



CITY COUNCIL AGENDA

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

Citizen Communication is limited to five minutes; however, the Mayor may limit comments to a lesser amount of time depending on the number of individuals who wish to speak.

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings** (July 13, 2015)
4. **Report of City Officials**
 - A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
 - A. Presentation of Employee Service Awards
 - B. Presentation of Colorado Government Association of Information Technology Awards
7. **Citizen Communication (5 minutes or less)**

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

8. **Consent Agenda**
 - A. Financial Report for June 2015
 - B. 2nd Quarter 2015 Insurance Claims Report
 - C. Contract for Investment Advisor Services
 - D. Computerized Maintenance Management System, CMMS
 - E. Second Reading of Councillor's Bill No. 32 Vacating the Plat for Westminster Center Subdivision, Filing #1
 - F. Second Reading of Councillor's Bill No. 33 Appropriating RTD Funding to Westminster Station Parking Structure
 - G. Second Reading of Councillor's Bill No. 34 Amending Title VI, Chapter 7, W.M.C., re Animals
 - H. Second Reading of Councillor's Bill No. 35 Approving Lease of 7225 Bradburn Boulevard to the SWAG
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
 - A. Public Hearing on the Thirteenth Amended PDP for Northpoint Center (aka Westminster Promenade West)
 - B. Thirteenth Amended PDP for Northpoint Center
 - C. Public Hearing on Fourth Amended PDP for the Olson Technological Park
 - D. Fourth Amended PDP for the Olson Technological Park
 - E. Public Hearing re Westminster Promenade West Subdivision
 - F. Councillor's Bill No. 36 re Westminster Promenade West Subdivision Comprehensive Plan Amendment
 - G. Westminster Promenade West Subdivision PDP
 - H. Westminster Promenade West Subdivision ODP
 - I. Vested Right for Westminster Promenade West Subdivision Site-Specific Development Plan
 - J. Councillor's Bill No. 37 Appropriating RTD Funding to Westminster Station Phase 1, Infrastructure Project
 - K. Westminster Station Phase 1, Infrastructure Project Construction Contract Award
 - L. Westminster Station Phase 1 Infrastructure Project Design Services Contract Amendment
 - M. Westminster Station Phase 1 Infrastructure Project Construction Engineering Services Contract Award
 - N. Councillor's Bill No. 38 Amending Title VI, Chapter 7, re Beekeeping and Chicken Husbandry
 - O. Councillor's Bill No. 39 Appropriating FY2014 Carryover into FY2015
 - P. Resolution No. 23 Adopting the 2015 Strategic Plan
 - Q. Resolution No. 24 Approving IGAs with CDOT for Little Dry Creek Trail Federal to Lowell Project
 - R. Authorize Local Match for CDOT Funding of Little Dry Creek Trail Federal to Lowell Project
 - S. Resolution No. 25 Approving Fall 2015 Adams County Open Space Grant Applications

11. Old Business and Passage of Ordinances on Second Reading

- A. Special Legal Counsel Services for Drafting of Collective Bargaining Ordinance (Tabled 10-27-14)
- B. Councillor’s Bill No. 18 Updating the Comprehensive Plan (Tabled 04-13-15)

12. Miscellaneous Business and Executive Session

- A. City Council

13. Adjournment

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (Separate Agenda)
WESTMINSTER HOUSING AUTHORITY MEETING (Separate Agenda)**

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

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JULY 13, 2015, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Herb Atchison, Mayor Pro Tem Bob Briggs and Councillors Bruce Baker, Maria De Cambra, Alberto Garcia, and Anita Seitz were present at roll call. Councillor Emma Pinter was absent. Also present were City Manager Donald M. Tripp, Deputy City Attorney Hilary Graham, and City Clerk Linda Yeager.

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Councillor Baker, to approve the minutes of the regular meeting of June 22, 2015, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. Tripp thanked Council members for their service to the community and reported there would be no post-meeting or executive session following adjournment of this meeting.

COUNCIL REPORTS

Councillor De Cambra thanked Officer Gomez of the Police Department who was working with people in south Westminster and had earned the praise of residents. She asked Chief Birk to relay her appreciation. Additionally, she reported that the City's first Latino Movie in the Park would be at the Irving Street Library on July 16. The Colorado Rapids would attend to sign autographs and there would be food trucks for everyone to enjoy.

Councillor Garcia reported having attended a luncheon at City Park to honor the City's seasonal and regular employees who maintained the baseball fields and facilities used for the Sparkler Tournament. Once again, they had done a superior job and were the root reason why the Triple Crown continued to bring the tournament to Westminster every year. Teams and fans from around the United States came to the week-long tournament, generating sales tax revenues during their stay, touting Westminster's hospitality, and returning home to tell their friends. The Sparkler Tournament kept growing as a result of the employees' efforts. Additionally, Councillor Garcia reported having attended his first Colorado Municipal League Executive Board meeting on July 11. He appreciated the opportunity to represent Westminster and to exchange best practices with other board members representing cities and towns around the state. In conclusion, he, too, was excited about the first Latino Movie in the Park and looked forward to attending with his family.

Councillor Seitz reminded everyone to purchase transponders or passes if they intended to use Express lanes on US 36, as the July 22nd deadline for tolling was rapidly approaching. She also thanked City Staff who had organized and worked the July 4th Celebration. It had been a huge success based on comments from her family and neighbors who thoroughly enjoyed the activities and the fireworks display. She, too, would be at Movies in the Park on Thursday and was looking forward to Christmas in July the next night when Movies in the Park would feature Elf at the Wolf Run Park.

Councillor Briggs enjoyed a baseball game on July 11 at Wolf Run Park that was played using 1880 rules; had the opportunity to visit the Farmers' Market at 72nd and Sheridan; and thought that the July 4th Fireworks finale had been the best ever.

CITIZEN COMMUNICATION

Richard Chamberlain, 8916 Estes Street, supported Councillor's Bill No. 35 that was scheduled for first reading later in the meeting and would authorize the lease of City-owned property at 7225 Bradburn Boulevard to the South

Westminster Arts Group (SWAG). This currently vacant City-owned structure would be used to provide affordable studio space to working artists in the metro area and would place Westminster in a good position to attract a diverse, creative population into the community's demographic and economic mix. Spin-off businesses were sure to follow and help to continue building a healthy arts district. He urged Council's support of the proposal.

Angela Green, 8192 West 109th Avenue, supported the City's Trail Master Plan and suggested that since the Green Knolls area where she lived would not have trail connectivity for a few years, a simple temporary solution would be to provide a signed, warning crosswalk across Wadsworth Boulevard and a small dirt connection to the new bike trail on US 36. She and other residents of the 153-home subdivision wanted to be able to enjoy biking with her children while they were young.

Clerk's Note: Due to an August 10 appeal hearing to be scheduled before the City Council, the following comments made by David Foster were transcribed verbatim.

David Foster, 360 South Garfield and legal counsel representing property owners at 8601 Sheridan Boulevard. We are one of two applicants for a Special Use Permit that you were discussing right before this meeting. I want to be sure you all know that I will not be discussing any of the merits of that case. I appreciate the fact that your staff contacted me today, and we agreed on August 10 to have that discussion; and I look forward to being here to discuss that case at that time. Although I'm an attorney, I'm also an optimist, and to that end I think there really is an opportunity in this particular case to reach a good resolution for the City and for both of the applicants. I would like to begin discussions with your staff over the course of the next several weeks. That's the optimist part of me, and now I'll give you the lawyer part of me. The lawyer part of me is that we were hoping that both of the applications would have been appealed at the same time. The reason is, and this is in the interest of full transparency and my good friend, Ken Fellman, is in the audience at the back of the room and I told him, the Planning Commission made their decision at the end of June, we had 28 days in which the City would either take action to appeal it or I would have to file a complaint in District Court to put a halt to that as we appeal our case on August 10. That's the transparent part. I don't want to be here tonight saying I'm hoping for a positive resolution and then have your City Attorney let you know next week that I just sued you because that would seem to be the polar opposite. So I am optimistic that we can reach a resolution, and I'm giving you notice that I have to take care of business on behalf of my clients and I'll see you back here on August 10. I appreciate your time.

CONSENT AGENDA

The following items were submitted on the consent agenda for Council's consideration: based on report and the recommendation of the City Manager, determine that the public interest would be best served and authorize the City Clerk's Office cumulative purchases with S Corporation, Inc. for Laserfiche software, professional services, and annual maintenance not to exceed the authorized expenditure level of \$98,916, for calendar year 2015 services; authorize the City Manager to award the bid and execute a contract with the lowest and most qualified bidder, Synergy Mechanical, Inc., in the amount of \$180,400 for construction of the 2015 West View Boiler System Replacement, authorize a construction contingency of 10% or \$18,040, and authorize Project Management Services from NV5, Inc. in the amount of \$10,695 bringing the total authorized expenditure for this project to \$209,135; authorize the City Manager to execute a contract for installation of replacement filters on the recreation pool at City Park with Crystal Clear Pools and Spas, Inc. in the amount of \$159,478 with a 10% contingency of \$15,948, for a total authorized expenditure not to exceed \$175,426; authorize the City Manager to increase the existing biosolids composting contracts from \$75,000, for both the A-1 Organics Composting Facility and the Renewable Fiber Composting Facility, for the composting of biosolids during inclement weather and wet field conditions in 2015, with one-year renewal in 2016, to a total authorized amount to be spent between the two vendors not to exceed \$200,000 in 2015, and not to exceed \$200,000 in 2016, plus any unit price cost adjustments based on Consumer Price Index for All Urban Consumers, subject to annual appropriation; and pass Councilor's Bill No. 29 on second reading authorizing

the City Manager to sign a lease agreement between the City of Westminster, Hyland Hills Park and Recreation District (through its Recreational Facilities enterprise) and Elevate Colorado LLC for the lease of approximately 3,600 square feet of space in the Ice Centre at the Promenade.

Councillor Baker moved to approve the consent agenda as presented. Councillor De Cambra seconded the motion, and it carried unanimously.

COUNCILLOR'S BILL NO. 32 - VACATING PLAT OF WESTMINSTER CENTER SUBDIVISION, FILING #1

It was moved by Mayor Pro Tem Briggs and seconded by Councillor Seitz to pass Councillor's Bill No. 32 on first reading vacating the entire final plat for Westminster Center Subdivision, Filing No. 1 and any streets dedicated by this plat. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 33 APPROPRIATING RTD FUNDING

Councillor Garcia moved, seconded by Mayor Pro Tem Briggs, to pass Councillor's Bill No. 33 on first reading appropriating a total of \$4,055,525 to the Westminster Station Garage/Grove Street project from the Regional Transportation District per the Intergovernmental Agreement between the City and the District executed June 2012. At roll call, the motion passed with all Council members voting affirmatively.

WESTMINSTER STATION PARKING STRUCTURE GUARANTEED MAXIMUM PRICE CONTRACT

It was moved by Mayor Pro Tem Briggs, seconded by Councillor Seitz, to authorize the Guaranteed Maximum Price contract, contingent upon approval of Councillor's Bill No. 33 on second reading, with The Beck Group to construct the Westminster Station parking structure, Grove Street, bus transfer facility and associated infrastructure in the amount of \$11,620,791. This guaranteed maximum price amount included the design contact sum previously approved by City Council in June 2014. The motion carried unanimously.

COUNCILLOR'S BILL NO. 34 AMENDING TITLE VI, CHAPTER 7, W.M.C. RE ANIMALS

Councillor Seitz moved to pass Councillor's Bill No. 34 on first reading amending Title VI, Chapter 7, of the Westminster Municipal Code, regarding Animals. Councillor Baker seconded the motion, and it passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 35 LEASING 7225 BRADBURN BOULEVARD TO THE SWAG

It was moved by Councillor Garcia and seconded by Mayor Pro Tem Briggs to pass Councillor's Bill No. 35 on first reading authorizing the execution of a lease agreement, in substantially the same form as attached, for property located at 7225 Bradburn Boulevard. The motion carried unanimously on roll call vote.

ADJOURNMENT

There was no further business to come before the City Council, and, hearing no objections, the Mayor adjourned the meeting at 7:26 p.m.

ATTEST:

City Clerk

Mayor



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, General Services Director
Dee Martin, HR – Workforce Manager

Recommended City Council Action

Present service pins and certificates of appreciation to employees celebrating 20 or more years of service with the City and in five year increments thereafter.

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In the fourth grouping of 2015, employees with 20, 25, 30, 35, and 40 years of service will be celebrated tonight.
 - Presentation of 20-year certificates and pins – Councillor Seitz
 - Presentation of 25-year certificates, pins, and checks – Mayor Atchison
 - Presentation of 30-year certificate and pin – Councillor Baker
 - Presentation of 35-year certificates and pins – Councillor Garcia
 - Presentation of 40-year certificate and pin – Mayor Pro Tem Briggs

Expenditure Required: \$5,000

Source of Funds: \$2,500 – General Fund – Community Development
\$2,500 – General Fund – Police Department

Policy Issue

None identified

Alternative

None identified

Background Information

The following 20-year employees will be presented with a certificate and service pin:

Cherie Sanchez	Accounting Manager	Finance Department
Mikele Wright	Senior Engineer	Community Development

The following 25-year employees will be presented with a certificate, service pin, and check:

John Carpenter	Community Development Director	Community Development
Douglas Tiller	Senior Police Officer	Police Department

The following 30-year employee will be presented with a certificate and service pin:

Eric Sisler	Library Network Specialist	Parks, Recreation & Libraries
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The following 35-year employees will be presented with a certificate and service pin:

Jeffrey Brotzman	Print Shop Coordinator	General Services
Lisa Chrisman	Human Resources Manager/Benefits	General Services
Jinny Jasper	Guest Relations Clerk II	Parks, Recreation & Libraries
Matt Rippey	Sergeant	Police Department

The following 40-year employee will be presented with a certificate and service pin:

Mike Lynch	Senior Police Officer	Police Department
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On July 29, 2015, the City Manager will host an employee awards luncheon. During this time, seven (7) employees will receive their 15-year service pins; ten (10) employees will receive their 10-year service pins; and four (4) employees will receive their 5-year service pin. Recognition will also be given to those celebrating their 20th, 25th, 30th, 35th and 40th anniversaries. This is the fourth luncheon in 2015 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the third luncheon is 525 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Background information on each individual being recognized is attached.

The recognition of employee’s years of service addresses City Council’s Strategic Plan Goal of “Excellence in City Services.” Recognition efforts have long been recognized as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their most valuable resource – employees.

Respectfully submitted,

Donald M. Tripp
City Manager

20-Years

Cherie Sanchez (sherry san-chez) began her employment with the City in 1995, as a clerk typist in Community Development. She transitioned to the Finance Department in 1997, where she worked as an Accounting Technician and then Accountant before assuming her present position. Cherie has been the City's Accounting Manager since June 2005. She earned a Bachelor of Science degree in Accounting from Metropolitan State College of Denver in 1998 and was awarded the Certified Public Finance Officer designation from the Government Finance Officers Association of the United States and Canada (GFOA) in 2008.

Cherie served as President of the Colorado Government Finance Officers Association in 2013, and was awarded the association's Finance Officer of the Year Award in 2014 for her many years of service on the Board of Directors and with the Careers and Outreach, Education and Conference Committees. Through her years of service with the City, Cherie served with teams responsible for the conversion of the City's financial management system, development of the City's first grant administration policy, implementation of many governmental accounting standards and continuous award of the Certificate of Achievement of Excellence in Financial Reporting award from the GFOA for the City's Comprehensive Annual Financial Report.

Cherie and her husband, Ray, have been married for 32 years and have four grown children - James, Jessica, Brian and Taylor, along with a Border Collie named Beau. Cherie and Ray enjoy walking and biking Westminster's parks, open space and trails system, camping throughout the state, and traveling here and abroad as often as possible.

