%
Public Safety Center	50.40	8%
Total System Size	270.9	

The Main Street Power Company's financial incentives model being used to develop the 270.9 kWh solar system PPA include the following:

- Investment Tax Credit (ITC): This is an immediate federal tax offset for 30% of the system costs subject to no change in ownership for five years.
- Modified Accelerated Cost Recovery System (MACRS): This is a depreciation schedule that allows the owner of the system to depreciate 85% of the system costs over 6 years.
- Bonus Depreciation: As part of the 2008 Economic Stimulus Act, and as extended per ARRA, solar systems are eligible for 50% bonus depreciation in the first year. This does not change the total depreciation but rather allows greater first year depreciation and lower subsequent years under the MACRS above.
- Xcel Energy Rebate: Per the Xcel Energy mid-sized rebate program, each installation less than 100 kW is eligible for a \$2.00/watt rebate paid upon system commissioning.
- Renewable Energy Certificate (REC) Sales: Per a twenty year contract with Xcel Energy, the system owner will sell the REC's (one megawatt of clean energy) to Xcel at \$115/REC. If the City chooses to purchase the system after year five, the City would be the beneficiary of these REC sales (estimated at \$42,000/year).

Economic benefits realized by installing 270.9 kWh PV solar systems with use of a Power Purchase Agreement:

- No capital outlay requirements for the City of Westminster.
- Immediate savings off the Xcel Energy billing rate.
- Savings of over 14.9% for a solar energy rate compared to the average for other metro area solar installations. Savings of 25% for a buyout price for the system compared to the average for other metro area solar installations.
- No rate escalation for the first 5-years and the opportunity for no escalator for future years through a system purchase option.
- Savings to the City of approximately \$64,000 in energy costs over 5 years and over \$300,000 over the 20-year life of the Photovoltaic system with exercise of purchase option.

Social/Environmental Benefits:

- Placement of educational web based real-time environmental and economic benefits monitoring kiosks/displays at each facility's lobby.
- Carbon reductions of over 600,000 lbs per year and 10,000 tons during the system life.
- Equivalent to 750,000 vehicle miles eliminated per year or planting 30,000 tree seedlings.
- Production of 400,000 kilowatts per year of clean, renewable energy.

It is important to note that the City of Westminster cannot take "credit" for the solar energy produced by this system. Main Street Power will enter into Xcel Energy's Solar Rewards program whereby Xcel Energy receives "credit" for the renewable power produced and Main Street Power receives \$0.115/kW power produced. For renewable energy credit accounting purposes (i.e., to avoid double counting the renewable energy), the City is limited to advertising that the City "hosts" the solar energy sites and that by purchasing renewable energy, the City is reducing its dependence on non-renewable sources.

One other significant component of the agreement provides that the City earmark or set aside, now, the first six years of anticipated energy payments since TABOR prohibitions require the City's inclusion of the City's standard non-appropriation clause into the PPA. By appropriating funds for the first six years of energy purchase, it provides a guarantee that Main Street Power and their financers will be receiving the income stream from our energy payments. Regardless, the City would obviously have to purchase energy during this time period and budget accordingly but Main Street Power needs this guarantee specifically stated within the contract. Since the 2010 Budget already has funds appropriated for energy purchase, funds are only needed for 2011-2015. It is estimated that energy purchased through Main Street Power would cost approximately \$22,000/year, totaling \$110,000 for the five-year period. Staff recommends that these funds be appropriated into the General Capital Improvement Fund (GCIF) into a capital project using 2008 carryover funds that City Council will review at an upcoming Study Session. By appropriating these funds into a CIP account, it permits the funds to roll forward from year-to-year, ensuring that the City is complying with the terms of the PPA. At the conclusion of the six-year period, if the City decides to exercise the option to purchase the system, these funds could be utilized towards that purchase. If the City does not opt to purchase the system, these funds would then be available for BO&M Major Maintenance project work or another capital project to be determined at that time.

The recommended City Council action addresses Council's strategic plan goal of a "Financially Sustainable City Government Providing Exceptional Services" with the installation of solar energy systems resulting in significant, long term energy cost savings. In addition, the proposed actions coincide with the City's goal of "Beautiful and Environmentally Sensitive City" by facilitating the installation of an alternative, renewable energy source in four City owned locations throughout the community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Colorado PPA Comparison Chart
Solar Power & Services Agreement

Solar Power & Services Agreement		Colorado Power Purchase Agreements Comparison Chart		
<u>Project</u>	<u>Energy Price</u>	<u>Escalator over 20 years</u>	<u>Buyout price/Watt</u>	<u>Equivalent for Buyout on 270.9 kW</u>
Denver International Airport	\$0.0600	6.00%	\$4.08	\$1,105,272.00
Boulder County Buildings	\$0.0635	3.73%	\$2.55	\$690,795.25
Denver Convention Center	\$0.0900	3.00%	\$3.84	\$1,040,256.00
City of Broomfield	\$0.0580	2.00%	\$3.14	\$850,626.00
Average	\$0.0679	3.68%	\$3.40	\$921,737.00
Westminster – Proposed	\$0.0580	3.50%	\$2.56	\$693,504.00
Westminster – Savings	15%	5%	25%	\$228,233.00

SOLAR POWER & SERVICES AGREEMENT

between

Main Street Power Company, as “Provider”

and

City of Westminster, as “City”

dated as of

_____ , 2009

LOCATION:

SOLAR POWER & SERVICES AGREEMENT (MUNICIPAL FORM)

This Solar Power & Services Agreement is made and entered into as of this ____ day of _____, 2009 (the “Effective Date”), between Main Street Power Company, a Colorado corporation (“Provider”), and the City of Westminster, a Colorado home rule city (“City”); and, together with Provider, the “Parties” and each, a “Party”).

WITNESSETH:

WHEREAS, City owns the Premises (as hereinafter defined);

WHEREAS, City desires that Provider (either itself or through the use of its representatives, agents, contractors, subcontractors and advisors) design, install, operate and maintain a solar photovoltaic system, with an expected nameplate capacity of approximately __ kW dc, at the Premises for the purpose of providing Solar Services (as hereinafter defined), and Provider is willing to undertake to do the same; and

WHEREAS, Provider desires to sell, and City desires to purchase, such Solar Services at the Premises, pursuant to the terms and conditions set forth herein.

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

1. DEFINITIONS; INTERPRETATION.

1.1 **Definitions.** In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Nameplate Capacity” means the nameplate capacity of the System, expressed in kW dc, as determined in connection with the achievement of Commercial Operation.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, “control” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. “Control” may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another Person.

“Agreement” means this Solar Power & Services Agreement, including the preamble, recitals and the Schedules and Exhibits attached hereto, which are incorporated herein by reference.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, holding, Governmental Approval, or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Approvals” means, collectively, the Governmental Approvals and the Local Electric Utility Approvals.

“Assignment” has the meaning set forth in Section 15.1.

“Assignment of Contracts” means the Assignment of Contracts, between City and Provider, in the form of Exhibit D.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Denver, Colorado are required or authorized by Applicable Law to be closed for business.

“Change in Law” has the meaning set forth in Section 7.5(a).

“City” has the meaning set forth in the preamble hereof.

“City Default” has the meaning set forth in Section 12.2(a).

“City Parties” has the meaning set forth in Section 18.1.

“Commercial Operation” has the meaning set forth in (i) the Rebate Contract in respect of the System at the Premises, or (ii) as applicable, the meaning set forth in any Interconnection Agreement in respect of interconnection of the System at any Substitute Premises.

“Commercial Operation Date” is the date upon which Commercial Operation has been achieved, and unless further extended by agreement of the parties, shall not be later than March 31, 2010.

“Confidential Information” has the meaning set forth in Section 17.1.

“Deemed Production” has the meaning set forth in Section 7.6.

“Department Program” has the meaning set forth in Section 20.15(a).

“Discounted Cash Flow” means, for any period of determination, (i) the product of (A) the Forecasted Production for each remaining year of the Term (or pro rata portion thereof) multiplied by (B) the sum of (x) kWh rate for Solar Services for the year in which such Forecasted Production would be delivered to the Point of Delivery and (y) payments which would have been made by Local Electric Utility to Provider for each SO-REC associated with such Forecasted Production

pursuant to the SO-REC Contract, less (ii) reasonably anticipated annual expenses of Provider for such period of determination, discounted by (iii) four percent (4%) per annum.

“E-Verify Program” has the meaning set forth in Section 20.15(a)

“Early Termination Date” has the meaning set forth in Section 2.1(c).

“Early Termination Fee” means the fee payable by City to Provider under the circumstances described in Sections 2.3 or 2.4.

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” has the meaning set forth in Section 6.2.

“Environmental Law” means any Applicable Law, whether currently existing or enacted after the Effective Date, concerning health or safety, natural resources, or the environment, or the use, generation, transport, treatment, removal, or recovery of Hazardous Substances.

“Expiration Date” has the meaning set forth in Section 2.1(c).

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System and of the provision of the Solar Services shall be determined pursuant to Section 2.5.

“Forecasted Production” means the amount of Solar Services forecasted to be delivered to the Point of Delivery, which, for any period of determination, shall be an amount equal to the actual Production during the full calendar year of the Term immediately preceding the beginning of such period of determination and which amount shall be discounted by 0.5% for each year of the Term until the end of such period of determination.

“Force Majeure Event” has the meaning set forth in Section 11.1.

“Governmental Approval” means any approval, consent, franchise, permit, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Hazardous Substances” has the meaning set forth in Section 9.2(f).

“Increased Cost Cap” has the meaning set forth in Section 7.5(c).

“Initial Term” has the meaning set forth in Section 2.1(a).

“Insolation” means, for any period of determination and for any particular location, the amount of kWhs per square meter falling on such location during such period of determination, as published by the National Renewable Energy Laboratory.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof.

“Interconnection Agreement” means that certain Small Generation Interconnection Agreement to be entered into between City and Local Electric Utility.

“Invoice Date” has the meaning set forth in Section 7.2.

“kW dc” means kilowatts direct current.

“kWh” means kilowatt-hours.

“kWh Rate” has the meaning set forth in Section 7.1.

“Lender” has the meaning set forth in Section 15.3.

“Lender’s Security Interest” has the meaning set forth in Section 15.3.

“Liens” has the meaning set forth in Section 8.1(d).

“Local Electric Utility” means Public Service Company of Colorado (d/b/a Xcel Energy, Inc.), or such other local electric distribution owner and operator providing electric distribution and interconnection services to City at the Premises as of the Effective Date, or any Person succeeding to such role after the Effective Date.

“Local Electric Utility Approval” means any approval, consent, franchise, permit, resolution, concession, license, or authorization issued by or on behalf of the Local Electric Utility.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all reasonable attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Metering System” has the meaning set forth in Section 5.3(a).

“Monitoring Equipment” has the meaning set forth in Section 4.5.

“MWh” means megawatt hours.

“Option Price” has the meaning set forth in Section 2.4(a).

“Party” or **“Parties”** has the meaning set forth in the preamble hereof.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Point of Delivery” means the location of the delivery of the Solar Services, shown more specifically in Schedule 2 of Exhibit A.

“Premises” means the premises described in Schedule 1 of Exhibit A.

“Production” means, for any period of determination, the total kWh of Solar Services delivered to the Point of Delivery during such period of determination, as recorded by the Metering System.

“Project Documents” means, collectively, (i) the Rebate Contract, (ii) the SO-REC Contract, (iii) the SGIA, (iv) the Assignment of Contracts, (v) the Interconnection Agreement, and (vi) all other documents necessary or incidental to the foregoing (i) through (v), all as permitted to be amended, modified or supplemented from time to time.

“Provider” has the meaning set forth in the preamble hereof.

“Provider Default” has the meaning set forth in Section 12.1(a).

“Provider Parties” has the meaning set forth in Section 18.2.

“Purchase Option” has the meaning set forth in Section 2.4(a).

“Qualified Assignee” has the meaning set forth in Section 15.3(b)(v).

“Rebate Contract” means that certain Solar Rewards Rebate Contract, between City and Local Electric Utility, whereby, inter alia, Local Electric Utility agrees to pay City a rebate of \$2.00 per watt of direct current of nameplate capacity of the System.

“Reimbursed Persons” means the City Parties or the Provider Parties, as the context requires.

“Renewal Rate” means, as of the beginning of any Renewal Term, the Fair Market Value for the provision of Solar Services during such Renewal Term, as determined pursuant to Section 2.5 prior to the beginning of such Renewal Term.

“Renewal Term” has the meaning set forth in Section 2.1(b).

“Representatives” has the meaning set forth in Section 17.1.