Mikele Wright (michael right) was first hired in 1985 as a Civil Engineer in the Department of Community Development, where she performed development review functions for approximately 1 ½ years. Then, she moved to California, where she obtained her Professional Engineer license. Ten years later, Mikele moved back to Colorado and was quickly rehired by the City, this time as a Senior Civil Engineer. Over the past 20 years of employment with Westminster, Mikele has assisted hundreds of private developers and their contractors with the design and construction of such projects as The Orchard at Westminster, Hyland Village, the new St. Anthony's North Hospital, and Legacy Ridge West. While development review has long been her forte, Mikele is fulfilling one of her career aspirations this year by managing a City Capital Improvement Project – the design and construction of the last remaining phase of the major drainage way that runs along the south side of 120th Avenue.

Mikele, a Colorado and Denver-area native, enjoys spending time with her family – husband Tracy, daughter Brittany, son Brandon, and the two family dogs. Now that the kids are grown and graduated from college, Mikele finally has time to play golf again, take a few vacations, lose a few dollars at Black Hawk, and enjoy more get-togethers with family and friends.

25-Years

John Carpenter was hired in 1990 as the Director of Community Development. For the past 25 years, John has managed the Department of Community Development, which is involved in planning, engineering, building inspection, redevelopment, historic preservation, public art and, until recently, open space acquisition.

Over the past 25 years, John has been involved in multiple significant development efforts, including the Westminster Plaza redevelopment, Legacy Ridge, Westminster City Center Marketplace, Westmoor, Shops at Walnut Creek, Bradburn, Westminster Promenade, Rodeo Market/Grange Hall restoration, the Orchard Town Center, Westminster Station, and Downtown Westminster. John and his staff have been involved in numerous major capital projects, including the 92nd Avenue/US 36 overpass, Westminster Boulevard, Federal Parkway, the 136th Avenue/I-25 Interchange, and the 144th Avenue/I-25 Interchange.

One of John's many passions is the City's open space acquisition program, which has acquired over 3,000 acres of the City land area since the program began in 1985. John has also been instrumental in establishing the City's public art program with the installation of nearly 200 public art pieces.

John enjoys spending time with Marilyn, his wife of 36 years, who is a retired School District 12 math teacher. John and Marilyn have lived in Westminster for 25 years and reside in a development John helped to plan. John is proud of his two grown sons, Ross and Ryan. Both are married, with one living in Denver and the other in Hong Kong. John enjoys biking, hiking, swimming, reading, music, travel, gardening and studying the evolution of cities. John and his wife have been Westminster Open Space Volunteers for 11 years, and more recently, City of Westminster Bike Trail Hosts. John is ever thankful for the wonderful work environment, coworkers, and City Council at the City.

Douglas Tiller (til-er) was hired in June 1990 as a Police Officer. He worked four years in the Patrol Division and roughly ten years as an Undercover Narcotics Detective. Doug transferred to the Traffic Unit in April 2004. In July 2005, he became a Motor Officer and then Motor Instructor. Doug was a Driving Instructor for twenty years and is currently a Field Training Officer.

Doug has participated in several teams recognized by the City in the Teams in Action Award program.

In his spare time, Doug enjoys time with his wife and kids, golf and fishing.

30-Years

Eric Sisler (sis-ler) began working for the City in 1985 at the age of sixteen. In that time, he has been a Page, Circulation Clerk, driven the bookmobile, provided courier service between libraries, and worked in technical services. As libraries became more reliant on computerized systems, Eric was "nominated" to support those systems. Eventually it became his full-time job as the Library Network Specialist, part of the Library's Automation Services section. His technical skills have helped design the infrastructure for two library facilities, migrate data to new integrated library systems, create open source summer reading software used by libraries around the country, and provide innovative new services for patrons and staff.

When not working, Eric enjoys camping, riding motorcycles, and hanging out at home with the family; both the 2-legged and 4-legged variety.

35-Years

Jeff Brotzman started working at the City 20 hours a week for \$4.25 while attending high school thirty-five years ago. He was the sole employee in the Print Shop, printing 800,000 sheets of paper a year. Today, Jeff is full-time and supervises two part-time assistants, with an annual printing production of 4.3 million sheets a year! He is very proud of the Print Shop and its staff and notes that the money saved by the organization, not to mention the provided convenience, are huge assets to the City.

Jeff met his wife, Penny, 26 years ago while working for the City. Penny was a Library Associate driving the bookmobile. They have been married for 23 years and spend most of their free time with their three dogs --- Finlay Scott, a brindle lab; Brodie Lynn, the fence jumper; Eddie Mac (short for Ed McCaffrey), a border collie; and Harper Lee, the cat.

Lisa Chrisman started with the City as a senior in high school working as a Tennis Instructor and Clerk Receptionist on a part-time basis at the Swim and Fitness Center. She held a variety of positions in Parks, Recreation and Libraries Department (PR&L) as she worked her way through college. In 1984, she accepted a Recreation Specialist position and coordinated the community fitness programs. She continued to work in PR&L until 1991 when she accepted a Human Resources Analyst position in General Services. In 2008, Lisa took on Employee Development and Training responsibilities and in 2009 was promoted to Human Resources Administrator. She is currently the Human Resources – Benefits Manager and is responsible for managing City wide benefits, including the Wellness Program, the employee on-site health clinic, and the Employee Development and Training program. Lisa was instrumental in developing

the Employee Wellness Program and oversees the Employee Recognition Action Team for employee recognition.

When not working, Lisa volunteers in the community and serves on a health advisory board that serves low income families. She enjoys traveling, reading, and spending time with her family. She and her husband, Ken have two daughters – one is a junior in College and the youngest is a senior in High School.

Jinny Jasper began working at the Westminster Swim and Fitness Center in 1980 as a Guest Relations Clerk. She has worked at all four recreation centers and is now working at West View, enjoying this center and the citizens who attend its programs. Jinny received the “Meritorious Service Award” along with co-worker, Laurie Rutledge in 2007 for participating in saving the life of a guest who collapsed after suffering a heart attack. He is alive and well today, living in Florida.

Last month, Jinny received the “Westminster Spirit Award” for her efforts in developing a training program for all new hires and for training many, many people over her 35 years with the Park, Recreation and Libraries Department. In addition, she has developed, and frequently updates, the policy manual for front line staff that is used at all the recreation centers. Lastly, she was recognized for her commitment to exceptional customer service.

Jinny has been married to Pat for 31 years and has two sons, Chris and Jeremy, as well as two grandchildren – Tylee (14) and Chance (5). Jinny and Pat are busy working, caring for grandkids and managing their rental properties. If there is any time left over, they head up to their mountain cabin where they chop wood, split logs, hike and fish.

Matt Rippy has worked with the City since August 1980, when he was first hired as a seasonal employee. In April 1981, Matt was hired as a Community Service Officer with the Police Department and worked in Animal Control until being hired by the Jefferson County Sheriff’s Department as a Deputy Sheriff. Matt returned to the City of Westminster when he was hired as a Police Officer in 1985.

During his career as an officer, Matt has successfully served as a Detective in the Investigations Division and a School Resource Officer at Westminster High School. Matt was promoted to Sergeant in December 2002 and has served in Patrol, with a three year rotation in Traffic. In 2012, Matt was selected as a Detective Sergeant. While in the Investigation’s Division, he spent the first two years supervising the Burglary Unit, Auto Theft Unit, Economic Crimes Unit and the Crime Lab. The last two years, he was assigned to the Person Section, where he supervised the Robbery Unit, Homicide Unit, and Major Assault Unit.

Matt has been a two-time recipient of the department’s Medal of Distinguished Service, and has earned the department’s Medal of Valor.

Sergeant Rippy has been directly involved in thousands of calls for service and hundreds of criminal investigations. He has served this community tirelessly and faithfully for over 30 years as an officer, detective and sergeant. However, he is best known for hitting Chief Dan Montgomery in the head with a golf ball. The chief was a real good sport about it. It took Sergeant Rippy 17 years to get promoted. Chief Montgomery said it was just a “coincidence.”

40-Years

Mike Lynch started his career with the City of Westminster as a Police Cadet and was assigned to Animal Control. On the day of his 21st birthday, Mike was hired as a Police Officer and attended the Police Academy in Aurora. Mike worked in Patrol for four years and was then assigned to the Investigations Division as a Detective – this is where he has worked for the last 35 years. Mike was initially assigned to investigate property crimes, but in 1983 he was assigned to the Crimes Against Persons Unit and started investigating homicides, assaults, sex assaults, child abuse and domestic violence cases. Mike was instrumental in developing the first Domestic Violence Policy for the department, and Westminster was one of the initial agencies to have a mandatory arrest policy and fast track court date for domestic violence cases.

Mike has taught throughout the metro area on domestic violence investigation at several seminars and academy's. Mike has been the lead Detective on over 60 murder cases and is proud of his 100 % clearance rate on those death investigations. Mike has been assigned over 6,000 criminal investigations during his tenure and is recognized as an expert witness in both the Adams and Jefferson County Courts. Mike has been a member of the Adams County Critical Investigation Team that investigates officer involved shootings since the team's inception. Michael has received the prestigious "Officer of the Year" award presented by the Adams County Bar Association, Officer of the Year presented by the Jefferson County District Attorney's Office, Officer of the Year presented by the Adams County Victim Rights Association, twice been recognized as Officer of the Year by the Westminster Elks Lodge, and Officer of the Year presented by the Tri-City Church at their annual law day recognition.

Mike was appointed and sat on the Governors Board to create a Best Practices Manual for cold homicide case investigations which is now taught throughout the state. He was the co-lead Detective assigned to a recent high profile case involving the kidnap and murder of a 10-year old girl, which was closed with the successful arrest and prosecution of the suspect. Mike, and his partner, have traveled over the country presenting a case study on this investigation to attendees of child abuse conferences which are attended by law enforcement personnel from all over the world.

Mike has been married to Crystal for 39 years, has three grown children and seven grandchildren. He enjoys playing racquetball, working in his wood shop and growing tomatoes. Mike is proud of his tenure with the City of Westminster and has witnessed numerous changes throughout the City as well as in the law enforcement field. Mike shares his longevity with Chief Lee Birk as being the most Senior Police Officer currently on duty at the Westminster Police Department.



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Colorado Government Association of Information Technology Award Presentation

Prepared By: David Puntteney, Information Technology Director

Recommended City Council Action

Councillor Seitz to accept two 2015 Colorado Government Association of Information Technology (CGAIT) Awards presented by Kevin Beach, Chairman of CGAIT, in recognition of the success that the City of Westminster Information Technology Department has achieved in improving internal operations and providing exceptional customer service.

Summary Statement

- The Chairman of the CGAIT group will be in attendance to present the City with two 2015 CGAIT Awards recognizing the City for improving internal operations for the City's Mobile Strategic Plan Initiative and providing exceptional customer service for the City's evaluation and production use of 3-D printing technology.
- These awards were originally presented at the 2015 Spring CGAIT Conference.
- Information Technology Director David Puntteney, Mobile Software Engineer Randy Land, Software Engineer Manager Art Rea, and Information Systems Manager Scott Rope will be in attendance at the meeting to participate in accepting the awards.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Colorado Government Association of Information Technology Group is a non-profit organization formed in 1980 by a few organizations in the Denver area who found value in discussing technology issues. The City of Westminster has been a member of this group since 1986, and CGAIT was chaired by IT Director David Puntenny in 1994-1995. This non-profit group has been instrumental in bringing together public sector IT Directors and Managers from across the state to promote advances in information technology that have the potential to improve government efficiency and effectiveness, broaden educational opportunities, promote collaboration among jurisdictions, share experiences, and enhance services to Colorado communities and citizens.

In 2015, the City of Westminster applied for and was selected as winner of the “Providing Exceptional Customer Service” and “Improving Internal Operations” awards. The City’s project submittals were titled “Mobile Strategic Plan Initiative” and “3-D Printer Evaluation Project” and the executive summary from each of the award submittals are included below:

3-D Printer Evaluation Project

In the fourth quarter of 2014, the City of Westminster’s Information Technology Department initiated a 3-D printing evaluation project. Following a comprehensive review of available 3-D printers and vendors, the City purchased a 3-D printer with the goal of testing how such technology might enable the City to improve services and meet internal customer needs. Since 3-D printing technology can be used to create objects from computer designs or 3-D scans, staff anticipated the technology may be used in the future to create design models for playground equipment, building models for development planning, replacement parts for maintaining equipment and more.

During testing, the City’s Print Shop Manager had indicated that a \$20,000 photo plate imager in the print shop had failed due to a worn gear. Because of the age of the equipment, the part was no longer available, and the machine was scheduled to be decommissioned.

IT staff obtained the worn gear from the print shop manager, created a CAD drawing for the gear, and then used the 3-D printer to print a new gear.

The 3-D printed gear was installed in the photo plate imager in March 2015, and has performed flawlessly since. If by chance another gear is needed in the future, 3-D printing will enable the City to reproduce another on the 3-D printer for less than 10 cents.

Mobile Strategic Plan Initiative

This is a city-wide program, sponsored by the Information Technology Department, for providing strategic direction, support, coordination and implementation of mobile and remote computing solutions. In 2014, the Information Technology Department conducted interviews with management team members from all departments to identify needs and opportunities to leverage mobile technology, and used the data collected to establish a comprehensive mobile strategic plan and program for the City. The City Manager’s Office and City Council approved the strategic plan and the recommendations for two new permanent full time positions in the Information Technology Department, as well as \$190,000 in capital improvement project funds allocated specifically for mobile hardware, software and tools to fast track the mobile strategic plan program.

The program provides research, development and deployment of enterprise-level technology platforms such as cloud services, backend API services, device management and remote access gateways in support of mobile and remote computing needs. The program also provides staffing to assist departments and teams with business analysis, project management, design, development and selection of individual mobile and remote software solutions.

This initiative also provides a centralized, cohesive strategy for navigating the constantly changing standards and security issues related to mobile and remote computing. Existing and proposed solutions can be evaluated against established and emerging security design standards and protocols to ensure safe, secure data transfer, handling and storage, as well as protection for backend systems.

The City of Westminster Information Technology Department continually strives to provide technology strategic plans, support and solutions that will help advance and achieve City Council and City Department's goals and objectives. These two awards highlight Staff's commitment to City Council's goal of "Excellence in City Services."

Respectfully submitted,

Donald M. Tripp
City Manager



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Financial Report for June 2015

Prepared By: Tammy Hitchens, Finance Director

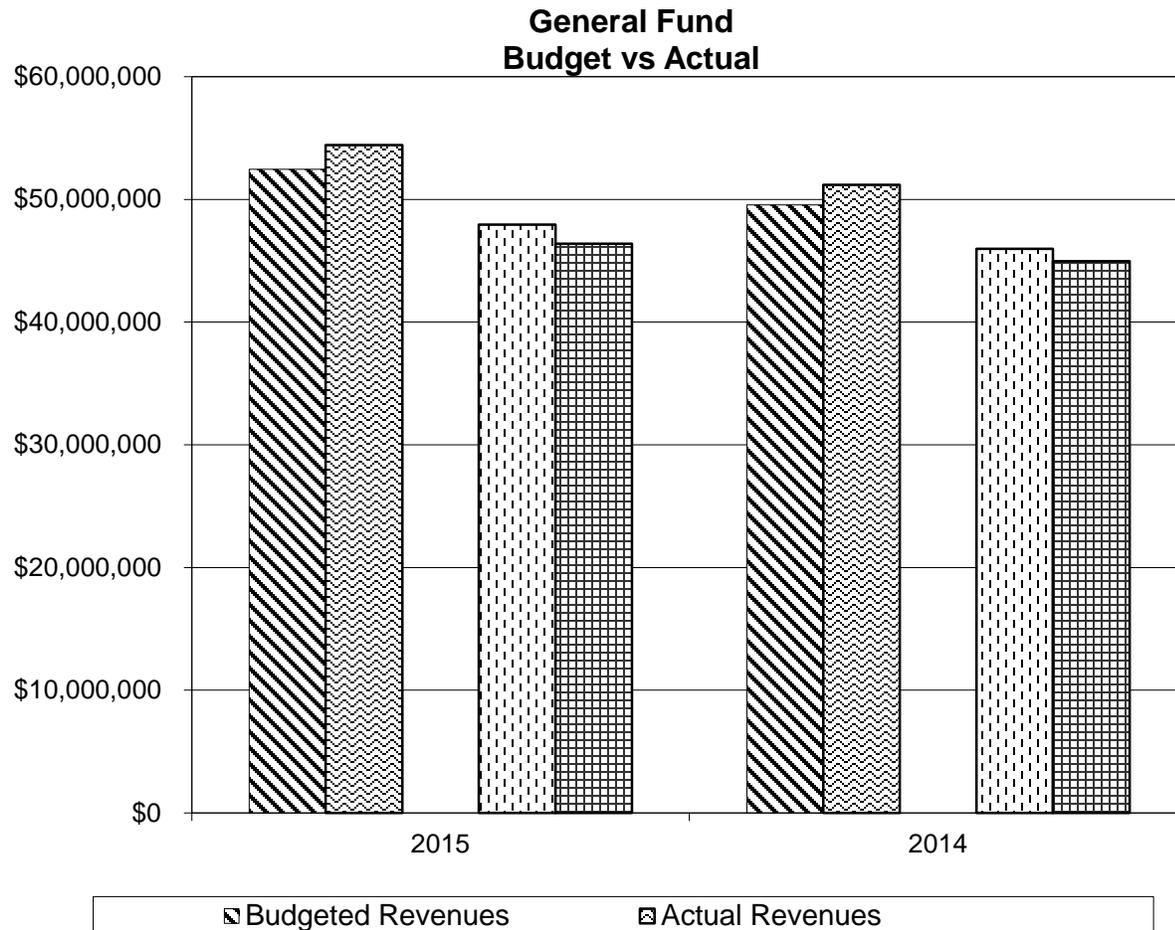
Recommended City Council Action

Accept the Financial Report for June as presented.

Summary Statement

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

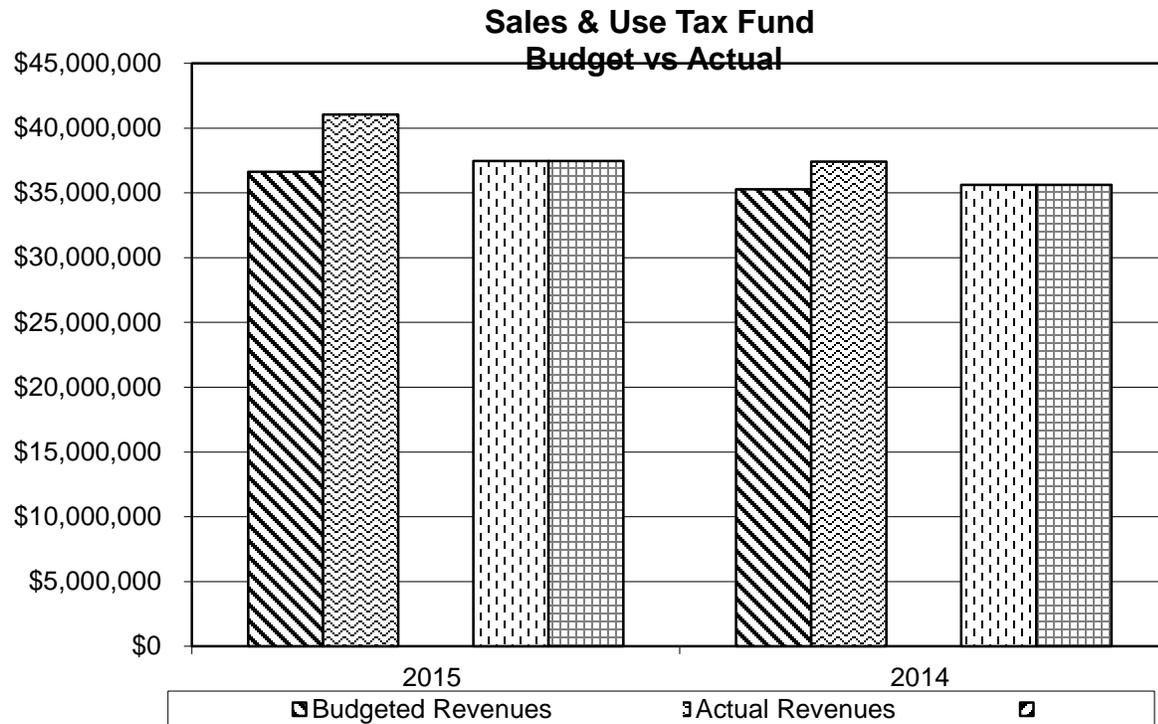
Current projections show General Fund revenues and carryover exceeding expenditures by \$3,503,768. The following graph represents Budget vs. Actual for 2014-2015.



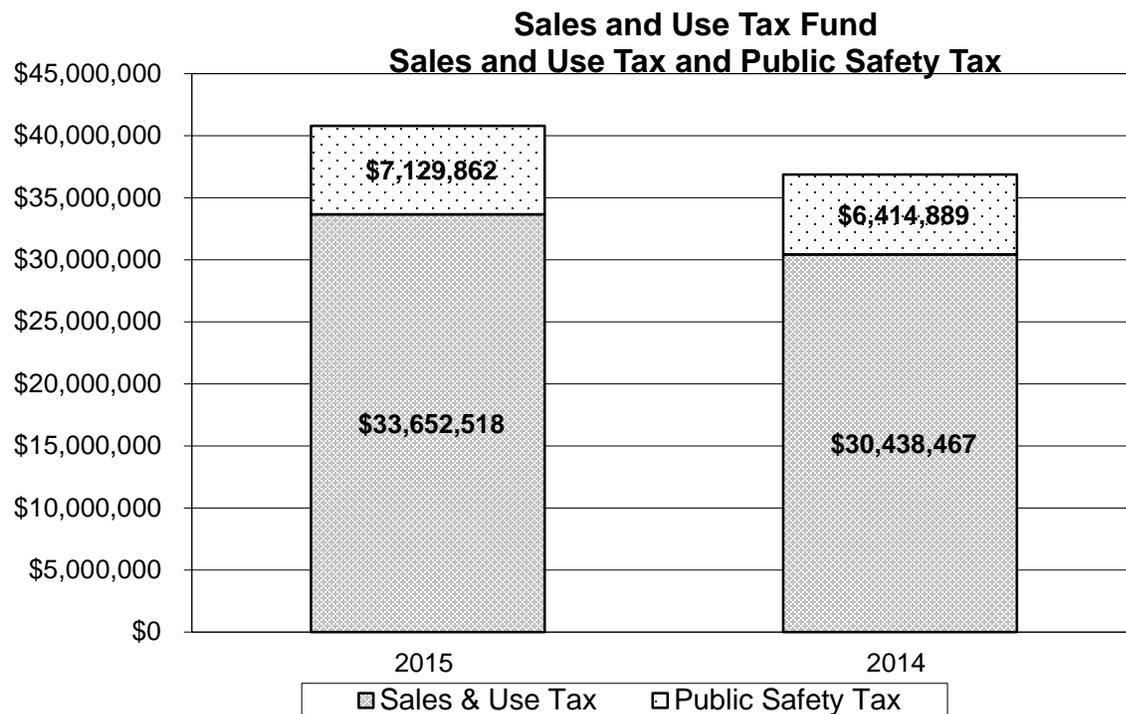
The favorable 2015 revenue variance relates to an increase in license and permitting activity, intergovernmental collections of Highway Users Tax and a revenue sharing agreement with Thornton, charges for recreation services, and collections of EMS and street infrastructure fees.

Current projections show the Sales and Use Tax Fund revenues exceeding expenditures by \$4,419,609. On a year-to-date cash basis, total sales and use tax is up 10.6% from 2014. Key components are listed below:

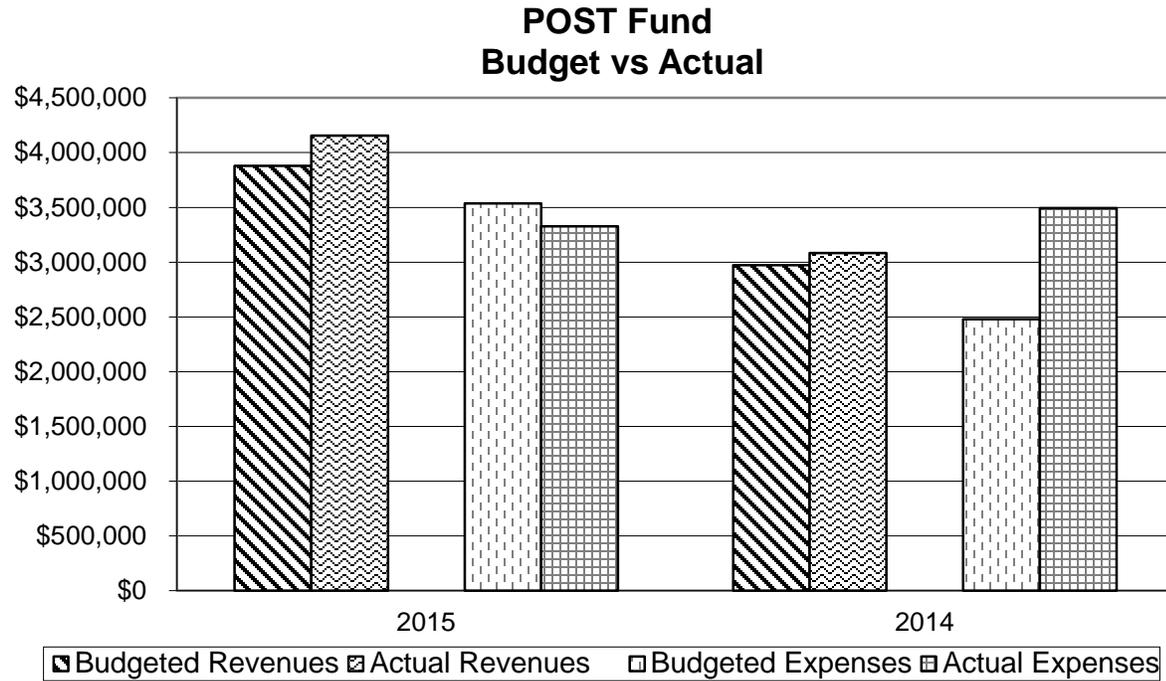
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 8.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 57.5% of all collections, are up 5.0% for the month when compared to 2014.
- Urban renewal areas make up 37.2% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 84.7% of this money is being retained for General Fund use in operating the City.



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

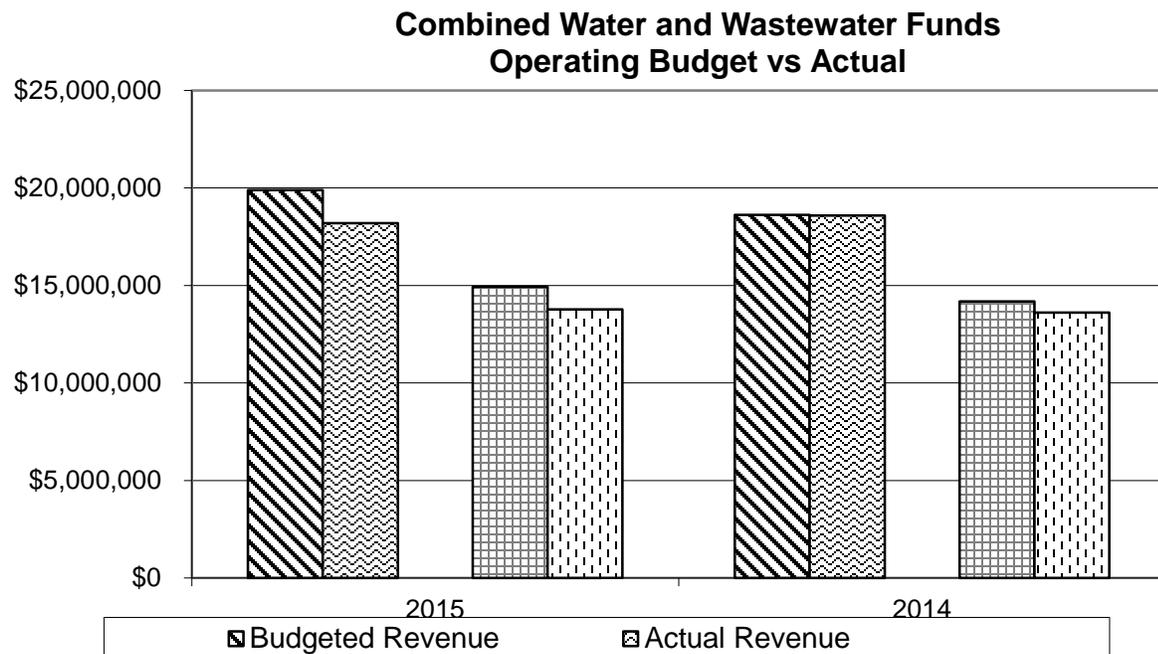


Current projections show Parks, Open Space and Trails (POST) Fund revenues and carryover exceeding expenditures by \$483,154.



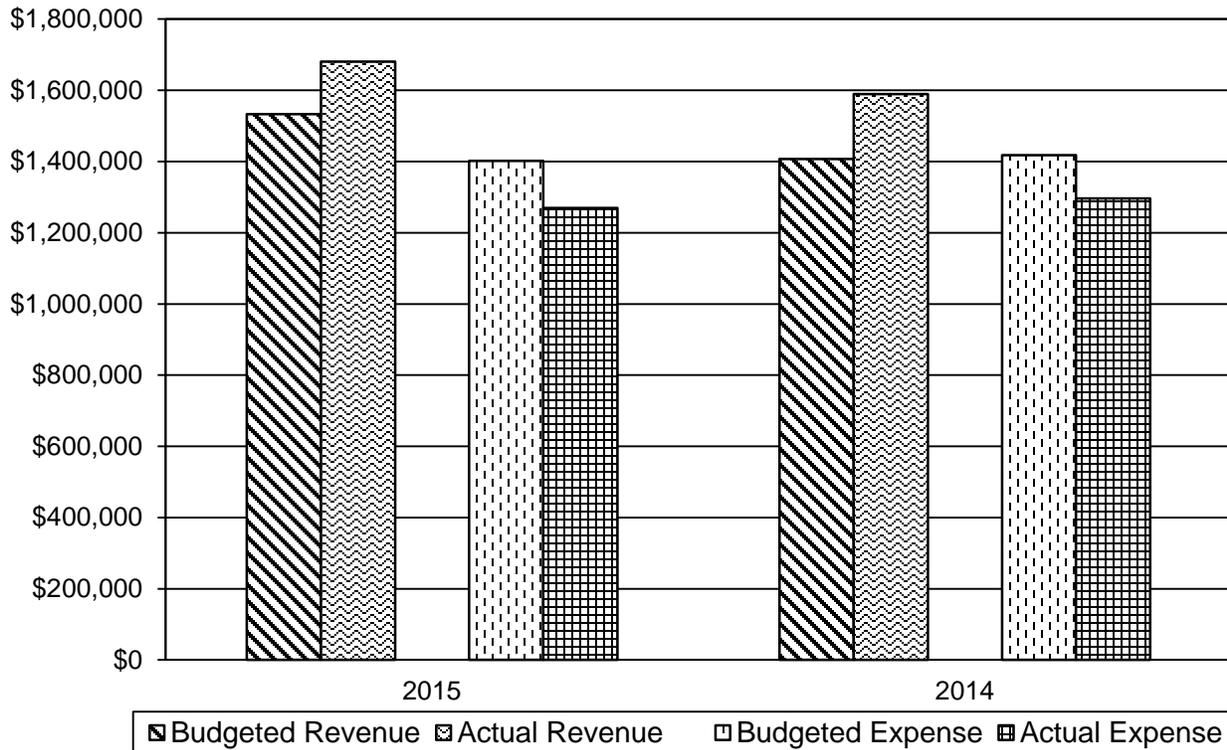
The increase in 2015 revenue is primarily due to carryover and an increase in sales tax collections over 2014 as well as the collection of grants appropriated in the prior year. The 2014 expense variance reflects a POST open space property acquisition funded by a grant and carryover revenue that had yet to be appropriated at the time of the purchase.