“SG Rate” means Local Electric Utility’s rate for “Secondary General Service,” specified in Schedule SG of its tariff, dated effective January 1, 2007, as amended, modified, supplemented, revised or replaced from time to time.

“SGIA” means that certain Small Generator Interconnection Application, between City and Local Electric Utility, whereby, inter alia, City requests interconnection of the System with the Local Electric Utility.

“Solar Services” means the supply of on-site electrical energy output from the System.

“Solar Services Payment” has the meaning set forth in Section 7.1.

“SO-REC” has the meaning set forth in the SO-REC Contract.

“SO-REC Contract” means that certain Solar Rewards SO-REC Purchase Contract, between Provider and Local Electric Utility, whereby, inter alia, Local Electric Utility agrees to purchase from Provider SO-RECs generated from the System.

“Stated Rate” means twelve percent (12%) per annum.

“Substitute Premises” has the meaning set forth in Section 2.2(a).

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 2 of Exhibit A and interconnected with the Local Electric Utility, owned by Provider and installed at the Premises.

“System Acceptance Testing” has the meaning set forth in Section 4.3.

“System Operations” means the operation, maintenance and repair of the System.

“Term” has the meaning set forth in Section 2.1(c).

“Uniform Commercial Code” means the Uniform Commercial Code, as promulgated and enacted in the State of Colorado.

- 1.2 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include,” “includes,” and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof,” “herein,” and “hereunder” and words of similar import refer to this

Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Exhibits,” “Articles” and “Sections” are to Exhibits, Articles and Sections of this Agreement.

2. **TERM AND TERMINATION.**

2.1 **Term.**

- (a) **Initial Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty (20) years after the Commercial Operation Date (the “Initial Term”), unless and until terminated earlier pursuant to the provisions of this Agreement, and subject to any limitation referenced herein relative to multiple year obligations by the City.
- (b) **Renewal Term.** The Parties may, by mutual agreement, renew this Agreement for successive one (1) year terms (each, a “Renewal Term”). Not earlier than ninety (90) days prior to the expiration of the Term, either Party may deliver written notice to the other Party of its desire to extend this Agreement for an additional Renewal Term at a specified Renewal Rate. Within thirty (30) days after delivery of such notification, the other Party shall, by written notice, (i) indicate its desire to renew this Agreement at the Renewal Rate specified in the initial notice, and the delivery of the other Party’s notice shall be effective, without requirement of further action, to extend this Agreement on the day after the then-applicable Expiration Date at the specified Renewal Rate for an additional Renewal Term, or (ii) indicate its desire to extend this Agreement at some other Renewal Rate. In the event a response is delivered pursuant to (ii) above, the provisions of Section 2.5 shall govern the determination of the Renewal Rate, and this Agreement shall be extended on the day after the then-applicable Expiration Date at the Renewal Rate so determined for an additional Renewal Term. Upon the establishment of any Renewal Rate pursuant to this Section 2.1, the Parties shall promptly amend Schedule 3 to Exhibit A to reflect such Renewal Rate.
- (c) **Definitions.** The Initial Term and any Renewal Terms are referred to collectively as the “Term.” The date on which this Agreement terminates by reason of expiration of the then applicable Initial Term or Renewal Term is hereafter referred to as the “Expiration Date.” Any other date on which this Agreement terminates in accordance with the terms hereof is hereafter referred to as the “Early Termination Date.”
- (d) **Nonappropriation.** Notwithstanding anything herein to the contrary, (but subject to the representation of appropriation under Sections 9.2 (g) and (h), below), this Agreement and each obligation of City hereunder is subject to and contingent upon its Council’s annual appropriation of funds being budgeted and appropriated for such purpose. If City is unable to appropriate funds for any payment or obligation required pursuant to this Agreement, or if such appropriations are insufficient during the Term, City may, at its sole option, terminate this

Agreement and be released from any further obligations hereunder upon giving written notice to Provider of termination due to non-appropriation.

2.2 Substitution of Premises.

- (a) **Substitute Premises.** If City (i) ceases to conduct business operations at the Premises, (ii) vacates the Premises, (iii) transfers title to the Premises, or (iv) otherwise desires, then City may provide substitute premises for installation, operation and maintenance of the System. Such substitute premises shall be located within the same Local Electric Utility district as the Premises or in a location with similar Insolation and Local Electric Utility rates, and shall otherwise be acceptable to Provider in its reasonable discretion (the “Substitute Premises”). City shall provide at least sixty (60) days’ written notice to Provider prior to the date on which it desires to effect such substitution. In the event that City does not provide Substitute Premises, the provisions of Section 2.3(b) shall apply.
- (b) **Amended Agreement.** In connection with such substitution, City shall execute and deliver to Provider (with copies to Lender, as applicable and to the extent that City has been provided with mailing instructions for Lender notice) an amended agreement that shall have all of the same terms and conditions of this Agreement (including representations and warranties) other than (i) the definitions of the “Effective Date” and “Term” of such amended agreement, the latter of which shall be the remainder of the Term, and (ii) the description of the “Premises” in Schedule 1 of Exhibit A, which shall be amended to describe the Substitute Premises, and the amended agreement shall be deemed to be a continuation of this Agreement with respect to the Substitute Premises for the remainder of the Term. City shall also provide any new City, owner, lessor, or mortgagee consents or releases required by Lender in connection with the Substitute Premises.
- (c) **Continued Payment; Costs, Fees and Expenses.** City shall pay to Provider (i) the Solar Services Payment (on the basis of Deemed Production of the System at the original Premises until the Commercial Operation Date of the System as relocated onto the Substitute Premises), (ii) \$115.00 per MWh for each SO-REC that would have been generated (on the basis of Deemed Production of the System at the original Premises until the Commercial Operation Date of the System as relocated onto the Substitute Premises), and (iii) all costs, fees and expenses associated with relocation of the System, including all costs, fees and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and design, construction, installation and testing of the System at the Substitute Premises, expenses for time and materials, all applicable interconnection fees and expenses at the Substitute Premises, as well as costs of new title search and other out of pocket expenses for preserving and re-filing the security interest of Lender in the System, including any reasonably required and incurred fees and expenses to outside consultants, advisors and attorneys in connection therewith.

- (d) **Removal of the System from the Premises.** Provider shall remove the System from the Premises prior to the termination of City's ownership of or rights to use the Premises. Provider shall restore the Premises to the condition specified by City, and all costs, fees and expenses of such restoration shall be reimbursed to Provider by City.
- (e) **Adjustment to kWh Rate.** If the Substitute Premises has inferior Insolation as compared to the Premises, Provider shall have the right to make an upward adjustment to the kWh Rate in Schedule 3 of Exhibit A of any amended agreement entered into pursuant to Section 2.2(b) so that City's payments to Provider are the same as if the System were located at the Premises.

2.3 Early Termination.

- (a) **Early Termination by City.** Except as provided herein, in the event that City terminates this Agreement prior to an Expiration Date, City shall pay, no later than ten (10) Business Days after such early termination (unless Fair Market Value of the System is required to be determined hereunder, in which event such payment shall be due no later than ten (10) Business Days after the date of such determination):
 - (i) *If such termination occurs prior to the commencement of the Installation Work,* all expenses incurred by Provider subsequent to the execution of this Agreement, including expenses for time and materials and any reasonably incurred fees and expenses to outside consultants, advisors and attorneys, and restocking fees for materials or panels on order, if any;
 - (ii) *In the event that City desires that Provider remove the System from the Premises,* an amount equal to (A) all amounts due from the City for Solar Services pursuant to any invoice issued by Provider during the year in which such termination occurs, plus (B) the cost of removal of the System. Upon receipt of City's payment, Provider shall remove the System, and restore the Premises in accordance with Section 2.6;
 - (iii) *In the event that City desires that the System remain on the Premises,* the City shall pay an amount equal to the greater of (A) the Fair Market Value of the System, as determined pursuant to Section 2.5, or (B) the difference between the Early Termination Fee for the year specified in Schedule 4 of Exhibit A and all amounts paid by City for Solar Services pursuant to any invoice issued by Provider during the year in which such early termination occurs. Upon receipt of City's payment, (x) Provider shall cause title to the System to pass to City from Provider, free and clear of any Liens, and without warranties of any kind except as to title and manufacturers' warranties to the solar panels and inverters of the System, (y) this Agreement shall terminate automatically and all rights and benefits under this Agreement to future rebates and incentives shall be transferred to the City (including the rights under any Rebate Contract) to the extent

transferable, and (z) Provider will transfer to City the remaining period on all third party warranties for the System, to the extent they exist and to the extent they are transferable. Notwithstanding anything in this Section 2.3(a) to the contrary, if Provider shall not have commenced the Installation Work within a period of one (1) year after the Effective Date, City may, upon thirty (30) days' prior written notice to Provider after the expiration of such period, terminate this Agreement without the requirement to pay any amounts to Provider under this Section 2.3(a); provided, however, that the City may at its option thereupon purchase from Provider all engineering plans related to the System for the amount of Provider's verifiable third party costs related thereto, and take assignment of applicable Xcel approvals related to the System.

- (b) Early Termination by City Due to Transfer. Unless the Parties have agreed upon a substitute site for the System pursuant to Section 2.2, in the event that City (i) ceases to conduct business operations at, (ii) vacates, or (iii) transfers title to the Premises, City shall notify Provider of any such event (or, if City fails to so notify, a notice will be deemed to have been delivered as of the date of any such event), and this Agreement will terminate sixty (60) days after such notice is provided (or deemed to have been delivered). No later than twenty (20) Business Days after the date of determination of Fair Market Value of the System, City shall pay to Provider an amount equal to the greater of (A) the Fair Market Value of the System, as determined pursuant to Section 2.5, or (B) the difference between the Early Termination Fee for the year in which termination occurs as set forth on Schedule 4 of Exhibit A and all amounts paid by City for Solar Services pursuant to any invoice issued by Provider during the year in which such early termination occurs. Upon receipt of City's payment, (x) Provider shall cause title to the System to pass to City from Provider, free and clear of any Liens, and without warranties of any kind except as to title and manufacturers' warranties to the solar panels and inverters of the System, (y) this Agreement shall terminate automatically, and (z) Provider will transfer to City the remaining period on all third party warranties for the System, to the extent transferable.

2.4 Purchase Option.

- (a) Purchase Option; Option Price. Subject to Section 2.4(d), so long as no City Default shall have occurred and be continuing, Provider grants to City an option to purchase the System (the "Purchase Option"), exercisable anytime after the later of (i) the fifth (5th) anniversary of the Commercial Operation Date, or (ii) any date after January 1 of the calendar year in which the sixth (6th) anniversary of the Effective Date occurs. Such Purchase Option may be exercised upon sixty (60) days' prior written notice to Provider, for a purchase price (the "Option Price") equal to the greater of (A) the Fair Market Value of the System, as determined pursuant to Section 2.5, or (B) the difference between the Early Termination Fee for the year in which the Purchase Option is exercised as specified in Schedule 4 of Exhibit A and all amounts paid by City for Solar

Services pursuant to any invoice issued by Provider during the year in which the Purchase Option is exercised.

- (b) Notice of Purchase Option. Subject to Section 2.4(d), not later than sixty (60) days after the delivery of City's notice given pursuant to Section 2.4(a), (i) the Parties shall promptly execute and deliver to each other all documents necessary to (A) cause title to the System to pass to City, free and clear of any Liens, and (B) assign all third party warranties for the System to City, to the extent they exist and to the extent they are assignable, and (ii) City will pay the Option Price to Provider, such payment to be made in accordance with any previous written instructions delivered to City for payments under this Agreement.
- (c) Voided Purchase Option. In the event that (i) City retracts its exercise of the Purchase Option after providing notice to Provider pursuant to Section 2.4(a), or (ii) fails to pay the Option Price when due, the Purchase Option will be void, and the provisions of this Agreement shall be applicable throughout the Term as if this Section 2.4 were not included in this Agreement.
- (d) First Exercise of the Purchase Option. Provider will provide advance written notice to City of the specific date upon which the Purchase Option may be first exercised under Paragraph 2.4 (a) ("Initial Option Date"). Notwithstanding anything in Section 2.5 (b) to the contrary, the City may, by providing notice within sixty (60) days of the Initial Option Date, purchase the System for the Fair Market Value of the System calculated as not being less than the sum of (A) the Discounted Cash Flow of Forecasted Production for the remainder of the Term, (B) \$0.50 per kW dc of Actual Nameplate Capacity, and (C) Provider's closing costs. If the City fails to exercise the Purchase Option by providing written notice within sixty (60) days of the Initial Option Date, then City's right to purchase the System for the Fair Market Value with the floor described in the preceding sentence, shall be terminated, and thereafter, City may exercise the Purchase Option at the Option Price established under Section 2.4 (a) generally.
- (e) Termination of Agreement Upon Consummation of Purchase Option. Upon satisfaction of all requirements hereunder for completion of the Purchase Option, including payment of any compensation hereunder, this Agreement shall terminate and the rights and benefits hereunder of Provider in any further subsidies, rebates or incentives, (including in any Rebate Contracts) shall be transferred to the City to the extent the same are transferable, and both parties shall be released of all further obligations hereunder.