Overall, current projections show combined Water and Wastewater Fund expenditures exceeding revenues by \$1,613,365, mostly due to tap fees and water sales impacted by the rainy spring and early summer. Operating projections show combined Water and Wastewater Fund expenditures exceeding revenues by \$1,160,298.



Current projections show combined Golf Course Fund revenues and carryover exceeding expenditures by \$284,655. Operating projections show combined Golf Course Fund revenues exceeding expenditures by \$279,195.

Golf Course Enterprise Operating Budget vs Actual



The budget to actual revenue variance for both years is mostly attributable to driving range and green fees.

Policy Issue

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

Alternative

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

Background Information

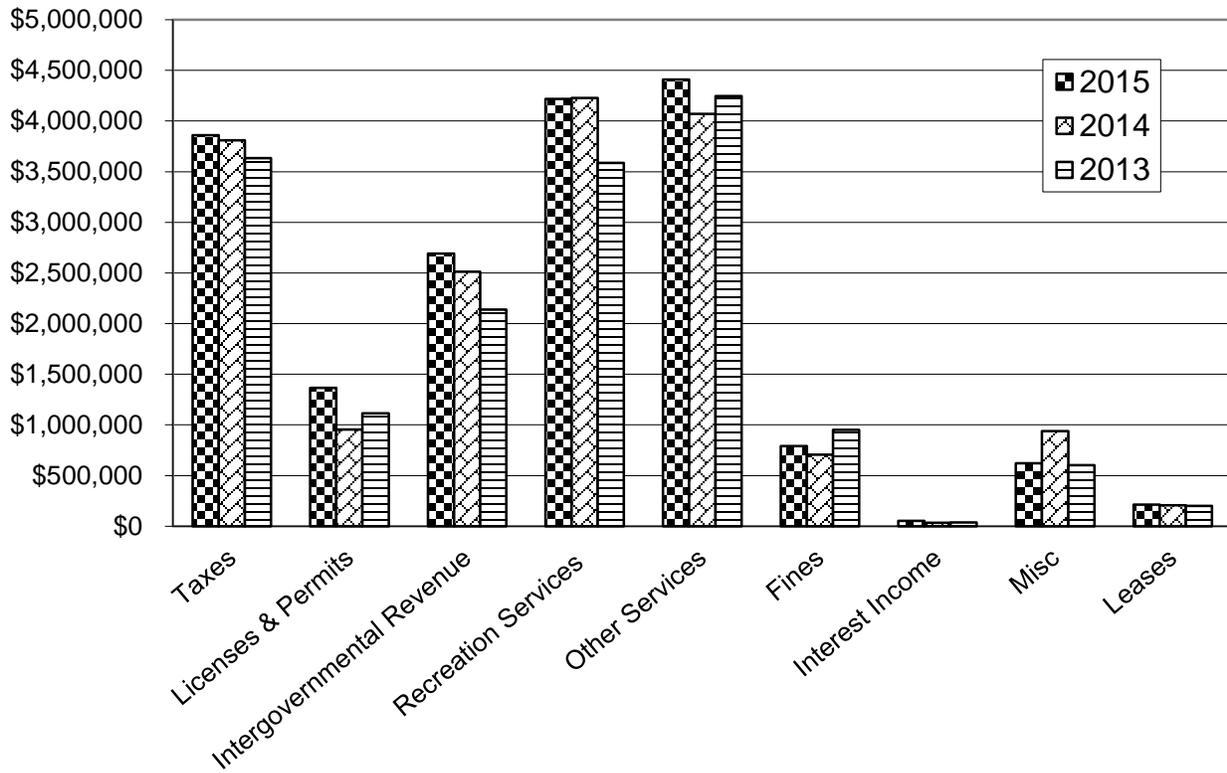
This section includes a discussion of highlights of each fund presented.

General Fund

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

The following chart represents the trend in actual revenues from 2013-2015 year-to-date.

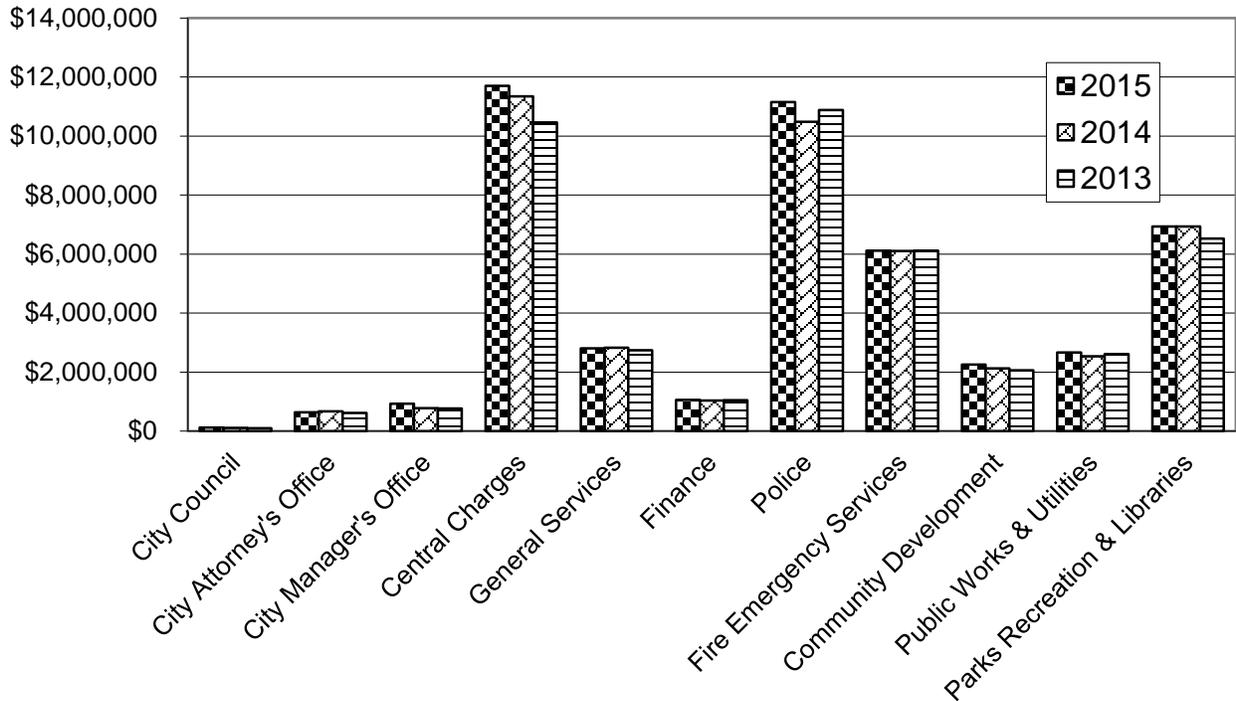
**General Fund Revenues excluding Transfers
2013-2015**



Tax revenue shows a slight increase mainly due to property and accommodations taxes. Licenses and Permits revenue is higher than the prior years due to an increase commercial and residential permits, especially in Adams County. Intergovernmental revenue is up mainly due to a revenue sharing agreement with Thornton. Variances between years in Other Services revenue is due mostly to EMS and infrastructure fees. The slight increase in fines over 2014 relates to traffic fines. 2014 Miscellaneous revenue reflects a one-time reimbursement from WEDA for costs incurred in the South Sheridan URA.

The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2013-2015.

**General Fund Expenditures by Function
2013-2015**

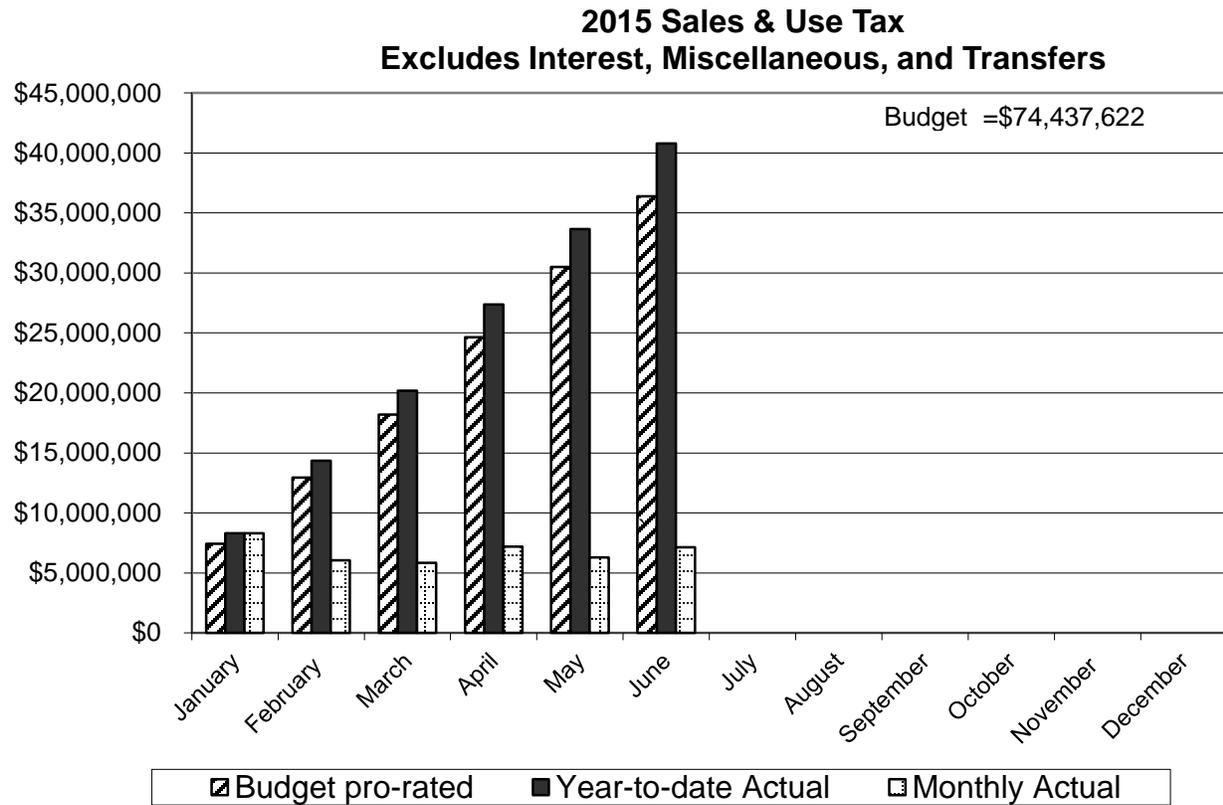


Central Charges expenditures is higher in 2015 mostly due to increased costs for healthcare and other employer paid insurances; contractual services associated with a revenue sharing agreement between the City and Thornton for the 128th Avenue Bridge improvements; and rental fees to fund equipment replacement. The increase in Police expenditures is due mostly to Patrol Services and Police Investigations personnel and contract services.

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

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

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

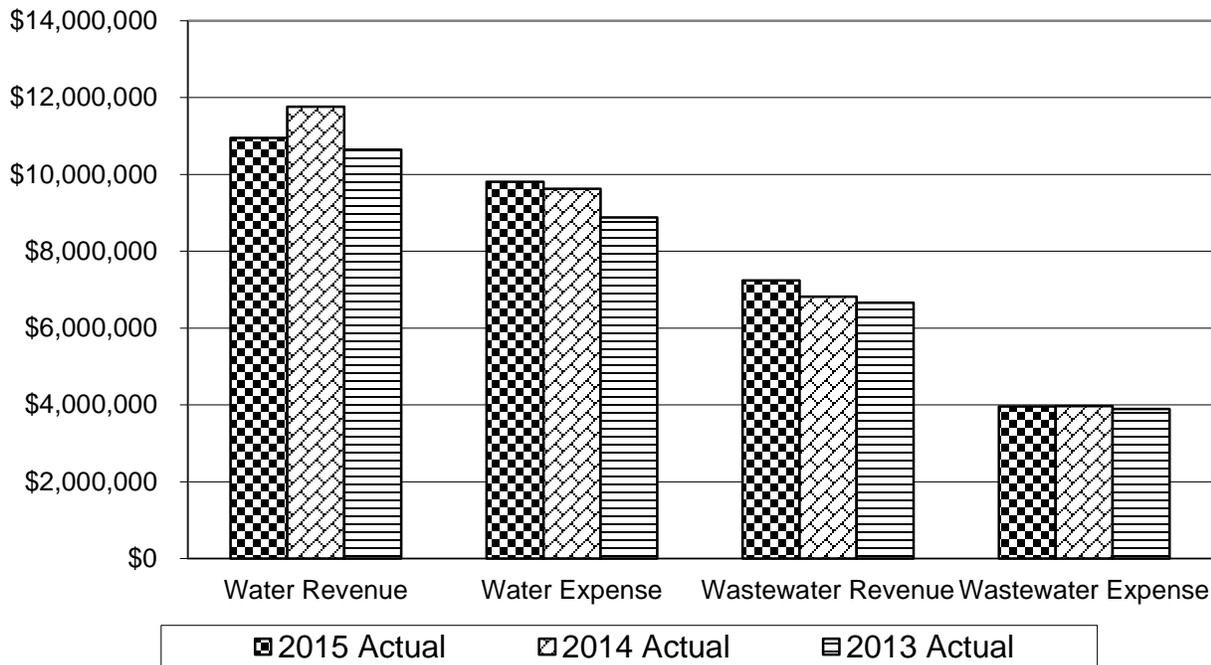


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

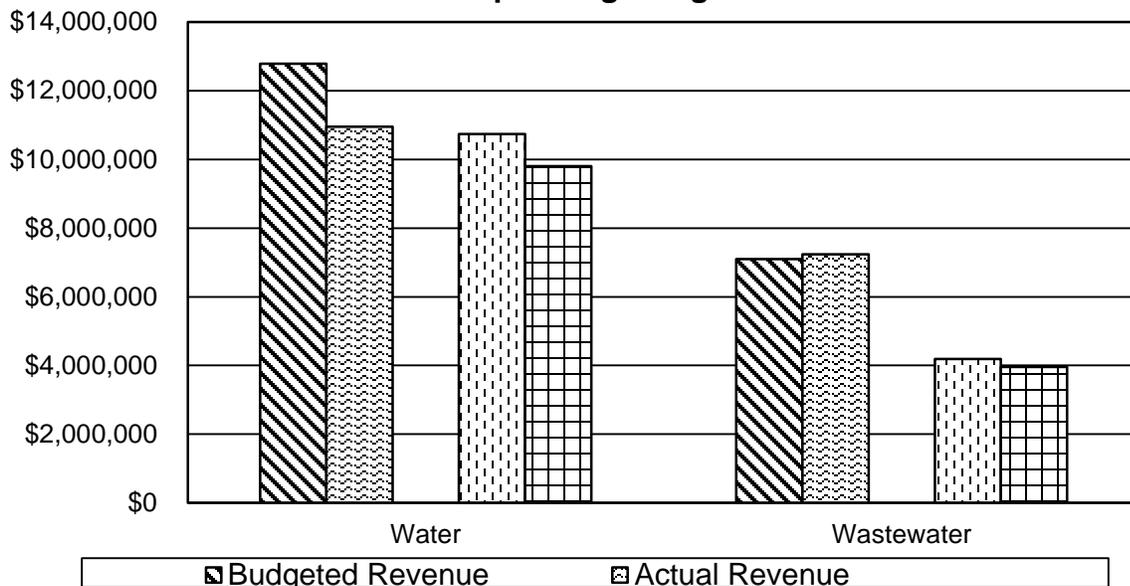
These graphs represent segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenues and Expenditures
2013-2015**



Fluctuations in revenue are mostly due to the effect of climatic variations on water consumption as well as changes in billing rates.

**Water and Wastewater Funds
2015 Operating Budget vs Actual**

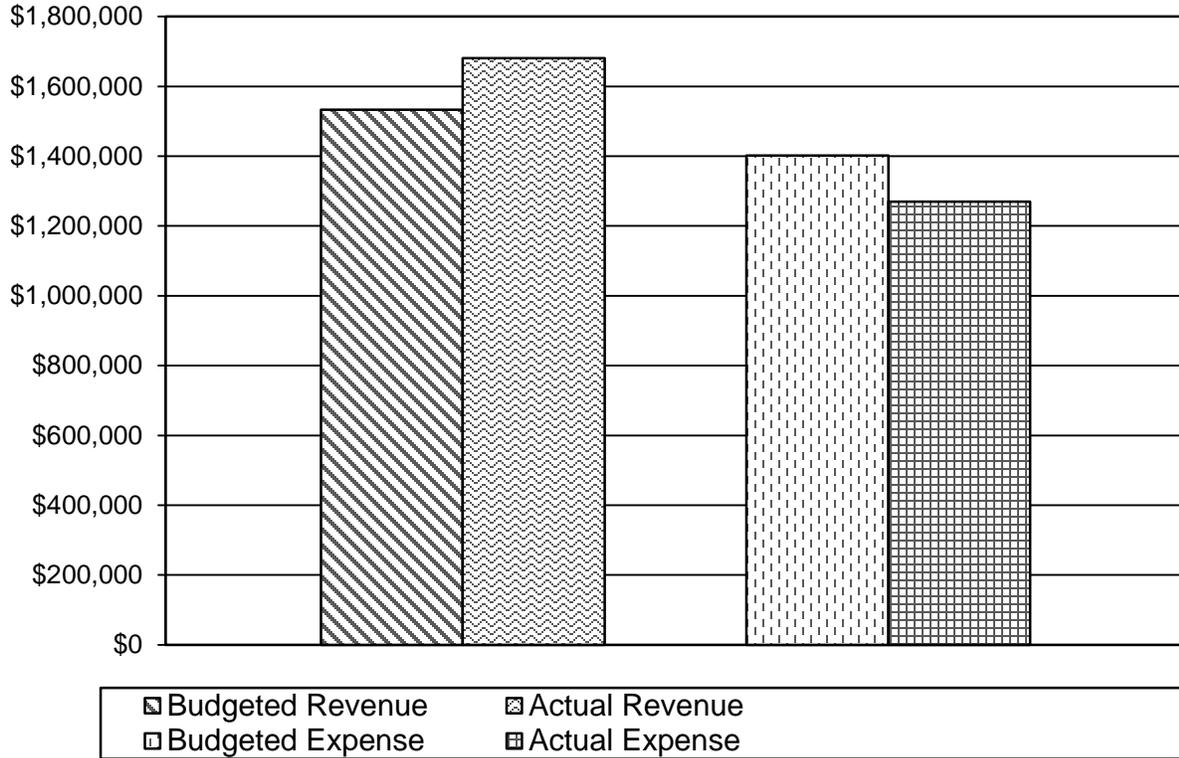


The Water Fund revenue shortfall reflects water consumption impacted by Colorado’s wet spring and early summer.

Golf Course Enterprise (Legacy and Heritage Golf Courses)

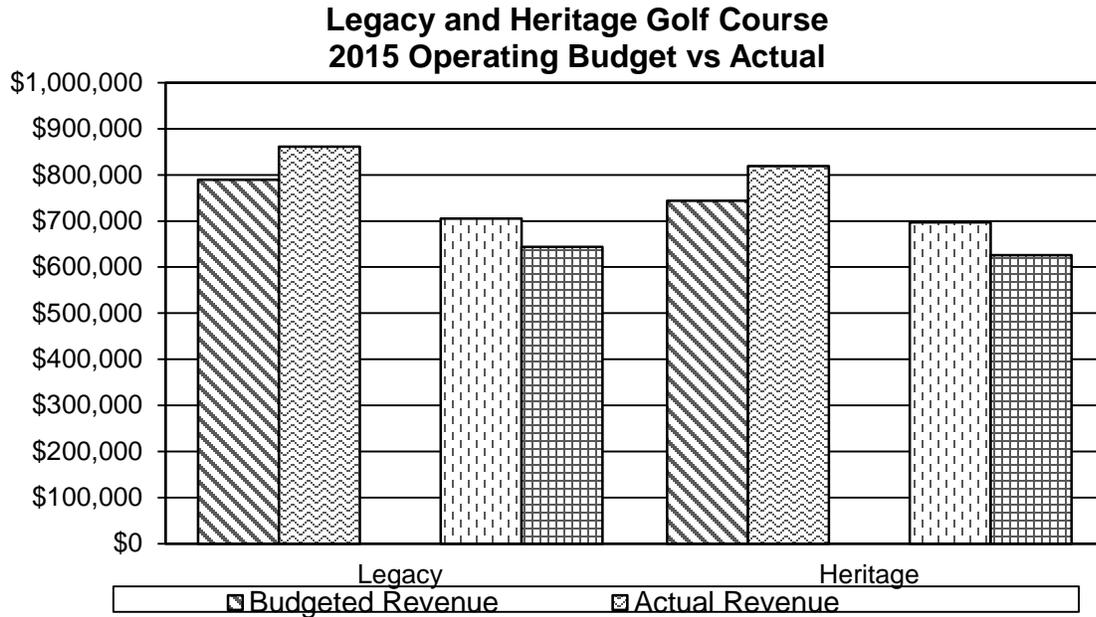
This enterprise reflects the combined operations of the City's two municipal golf courses.

**Combined Golf Courses
2015 Operating Budget vs Actual**

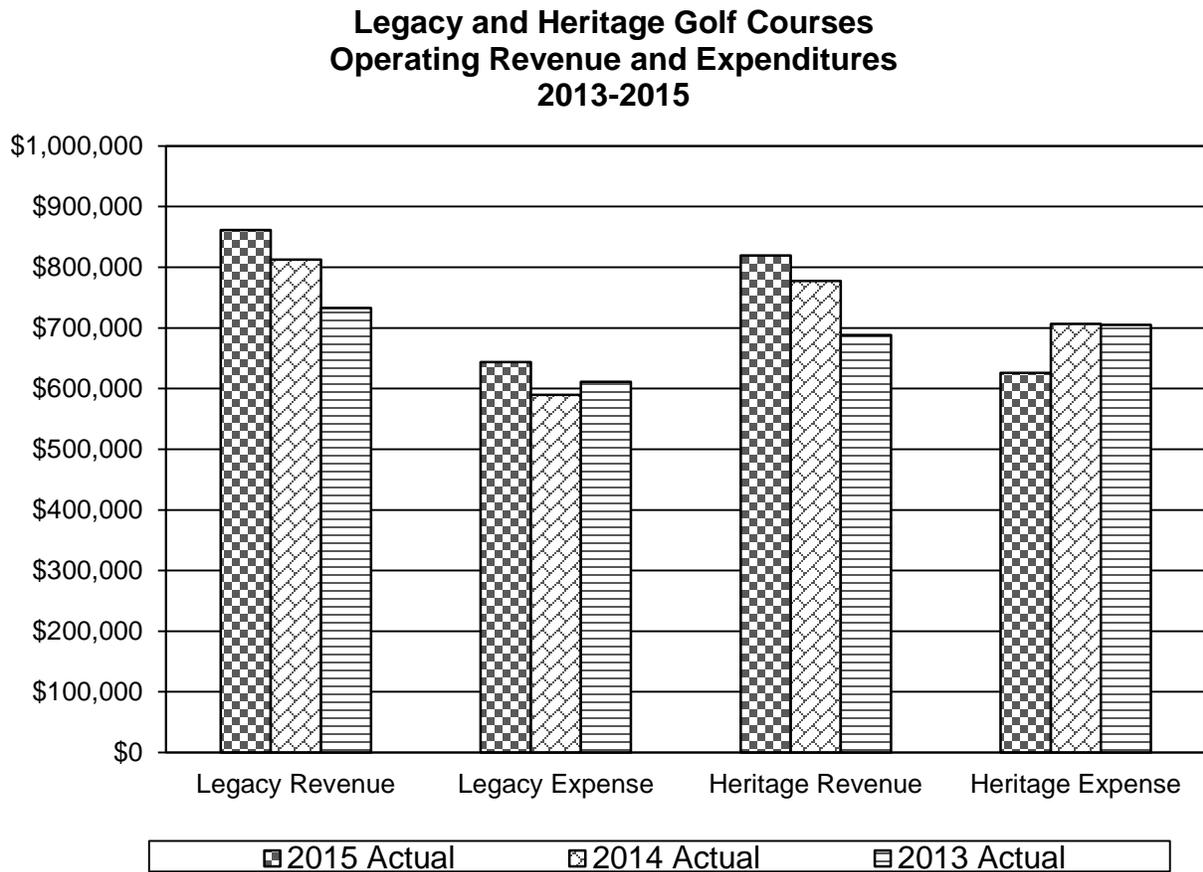


The budget to actual revenue variance reflects increased sales of driving range fees, green fees, merchandise sales and Junior Golf Camp registrations.

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



Favorable budget to actual revenue variances reflect an increase in driving range fees, green fees, merchandise sales and Junior Golf Camp registrations. Various golf course promotions have spurred sales at both courses.



Revenues are up at both courses due to increased play and promotional programs. Expenses are up at Legacy due to the purchase of a new vehicle. Expenses at Heritage are down due mostly to open positions and the timing of commodity purchases between years.

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

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Financial Statements
Shopping Center Report

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Taxes	5,887,933	3,836,609		3,859,459	22,850	100.6%
Licenses & Permits	1,739,217	799,588		1,364,828	565,240	170.7%
Intergovernmental Revenue	5,548,768	2,109,822		2,691,555	581,733	127.6%
Charges for Services						
Recreation Services	7,075,498	3,785,670		4,217,121	431,451	111.4%
Other Services	9,871,075	4,164,384		4,410,049	245,665	105.9%
Fines	1,511,000	761,122		789,855	28,733	103.8%
Interest Income	75,000	36,524		53,543	17,019	146.6%
Miscellaneous	1,661,153	560,919		621,709	60,790	110.8%
Leases	401,779	212,025		212,025	0	100.0%
Interfund Transfers	70,704,714	35,388,057		35,388,057	0	100.0%
Other Financing Sources	577,947	577,946	(1)	577,946	0	100.0%
Sub-total Revenues	<u>105,054,084</u>	<u>52,232,666</u>		<u>54,186,147</u>	<u>1,953,481</u>	<u>103.7%</u>
Carryover	229,949	229,949		229,949	0	100.0%
Total Revenues	<u>105,284,033</u>	<u>52,462,615</u>		<u>54,416,096</u>	<u>1,953,481</u>	<u>103.7%</u>
Expenditures						
City Council	266,525	131,099		120,911	(10,188)	92.2%
City Attorney's Office	1,347,732	656,014		637,651	(18,363)	97.2%
City Manager's Office	2,174,421	1,058,437		930,922	(127,515)	88.0%
Central Charges	28,329,421	11,830,815		11,703,480	(127,335)	98.9%
General Services	6,299,645	3,011,031		2,807,963	(203,068)	93.3%
Finance	2,274,069	1,108,752		1,059,993	(48,759)	95.6%
Police	22,168,575	10,963,722		11,148,135	184,413	101.7%
Fire Emergency Services	12,840,305	6,287,654		6,114,269	(173,385)	97.2%
Community Development	4,793,960	2,349,088		2,251,862	(97,226)	95.9%
Public Works & Utilities	8,634,994	3,250,871		2,669,430	(581,441)	82.1%
Parks, Recreation & Libraries	16,154,386	7,288,997		6,941,577	(347,420)	95.2%
Total Expenditures	<u>105,284,033</u>	<u>47,936,480</u>		<u>46,386,193</u>	<u>(1,550,287)</u>	<u>96.8%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>4,526,135</u>		<u>8,029,903</u>	<u>3,503,768</u>	

(1) Appropriation of lease proceeds for Park Services maintenance equipment.

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues						
Sales Tax						
Sales Tax Returns	50,545,930	24,918,618		27,349,372	2,430,754	109.8%
Sales Tx Audit Revenues	729,000	364,500		397,633	33,133	109.1%
S-T Rev. STX	<u>51,274,930</u>	<u>25,283,118</u>		<u>27,747,005</u>	<u>2,463,887</u>	109.7%
Use Tax						
Use Tax Returns	9,020,573	4,053,690		5,504,828	1,451,138	135.8%
Use Tax Audit Revenues	785,000	392,500		400,685	8,185	102.1%
S-T Rev. UTX	<u>9,805,573</u>	<u>4,446,190</u>		<u>5,905,513</u>	<u>1,459,323</u>	132.8%
Total STX and UTX	<u><u>61,080,503</u></u>	<u><u>29,729,308</u></u>		<u><u>33,652,518</u></u>	<u><u>3,923,210</u></u>	113.2%
Public Safety Tax						
PST Tax Returns	13,048,619	6,508,584		6,970,257	461,673	107.1%
PST Audit Revenues	308,500	154,250		159,605	5,355	103.5%
Total Rev. PST	<u><u>13,357,119</u></u>	<u><u>6,662,834</u></u>		<u><u>7,129,862</u></u>	<u><u>467,028</u></u>	107.0%
Interest Income	51,000	25,500		54,871	29,371	215.2%
Interfund Transfers	434,975	217,487		217,487	0	100.0%
Total Revenues	<u><u>74,923,597</u></u>	<u><u>36,635,129</u></u>		<u><u>41,054,738</u></u>	<u><u>4,419,609</u></u>	112.1%
Expenditures						
Central Charges	<u>74,923,597</u>	<u>37,461,799</u>		<u>37,461,799</u>	<u>0</u>	100.0%
Revenues Over(Under) Expenditures	<u><u>0</u></u>	<u><u>(826,670)</u></u>		<u><u>3,592,939</u></u>	<u><u>4,419,609</u></u>	

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Sales & Use Tax	5,379,727	2,689,210		2,968,597	279,387	110.4%
Intergovernmental Revenue	375,561	375,561		385,561	10,000	102.7%
Interest Income	10,000	5,000		7,589	2,589	151.8%
Miscellaneous	98,368	49,184		31,707	(17,477)	64.5%
Interfund Transfers	32,025	16,013		16,013	0	100.0%
Sub-total Revenues	<u>5,895,681</u>	<u>3,134,968</u>		<u>3,409,467</u>	<u>274,499</u>	<u>108.8%</u>
Carryover	745,468	745,468		745,468	0	100.0%
Total Revenues	<u>6,641,149</u>	<u>3,880,436</u>		<u>4,154,935</u>	<u>274,499</u>	<u>107.1%</u>
Expenditures						
Central Charges	5,023,027	2,289,500		2,198,743	(90,757)	96.0%
Park Services	1,618,122	1,247,420		1,129,522	(117,898)	90.5%
Total Expenditures	<u>6,641,149</u>	<u>3,536,920</u>		<u>3,328,265</u>	<u>(208,655)</u>	<u>94.1%</u>
Revenues Over(Under) Expenditures	<u>0</u>	<u>343,516</u>		<u>826,670</u>	<u>483,154</u>	

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	37,500		52,860	15,360	141.0%
Intergovernmental Revenue	0	0	(1)	239,750	239,750	
Rates and Charges	49,200,891	19,639,007		17,732,255	(1,906,752)	90.3%
Miscellaneous	410,000	205,000		169,197	(35,803)	82.5%
Total Operating Revenues	49,685,891	19,881,507		18,194,062	(1,687,445)	91.5%
Operating Expenditures						
Central Charges	6,465,084	3,232,543		3,245,099	12,556	100.4%
Finance	662,357	330,516		326,450	(4,066)	98.8%
Public Works & Utilities	21,818,221	9,773,142		8,686,151	(1,086,991)	88.9%
Parks, Recreation & Libraries	152,467	65,866		65,948	82	100.1%
Information Technology	3,173,708	1,526,554		1,444,675	(81,879)	94.6%
Total Operating Expenditures	32,271,837	14,928,621		13,768,323	(1,160,298)	92.2%
Operating Income (Loss)	17,414,054	4,952,886		4,425,739	(527,147)	
Other Revenue and Expenditures						
Tap Fees	12,685,226	6,342,614		5,221,647	(1,120,967)	82.3%
Interest Income	360,500	180,250		208,049	27,799	115.4%
Sale of Assets	0	0		6,950	6,950	
Debt Service	(6,543,780)	(2,968,851)		(2,968,851)	0	100.0%
Reserve Transfer In	930,000	930,000		930,000	0	100.0%
Total Other Revenue (Expenditures)	7,431,946	4,484,013		3,397,795	(1,086,218)	
Revenues Over(Under) Expenditures	24,846,000	9,436,899	(2)	7,823,534	(1,613,365)	

(1) Build America Bonds interest rate subsidy.