2.5 Determination of Fair Market Value.

- (a) Subject to Section 2.5(b), the Fair Market Value of the System or the provision of Solar Services, as applicable, shall be determined by the mutual agreement of City and Provider; provided, however, if City and Provider cannot mutually agree to a Fair Market Value within twenty (20) days of the need to determine Fair Market Value pursuant to the applicable provision of this Agreement, then the Parties

shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The costs of the appraisal shall be borne by the Parties equally.

- (b) Notwithstanding anything in Section 2.5(a) to the contrary, the Fair Market Value of the System, whether determined by the mutual agreement of City and Provider, or by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry selected by the Parties, or by a court of law, shall not be less than an amount calculated as follows: the sum of (A) the Discounted Cash Flow for the remainder of the Term, (B) the salvage value of the System at the end of the Term, and (C) Provider's closing costs.

2.6 **Removal of System.** Unless City shall have exercised the Purchase Option, Provider shall, at its expense, remove the System from the Premises on a mutually agreeable date but in no event later than sixty (60) days after the Expiration Date or Early Termination Date (as applicable); provided, however, that in the event that the costs to remove the System (including costs required to restore the Premises to the condition provided in this Section 2.6) would exceed the Fair Market Value of the System, then Provider shall have no obligation to remove the System, and may surrender the System to City for no consideration. In the event of such surrender, Provider shall promptly execute and deliver to City all documents necessary to (a) cause title to the System to pass to City, free and clear of any Liens, and (b) assign all warranties for the System to City, to the extent they exist and to the extent they are assignable. The Premises shall be returned to its original condition, except for System mounting pads or other support structures and ordinary wear and tear. If the removal of the System shall occur after the Expiration Date or Early Termination Date (as applicable), City's covenants in Section 8.2 shall remain in effect until the date that the System is removed and the Premises are restored pursuant to this Section 2.6. If Provider is under an obligation to remove the System pursuant to this Section 2.6, and fails to remove or commence substantial efforts to remove the System by the date agreed upon pursuant to this Section 2.6, City may remove the System to a public warehouse and restore the Premises to its original condition (other than System mounting pads or other support structures and ordinary wear and tear) at Provider's cost.

2.7 **Provider's Right to Terminate this Agreement.** In addition to its other rights hereunder to terminate this Agreement, Provider may terminate this Agreement (a) if Provider is unable to reserve and receive a rebate or subsidy from the state, Local Electric Utility or other source for the installation of the System as designed in an amount not less than the amount stated in Schedule 2 of Exhibit A, whether before or after commencement of the Installation Work, and, in the event that the Installation Work has been initiated or substantially completed, remove any and all System infrastructure or components, provided that it shall restore the Premises pursuant to the requirements of Section 2.6, or (b) if no Installation Work has been commenced, at any time prior to March 31, 2010.

3. CONDITIONS PRECEDENT.

- 3.1 **Conditions.** The following conditions, if not satisfied (or waived by Provider, in its sole discretion) prior to commencement of the Installation Work, shall render this Agreement null, void and of no further force or effect:
- (a) City's representations and warranties in Sections 9.1 and 9.2 remain true, complete and correct, in all material respects, at all times prior to commencement of the Installation Work;
 - (b) A rebate or subsidy in an amount designated in Schedule 2 of Exhibit A is available to Provider from the state, Local Electric Utility, or other source for the acquisition, installation, operation and maintenance of the System and is reserved for the System as designed;
 - (c) There is no material adverse change in the subsidy program or federal tax code that would adversely affect the economics of the acquisition, installation, operation and maintenance of the System for Provider and its investors;
 - (d) There is no material adverse change that affects the ability to obtain credit-committee approval of Lender or Provider's investors;
 - (e) City has delivered to Lender and Provider (i) an Acknowledgement and Confirmation, in the form of Exhibit B executed by City, and (ii) a fully executed release or acknowledgment from any mortgagee of the Premises, if required by Lender, to establish the priority of Lender's Security Interest in the System;
 - (f) Each of the Project Documents (i) has been entered into by each of the parties thereto, (ii) is in full force and effect, with all conditions precedent thereunder satisfied or waived (except for any conditions precedent that specify that the conditions precedent to this Agreement have been satisfied), (iii) is enforceable, in accordance with its terms, against the parties thereto (except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity));
 - (g) All necessary Governmental Approvals and Local Electric Utility Approvals shall have been obtained by Provider (except for such Governmental Approvals and Local Electric Utility Approvals that are reasonably expected to be obtained in the ordinary course or are otherwise to be obtained by the City);
 - (h) Provider shall have secured equity and debt funding, on terms acceptable to it in its sole discretion, necessary to perform its obligations under this Agreement;

- (i) City shall have obtained the necessary ethernet connection to intranet and/or internet network, in the area of the System's electrical equipment, so City can fulfill its obligations under Section 4.5 below;
- (j) If there is any mortgage or fixture filing against the Premises which could be construed as prospectively attaching to the System as a fixture of the Premises, City shall provide to Provider a disclaimer, release or other similar instrument reasonably acceptable to Provider from any such mortgagee or Person making a fixture filing on the Premises.

If despite reasonable efforts to fulfill a condition herein, such condition through no fault of the City cannot be fulfilled, then the failure to fulfill the condition shall not be deemed a breach of this Agreement.

3.2 **Fees and Expenses.** In the event that this Agreement is rendered null, void and of no further force or effect pursuant to Section 3.1 for failure to satisfy the conditions set forth in

- (a) Section 3.1(a), (to the extent fulfillment of such condition was under the control of the City), then City shall pay or reimburse Provider for all expenses incurred by Provider subsequent to execution of this Agreement, including expenses for time and materials and any reasonably incurred fees and expenses to outside consultants, advisors and attorneys;
- (b) Sections 9.1 or 9.3 (to the extent the fulfillment of such condition was under the control of Provider), then Provider shall pay or reimburse City for all expenses incurred by City subsequent to execution of this Agreement, including expenses for time and materials and any reasonably incurred fees and expenses to outside consultants, advisors and attorneys; or
- (c) Section 3.1(b), (c), (d), (e), (f), (g), (h), (i), and (j) each Party shall bear its own costs.

4. **CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.**

4.1 **Installation Work.**

- (a) Installation Work shall have commenced on or before September 30, 2009. Provider will (either itself or through the use of its representatives, agents, contractors, subcontractors and advisors) design, engineer, install and construct the System substantially in accordance with the terms of this Agreement. Upon commencement of the Installation Work, Provider shall proceed with due diligence to complete the Installation Work, subject to Acts of God and other circumstances beyond the reasonable control of Provider. City shall have the right to review and approve all construction plans, including engineering evaluations of the impact of the System on (i) the structural integrity and strength of the roof of the Premises and (ii) the Local Electric Utility's equipment and service. Subject to the terms of City's leases with its tenants, if any, Provider

shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. (local time), Monday through Friday (and if necessary to complete the Installation Work on or before March 31, 2010, Saturday and Sunday), in a manner that minimizes inconvenience to and interference with City and City's invitees' and customers' use of the Premises to the extent commercially practical.

- (b) Requisite Standards. The System shall be installed with due care and in a workmanlike manner by qualified employees, representatives, agents, contractors, subcontractors or advisors of Provider and shall conform to applicable industry standards and practices, and Applicable Law. To the extent any such Installation Work is provided by third parties, any warranties provided thereby shall be assigned to the City. If Provider fails to meet any of the foregoing standards, Provider shall perform at its own cost, and without additional charge to City, the professional services necessary to correct errors and omissions, including any necessary replacement of any component of the System, that are caused by Provider's failure to comply with the above standards so that the System is capable of providing Solar Services at a reasonably continuous rate.

4.2 Approvals; State Subsidy.

- (a) Local Electric Utility Approvals. City shall assist Provider in obtaining necessary Local Electric Utility Approvals, including the submission of applications for interconnection of the System with the Local Electric Utility. If the Local Electric Utility fails to approve the interconnection of the System or requires equipment in addition to that shown in Schedule 2 of Exhibit A, Provider may, at Provider's option, immediately terminate this Agreement. If Provider elects not to terminate this Agreement pursuant to this Section, City shall assist Provider in obtaining approval for a modified System conforming to the Local Electric Utility's requirements.
- (b) Governmental Approvals. Provider shall obtain the necessary Governmental Approvals. City shall cooperate in good faith with Provider in obtaining the necessary Governmental Approvals (as provided in Section 4.2(d)), which may include provision by City of any electrical drawings and structural drawings of the Premises which City has in its possession. City shall not be required to prepare any new drawings. Provider shall not commence construction until all necessary permits or approvals for construction have been obtained. City shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. If any applicable Governmental Authority does not provide the necessary Governmental Approvals, Provider may immediately terminate this Agreement. The failure of Provider to obtain any required Governmental Approval shall not constitute a Provider Default. If Provider elects not to terminate this Agreement pursuant to this Section 4.2(b), City shall cooperate in good faith with Provider in obtaining approval for a

modified System conforming to any Governmental Authority's requirements to issue a Governmental Approval; provided, however, such modified System must be acceptable to City, which acceptance shall not be unreasonably withheld (e.g., such modified System must materially comply with the intent of this Agreement).

- (c) **State Subsidy; Rebate Funding.** City, at its sole cost and expense, shall make necessary repairs or changes to the existing electrical structure of the Premises, at Provider's direction and with its approval, so that the Premises are eligible for state subsidy, rebate funding renewable energy credits, sale of electricity, and otherwise to fulfill the intent of this Agreement.
- (d) **General Obligation to Assist Provider.** City shall generally assist Provider in obtaining and maintaining Approvals required for Provider to perform its obligations under this Agreement. Such assistance by City shall include providing any authorizations from City needed for any Approvals, signing applications for permits, Local Electric Utility grid interconnection applications and rebate applications and processing. City shall ensure that any authorizations required of City and within the control or authority of City, are provided in a timely manner. To the extent that only City is authorized to obtain or issue any necessary consents, approvals, permits, rebates or other financial incentives for the acquisition, installation, operation, maintenance or removal of the System, City (i) shall deliver to Provider promptly, and shall assist Provider in maintaining and utilizing, copies of such consents, approvals, permits, rebates, financial incentives and authorizations, and (ii) shall not, in respect of any such consents, approvals, permits, rebates, financial incentives and authorizations, charge Provider fees in excess of the applicable rates under Applicable Law, including under C.R.S. §31-15-602. Notwithstanding the foregoing, nothing herein shall be construed as requiring City to (x) guaranty issuance of authorizations or Approvals over which City has no power or authority, (y) take any action inconsistent with Applicable Law.

4.3 **System Acceptance Testing.** Provider may, upon not less than three (3) Business Days' prior written notice to City, conduct testing of the System ("System Acceptance Testing"). City shall have the right, but not the obligation, to be present at and observe the System Acceptance Testing, at City's sole cost.

4.4 **Access to Premises, Grant of License; Easements.**

- (a) **Rights of Access.** City hereby grants to Provider, its employees, agents, contractors, subcontractors, invitees and advisors a license, which shall include the rights (i) to use and access the Premises to install, operate and maintain the System during the Term and for such period thereafter required to remove the System, (ii) of ingress and egress to the Premises and (iii) to access electrical panels and conduits to interconnect the System with, or disconnect the System from, the Premises' electrical wiring. City and its authorized representatives shall at all times have access to and the right to observe the Installation Work or System maintenance or removal but shall not interfere or handle any Provider

equipment or any component of the System without written authorization from Provider; provided, however, in the event of a material malfunction or emergency as specified in Section 5.2, City shall be permitted to take those actions necessary to prevent injury as specified in Section 12.1(c).

- (b) **Solar Access.** City shall be responsible to undertake all reasonable measures with respect to the City's properties and any adjoining properties to maintain full solar access for the Premises and the System in order to prevent overshadowing of the Premises and the System by other buildings, structures or flora (and subsequent reduction in Insolation).