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

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	37,500		52,860	15,360	141.0%
Intergovernmental Revenue	0	0	(1)	239,750	239,750	
Rates and Charges	35,019,138	12,548,130		10,496,768	(2,051,362)	83.7%
Miscellaneous	400,000	200,000		164,397	(35,603)	82.2%
Total Operating Revenues	<u>35,494,138</u>	<u>12,785,630</u>		<u>10,953,775</u>	<u>(1,831,855)</u>	
Operating Expenditures						
Central Charges	4,503,673	2,251,837		2,241,890	(9,947)	99.6%
Finance	662,357	330,516		326,450	(4,066)	98.8%
Public Works & Utilities	15,192,115	6,563,240		5,729,834	(833,406)	87.3%
PR&L Standley Lake	152,467	65,866		65,948	82	100.1%
Information Technology	3,173,708	1,526,554		1,444,675	(81,879)	94.6%
Total Operating Expenditures	<u>23,684,320</u>	<u>10,738,013</u>		<u>9,808,797</u>	<u>(929,216)</u>	91.3%
Operating Income (Loss)	<u>11,809,818</u>	<u>2,047,617</u>		<u>1,144,978</u>	<u>(902,639)</u>	
Other Revenue and (Expenditures)						
Tap Fees	10,327,653	5,163,827		3,825,191	(1,338,636)	74.1%
Interest Income	277,500	138,750		152,946	14,196	110.2%
Sale of Assets	0	0		6,950	6,950	
Debt Service	(5,422,971)	(2,407,874)		(2,407,874)	0	100.0%
Total Other Revenues (Expenditures)	<u>5,182,182</u>	<u>2,894,703</u>		<u>1,577,213</u>	<u>(1,317,490)</u>	
Revenues Over(Under) Expenditures	<u>16,992,000</u>	<u>4,942,320</u>	(2)	<u>2,722,191</u>	<u>(2,220,129)</u>	

(1) Build America Bond interest rate subsidy.

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

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	14,181,753	7,090,877		7,235,487	144,610	102.0%
Miscellaneous	10,000	5,000		4,800	(200)	96.0%
Total Operating Revenues	<u>14,191,753</u>	<u>7,095,877</u>		<u>7,240,287</u>	<u>144,410</u>	102.0%
Operating Expenditures						
Central Charges	1,961,411	980,706	(1)	1,003,209	22,503	102.3%
Public Works & Utilities	6,626,106	3,209,902		2,956,317	(253,585)	92.1%
Total Operating Expenditures	<u>8,587,517</u>	<u>4,190,608</u>		<u>3,959,526</u>	<u>(231,082)</u>	94.5%
Operating Income (Loss)	<u>5,604,236</u>	<u>2,905,269</u>		<u>3,280,761</u>	<u>375,492</u>	
Other Revenue and Expenditures						
Tap Fees	2,357,573	1,178,787		1,396,456	217,669	118.5%
Interest Income	83,000	41,500		55,103	13,603	132.8%
Debt Service	(1,120,809)	(560,977)		(560,977)	0	100.0%
Reserve Transfer In	930,000	930,000		930,000	0	100.0%
Total Other Revenues (Expenditures)	<u>2,249,764</u>	<u>1,589,310</u>		<u>1,820,582</u>	<u>231,272</u>	
Revenues Over(Under) Expenditures	<u>7,854,000</u>	<u>4,494,579</u>	(2)	<u>5,101,343</u>	<u>606,764</u>	

(1) Budget to actual variance is due to personnel services employee insurances.

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

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	3,382,000	1,691,000		1,654,432	(36,568)	97.8%
Interest Income	26,000	13,000		20,182	7,182	155.2%
Miscellaneous	0	0	(1)	456,623	456,623	
Other Financing Sources	4,610,000	4,610,000	(2)	4,610,000	0	100.0%
Total Revenues	<u>8,018,000</u>	<u>6,314,000</u>		<u>6,741,237</u>	<u>427,237</u>	106.8%
Expenditures						
General Services	86,200	28,446		17,628	(10,818)	62.0%
Community Development	181,396	96,140		95,644	(496)	99.5%
PR&L Park Services	200,000	82,200		72,869	(9,331)	88.6%
Public Works & Utilities	338,404	94,076		69,701	(24,375)	74.1%
Total Expenditures	<u>806,000</u>	<u>300,862</u>		<u>255,842</u>	<u>(45,020)</u>	85.0%
Revenues Over(Under) Expenditures	<u>7,212,000</u>	<u>6,013,138</u>	(3)	<u>6,485,395</u>	<u>472,257</u>	

(1) Adams County Little Dry Creek IGA billing.

(2) Storm Drainage 2015 Bond Issue.

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

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Courses Combined						
Operating Revenues						
Charges for Services	3,283,750	1,533,432		1,676,571	143,139	109.3%
Miscellaneous	0	0		4,180	4,180	
Total Revenues	<u>3,283,750</u>	<u>1,533,432</u>		<u>1,680,751</u>	<u>147,319</u>	109.6%
Operating Expenditures						
Central Charges	186,184	93,103	(1)	119,541	26,438	128.4%
Recreation Facilities	2,626,576	1,308,438		1,150,124	(158,314)	87.9%
Total Expenditures	<u>2,812,760</u>	<u>1,401,541</u>		<u>1,269,665</u>	<u>(131,876)</u>	90.6%
Operating Income (Loss)	<u>470,990</u>	<u>131,891</u>		<u>411,086</u>	<u>279,195</u>	
Other Revenues and Expenditures						
Interest Income	0	0		5,460	5,460	
Other Financing Use	(6,080)	(2,400)		(2,400)	0	100.0%
Debt Service	(819,282)	(322,744)		(322,744)	0	100.0%
Interfund Transfers In	519,969	259,985		259,985	0	100.0%
Interfund Transfers Out	(84,598)	(84,598)		(84,598)	0	100.0%
Carryover	134,001	134,001		134,001	0	100.0%
Total Other Revenue (Expenditures)	<u>(255,990)</u>	<u>(15,756)</u>		<u>(10,296)</u>	<u>5,460</u>	
Revenues Over(Under) Expenditures	<u>215,000</u>	<u>116,135</u>	(2)	<u>400,790</u>	<u>284,655</u>	

(1) Budget to actual variance mostly due to personnel services, employee insurances.

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

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Operating Revenues						
Charges for Services	1,746,984	789,637		858,723	69,086	108.7%
Miscellaneous	0	0		2,590	2,590	
Total Revenues	<u>1,746,984</u>	<u>789,637</u>		<u>861,313</u>	<u>71,676</u>	109.1%
Operating Expenditures						
Central Charges	98,935	49,566	(1)	63,256	13,690	127.6%
Recreation Facilities	1,319,132	655,337		580,527	(74,810)	88.6%
Total Expenditures	<u>1,418,067</u>	<u>704,903</u>		<u>643,783</u>	<u>(61,120)</u>	91.3%
Operating Income (Loss)	<u>328,917</u>	<u>84,734</u>		<u>217,530</u>	<u>132,796</u>	
Other Revenues and Expenditures						
Interest Income	0	0		3,135	3,135	
Other Financing Use	(3,000)	(2,000)		(2,000)	0	100.0%
Debt Service	(160,320)	(126,503)		(126,503)	0	100.0%
Interfund Transfers Out	(84,598)	(84,598)		(84,598)	0	100.0%
Carryover	42,001	42,001		42,001	0	100.0%
Total Other Revenue (Expenditures)	<u>(205,917)</u>	<u>(171,100)</u>		<u>(167,965)</u>	<u>3,135</u>	
Revenues Over(Under) Expenditures	<u>123,000</u>	<u>(86,366)</u>	(2)	<u>49,565</u>	<u>135,931</u>	

(1) Budget to actual variance mostly due to personnel services, employee insurances.

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

**City of Westminster
Financial Report
For Six Months Ending June 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Operating Revenues						
Charges for Services	1,536,766	743,795		817,848	74,053	110.0%
Total Revenues	<u>1,536,766</u>	<u>743,795</u>		<u>819,438</u>	<u>75,643</u>	110.2%
Operating Expenditures						
Central Charges	87,249	43,537	(1)	56,285	12,748	129.3%
Recreation Facilities	1,307,444	653,101		569,597	(83,504)	87.2%
Total Expenditures	<u>1,394,693</u>	<u>696,638</u>		<u>625,882</u>	<u>(70,756)</u>	89.8%
Operating Income (Loss)	<u>142,073</u>	<u>47,157</u>		<u>193,556</u>	<u>146,399</u>	
Other Revenues and Expenditures						
Interest Income	0	0		2,325	2,325	
Other Financing Use	(3,080)	(400)		(400)	0	100.0%
Debt Service	(658,962)	(196,241)		(196,241)	0	100.0%
Interfund Transfers	519,969	259,985		259,985	0	100.0%
Carryover	92,000	92,000		92,000	0	100.0%
Total Other Revenue (Expenditures)	<u>(50,073)</u>	<u>155,344</u>		<u>157,669</u>	<u>2,325</u>	
Revenues Over(Under) Expenditures	<u>92,000</u>	<u>202,501</u>	(2)	<u>351,225</u>	<u>148,724</u>	

(1) Budget to actual variance mostly due to personnel services, employee insurances.

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

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF JUNE 2015

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General	General	Total	General	General	Total	Sales	Use	Total
	Sales	Use		Sales	Use		Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	469,162	19,923	489,085	437,353	24,639	461,992	7	(19)	6
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	299,969	3,107	303,076	315,212	803	316,015	(5)	287	(4)
SHOPS AT WALNUT CREEK 104TH & REED TARGET	258,045	3,731	261,776	242,966	2,356	245,322	6	58	7
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	257,362	863	258,225	238,433	416	238,849	8	107	8
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	220,325	1,156	221,481	221,555	727	222,282	(1)	59	0
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	189,568	880	190,448	179,854	1,129	180,983	5	(22)	5
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	166,027	21,810	187,837	156,377	40,566	196,943	6	(46)	(5)
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	177,856	626	178,482	177,240	486	177,726	0	29	0
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	173,868	2,707	176,575	172,657	1,204	173,861	1	125	2
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	141,852	2,586	144,438	120,288	1,326	121,614	18	95	19
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	136,343	343	136,686	128,157	1,063	129,220	6	(68)	6
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	103,988	487	104,475	86,272	3,261	89,533	21	(85)	17
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	99,490	264	99,754	99,186	74	99,260	0	257	0

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF JUNE 2015

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General	General	Total	General	General	Total	Sales	Use	Total
	Sales	Use		Sales	Use		Sales	Use	Total
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN LOWE'S	90,695	161	90,856	88,897	1,107	90,004	2	(85)	1
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	9,782	66,777	76,559	13,873	43,139	57,012	(29)	55	34
BRADBURN VILLAGE 120TH & BRADBURN WHOLE FOODS	74,271	151	74,422	17,260	52	17,312	330	190	330
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	66,622	227	66,849	65,005	208	65,213	2	9	3
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	57,014	4,111	61,125	54,598	490	55,088	4	739	11
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	59,903	80	59,983	61,198	378	61,576	(2)	(79)	(3)
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	56,936	2,165	59,101	52,813	461	53,274	8	370	11
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	54,519	497	55,016	56,894	347	57,241	(4)	43	(4)
WILLOW RUN 128TH & ZUNI SAFEWAY	50,157	196	50,353	33,686	428	34,114	49	(54)	48
NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART	48,061	214	48,275	43,994	124	44,118	9	73	9
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	40,342	351	40,693	40,920	377	41,297	(1)	(7)	(1)
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINTA	38,149	1,634	39,783	22,640	2,864	25,504	69	(43)	56
TOTALS	3,340,306	135,047	3,475,353	3,127,328	128,025	3,255,353	7	5	7

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
JUNE 2015 YEAR-TO-DATE

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General	General	Total	General	General	Total	Sales	Use	Total
	Sales	Use		Sales	Use		Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	2,911,613	127,867	3,039,480	2,690,805	87,410	2,778,215	8	46	9
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	1,922,873	20,914	1,943,787	2,009,414	11079	2,020,493	(4)	89	(4)
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,607,820	16,303	1,624,123	1,515,853	11,141	1,526,994	6	46	6
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	1,559,642	4119	1,563,761	1,456,225	39518	1,495,743	7	(90)	5
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,194,611	12,406	1,207,017	1,192,411	7265	1,199,676	0	71	1
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,101,263	14242	1,115,505	1,058,092	12,856	1,070,948	4	11	4
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,097,061	9,005	1,106,066	1,044,454	11,686	1,056,140	5	(23)	5
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,027,053	10849	1,037,902	1,048,015	3073	1,051,088	(2)	253	(1)
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	961,814	117,468	1,079,282	908,904	146,232	1,055,136	6	(20)	2
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	921,911	30,974	952,885	726,727	9,797	736,524	27	216	29
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	915,603	11249	926,852	848,200	5,555	853,755	8	103	9
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	655,553	2221	657,774	571,833	4,493	576,326	15	(51)	14
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN LOWE'S	537,878	15117	552,995	437,855	2923	440,778	23	417	25

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
JUNE 2015 YEAR-TO-DATE

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General	General	Total	General	General	Total	Sales	Use	Total
	Sales	Use		Sales	Use		Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	442,632	10848	453,480	377,237	799	378,036	17	1,258	20
BRADBURN VILLAGE 120TH & BRADBURN WHOLE FOODS	413,579	64,785	478,364	101,102	1,258	102,360	309	5,050	367
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	349,537	1232	350,769	392,837	2597	395,434	(11)	(53)	(11)
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	340,582	3586	344,168	335,231	2249	337,480	2	59	2
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	312,619	6,371	318,990	299,419	6763	306,182	4	(6)	4
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	310,074	9850	319,924	292,126	3859	295,985	6	155	8
NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART	264,817	2,987	267,804	249,314	4001	253,315	6	(25)	6
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	215,099	5673	220,772	197,059	1749	198,808	9	224	11
WILLOW RUN 128TH & ZUNI SAFEWAY	211,812	1402	213,214	190,285	1382	191,667	11	1	11
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	206,741	22897	229,638	196,018	2119	198,137	5	981	16
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINTA	182,025	21810	203,835	82,861	92125	174,986	120	(76)	16
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	174,661	2,139	176,800	155,947	2,321	158,268	12	(8)	12
TOTALS	19,838,873	546,314	20,385,187	18,378,224	474,250	18,852,474	8	15	8



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Quarterly Insurance Claims Report – April through June 2015
Prepared By: Martee Erichson, Risk Manager

Recommended City Council Action

Accept the Second Quarter 2015 Insurance Claims Report.

Summary Statement

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

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 2nd quarter of 2015 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow-up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the second quarter of 2015, Staff has noted the following summary information:

- Nine of the 14 claims reported in the second quarter of 2015 are closed at this time.
- Total claims for the quarter and year-to-date are broken down by department as follows:

Department	2nd Quarter 2015			YTD Total
	Total Claims	Open	Closed	
Fire	0	0	0	1
General Services	2	1	1	2
Parks, Recreation and Libraries (PRL)	7	2	5	9
Police (PD)	3	2	1	5
Public Works and Utilities (PWU) - Street Maintenance	1	0	1	6
Public Works and Utilities (PWU) - Utility Field Operations	1	0	1	2
TOTAL	14	5	9	25

Risk Management supports Council’s Strategic Plan goal of “Excellence in City Services” by working to mitigate the cost of claims to the City and maintaining a loss control program that strives to keep City streets and facilities safe for the general public.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment – Quarterly Insurance Report

Quarterly Insurance Claims Report – April through June 2015

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2015-104	4/5/2015	PD	Tad Koriath	11195 Alcott St. # A, Westminster CO 80234	Employee driving a City vehicle backed into claimant's parked vehicle causing damage.	\$ 2,498.89	Closed	
2015-121	4/20/2015	PRL	Todd Wheeler	5506 Balsam St., Arvada CO 80002	Employee driving a City vehicle backed into claimant's parked vehicle causing damage.	\$ 3,122.16	Closed	
2015-124	4/20/2015	PWU - Util	Clair Archuleta	7064 Winona Ct., Westminster CO 80030	Claimant's basement was damaged due to a sewer backup.	\$ 2,500.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City; however, claimant was offered payment under the City's "good neighbor" settlement program.

Quarterly Insurance Claims Report – April through June 2015

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2015-131	5/2/2015	PRL	Stephanie Roland	11241 W 104th Ave., Westminster CO 80021	Claimant alleges the City is responsible for damage to her vehicle windshield that was hit by a softball coming from play at Christopher Fields.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2015-133	5/11/2015	GS	Diana DiTirro / DiTirro Building Services	16132 W 66th Cr., Arvada CO 80007	Claimant's company vacuum cleaner, that was stored in the basement of the Municipal Court, was damaged when a sump pump failed during a flooding event in the building.	\$ 199.00	Closed	
2015-142	5/14/2015	PRL	Jim Hynes	10676 Kipling Way, Westminster CO 80021	Claimant alleges the basement of a rental home he owns at 10767 Moore St, was flooded due to City employees pumping water out of Jessica Ridgeway Park.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.

Quarterly Insurance Claims Report – April through June 2015

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2015-140	5/16/2015	PRL	Earl Colm	14429 W Ellsworth Ave., Golden CO 80401	Claimant was leaving Standley Lake Park when a wind gust caught the Park's unsecured gate and blew it into the claimant's vehicle causing damage.	\$ 2,210.56	Closed	
2015-170	6/14/2015	PRL	Cynthia DeLorenzo	10373 Irving Ct., Westminster CO 80031	Claimant alleges she was injured when she stepped into a drainage pipe hole that was covered with grass while looking for a golf ball in the native grass.	\$ -	Open	CIRSA investigating
2015-187	6/18/2015	PRL	Anson Rohr	5010 W 70th Pl., Westminster CO 80030	Claimant alleges he slipped, fell and was injured while he was walking on crutches past the showers in the locker room at a City recreation center.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.

Quarterly Insurance Claims Report – April through June 2015

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2015-195	6/24/2015	PRL	Jesus Juarez	3561 W 75th Pl., Westminster CO 80030	A large cottonwood tree on a City park blew over in a heavy wind storm and landed on the claimant's home causing damage.	\$ -	Open	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City; however, claimant was offered payment under the City's "good neighbor" settlement program.
2015-203	6/29/2015	PD	Patrick & Angela Borrego	8914 Princeton St., Westminster CO 80031	Claimants' son, John Horton, was driving the claimant's vehicle when he was rear-ended at an intersection by a Westminster police officer driving a City vehicle.	\$ -	Open	CIRSA investigating

Quarterly Insurance Claims Report – April through June 2015

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
CLAIMS SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 2nd QUARTER 2015:								
2014-431	10/8/2014	NA	Linda Fuller	15249 Navajo St., Broomfield CO 80023	Claimant's attorney mistakenly filed a Notice of Claim on the City when attorney's staff read the police report wrong and believed a City employee was involved.	\$ -	Closed	
2014-432	10/9/2014	PD	Charles Estrada	Colorado Dept. of Corrections, Canon City CO	Claimant's attorney alleges the claimant suffered injuries during his arrest by Westminster police officers.	\$ -	Open	CIRSA investigating
2015-037	1/31/2015	PWU - Streets	Javier Chacon	7401 Winona Ct., Westminster CO 80030	Claimant lost control of his vehicle on an icy street and a City snow plow driver behind him could not stop and rear-ended the claimant's vehicle causing damage.	\$ 2,300.58	Closed	
2015-101	3/26/2015	GS	Dana Diaz / Big Mamas Burritos	3190 W 72nd Ave., Westminster CO 80030	Claimant's metal gate and post was damaged when an Employee driving a city vehicle backed out of a parking space and into the gate.	\$ -	Open	CIRSA investigating
					TOTAL	\$ 12,831.19		



Agenda Item 8 C

Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Contract for Investment Advisor Services

Prepared By: Robert Byerhof, Treasury Manager
Fred Kellam, Senior Financial Analyst
Rachel Price, Financial Analyst

Recommended City Council Action

Based on the recommendation of the City Manager, the City Council finds that the public interest would be best served by authorizing the City Manager to execute a contract with Chandler Asset Management to provide investment advisor services to the City.

Summary Statement

- The City maintains an investment portfolio that as of June 30, 2015, had a market value of \$183,431,854. The total value of the portfolio fluctuates throughout the year depending on market fluctuations, revenue receipts and expenditures.
- Since 1998, the City has employed the services of an investment advisor due to the efficiencies inherent for these services such as:
 - The technical and personnel resources available to monitor market conditions relative to security purchases, sales, and credit issues.
 - The expertise to provide the necessary daily oversight to monitor and comply with the City's Investment Policy.
 - The ongoing research and monitoring of securities markets and individual investments.
- On March 30, 2015 a Request for Proposal (RFP) was issued for investment advisor services. Eight proposals were submitted for analysis from which Staff recommends that Chandler Asset Management be hired as the City's investment advisor.

Expenditure Required: Varies depending on portfolio balance

Source of Funds: Interest Earnings

Policy Issue

Should the City of Westminster proceed with a contract for investment advisor services with Chandler Asset Management?

Alternatives

1. Choose another firm to perform the investment advisor services. Staff does not recommend this alternative, as Chandler Asset Management represents the most qualified investment advisor provider based on their proposal to the City's RFP and subsequent presentation.
2. Do not have an investment advisor assist the City manage its investment portfolio. Staff does not recommend this alternative. Given the size of the City's portfolio, the City is best served by the professional services of an investment advisor to efficiently research and monitor the market, execute investment transactions, in compliance with the City's Investment Policy.

Background Information

The City recently underwent an RFP process for investment advisor services due to City purchasing requirements and the expiration of the contract with the City's current investment advisor firm.

The City has employed the services of an investment advisor since June 1998. Prior to June 1998, the City employed an Investment Officer, whose primary responsibility was managing the investments of City's portfolio. The City decided to outsource the investment services as staff resources were needed for other functions. Originally, the City hired American Money Management. The firm was later purchased by MBIA Municipal Investors Service Corporation, which later changed their name to Cutwater Asset Management (Cutwater) after restructuring. Most recently, Cutwater was acquired by Bank of New York Mellon (BNY) and became part of, and was renamed Insight Investment, a subsidiary of BNY.

The investment advisor's resources are devoted solely to observing market conditions, monitoring credit risk, proposing and implementing investment strategy, contacting brokers for the best pricing and informing the City when action is deemed necessary to protect the City's portfolio. Finance personnel who would otherwise take on the role as a portfolio manager have numerous other responsibilities and duties that command attention on a daily basis, such as debt and lease management, banking relationships and services, financial analysis of various City projects and urban renewal areas, and administration of the City's Purchasing Card program.

Utilizing the services of an investment advisor has proven to be a cost effective and prudent relationship over the years. Since the end of the Great Recession in 2010, interest rates and yields have remained at historic lows. Even with this low rate environment, the City earned a rate of return net of fees of 0.87% in 2014, totaling \$1,879,240.98 interest earnings. This compared favorably to the return of the 2-year T-Note over the same time horizon of 0.45%, the City's portfolio benefited from the utilization of an investment advisor and active portfolio management. The 2-year T-Note was selected as a benchmark as the weighted average maturity of the portfolio was 692 days.

2015 Investment Advisor Selection Process

Maintaining the services of an investment advisor is a prudent and practical use of City funds given the complexities of the financial markets and professional expertise required to manage investments and monitor market conditions. The RFP for investment advisor services was released on March 30, 2015 and eight proposals were received and analyzed for: responsiveness, experience and credentials of key personnel, technological capabilities (e.g. reporting functionality, automated compliance software), size of portfolios managed by each firm, experience with serving public sector clients, expertise with public investment policy, references from peer government entities, and pricing.

Initial review of the proposals prompted the selection committee to interview the top five candidates: Cutwater Asset Management (now Insight Investment and the City’s current service provider), Chandler Asset Management (Chandler), Davidson Fixed Income Management, Public Trust Advisors and PFM Asset Management (PFM).

Proposed pricing arrangements varied and included flat fee based on assets under management, tiered structures based on assets under management and graduated fee structures that increased over time. The table below estimates the annual fees of each of the five finalist firms based on a total portfolio value of \$180,000,000:

Proposing Firm	Estimated Annual Fee	Fee Notes
Davidson Fixed Income Management	72,000	Flat .04% applied to total portfolio
Cutwater Asset Management	90,000	Flat .05% applied to total portfolio
Public Trust Advisors	90,000	Flat .05% applied to total portfolio
Chandler Asset Management	97,500	.06% applied to first \$75 million, .05% thereafter
PFM Asset Management LLC	90,000-126,000	.05% applied to total portfolio year 1, .06% year 2, .07% thereafter

While pricing is one consideration during the evaluation process, the lowest bid should not be the determining factor in the selection of an investment advisor due to the complexities of the services provided and differing capabilities of each firm.

After thorough analysis and comparison of each finalist, Staff recommends that the contract be awarded to Chandler. Key considerations supporting the recommendation for Chandler include:

FIRM

- Chandler was formed in 1988, the second oldest firm of the finalists. Since the beginning Chandler has had a strong public sector presence, which continues today.
- Chandler services are focused on asset management and investing. Chandler is not over-diversified into other business lines. This is an advantage over other firms who may be diverting their focus and funding to “more profitable” business lines.
- Chandler indicated the fewest number of portfolios lost in the past two years and the second highest number of portfolios added at 37. These statistics are important because it shows that not only do their current clients want to retain their services but also that others are willing to change based on determining their services to be superior in the competitive marketplace.
- Chandler remains in “good standing” with the State of Colorado.
- As Chandler is a privately-held company, Staff reviewed their financial statements and determined the firm has adequate solvency and capitalization.

STAFF

- Chandler’s founder, Kay Chandler, worked in municipal government for over ten years. Her experience has influenced the staff at Chandler and provides them a unique understanding of public sector challenges.
- Chandler is the only firm who had both zero turnover in key personnel and had the highest number of positions added. This statistic shows their staffs’ commitment to the firm as well as the firm’s commitment to maintaining adequate staffing to service accounts.
- Chandler had the second lowest number of average number of portfolios managed by each manager at 20. In comparison, three other finalist firms indicated double the number of accounts per manager. This further shows the attention Chandler is willing to devote to the City’s portfolio.
- Considering the relationship manager’s 32 years in the industry and the portfolio manager’s 28 years in the industry, Chandler has longest number of years in the field for these positions.
- Professional certifications of their staff include: Chartered Financial Analyst, Certified Cash Manager, and Certified Treasury Professional.

INVESTMENT STRATEGY & REPORTING

- While investing public funds involves three primary values (in priority order) of: Safety of principal, Liquidity for cash flow needs and Yield/return Chandler utilizes a “total return” philosophy, rather than a typical “buy and hold” approach. Without increasing risk to Safety and Liquidity of the portfolio, the selection committee believes this approach will be more effective at achieving greater returns and adding value to the portfolio over the long term.
- Investment decisions are made at Chandler on a “team” basis. Chandler uses four sub-committees who perform their analyses and make recommendations to the Investment Management Team. The Investment Management team then reviews the recommendations and makes decisions for each portfolio based on the recommendations. This process provides a thorough analysis of the options available from multiple perspectives and enriches the quality of decisions made.
- Chandler utilizes a proprietary analysis model that integrates their ongoing credit research with individual investment policies. The system is customizable to reflect the City’s policy as a further control to ensure compliance with securities trades. The system is also Global Investment Performance Standards (GIPS) compliant.
- Chandler’s system is able to provide timely, accurate, and downloadable reporting on: account activity, comparison to benchmarks and compliance. Statements are ready within three business days of month-end, the fastest turn-around of the finalists. This will help the Finance Department meet its month-end closing deadlines used for financial reporting.

COMMITMENT

- Chandler thoroughly researched the City of Westminster. Chandler’s RFP response indicates they will be available during the City’s administrative office hours of 7 am to 6 pm.
- Staff contacted five references listed and all references are peers within the state of Colorado. All entities providing a reference check provided very favorable feedback overall, and cited specific attributes discussed above (e.g. reporting capabilities, proactive regarding policy development, proactive communication). No negative comments were received about Chandler. One reference commented that as a result of updating their charter as Chandler suggested, their portfolio experienced greater returns while maintaining their conservative approach.

The selection of Chandler as the City’s investment advisor helps achieve City Council’s Strategic Plan Goal of “Excellence in City Services” by assisting City Staff in making the best financial decisions for the investment portfolio.

Staff and a representative from Chandler Asset Management will be present at the July 27th Council meeting to address any questions or concerns relative investment advisor services.

Respectfully submitted,

Donald M. Tripp
City Manager



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Computerized Maintenance Management System, CMMS

Prepared By: Mark Ruse, Facilities CIP and Operations Manager
Matthew Booco, Business Operations Coordinator
Debbie Mitchell, General Services Director
David Puntenney, Information Technology Director

Recommended City Council Action

Authorize the City Manager to award the bid and execute a contract with the lowest and most qualified bidder, Maintenance Connection, Inc. in the amount of \$95,704 for the purchase and implementation of a Computerized Maintenance Management System for the Building Operations and Maintenance Division, and authorize a contingency of 10% or \$9,570 bringing the total authorized expenditure for this project to \$105,274.

Summary Statement

- The Building Operations and Maintenance Division currently uses Accela for their facility maintenance and repair system. Accela was implemented for several different functions and departments across the City starting in 2004.
- Accela has proven to be inadequate for facility maintenance and repair management by lacking the following capabilities:
 - Ability to effectively schedule work;
 - Track material and man-hour costs per facility;
 - Budget future facility maintenance costs;
 - Schedule and track preventive maintenance;
 - Mobile application technology; and
 - Functionality to provide timely customer feedback.
- A Computerized Maintenance Management System (CMMS) consultant was hired in the Fall of 2014 to identify the maintenance management system needs of the Building Operations and Maintenance Division, develop the full CMMS requirements list, and draft the Request For Proposals (RFP). The consultant also helped identify and define interfaces that are required between the new CMMS and the City’s JD Edwards Enterprise reporting system, and helped to evaluate the proposals.
- A RFP was released on December 15, 2014 and three firms submitted proposals. Two of the three firms were selected by a steering committee to present a 3-hour demonstration of their software to address specific requirements provided by the City. A group of thirty City Staff members representing several departments and user groups attended the demonstrations on March 23, 2015 and provided feedback to the steering committee.
- A thorough review was completed of both final firms by the steering committee with representation and input from the Information Technology Department (IT). Maintenance Connection was selected as the best and most appropriate software for the City’s needs with the lowest cost.
- Adequate funds have been budgeted and are available for this expense.

Expenditure Required: \$105,274

Source of Funds: General Capital Improvement Fund – BO&M Computerized Maintenance Management System Project

Policy Issues

Should the City implement a new Computerized Maintenance Management System for Building Operations and Maintenance Division?

Alternatives

City Council could decline to approve the contract and direct the Building Operations and Maintenance Division to continue using Accela for their maintenance management and customer service system. This alternative is not recommended based on the limited capability of Accela as a facility operations and maintenance management system.