- 4.5 **Internet Connection.** City hereby grants to Provider the right to connect the System monitoring equipment ("Monitoring Equipment") to the necessary intranet and/or internet networks so that it is possible for Provider to remotely monitor energy production by the System. City will provide Provider with a working Ethernet connection to intranet and/or internet network, in the area of electrical equipment.
- 4.6 **Temporary Storage Space During Installation or Removal.** City shall use commercially reasonable efforts to provide Provider and its contractors with sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations and System removal, and access for rigging and material handling. City shall provide Provider a reasonable area for construction laydown.

5. SYSTEM OPERATIONS.

- 5.1 **Provider as Owner and Operator.** Provider will own and operate (either itself or through the use of its representatives, agents, contractors, subcontractors and advisors) the System at its sole cost and expense.
- 5.2 **Malfunctions and Emergencies.**
- (a) Each Party shall notify the other (i) immediately upon the discovery of an emergency condition in the System, and (ii) within twenty-four (24) hours following its discovery of any material malfunction in the operation of the System or of the discovery of an interruption in the supply of Solar Services.
- (b) If an emergency condition exists, Provider shall immediately dispatch the appropriate personnel to perform the necessary repairs or take corrective action in an expeditious and safe manner.
- (c) Each Party shall designate personnel and establish procedures so that each Party may provide notice of such conditions requiring Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. For routine and emergency repairs, City shall notify Provider through its contacts listed in attached Schedule 5 of Exhibit A.

5.3 Metering.

- (a) Installation and Maintenance. Provider shall install and maintain, at the Point of Delivery, a utility grade kilowatt-hour (kWh) meter for the measurement of Solar Services delivered to the Point of Delivery (the “Metering System”).
- (b) Testing. No more than one (1) time in any twelve (12) month period, City may request, in writing, that Provider test the Metering System for accuracy. Notwithstanding the foregoing, if City reasonably believes the Metering System is inaccurate, it may request, in writing, that Provider test the Metering System for accuracy. Provider shall test the Metering System within twenty (20) days after delivery of City’s written request, and shall provide to City a copy of all testing and accuracy calibrations for the Metering System to City.
- (c) Adjustments. If testing of the Metering System indicates that it is in error by more than two percent (2%), then Provider shall promptly repair or replace the Metering System. Provider shall make a corresponding adjustment to the records of the amount of Solar Services delivered to the Point of Delivery based on such test results for (i) the actual period of time when such error caused inaccurate meter recordings, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of the date of the last previous test confirming accurate metering or the date the Metering System was placed into service, but not to exceed two (2) years.
- (d) Costs. If (i) testing of the Metering System is pursuant to City’s written request under Section 5.3(b), and (ii) such testing indicates the Metering System is in error by two percent (2%) or less, City shall be responsible for the costs of such testing.

6. DELIVERY OF SOLAR SERVICES.

- 6.1 Purchase Requirement. City agrees to purchase all of the Solar Services delivered to the Point of Delivery during the Term.
- 6.2 Environmental Attributes, etc. City’s purchase of Solar Services does not include Environmental Attributes or any other attributes of ownership of the System, all of which shall be retained, and may be otherwise sold or transferred, by Provider, in its sole discretion. For purposes of this Agreement, “Environmental Attributes” shall include any of the following (a) created by order of any Governmental Authority, or (b) allocated as a result of Provider’s or City’s participation in any voluntary registry, association or market-based exchange: any non-energy attributes howsoever entitled, whether now existing or hereafter created or arising, attributable to the installation, ownership or operation of the System, including carbon trading credits, SO-RECs or other renewable energy credits or certificates, emissions reduction credits, investment or investment tax credits, production tax credits, emissions allowances, green tags, tradable renewable credits, and Green-e® products. City acknowledges and agrees that (x) several

Governmental Authorities are in the process of enacting legislation requiring the monitoring and reporting of greenhouse gas emissions and the allocation of Environmental Attributes, and that such legislation may be enacted during the Term, (y) any such enacted legislation may allocate Environmental Attributes in a manner inconsistent with this Agreement, and (z) in the event that Environmental Attributes are allocated in a manner inconsistent with this Agreement pursuant to such enacted legislation, it shall take such actions as are required to provide Provider with the legal and/or beneficial interests in and to the Environmental Attributes, including execution, delivery and registration of any document required therefor.

- 6.3 **Title to System.** Throughout the duration of this Agreement, Provider shall retain legal and beneficial ownership of the System at all times, including all Environmental Attributes.
- 6.4 **Personal Property; Not Fixture.** The System shall, at all times, retain the legal status of Provider's personal property as defined under Article 9 of the Uniform Commercial Code. City covenants that it will use reasonable commercial efforts to place all Persons having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could be construed as prospectively attaching to the System as a fixture of the Premises, City shall provide to Provider a disclaimer, release or other similar instrument reasonably acceptable to Provider from any such mortgagee or Person making a fixture filing on the Premises. If City is the fee owner of the Premises, City consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If City is not the fee owner, City will obtain such disclaimer from such owner.

7. **PRICE AND PAYMENT.**

- 7.1 **Consideration.** City shall pay to Provider monthly the "Solar Services Payment" for the Solar Services delivered to the Point of Delivery during each preceding month of the Term, which Solar Services Payment shall equal the product of (a) the Production delivered (and/or, in the event that Section 7.6 applies, the Deemed Production that would have been delivered) to the Point of Delivery in the preceding month multiplied by (b) the price per kWh for Solar Services for the year in which such Production was delivered (and/or, in the event that Section 7.6 applies, the Deemed Production that would have been delivered) to the Point of Delivery as specified in Schedule 3 of Exhibit A (the "kWh Rate").
- 7.2 **Payment.** Provider shall invoice City on the fifth (5th) Business Day of each month (each, an "Invoice Date"), commencing on the first calendar month to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the previous month. The first invoice shall include any Solar Services delivered to the Point of Delivery prior to the initial Invoice Date. The last invoice shall be pro rated, as necessary, to include Solar Services delivered to the Point of Delivery only through the Expiration Date.

- 7.3 Time of Payment. City shall pay amounts due hereunder within ten (10) Business Days after the applicable Invoice Date.
- 7.4 Method of Payment. City shall make all payments under this Agreement by electronic funds transfer in immediately available funds to the account designated by Provider. All payments that are not paid when due may, at the discretion of Provider, bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except as provided in Section 7.5, all payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind. Upon receipt of written direction and instructions from Provider and Lender, all payments to be made by City to Provider under this Agreement shall be made directly to Lender or its agent designated in a writing addressed to City from time to time. No Party may withhold, deduct or set-off against amounts or credits owed by such Party to the other Party.
- 7.5 Adjustments to Solar Services Payments.
- (a) Change in Law. In the event there is any change in Applicable Law subsequent to the Effective Date that results in a material change in Provider's costs to provide the Solar Services (a "Change in Law"), Provider will promptly submit to City a written notice setting forth (i) the citation of the Change in Law, (ii) the manner in which such Change in Law shall materially change Provider's costs to provide the Solar Services, including computations in connection therewith, and (iii) Provider's proposed adjustment to the then applicable and future kWh Rates to reflect such expected material changes in Provider's costs.
 - (b) Notice. Within thirty (30) days after delivery of Provider's notice, City may, by written notice to Provider, (i) accept Provider's notice, or (ii) reject Provider's notice, and demand that the Fair Market Value of the Solar Services be computed in accordance with Section 2.5 to determine any increase in Provider's costs due to a Change in Law. A failure of City to accept or reject Provider's notice pursuant to this Section 7.5 shall be deemed acceptance of Provider's notice.
 - (c) Adjustment to kWh Rate. From and after the date of (i) City's acceptance of Provider's notice, or (ii) the determination of the Fair Market Value of the Solar Services, the kWh Rate shall be adjusted to include one-half (1/2) of Provider's total increased cost due to the Change in Law, ; provided, however, that (y) either adjustment made pursuant to (i) or (ii) shall remain in effect only for such period until the Change in Law is altered, repealed, or made inapplicable to the System, and (z) City's responsibility for the increased cost shall not exceed the then-current market price for solar energy, (less any sales and use tax component of Provider's resulting pricing or any sales and use tax benefit being received by the City as a result of this Agreement), (the "Increased Cost Cap"), and upon reaching the Increased Cost Cap, all additional increased costs are the sole responsibility of Provider.

(d) **Adjustment to Billing Schedule.** In the event that Local Electric Utility modifies the currently available demand billing structure for the Premises (which structure is acknowledged by the Parties to be an artificially low kWh rate combined with a higher peak demand charge), to a commercial (“C”) billing structure or a new, yet-to-be-determined photovoltaic (“PV”) rate (either voluntarily or as a result of the solar installation resulting in the potential elimination of demand charges), then the Parties agree that the base kWh rate included herein in Exhibit A - Schedule 3 will be increased by fifty percent (50%) of the increase in the current SG rate, inclusive of all related taxes and charges and the new non-demand billing rate inclusive of all related taxes and charges. Such difference shall be a one time adjustor and future billing will be tied to the then-applicable, predefined escalator.

7.6 **Deemed Production.** In the event that (a) City requests that Provider shut down or curtail energy production from the System (including any shut down of the System required to relocate the System onto Substitute Premises pursuant to Section 2.2(a)), or (b) City’s errors, acts or omissions result in the shut down of, or curtailment of energy production from, the System or an action necessary to prevent injury under Section 12.2(c), Provider will have been deemed to deliver Solar Services to the Point of Delivery during the period commencing with the date of the shut down of, or curtailment of energy production from, the System and ending on the date that the System is again capable of meeting the System Test Requirements. The amount of Solar Services deemed to have been delivered to the Point of Delivery shall be an amount equal to the actual Production during the equivalent period in the immediately preceding year (or in the case of a curtailment, less any Solar Services actually delivered to the Point of Delivery) (the “**Deemed Production**”). In the event that the shutdown of, or curtailment of energy production from, the System occurs in a calendar year that is a leap year, Deemed Production for February 29th of such calendar year shall be in amount equal to the actual Production on February 28th of the immediately preceding year.

8. **GENERAL COVENANTS.**

8.1 **Provider’s Covenants.** As a material inducement to City’s execution and delivery of this Agreement, Provider covenants and agrees to the following:

- (a) **System Condition.** Provider shall take all actions reasonably necessary to ensure that the System is capable of delivering Solar Services to the Point of Delivery at a commercially reasonable continuous rate.
- (b) **Approvals.** Subject to City’s performance of its obligations under Section 4.2 (a) and (b) (including such obligations required of City if Provider shall not terminate this Agreement pursuant to Section 4.2 (a) and (b)), Provider shall obtain and maintain all Approvals required to be obtained and maintained in order to perform its obligations under this Agreement. Upon City’s request, Provider shall deliver copies of all Approvals obtained and maintained pursuant to this Section 8.1 to City.

- (c) **Health and Safety.** In performing its obligations under this Agreement, Provider shall take all necessary and reasonable safety precautions that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property. Provider shall immediately report to City any death, lost time injury, or property damage to the Premises that occurs on the Premises.
- (d) **Liens.** Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein. Provider also shall pay promptly before a fine or penalty may attach to the Premises any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by Provider or its agents and subcontractors on the Premises. If Provider breaches its obligations under this Section, it shall (i) immediately notify City in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to City, and (iii) defend and indemnify City against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien. The parties acknowledge that Provider may grant Lender's Security Interest and that such a lien on the System does not constitute a lien on the Premises.
- (e) **No Infringement.** Neither the System nor Provider's performance of its obligations under this Agreement shall infringe upon any Person's intellectual property rights or other proprietary rights.

8.2 **City's Covenants.** As a material inducement to Provider's execution and delivery of the Agreement, City covenants and agrees as follows:

- (a) **Health and Safety.** City shall at all times maintain the Premises consistent with all Applicable Laws pertaining to the health and safety of persons and real and personal property. City shall at all times comply with Provider's instructions and safety guidelines when in the vicinity of the System.
- (b) **Security.** City shall provide for physical security of the System, including commercially reasonable installation, maintenance and monitoring of security alarms on the Premises.
- (c) **Notice of Damage.** City shall promptly notify Provider of any damage to, or loss of the use of, the System or any matter or circumstance that could reasonably be expected to adversely affect the System or its operation.
- (d) **Liens.** City shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If City breaches its obligations under this Section, it shall (i) immediately notify Provider in writing, and (ii) promptly cause such Lien to be discharged and released of record without cost to Provider, as City will pay for the discharge.

- (e) Approvals. City shall obtain and maintain Approvals required to be obtained and maintained by it to perform its obligations under this Agreement, including such Approvals required to site, install and maintain the System on the Premises.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Representations and Warranties of the Parties. Each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization or incorporation, as appropriate;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein; and
- (f) its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it is a party or by which it or its property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

9.2 City's Additional Representations and Warranties. In addition to its representations and warranties in Section 9.1, City represents and warrants to Provider as of the Effective Date that:

- (a) to the best of City's actual knowledge, the roof of the Premises (i) has been weather-proofed against the weather conditions reasonably expected to exist in the State of Colorado, (ii) as existing on the Effective Date, can reasonably be expected to exist in the same condition (except for ordinary wear and tear) for a period of seven (7) years from the Effective Date, and (iii) otherwise has the structural integrity sufficient to accommodate the System as designed by Provider;
- (b) to the best of the City's actual knowledge, there is a suitable electrical interconnection point of sufficient capacity to accommodate the System as

designed by Provider located within 500 feet of the planned location of the System as described in Schedules 1 and 2 of Exhibit A;

- (c) for any underground placement of electrical cable or conduit, to the best knowledge and belief of City, there are no rocks or other obstructions that would prevent ordinary trenching equipment to be used for the installation of underground electrical cable from providing a trench of sufficient depth to comply with the National Electrical Code;
- (d) to the best knowledge and belief of City, there exist no other site conditions or conditions at the Premises or construction requirements for the System as designed by Provider that would materially increase the cost of the Installation Work or would adversely affect the electricity production from the System as designed by Provider;
- (e) that there are no threatened condemnation or eminent domain proceedings, or contemplated sales in lieu therein, involving a partial or total taking of the Premises; and
- (f) (i) to the best of its knowledge after due inquiry, no Hazardous Substances exist on the Premises, and (ii) during the period which it has occupied the Premises, the Premises have not been used for the unlawful storage or disposal of Hazardous Substances. “Hazardous Substances” shall mean any flammable explosive or radioactive material, petroleum or petroleum product, or any “toxic substance,” “pollutant,” “contaminant,” “hazardous material,” “hazardous substance,” “hazardous waste,” or words of similar import, as defined under any Environmental Law.
- (g) The City has duly appropriated and/or currently pledged and reserved all amounts due under Sections 6 and 7 of this Agreement for the six years following the Commencement Date such that the obligations during such years hereunder are enforceable and not subject to the claim or condition that such obligations are subject to future annual appropriations under Section 2.1 (d), or otherwise under the Colorado Constitution or other Applicable Law.

9.3 **Provider’s Additional Representations and Warranties.** In addition to its representations and warranties in Section 9.1, Provider represents and warrants to City as of the Effective Date that (a) it has taken all required actions, if any, necessary to comply with the Public Utility Holding Company Act of 2005, as amended, and (b) it is not an electric utility subject to rate regulation by any Governmental Authority, and (c) that it has no knowledge of any material defect or deficiency in any electrical or structural system for which City is responsible hereunder that would render City in default of its obligations hereunder.

9.4 **EXCLUSION OF WARRANTIES.** THE PARTIES ACKNOWLEDGE THAT UNLESS AND UNTIL THE CITY EXERCISES ITS OPTION TO PURCHASE TO SYSTEM AS PROVIDED HEREIN, THE SYSTEM IS OWNED BY PROVIDER, AND

THEREFORE, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1 AND THIS ARTICLE 9, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND SOLAR SERVICES PROVIDED BY PROVIDER TO CITY PURSUANT TO THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE AMOUNT OF POWER GENERATED BY THE SYSTEM), SHALL BE "AS-IS, WHERE-IS." NO OTHER WARRANTY TO CITY OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE SOLAR SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

10. **TAXES AND GOVERNMENTAL FEES.**

- 10.1 **City's Obligations.** In accordance with the provisions of C.R.S. §31-15-602 (4)(b), City shall not charge a building or other permit fee related to the System in excess of the lesser of the actual costs in issuing the permit(s), or \$1,000. Provider shall notify City in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by City.
- 10.2 **Provider's Obligations.** Subject to Section 10.1, Provider shall be responsible for all income, gross receipts, ad valorem, sales and use, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System.

11. **FORCE MAJEURE.**

- 11.1 **Definition.** "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include the following acts or events: (a) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (b) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (c) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (d) strikes or labor disputes; (e) action by a Governmental Authority, including a moratorium on any activities related to or required by this Agreement; and (f) the impossibility for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Approval necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement, provided that the delay or non-obtaining of such Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Approval.

- 11.2 Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Article 11 shall immediately (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (d) resume performance of its obligations hereunder as soon as practicable thereafter. If Provider claims relief from performance of its obligations hereunder pursuant to a “Force Majeure Event,” and the delivery of Solar Services is suspended in full, the obligation of City to make Solar Services Payments to Provider shall likewise be suspended until Provider resumes performance of its obligations under this Agreement; provided, however, that City shall not be excused from making any payments due in respect of Solar Services delivered to City prior to the Force Majeure Event performance interruption.
- 11.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider’s performance of its obligations hereunder and that has continued for a period of one hundred twenty (120) consecutive days or two hundred forty (240) days in the aggregate, then City shall be entitled to terminate this Agreement upon thirty (30) days’ prior written notice to Provider. If at the end of such thirty (30) day period, such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other, subject to Section 20.6 (except as such Section provides for the survival of Section 2.6), and the provisions of Section 2.3 shall be inapplicable. By mutual agreement of the Parties, the System (or any portion thereof) that is damaged or destroyed by a Force Majeure Event may be replaced by Provider within the time frames set forth above and from and after the date that the replacement System (or to the extent that only a portion of the System was damaged or destroyed, the System) commences production of Solar Services at a commercially reasonable, continuous rate, all terms and conditions of this Agreement will remain in effect, including the remaining Term.

12. DEFAULT.

12.1 Provider Defaults and City Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a “Provider Default”):

(i) Provider shall (A) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (B) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (C) make a general assignment for the benefit of its creditors, (D) commence a voluntary case under any bankruptcy law, (E) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency,

reorganization, winding up, or composition or readjustment of debts, (F) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against Provider in an involuntary case under any bankruptcy law, or (G) take any corporate or other action for the purpose of effecting any of the foregoing;

- (ii) a proceeding or case shall be commenced without the application or consent of Provider in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of Provider under any bankruptcy law, and such proceeding or case shall continue undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days;
- (iii) Provider fails to pay City any amount owed under this Agreement within thirty (30) days from delivery of notice to Provider by the City of the amount claimed to be due;
- (iv) Provider breaches any material term of this Agreement, and (A) if such breach can be cured within thirty (30) days after delivery of City's notice of such breach, Provider fails to so cure, or (B) Provider fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and

(b) City's Remedies.

- (i) If a Provider Default described in Section 12.1(a)(i), or (ii) has occurred, City may terminate this Agreement upon fifteen (15) days' prior written notice to Provider or to a person officially appointed to act for Provider;
 - (ii) If a Provider Default described in Section 12.1(a)(iii), or (iv) has occurred and is continuing, City may terminate this Agreement upon the expiration of the respective grace and cure periods set forth in such provision by written notice to Provider; and
 - (iii) If a Provider Default described in Section 12.1(a) has occurred and is continuing, City may exercise any other remedy it may have at law or equity or under this Agreement.
- (c) Actions to Prevent Injury. If any Provider Default creates an imminent risk of damage or injury to any Person or any Person's property, then, in addition to any other right or remedy that City may have, City may (but shall not be obligated to) take such action as City deems appropriate to prevent such damage or injury. Such action may include disconnecting and removing all or a portion of the System, with notice thereof to Provider as soon as reasonably practicable.

(d) No Early Termination Fee. Section 2.3 of this Agreement shall not apply to any termination of this Agreement by City pursuant to this Section 12.1.

12.2 City Defaults and Provider's Remedies.

(a) City Default. The following events shall be defaults with respect to City (each, a "City Default"):

- (i) City shall (A) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (B) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (C) make a general assignment for the benefit of its creditors, (D) commence a voluntary case under any bankruptcy law, (E) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts, (F) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against City in an involuntary case under any bankruptcy law, or (G) take any corporate or other action for the purpose of effecting any of the foregoing;
- (ii) a proceeding or case shall be commenced without the application or consent of City in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of City under any bankruptcy law, and such proceeding or case shall continue undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) or more days;
- (iii) Except as provided in Section 12.2(a)(iv) and (v), City breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and City fails to so cure, or (B) City fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed;
- (iv) City fails to pay Provider the monthly Solar Services Payment on or before the tenth (10th) day of each month after the Commercial Operation Date (provided Provider has delivered timely billings to City), or such other date upon which the parties may later mutually agree;
- (v) City fails to pay Provider any other amount when due to Provider under this Agreement within thirty (30) days from the date such amount is due;
- (vi) City refuses to perform its obligations set forth in Section 4.2 or refuses to sign or purposefully breaches any term of the interconnection agreement required by the Local Electrical Utility for interconnection of the System; and

(vii) City (A) defaults under any Project Document to which it is a party, and such default is not cured by Provider within the specified time period for cure under such Project Document, (B) amends, modifies, or supplements any Project Document to which it is a party in a manner that could reasonably be expected to materially and adversely affect Provider, or (C) otherwise terminates, or suffers to be terminated, any Project Document to which it is a party (where such termination is not the result of a material and uncured default by Provider).

(b) Provider's Remedies.

- (i) If a City Default described in Section 12.2(a)(i), or (ii) has occurred, this Agreement shall terminate immediately.
- (ii) If a City Default described in Section 12.2(a)(iii), (iv), (v), (vi) or (vii) has occurred and is continuing, Provider may terminate this Agreement upon the expiration of the respective cure periods set forth in such provisions by written notice to Provider.
- (iii) If a City Default described in Section 12.2(a) has occurred and is continuing, in addition to any other remedy hereunder, (A) Provider may, in its sole discretion, (1) cease the provision of all Solar Services, and (2) remove the System from the Premises in compliance with the provisions of Section 2.6, (B) City shall pay to Provider the Early Termination Fee set forth on Schedule 4 of Exhibit A, and (C) Provider may exercise any other remedy it may have at law or equity or under this Agreement.

(c) Actions to Prevent Injury. If any City Default creates an imminent risk of damage or injury to any Person or any Person's property, then in any such case, in addition to any other right or remedy that Provider may have, Provider may (but shall not be obligated to) take such action as Provider deems appropriate to prevent such damage or injury. Such action may include disconnecting and removing all or a portion of the System, in compliance with the provisions of Section 2.6, or suspending the supply of Solar Services to City.

12.3 Removal of System. Upon any termination of this Agreement pursuant to this Article 12, Provider will remove the System pursuant to Section 2.6, unless the System is purchased by City pursuant to Section 2.4.

13. JURISDICTION AND VENUE.

The Parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of (i) the state courts located in Jefferson or Adams County, Colorado or (ii) the federal courts located in the County of Denver, Colorado, for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in either (i) the state courts located in Jefferson or Adams County, Colorado or (ii) the federal and state courts located in the County of Denver, Colorado.

14. **LIMITATION OF LIABILITY.** NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, A PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY, (EXCEPT INDEMNITY OBLIGATIONS IN RESPECT OF PERSONAL INJURY OR PROPERTY DAMAGE CLAIMS AND COVERED CLAIMS UNDER ANY REQUIRED INSURANCE HEREUNDER OR UNDER THE POLICIES OF ANY SUBCONTRACTORS OF PROVIDER), UNDER THIS AGREEMENT SHALL BE LIMITED, IN THE AGGREGATE, TO (A) IN THE CASE OF CITY, THE HIGHER OF (1) THE HIGHEST EARLY TERMINATION FEE SET FORTH IN SCHEDULE 4, OF EXHIBIT A, AND (2) THE FAIR MARKET VALUE OF THE SYSTEM, AND (B) IN THE CASE OF PROVIDER, THE COSTS TO INSTALL, OPERATE AND MAINTAIN THE SYSTEM. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF THE RIGHTS, PROTECTIONS, LIMITATIONS AND IMMUNITIES AFFORDED THE CITY BY THE COLORADO GOVERNMENTAL IMMUNITY ACTS C.R.S. § 24-10-101 ET. SEQ. AS AMENDED FROM TIME OR TIME OR OTHERWISE AVAILABLE AT LAW.
15. **ASSIGNMENT.**
- 15.1 **Assignment by Provider.** Except for the provisions in Section 15.3, Provider shall not sell, transfer, assign or pledge (collectively or each, an "Assignment") this Agreement or any interest herein without the prior written consent of City, which consent shall not be unreasonably withheld. By way of example and not limitation, an Assignment by Provider may include any of the following: (i) an Assignment to an Affiliate of Provider, (ii) an Assignment through merger, consolidation or sale of all or substantially all of Provider's stock or assets, or (iii) an Assignment of Provider's interest in the System or any monies due under this Agreement (provided that City will not pay to a third party any monies owed hereunder without the advance written direction of Provider and/or Lender). By way of example, and not limitation, if City has been provided with reasonable proof that the proposed assignee: (x) has comparable successful experience in operating and maintaining photovoltaic solar systems comparable to the System and successfully providing services comparable to the Solar Services; (y) has the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement; and (z) shall agree to assume in writing the due performance of all Provider's obligations under this Agreement, including any accrued obligations at the time of the Assignment, then any Assignment to such assignee shall be deemed reasonable, and City's withholding of consent to any such Assignment shall be deemed unreasonable. A copy of the Assignment agreement, fully executed and acknowledged by the assignee shall be sent to City not less than ten (10) days before the effective date of such Assignment.

- 15.2 **Assignment by City.** City shall not assign its interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be unreasonably withheld.
- 15.3 **Lender Accommodations.** City acknowledges that Provider will finance the installation, operation and maintenance of the System with financing accommodations from one or more financial institutions and that Provider's obligations to such financial institutions may be secured by, *inter alia*, a pledge or collateral assignment of this Agreement and a first security interest in the System (collectively, the "Lender's Security Interest"). In order to facilitate such financing, and with respect to any such financial institutions of which Provider has notified City in writing (each, a "Lender"), City agrees as follows:
- (a) **Consent to Lender's Security Interest.** City consents to Provider providing to Lender, the Lender's Security Interest.
 - (b) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement, upon the occurrence of an event of default under Lender's financing documents:
 - (i) Lender, as holder of the Lender's Security Interest, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. Lender shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.
 - (ii) Lender shall have the right, but not the obligation, to pay all sums due from Provider under this Agreement and to perform any other act, duty or obligation required of Provider hereunder or cause to be cured any default of Provider hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires Lender to cure any Provider Default (unless Lender has succeeded to Provider's interests under this Agreement) or to perform any act, duty or obligation of Provider under this Agreement, but City hereby gives it the option to do so.
 - (iii) Upon the exercise of remedies under the Lender's Security Interest in the System, including any sale thereof by Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to Lender (or any Qualified Assignee of Lender as defined below) in lieu thereof, Lender shall give notice to City of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement, nor require City's consent.
 - (iv) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days

of such termination or rejection, City shall enter into a new agreement with Lender or its Qualified Assignee having substantially the same terms and conditions as this Agreement.

- (v) For purposes of this section, a “Qualified Assignee” must be a business organization with at least three (3) years’ experience in the operation and management of commercial solar generating systems.
- (c) Acknowledgement and Confirmation. City shall deliver to Lender and Provider a fully executed Acknowledgement and Confirmation in the form of Exhibit C that the ownership of the System remains in Provider and further acknowledging that the System is the personal property of Provider.
- (d) Right to Cure.
 - (i) City will not exercise any right to terminate or suspend this Agreement as a result of a Provider Default unless (to the extent City has been given prior written notice of the manner in which to give Lender notice hereunder), it shall have given Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the Provider Default giving rise to such right, and Lender shall not have caused to be cured the Provider Default giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider Default cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such Provider Default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional one hundred twenty (120) days. The Parties’ respective obligations will otherwise remain in effect during any cure period.
 - (ii) If Lender or its Qualified Assignee (including any purchaser or transferee), pursuant to an exercise of remedies by Lender, shall acquire title to or control of Provider’s assets and shall, within the time periods described in Section 15.3(d)(i), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

16. NOTICES.

- 16.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Provider:

Main Street Power Company

Attention T. Amory Host
1245 Pearl Street, Suite 200
Boulder, CO 80302
Telephone: 303-444-3020
Fax No. 303-449-3058
e-mail: tahost@peak-solar.com

With a copy to: J. Marcus Painter, Esq.
Holland & Hart, LLP
1800 Broadway, Suite 300
Boulder, CO 80302
Telephone: 303-473-2700
Fax No. 303-473-2720
e-mail: mpainter@hollandhart.com

If to City: City of Westminster
City Manager
4800 West 92nd Avenue
Westminster, CO 80031
Telephone: 303-658-2400

With a copy to: City Attorney
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031
Telephone: 303-658-2100

or at such other address as may be designated in writing to the other Party.

- 16.2 **Notice.** Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile or e-mail and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile or e-mail (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

- 16.3 **Notices of Default.** City will, to the extent Provider has submitted all applicable contact information for Lender notice, deliver to Lender, concurrently with delivery thereof to Provider, a copy of each notice of default given by City under this Agreement, inclusive of a reasonable description of the Provider Default(s). No such notice will be effective without delivery to Lender.
- 16.4 **Address for Invoices.** All invoices under this Agreement shall be sent to the notice address provided by City. Invoices shall be sent by regular first class mail postage prepaid, and deemed delivered five (5) Business Days after deposit in the mail.

17. **CONFIDENTIALITY.**

- 17.1 **Confidentiality Obligation.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of its business (“Confidential Information”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement, a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors, advisors and consultants (collectively, “Representatives”), and Affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of, and the exercise of rights under, this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable to the other for any breach of this provision by any of such Party’s Representatives or any Person to whom that Party improperly discloses Confidential Information. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party’s need for it has expired or upon the request of the disclosing Party.
- 17.2 **Permitted Disclosures.** Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:
- (a) becomes publicly available other than through the receiving Party;
 - (b) is required to be disclosed by a Governmental Authority, under Applicable Law (including the Colorado Open Records Act (C.R.S. §24-72-201, et seq.), including the determination of the extent to which any such information can or cannot be considered “confidential” under C.R.S. §24-72-204 (3)(a)(IV)), or pursuant to a

- validly issued subpoena, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
 - (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.
- 17.3 **Goodwill and Publicity.** Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. To the extent permitted by and subject to the provisions of the Colorado Open Records Act (C.R.S. §24-72-201, et seq.) and the Colorado Open Meetings Law (C.R.S. §24-6-401, et seq.), the Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement and the installation and operation of the System, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement or the System; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by or cannot be proscribed by Applicable Law, including the Colorado Open Records Act (C.R.S. §24-72-201, et seq.) and the Colorado Open Meetings Law (C.R.S. §24-6-401, et seq.)), shall be made by either Party without the prior written consent of the other Party. At no time shall a Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party without an express written agreement with respect thereto. Notwithstanding the foregoing, either Party may, without the consent of the other Party, publicly announce the existence of this Agreement and its general nature, as well as the name of the parties to this Agreement, including _____, but nothing in the foregoing exception shall be deemed to authorize the disclosing Party to make any representations on behalf of the other Party.
- 17.4 **Enforcement of Confidentiality Obligation.** Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article 17 by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article 17. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article 17, but shall be in addition to all other remedies available at law or in equity.
18. **INDEMNIFICATION AND LIABILITY.**
- 18.1 **Provider's Indemnification.** Provider shall indemnify, defend, and hold harmless City and its agents and employees (collectively the "City Parties") from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from this Agreement, provided that any such claim, damage, loss or expense (a) is attributable

to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and (b) is caused, or alleged to have been caused, in whole or in part, by any negligent act or omission of Provider, any subcontractor of Provider, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

- 18.2 **City's Liability.** City agrees that it shall be responsible to the extent permitted by Applicable Law (and subject to the Colorado Governmental Immunity Act), for any and all Losses incurred by Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Provider Parties") arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of City's breach of contract, negligence or willful misconduct.
- 18.3 **City's Hazardous Substance Clean-up Obligation.** To the extent permitted by Applicable Law, in the event that Hazardous Substances are discovered on the Premises or the groundwater thereunder, City shall (a) promptly remove, clean-up, encapsulate, monitor or treat such Hazardous Substances as required by Environmental Law, and (b) be responsible for any and all Losses incurred by the Provider Parties to the extent arising from or out of any claim for or arising out the discovery or release of Hazardous Substances on the Premises by City (or to the extent City may be otherwise responsible under other Applicable Law).

- 18.4 **Waiver of Subrogation.** Each Party hereby waives its subrogation rights against the other Party, the other Party's contractors, agents, employees and assigns for any and all loss or damage to property, and shall further ensure that any insurance policy maintained by it pursuant to Article 19 shall include similar waivers from its insurers.

19. **INSURANCE.**

- 19.1 **Generally.** Each Party shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, and (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Provider shall carry adequate property loss insurance on the System which need not be covered by City's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion, but in any event shall not be less than the original cost of the System.
- 19.2 **Required Coverages for Provider or Provider's Subcontractors.** In addition to the above, the following coverages shall be included in the policy for Provider or Provider's subcontractors:
 - (a) Premises, operations and elevators, including work let or sublet, to cover all claims for bodily injury (including but not limited to death, disease or sickness) and damage or destruction or loss of use of any tangible property.
 - (b) Products and completed operations.

- (c) Broad form blanket contractual liability with all exclusions deleted.
 - (d) Personal injury liability.
 - (e) Explosions, collapse, and underground hazards.
 - (f) Broad form property damage endorsement.
 - (g) Incidental malpractice.
 - (h) Independent contractors.
- 19.3 **Certificates of Insurance.** Each Party shall furnish current certificates evidencing that the insurance required under Sections 19.1 and 19.2 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled or materially altered.
20. **MISCELLANEOUS.**
- 20.1 **Integration; Exhibits.** This Agreement, together with the Exhibits and Schedules attached hereto, constitutes the entire agreement and understanding between Provider and City with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached hereto are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, the provisions of this Agreement shall prevail, and such Exhibit or Schedule shall be corrected accordingly.
- 20.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and City.
- 20.3 **Industry Standards.** Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.
- 20.4 **Cumulative Remedies.** Except as set forth to the contrary herein, any right or remedy of Provider or City shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- 20.5 **Limited Effect of Waiver.** The failure of Provider or City to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

- 20.6 **Survival.** The obligations under Sections 2.6 (Removal of System), 8.1(d) (Provider's Covenants; Liens), 8.2(d) (City's Covenants; Liens), 9.4 (Exclusion of Warranties) and 18.3 (City's Hazardous Substance Indemnity and Clean-up Obligation) and Articles 10 (Taxes and Governmental Fees), 13 (Jurisdiction and Venue), 14 (Limitation of Liability), 16 (Notices), 17 (Confidentiality) and 20 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for a period of two (2) years.
- 20.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Colorado without reference to any conflicts of law principles.
- 20.8 **Severability.** If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.
- 20.9 **Relationship of the Parties.** The relationship between Provider and City shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and City, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.
- 20.10 **Successors and Assigns.** This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and City and their respective permitted successors and assigns.
- 20.11 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- 20.12 **Facsimile Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
- 20.13 **Attorneys' Fees.** If any legal action, arbitration, or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, except as expressly excluded in this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, expenses, expert witness fees, and other

costs incurred in that action or proceeding in addition to any other relief to which it may be entitled.

20.14 Early Termination Fee Not Penalty. City acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with City's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages, and not a penalty, to be borne by City in lieu of Provider's actual damages.

20.15 Immigration Status Obligations.

- (a) Provider certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that Provider will participate in the United States Government's E-Verify Program (the "E-Verify Program") or the State of Colorado Department of Labor and Employment Program (the "Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.
- (b) Provider shall not:
 - (1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
 - (2) Enter into a contract with a subcontractor that fails to certify to Provider that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.
- (c) Provider shall affirm as required by C.R.S. § 8-17.5-102 (c) (II) the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
- (d) Provider is prohibited from using the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
- (e) If Provider obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, Provider shall be required to:
 - (1) Notify the subcontractor and City within three (3) days that Provider has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (2) Terminate the contract with the subcontractor if within three (3) days of receiving the notice required pursuant to sub-section (e)(1) the subcontractor does

not stop employing or contracting with the illegal alien; except that Provider 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.

- (f) Provider shall comply with all rules and regulations and any reasonable request by the State Department of Labor and Employment made in the course of the Department's performance of its lawful duties pursuant to C.R.S. 8-17.5-101, et seq., as amended from time to time.
- (g) If Provider violates any of the provisions set forth in this Section 20.15, City may terminate this Agreement and Provider shall be liable for all actual damages incurred by City.

[SIGNATURE PAGES ATTACHED]

IN WITNESS WHEREOF, Provider and City have executed this Agreement, intending to be bound hereby, as of the Effective Date.

“PROVIDER”:

Main Street Power Company, a Colorado corporation

By: _____

Name: T. Amory Host

Title: President

“City”:

City of Westminster, a Colorado home rule municipality

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
SOLAR POWER & SERVICES AGREEMENT

This Exhibit consists of five (5) schedules and relates to the Solar Power & Services Agreement, dated _____ (as amended, supplemented or otherwise modified from time to time, the “Agreement”), between City of Westminster, a Colorado home rule city (“City”) and Main Street Power Company, a Colorado corporation (“Provider”). Capitalized terms used and not otherwise defined herein have the meanings ascribed thereto in the Agreement.

1. Schedule 1: Description of the Premises. The Premises for the installation of the System provided pursuant to this Agreement are described in Schedule 1 to this Exhibit A.
2. Schedule 2: Description of System. The System to be installed on the Premises subject to this Agreement shall be as described in Schedule 2 to this Exhibit A.
3. Schedule 3: kWh Rate. The kWh Rates with respect to the System to be installed pursuant to this Agreement shall be as specified in Schedule 3 to this Exhibit A.
4. Schedule 4: Early Termination Fee. The Early Termination Fee payable pursuant to this Agreement shall be as specified in Schedule 4 to this Exhibit A.
5. Schedule 5: Routine and Emergency Contact Information. Routine and emergency contact information for each Party shall be as specified in Schedule 5 to this Exhibit A.

Exhibit A -- SCHEDULE 1

DESCRIPTION OF PREMISES

New Installation of an approximately____ kW dc system with final details and sites to follow

Exhibit A -- SCHEDULE 2

DESCRIPTION OF SYSTEM

Solar System Size and Location: See Schedule 1.

Anticipated Rebate for System in the amount of \$____ per watt.

Scope: Design and supply grid-interconnected, roof-top solar electric (PV) systems. Provider responsible for turnkey installation and removal.

Module: _____ or equivalent (TBD)

Inverter: _____ or equivalent (TBD)

Structure: TBD

Warranty: 25 years on Panels and 5 years on inverters (such warranties to be assigned to City in the event the Solar System is acquired by City).

System Includes: Solar panels, support system, inverter system, wire kits, and data monitoring system. Design including: 1 site visit, system drawings, engineering review and stamps (not including building structural review, if required). Installation by registered and experience contractors. System commissioning. Support for interconnection application and permitting.

Exclusions: Local Electric Utility interconnection permit.

Point of Delivery: At the meter.

EXHIBIT A -- SCHEDULE 3

kWh RATE

The kWh Rate under the Agreement shall be as set forth below:

Years After Commercial Operation Date	\$/kWh Rate
0 to 1	\$.058
1 to 2	\$.058
2 to 3	\$.058
3 to 4	\$.058
4 to 5	\$.058
5 to 6	\$.058
6 to 7	\$.061
7 to 8	\$.063
8 to 9	\$.066
9 to 10	\$.069
10 to 11	\$.073
11 to 12	\$.076
12 to 13	\$.080
13 to 14	\$.084
14 to 15	\$.088
15 to 16	\$.092
16 to 17	\$.097
17 to 18	\$.102
18 to 19	\$.109
19 to 20	\$.115

EXHIBIT A -- SCHEDULE 4

EARLY TERMINATION

The Early Termination Fee under the Agreement shall be as set forth below:

Early Termination Occurs in Year:	Early Termination Fee (\$/Wdc w/o cost of removal) (City takes title)
1	N/A
2	N/A
3	N/A
4	N/A
5	N/A
6	\$2.56
7	\$2.46
8	\$2.36
9	\$2.26
10	\$2.16
11	\$2.06
12	\$1.96
13	\$1.86
14	\$1.76
15	\$1.66
16	\$1.56
17	\$1.46
18	\$1.36
19	\$1.26
20	\$1.16

EXHIBIT A- SCHEDULE 5

ROUTINE AND EMERGENCY CONTACT INFORMATION

City:

Provider:

Main Street Power Company
T. Amory Host
Phone: 303-444-3020
Fax: 303-449-3058
tahost@peak-solar.com

EXHIBIT B
TO
SOLAR POWER & SERVICES AGREEMENT
ACKNOWLEDGEMENT AND CONFIRMATION

This Acknowledgement and Confirmation, dated as of _____, 200____ (this “Acknowledgement”), is made by City of Westminster, a Colorado home rule city (“City”) under that certain Solar Power & Services Agreement dated _____, 2009 (as amended from time to time, the “SPSA”) with Main Street Power Company, a Colorado corporation (“Provider”). This Acknowledgement is provided pursuant to Section 6.4 of the SPSA to _____ (“Lender”), which is providing financial accommodations to Provider.

The solar photovoltaic system (the “System”) to be installed, operated and maintained by Provider pursuant to the SPSA is located at City’s facility at _____ (the “Premises”).

6. Acknowledgement of Collateral Assignment.

- (a) City acknowledges the collateral assignment by Provider to Lender, of Provider’s right, title and interest in, to and under the SPSA, as consented to under Section 15.3 of the SPSA.
- (b) Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Provider’s interests in the SPSA, including those rights provided to Lender in Section 15.3 of the SPSA.
- (c) City acknowledges that it has been advised that Provider has granted a first priority security interest in the System to Lender and that Lender has relied upon the characterization of the System as personal property, as agreed in the SPSA in accepting such security interest as collateral for its financial accommodations to Provider.
- (d) Until further written notice, City agrees to make all payments due Provider under the SPSA to Lender [at the following address:

[_____]
[_____]
[_____]

Attention: [_____]
Reference: [_____]]

[to the following account:]

7. Confirmation. City confirms the following matters for the benefit of Lender:

- (a) To City's knowledge, there exists no event or condition that constitutes a default, or that would, with the giving of notice or lapse of time, constitute an event of default, under the SPSA.
- (b) City has approved the System as installed at the Premises.
- (c) City is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises which could attach to the System as an interest adverse to Lender's security interest therein.

City

PROVIDER

By: _____
Name: _____

By: _____
Name: _____

EXHIBIT C

TO

SOLAR POWER & SERVICES AGREEMENT

OWNER/LESSOR ACKNOWLEDGEMENT AND CONFIRMATION

This Owner/Lessor Acknowledgement and Confirmation, dated as of _____, 200____ (this “Acknowledgement”), is made by _____, a _____, (“Owner/Lessor”). Owner/Lessor is the _____ of real property situated in the City/Town of _____, County of _____, and State of _____ having a street address of _____ (the “Premises”). The Premises are leased to _____ (“City”) by Lease dated _____ (the “Lease”).

Owner/Lessor has been advised of a certain Solar Power & Services Agreement dated _____, 2009 (the “SPSA”) between City and Main Street Power Company, a Colorado corporation (“Provider”) pursuant to which a solar photovoltaic system (the “System”) is to be installed, operated and maintained by Provider at City’s _____ facility (the “Building”) at the Premises. The System will be connected to the electrical system of the Building as a supplemental source of electrical power.

This Acknowledgement is provided pursuant to Section ___ of the SPSA at the request of City to _____ (“Lender”), which is providing financial accommodations to Provider to finance the installation of the System. Owner/Lessor has been advised that part of the collateral securing such financial accommodations is the granting of a first priority security interest (the “Security Interest”) in the System to Lender to be perfected by the filing of a Financing Statement (Form UCC-1) under the Uniform Commercial Code, as enacted in the State of _____. The Security Interest will cover the System as personal property only, and not as a fixture.

Owner/Lessor hereby acknowledges and confirms to Lender the following matters with respect to the Premises:

- (d) City either has the absolute right to install the System and grant the Security Interest under the terms of the Lease or has it obtained the consent of Owner/Lessor to do so.
- (e) The granting of the Security Interest will not violate any term or condition of the Lease or, to the best of Owner/Lessor’s knowledge, of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.
- (f) Owner/Lessor acknowledges that Lender has relied upon the characterization of the System as being and remaining at all times personal

property, as agreed in the SPSA, in accepting the Security Interest as collateral for its financing of the System.

- (g) Owner/Lessor is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Lender's Security Interest therein.
- (h) To Owner/Lessor's knowledge, there exists no event or condition which constitutes a default, or which would, with the giving of notice or lapse of time, constitute a default, under the Lease.
- (i) Owner/Lessor will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the System by Provider, the existence of the Security Interest, and the fact that the System is not a part of the Premises or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.
- (j) Owner/Lessor disclaims any right to receive any rebate, subsidy, tax credit, or renewable energy credits or other environmental attributes based upon the installation of the System at the Premises.

OWNER/LESSOR

City

By:_____

By:_____]

EXHIBIT D
TO
SOLAR POWER & SERVICES AGREEMENT
ASSIGNMENT AND ASSUMPTION OF CONTRACT RIGHTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT RIGHTS (this “Assignment”) dated as of _____, 2009, is between City of Westminster, a Colorado home rule city (“Assignor”) and **MAIN STREET POWER COMPANY**, a Colorado corporation (“Assignee”).

Assignor and Assignee are parties to that certain Solar Power & Services Agreement dated as of _____ (the “Agreement”), for the installation of a solar photovoltaic system on those certain premises described on **Exhibit A** attached hereto (the “Premises”).

Assignor has entered into certain contracts which relate to or benefit the Premises, which contracts are described in **Exhibit B** attached hereto (the “Contracts”), and, in conjunction with the Agreement, Assignor desires to assign to Assignee certain of its rights under the Contracts, which rights are described in **Exhibit B** attached hereto (the “Contract Rights”), and Assignee desires to accept the assignment thereof, on the terms and conditions set forth below.

ACCORDINGLY, the parties hereto agree as follows:

As of the Effective Date (as defined in the Agreement) of the Agreement (the “Conveyance Date”), and for the entire Term (as defined in the Agreement) of the Agreement, Assignor hereby assigns to Assignee all of the Contract Rights.

In the event of any dispute between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the substantially losing party shall pay the substantially prevailing party’s costs and expenses of such dispute, including, without limitation, reasonable legal fees and costs.

This Assignment shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Assignor and Assignee have executed this Agreement as of the day and year first written above.

ASSIGNOR:

CITY OF WESTMINSTER,
a Colorado home rule city

By: _____
Name: _____
Title: _____

ASSIGNEE:

MAIN STREET POWER COMPANY,
a Colorado corporation

By: _____
Name: T. Amory Host
Title: President

EXHIBIT A

Description of Premises

EXHIBIT B
Contracts and Contract Rights

<u>Contract</u>	<u>Rights Assigned</u>
Rebate Contract dated _____, by and between _____ and _____	Right to any payments received pursuant to such contract
Small Generator Interconnection Agreement dated _____ by and between _____ and _____	Right to cure any defaults under Sections _____ of such contract.
Interconnection Agreement dated _____ by and between _____ and _____	Right to cure any defaults under Sections _____ of such contract.

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE
MONDAY, June 8, 2009
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (June 8, 2009)
- 3. New Business**
 - A. Project Description for the Westminster Center Urban Reinvestment Project
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JUNE 8, 2009 AT 7:46 P.M.

ROLL CALL

Present at roll call were Chairperson McNally and Board Members Briggs, Kaiser, Lindsey, Major, and Winter. Vice Chairperson Dittman was absent and excused. Also present were J. Brent McFall, Executive Director, Jane Greenfield, Acting Attorney for the Authority, and Linda Yeager, Secretary. Member Kaiser had been elected Temporary Chair during the Vice Chairperson's absence.

CONSIDERATION OF MINUTES

Board Member Briggs moved, seconded by Kaiser, to approve the minutes of the meeting of May 18, 2009 with no additions or corrections. The motion carried unanimously.

RESOLUTION NO. 112 RE REFINANCE OF WEDA BONDS SERIES 2007

Chair McNally cited a conflict of interest due to employment and recused herself from consideration of this item. She passed the gavel to the Temporary Chair and left the meeting room.

It was moved by Briggs and seconded by Major to adopt Resolution No. 112 authorizing the Executive Director or his designee to enter into a loan agreement of up to \$8.10 million with Vectra Bank to refinance the Series 2007 Westminster Economic Development Authority bonds that were issued to finance the construction of public infrastructure improvements in the South Sheridan Urban Renewal Area, to be repaid from available tax increment revenues, with the moral obligation pledge of the City of Westminster, as well as approving loan documents including but not limited to the Loan Agreement, Promissory Note, and the 2009 Cooperation Agreement with the City. The motion passed by a 5:1 margin at roll call with Chair McNally abstaining.

PUBLIC HEARING ON AMENDMENT TO 2009 BUDGET

At 7:48 p.m. Chairperson McNally re-entered the meeting room, reclaimed the gavel from the Temporary Chair, and resumed conducting the balance of the meeting. She opened a public hearing to consider an amendment of the 2009 Budget. The Executive Director indicated that staff was present to answer any questions that had not been satisfactorily explained in the agenda memorandum. There were no questions and no one in the audience wished to testify. The Chair closed the hearing at 7:49 p.m.

RESOLUTION NO. 113 ADOPTING AMENDMENT TO 2009 BUDGET APPROVED

It was moved by Briggs, seconded by Kaiser, to adopt Resolution No. 113 approving an amendment to the 2009 WEDA budget as presented and to appropriate the funds. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no other business to come before the Authority, the meeting adjourned at 7:50 p.m.

ATTEST:

Secretary

Chairperson

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
July 13, 2009



SUBJECT: Project Description for the Westminster Center Urban Reinvestment Project

Prepared By: Susan Grafton, Economic Development Manager

Recommended Board Action

Approve the attached Project Description for the Westminster Center Urban Reinvestment Project (WURP) and direct Staff to prepare and issue a Request for Proposal (RFP) for the project.

Summary Statement

- Council adopted an Urban Renewal Plan for the Westminster Mall area on April 13, 2009.
- WEDA now needs to formally approve the description of the project planned for the Westminster Center urban renewal area.
- This project description will provide the framework for the Request for Proposals (RFP) that WEDA will be issuing by the end of July 2009.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does the outlined project description capture WEDA's development vision for the WURP?

Alternatives

1. Make modifications to the description.
2. Decide not to move forward with a WURP description at this time.
3. Totally redefine the WURP project.
4. Decide not to issue an RFP for the WURP.

Background Information

The Westminster Center Urban Reinvestment Plan was reviewed and approved by City Council on April 13, 2009. This plan put the entire Westminster Mall property in an Urban Renewal District. This action set the stage for WEDA to initiate the redevelopment efforts for the Westminster Mall area. The State Statutes on Urban Renewal require that a detailed project description be developed so that all parties are clear about the Urban Renewal Authority vision for the project.

The attached WURP Project Description was outlined jointly by Community Development and City Manager's Office staff. It was further refined by project consultants to assure marketability. The project defined is similar in nature to the one described in the Van Meter Williams & Pollack plan presented to Council in December 2008. As written, the project is described as a dense mixed use project similar in form to an urban downtown. It will have a strong retail base complimented by office, residential and entertainment type uses. Development is anticipated to occur over a 15 to 20 year period of time.

Next Steps

Once WEDA approves the WURP description, the Request for Proposal (RFP) will be finalized and sent out to a prequalified list of developers. Staff is working with the following rough timeline in mind for the WURP project:

July 31, 2009	RFP distributed
September 15, 2009	Development proposals returned to Staff
September 15, 2009 to October 15, 2009	Review proposals and conduct interviews
October 15, 2009 to November 30, 2009	Select developer and negotiate and approve Exclusive Negotiation Agreement (ENA)
December 1, 2009	Begin project planning and design, as well as negotiate details of predevelopment agreement
January 2010 to December 2010	Finalize development agreement and finalize project plan
2011	Begin demolition

The timeline is optimistic but preliminary discussions with potential development partners indicate positive interest in the WURP. The biggest concern right now is the economy and when it will begin to turn around. However, all parties agree that now is an excellent time to be planning a project of this magnitude. Westminster will be ready to move aggressively with the WURP as the economy recovers.

Respectfully submitted,

J. Brent McFall
Executive Director
Attachment

Westminster Center Urban Reinvestment Project

Project Description

June 30, 2009

INTRODUCTION

The Westminster Center Urban Reinvestment Project (“WURP”) encompasses the entire Westminster Mall and surrounding out-parcels and pad sites. Originally developed in the mid 1970’s, the 108 acre site is bounded by 88th Avenue to the south, 92nd Avenue to the north, Harlan Street to the west and US 36 to the east. The traditional enclosed mall of 1,120,000 square feet is currently served by three anchor stores, with three additional department store buildings now vacant. An additional 111,000 square feet in detached space lines the outer edge of the site. Since 1999, the Westminster Mall has been in a constant state of decline due to lack of reinvestment. What once was a cutting edge project for a newly developing area in the mid-1970s is now physically and economically obsolete.

It is the City of Westminster and the Westminster Economic Development Authority’s goal to develop a new high density, urban center of regional scope on the 108 acre parcel. The project is to be cutting edge with a long term development vision. The project will facilitate the vertical and horizontal mixture of uses including entertainment, office, residential, and cultural along with a strong retail component. The WURP is intended to be a sustainable place, one that mixes uses, reuses existing anchor stores where appropriate, capitalizes on and encourages alternate modes of transportation, creates a strong pedestrian-friendly block layout, and will stand the test of time. The Westminster Comprehensive Land Use Plan (CLUP) defines the WURP area as District Center, thus encouraging the area to be dynamic with a mixture of uses.

CREATIVITY, FLEXIBILITY AND QUALITY

The City of Westminster strives to be creative and flexible in its approach to achieving quality urban redevelopment within the WURP. The City does not desire to replicate a “lifestyle center” nor does it wish to create formulaic development “pads” for sale to “anywhere USA” builders. Instead the city desires to develop a project that has a strong retail component enhanced by office, residential and other uses. The goal of the City is the creation of a “downtown” type development form; to encourage the best of urban development principles, while allowing for a certain amount of creative injection from the design community. This includes the introduction of vertical mixed use development as appropriate within the project. The City is primarily interested in creating a new gathering space; a unique place that incorporates the best of urbanity with the conveniences of a suburban infrastructure. The City will require that the quality of the built form meet the highest expectations. This includes landscape, architecture, and the creation of public amenity space for the residents of the City to enjoy.

DOWNTOWN

The WURP will focus on human scale development and will accommodate complementary office, retail, restaurant and entertainment uses combined with higher density housing. The downtown form of development should accommodate vertical mixed-use structures, and offer efficiencies of strong access to multiple modes of transportation and major regional transit services. Additionally, the “downtown,” should support an interconnected, pedestrian oriented urban neighborhood and/or district that

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are comprised of a balanced mix of activities and land uses within optimal walking distance. Class "A" office and/or high quality office design with an active ground level presence is highly encouraged. Retail uses should include both those that draw from large regional trade areas, as well as small compact neighborhood retail tailoring to those within the immediate area. A minimum of 2 anchor type retailers should be incorporated into the project to stabilize the downtown and to help draw other retail uses to the project. The City will strive for development of a variety of housing types such as apartments, condominiums, lofts, townhomes, and live/work units, to diversify the types of residents and workforce within the area.

The focus of the "downtown" character will largely be driven by urban design, which includes the connections between people and places, movement and urban form, nature and the built surroundings. It is largely the result of the interaction of the public realm (streets, plazas, open spaces, parks, etc.) and the built structures that ensue between these public spaces. To that end, the urban design of this "downtown" should not be "super blocks" designed in a formulaic fashion to discourage easy pedestrian movement between blocks and land uses. Rather, blocks should be designed to create a compact, organic development pattern that appears to the casual observer to be a cultural "city center" that developed over many years, or decades. The street and block pattern should give preference to smaller depth building lots, with occasional irregular (i.e. possible diagonal or offset) street patterns to create visual interest and create the look and feel of a traditional downtown while preserving opportunities for the development of anchor department stores. Buildings should be brought closer to the street. Single story buildings are not preferred. Finally, the use of public space (i.e. parks, plazas and courtyards) should be incorporated into the urban fabric of the WURP such that they become primary focal points of the "downtown" and not an afterthought of a "project" to be developed.

Urban design brings these elements together with vision and purpose, so that there is an identifiable character to a group of buildings within an urban neighborhood. Establishing identifiable urban neighborhoods through context-sensitive architecture, aesthetically pleasing vistas, landmarks and focal points, safe and attractive streets and public places, should result in "downtown" character and design that is functional, sustainable, and distinctive. Colorado's regional climate is another element that influences urban design and should be considered. This includes both summer and winter climates where solar orientation should be carefully considered in building placement to avoid over exposure of sun during the summer months and snow/ice accumulation during the winter months.

ACCESS AND TRANSIT ORIENTED DEVELOPMENT

One of the most attractive assets of this property is its access to a variety of transportation modes. The property is adjacent to highly traveled US 36, with direct access to the highway via the Sheridan Boulevard/92nd Avenue interchange. The WURP is also adjacent to a bus-commuter transfer facility at 88th Avenue and Sheridan Boulevard that includes regional network connections and parking structures. A commuter rail station is also planned at the south edge of the project site, as the third station out of Denver on the regional system's Northwest Corridor line. Westminster is

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known for its extensive pedestrian/bicycle trails to which the WURP site is also connected.

The desired transit-oriented development should contain specific features that are designed to encourage public transport use and differentiate the development from urban sprawl. Examples of these features include mixed-use development that will use transit at all times of day, excellent pedestrian facilities such as high quality pedestrian crossings, narrow streets to slow traffic, wide sidewalks, and tapering of buildings as they become more distant from the public transport node. Another key feature of transit-oriented development is reduced amounts of parking for personal vehicles. Most importantly, transit-oriented development provides people with options so they can choose where to live, work, play and interact. In the most successful transit-oriented development, there is activity throughout the project and multi-modal transit nodes integrate seamlessly into the surrounding community.

HEIGHT/DENSITY

Typically in suburban developments, communities look for projects to be of lower density. With the WURP the City of Westminster will not be looking to limit the height of structures; but instead will strive for the appropriate balance of urban form and public realm. To that end, the appropriate heights and/or densities will be defined by the ability of the WURP to facilitate a compact, human scale, ground level with appropriate verticality. Human scale and appropriate verticality are a function of the relationship of the building façade and the curb line, as well as the overall height of the first 3 floors relative to the public realm. As such, the appropriate heights and densities will be determined based on the ability of the project to be economically sustainable, provide the appropriate public realm within the overall project, and meet the needs of the market place (i.e. provision of adequate parking). The ability of the WURP to provide alternative designs for utilities such as structured parking will greatly allow for increased heights and densities. Additionally, height and density design will need to work in concert with the preservation of views and provision of public open spaces, as well as potential additional marketability (i.e. visibility along the US 36 corridor).

STRUCTURED PARKING

In order to achieve the desired densities, critical-mass of development and urban design principles, structured parking will be a critical component of the WURP. Long-term or permanent surface parking fields, with the exception of traditional on-street parking, will be discouraged.

A shift away from the traditional suburban surface-parking model of development is desired. Instead, such concepts as shared parking facilities between users, reduced or capped parking expectations and phased parking structures will all receive serious consideration in the project. Overall site layout will be expected to integrate multiple structures throughout the project to serve retail, office, entertainment, residential and transit uses.

VIEWS/NATURAL FEATURES

Special care should be given to evaluate and analyze the likely physical amenities and view corridors that will be retained as a portion of the WURP. These amenities include

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possible view corridors of the Front Range, downtown Denver, views of focal architectural elements within the Westminster Urban Center; and public realm focal points the City wishes to accentuate. The natural features the site enjoys, especially along the periphery, should be retained and reinforced as amenities within the redeveloped project. These amenities include significant trees (i.e. 88th Avenue), the Allen Ditch amenity along the 88th Avenue frontage, etc. The City will require functional and appropriately sized park areas to serve recreational needs of the future residents and tenants.

SUSTAINABILITY

The City desires to be at the forefront of the "green" building movement; and endeavors to encourage development that incorporates sustainable development techniques and practices. The platting of the property, as well as the location of public infrastructure, should encourage multimodal transportation. The placement of landscape and other water utilizing features (i.e. fountains) should use best management practices to reduce the overall consumption of water. Solar and other energy saving devices should be incorporated where feasible to lower the overall energy use throughout the project. Recycling and reuse of existing building materials will be encouraged to the greatest extent practical.

INTEGRATION INTO THE COMMUNITY

The City strives to blend this project into the overall fabric of the community, and any part (or the whole) of this redevelopment effort should not feel divorced from the remainder of the community. Nor should it "stand alone" as a development "project." It should encourage pedestrian and bicycle traffic into and out of the site. The development should open toward both the 88th and 92nd Avenue frontages, and should not "turn its back" toward any of the current project area boundaries.

LOGICALLY PHASED

The City understands that the project will be phased and built-out over a multi-year period. It is the City's expectation that these multiple phases will take place under the same master developer in concert with other development partners and/or sub-developers. It is further expected that the first phase will be substantial enough to anchor the project and create a "sense of place" for future phases to capitalize on.

The WURP should be phased in such a manner as to retain, grow and attract businesses during the entire period of development. Given the magnitude of the development, 100 +/- acres, it is anticipated that more modestly sized portions of the project will be undertaken at any given time. Some phasing will be dictated by market conditions, others by infrastructure and supporting development needs, such as parking structures. Phasing should also take into account, where appropriate, the preservation, improvement and continued operation of existing anchor tenants and the need to achieve a critical mass of retail space.

Lastly, phasing should be sensitive to other development projects and infrastructure improvements adjacent to but off of the WURP site itself. Namely, as transit projects begin to take shape the WURP needs to be able to respond, connect and coordinate with those activities to maximize connectivity and near and long term benefit.