Background Information

A Computerized Maintenance Management System (CMMS) is a necessary business tool for today’s facility manager. As the nerve center of the facility management program, a CMMS provides the following functions:

- Maintains asset history and information for easy access;
- Accurate accounting of maintenance costs for each City facility;
- Increases efficiency and effectiveness of facility staff by prioritizing and scheduling maintenance;
- Accurate tracking of inventory;
- Validate and develop capital improvement and operational budgets;
- Optimizes workflows and best business practices; and
- Helps to proactively manage facilities through robust reporting and implementation of key performance indicators.

Once fully implemented, a CMMS is an invaluable tool to maximize the effectiveness in the City’s Building Operations and Maintenance Division operations.

On December 15, 2014, an RFP was released with a detailed list of desired CMMS capabilities. Three bids were received, as follows:

Company	Complete Bid
Denovo Ventures, LLC	\$782,230.00
GSI	\$148,335.00
Maintenance Connection	\$95,704

A CMMS steering committee comprised of representatives from General Services and IT reviewed the full proposals and selected GSI and Maintenance Connection to provide a 3-hour demonstration of the software to meet the City’s RFP desired requirements. These demonstrations were held on March 23, 2015 for a cross functional team of City Staff encompassing thirty employees from most Departments and user groups as well as all of the Building Operations and Maintenance Staff. The following day, feedback sessions were held with groups of the Staff who attended the demonstrations and there was significant support for Maintenance Connection. The steering committee conducted a thorough review of references from both final firms and then completed an in-depth review of the implementation process proposed by Maintenance Connection. Maintenance Connection is a leading maintenance management software company and has been providing services to over 1,100 customers throughout the United States and internationally for over fifteen years. Their clients include customers in government, water/wastewater treatment, IT, and healthcare industries. Maintenance Connection is currently used by the City of Boulder, City of Breckenridge and Eagle County. They have a strong client retention rate of greater than 95 percent.

Research and experience validates the importance and criticality of a strong implementation plan to ensure long term success of any CMMS. In addition to the strong implementation plan and schedule proposed by Maintenance Connection, the steering committee is recommending that a third party implementation consultant be hired. The implementation consultant will facilitate a successful implementation of the CMMS, ensuring full optimization of the new system. This consultant contract was competitively bid and will be awarded as a separate contract.

Many vendors, including Maintenance Connection, now offer two options for customers considering software solutions for their organization. IT Staff assisted in determining the option that will be most effective from an operational and cost prospective. The first option is a traditional purchase and installation of the software license on customer owned computer servers, which is referred to as the “self-hosted” or “on-site” method. The second option is a hosted (cloud-based) solution where the vendor leases/owns and manages the computer servers, and then handles the installation of software upgrades and data backups for the customers. With the cloud-based method, customers simply connect to their software on the external computer through an Internet connection.

During the evaluation process, Staff assessed costs, administration time, integration capabilities, and support time associated with both the self-hosted and cloud-based options. Staff learned that Maintenance Connection’s cloud-based offering lacked the ability to fully integrate with the City’s central user database, which would require application administrators to manage user names and passwords in two locations. This would result in additional work-load for application administrators and confusion for system users. Maintenance Connection stated that over 90% of customers similar in size to Westminster choose not to use the cloud-based solution because of the same issues identified by Staff. The self-hosted solution for this project is clearly the most effective choice from an operational and cost prospective.

The steering committee is confident Maintenance Connection will be a powerful management tool to significantly increase effectiveness and efficiency of our facility maintenance team and improve customer service and budgeting capability for continued upkeep of our aging City facilities.

The CMMS for Building Operations and Maintenance Division helps achieve City Council’s Strategic Plan Goal of “Excellence in City Services” by contributing to the objectives of well-maintained City infrastructure and facilities and efficient use of all resources.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Maintenance and Technical Support
Contract and License Agreement



SOFTWARE MAINTENANCE AND TECHNICAL SUPPORT AGREEMENT

This Software Maintenance and Technical Support Agreement (hereinafter the "Support Agreement") is entered into on this _____, by and between Maintenance Connection, Inc., a California corporation, having its principal place of business at 1477 Drew Ave., Suite 103, Davis, California 95616 hereinafter ("Vendor"), and _____, of _____, (hereinafter "Customer").

1. DEFINITIONS

The following terms and expressions shall have the following meanings when used in this agreement:

"Business Hours", shall mean Monday to Friday, excluding registered US holidays, from 6:00am to 6:00pm PST.

"Enhancements" shall mean incremental upgrades or new releases of the Software, generally containing error corrections, enhanced system functions, and new system features."

"Number of Users" shall mean the number of users specified in the Quotation who are authorized to use the Software.

"Order" shall mean any purchase order issued by the Customer made pursuant to this Agreement for software and/or services from Vendor.

"Quotation" shall mean a final price quotation for the supply of Software or Services issued by Vendor and signed by Customer.

"Services" shall mean the Services set out in this Software Maintenance and Technical Support Agreement.

"Site" shall mean the location for which the Software may be used identified in the Quotation/Order.

"Software" shall mean each Vendor software program provided by Vendor, including software in which Vendor has sub-licensing rights, in executable, machine readable, object, printed or interpreted form, any documentation, modifications, improvements or updates supplied to the Customer under any Quotation or Order.

"Software License" shall mean the Software License supplied separately by Vendor.

"Vendor" shall mean Maintenance Connection, Inc., of 1477 Drew Ave. Suite 103, Davis, CA 95616.

2. TERM

2.1 **Term/Annual Renewal.** This Support Agreement shall be effective on the date an Order for the first year of use under the Software License Agreement is submitted at the cost provided for in the Quotation. This Support Agreement shall expire upon the anniversary date of the Software License Agreement, unless renewed by Customer pursuant to this paragraph. Vendor will notify Customer in writing within thirty (30) days of a pending expiration date. Customer may, at its sole discretion, enter into one or more additional one-year terms of service under this Support Agreement by placing a purchase order, in the amount as indicated on Attachment A for annual support, with Vendor prior to the expiration date of the Support Agreement. The Customer will be invoiced in that amount for an additional annual term immediately upon the submission of the required purchase order.

3. FEES & OPTIONS

3.1. **Annual Hosting Fee.** The annual hosting fee (if applicable) includes database backups, redundant RAID disk storage, load balanced web servers and use of the Microsoft SQL Server 2000 database server.

3.2. **Annual Support Fee.** The Support Fee will be billed according to the cost provided in the Quotation on an annual basis following receipt of purchase order as described in paragraph 2.1.

3.3 **Additional Fees.** Occasionally additional services will be required that are not covered in the scope of this agreement. The rates for these services are as follows:

3.3.1 **On-site services.** Onsite service will be billable in 4-hour minimum increments, at a rate of \$200.00 per hour. Travel and any accommodation expenses for additional services that are not covered by the terms of this Agreement will be arranged and paid for by Customer.

3.4.2 Distance support. Phone support for additional services beyond the scope of this agreement will be billable at \$200.00 per hour, in ten-minute minimum increments. E-mail inquiries and responses thereto shall be free-of-charge.

4. PAYMENT

4.1 Date of Payment. CUSTOMER will pay the Annual Fees defined in section 3 within forty-five (45) days of receipt of invoice by Customer from Vendor. Failure to pay any undisputed Annual Support Fee portion of the invoice may result, at Vendor's discretion, in suspension or termination of this Support Agreement following a thirty (30) day written notice to customer.

5. DESCRIPTION OF SUPPORT AND MAINTENANCE SERVICES

5.1. Customer Support Services

5.1.1. Vendor will provide assistance on the use of the Software by telephone, fax or e-mail, during Business Hours.

5.1.2. Vendor will respond to requests for Software application advice within 1 working day of the initial request.

5.1.3 Vendor shall retain the necessary competence for enabling further development of the Software, maintenance of documentation, and assisting in fault resolution, assistance with upgrade and patching of the software, and for providing training to the Customer. Supplier does not warrant support for any application other than Software.

5.2. Software Maintenance Services

5.2.1. Vendor will provide Software maintenance, limited to the correction of errors in the Software, procedural documents and other basic information, supplied with the Software. The said Software maintenance will be carried out as set out in 5.2.2 and 5.2.4 below.

5.2.2. Vendor will provide the Customer with a list of all significant errors and corrections with each update for the Software covered by this Agreement.

5.2.3. Errors discovered by the Customer will be reported by designated representatives of the Customer through the reporting mechanisms by Vendor and will include all required supplemental documentation.

5.2.4. The Vendor will attempt to resolve the problem either over the phone, via email, or via fax within

four hours of the initial request for assistance. In the event that the error renders the Software unusable, the vendor will use all reasonable efforts to respond to the Customer with an action plan to resolve the problem within 1 working day of notification of the problem, when notification is accompanied by a reasonably complete description of the problem

5.3. Service Exclusions

For the avoidance of all doubt, Software Maintenance Services shall not include the diagnosis and rectification of any damage or defect arising out of:

5.3.1. the improper use, operation or neglect of either the Software or the Licensed Equipment;

5.3.2. the modification of the Software or its merger (in whole or in part) with any other software;

5.3.3. unless otherwise agreed by Vendor in writing the use of the Software on equipment other than the Licensed Equipment;

5.3.4. the failure by the Customer to implement recommendations in respect of the solutions and faults previously advised by Vendor;

5.3.5. any repair, adjustment, alteration or modification of the Software by any person other than Vendor without Vendor's prior written consent;

5.3.6. any breach by the Customer of its obligations under this Agreement or the License;

5.3.7. the Customer's failure to install and use on the Licensed Equipment in substitution for the previous release any new release of the Software within 90 days of receipt of the same;

5.4. Option to Provide Excluded Services. Vendor may, upon request of the Customer, provide support notwithstanding that the need for such support arises from any circumstances described in clause 5.3 above, or that the support requested is not covered by the terms of this Agreement. Vendor shall in such circumstances be entitled to charge for such service at rates detailed in 3.3 or otherwise on a time and materials basis or fixed quote upon mutual agreement of both Vendor and Customer.

5.5. Software Support Services.

Vendor agrees to provide the Customer with the following Software support services with respect to the Software:

5.5.1. Vendor will provide the Customer with all Software and related documentation for all Enhancements completed and implemented during the term of this Support Agreement.

improvements or additions to that Software provided under this Agreement will be subject to the terms and conditions of the License.

8.2 Incorporation Of Terms. The terms and conditions of this Support Agreement shall apply to all Software and Services supplied by Vendor under any Order placed by the Customer. In the event of any conflict between these terms and the provisions of the Software License Agreement, the terms of the Software License Agreement shall apply.

9. MISCELLANEOUS

9.1 Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party, except as a consequence of a transfer of ownership of all or substantially all of the assets of the party relating to this Agreement.

9.2 Severance. If a provision of this Agreement is wholly or partially invalid, this Agreement shall be interpreted as if the invalid provision had not been included herein.

9.3 Amendments. Any amendment to this Agreement shall only be effective if the amendment is in writing and is signed by authorized representatives of the parties.

9.4 Counterparts. This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement.

9.5 No Waivers. No failure of delay by a party to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, or shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

9.6 Attorney's Fees. In any proceeding brought to enforce the provisions of this Agreement, the losing party therein shall pay to the prevailing party reasonable attorneys' fees, actual court costs and other expenses incurred by the prevailing party in connection with such proceeding.

9.7 Governing Law. This Agreement shall be construed in accordance with the laws of the state of Colorado (USA). All disputes relating hereto shall be resolved in a court of competent jurisdiction, whether state or federal, in the state of Colorado (USA).

9.8 Entire Agreement. This Agreement constitutes the complete understanding between the parties of each party's obligations to the other party relating to the Services, and supercedes all other previous written or oral agreements or memoranda.

6. WARRANTIES/REMEDIES

6.1. Warranty. Vendor warrants to the Customer that it will perform the Services provided for in this Agreement with reasonable skill and care, and that the Services will not directly cause or create any defect in the Software.

6.2. Notice/Cure. The Customer shall give notice to Vendor as soon as commercially practical of a breach of warranty. Subject to 6.3 hereunder, Vendor shall remedy any breach of the warranty set out in clause 6.1 above, by the provision of Services free of charge.

6.3. Waiver. The above warranty is made in lieu of all other warranties, whether express or implied, including specifically the warranties of merchantability and fitness for a particular purpose. Without limiting the foregoing, Vendor shall not be liable for and shall have no obligation to remedy any defects or damage arising out of any of the circumstances described in 5.3 herein.

7. TERMINATION

7.1. Anniversary dates. This Agreement may be terminated for any reason on an anniversary date of this Agreement by Customer, by providing the other party with at least 30 days written notice to the other party. In addition, Customer may terminate this Agreement at any time for any reason upon ten (10) days written notice to Vendor. In the event that Vendor is discontinuing software maintenance and technical support services to other customers, then this agreement may be terminated by Vendor on an anniversary date with at least 30 days written notice.

7.2 Material Breach. Either party may terminate this Agreement if the other party is in material breach of one or more terms and conditions contained herein, and if the party-in-breach fails to cure the breach within a ninety (90) day period of time following notice from the terminating party.

7.3. Termination of Software License. This Agreement shall be terminated with respect to any particular item of Software on the date any such Software License expires or the License is terminated for any reason. However, no termination of this Agreement by either party for any reason can serve to terminate the Software License Agreement.

8. SOFTWARE LICENSE

8.1 Effect of Software License. The Customer has been granted a license by Vendor in the terms of a separate Software License to use Software being supported under this Agreement and acknowledges that any replacements,



LICENSE AGREEMENT

STANDARD LICENSE AGREEMENT

This is a legal agreement between you (either an individual or an entity) ("**Customer**") and Maintenance Connection, Inc., a California corporation, having its principal place of business at 1477 Drew Ave., Suite 103, Davis, California 95616 ("**Maintenance Connection, Inc**"). Use of this software constitutes acceptance of the terms of this agreement. If you do not agree to the terms of this agreement, contact Maintenance Connection, Inc for other licensing options or promptly return the software and the accompanying items (including written materials and binders or other containers) to Maintenance Connection or its authorized distributor from which you received the software for a full refund.

Important Notice

As part of the purchase process, you agree to accept the terms of this Agreement. This Agreement is a legal contract, which specifies the terms of the license and warranty limitation between you and Maintenance Connection, Inc. for the software and related documentation. You should carefully read the following terms and conditions before installing or using the software. Unless you have entered into a separate written license agreement with Maintenance Connection, Inc. providing otherwise, installation or use of the software indicates your agreement to be bound by these terms and conditions. If you do not agree to these terms, do not attempt to install or use the software.

License to Use

You may install the purchased software on a single physical workstation or server and use that software to run the Maintenance Connection web application software if self-hosted. Additionally, you may install the purchased software on a non-production backup server to use for disaster recovery, new release testing, and for hot-site recovery purposes. You may not use the software installed on a backup server and the production server simultaneously for production purposes.

If you have purchased multiple concurrent licenses, then you are entitled to use the number of purchased concurrent licenses at any given time. The number of users accessing the Work Order Manager and Reporter applications may not exceed the number of concurrent licenses at any given time. The number of users accessing the Service Requester application is unlimited at any given time and do not pertain to the purchased concurrent licenses.

You may not copy all or any part of the software or related documentation, except that you may make a reasonable number of copies of the software solely for backup or archival purposes.

Multiple Media and Upgrades

You may receive the software and related documentation in more than one medium. Regardless of the number of media you receive, you may use only the medium that is appropriate for the servers on which the software is to be installed for production or hot-site recovery purposes if self-hosted. You may not install, use or transfer the other media unless it is for backup, disaster recovery, or archival purposes.

If the software and related documentation are provided as an upgrade to an earlier licensed release of the software, then you must have a valid license to operate such earlier release of the software as the upgrade to install or use the upgrade. All software being upgraded is deemed to be part of the software and is subject to this Agreement.

Modification and Redistribution of Software Source Code

You may not in any way shape or form modify the .HTML/.HTM, .ASP, .JS, or .CSS files or similar source code form of those portions of the software that are non-compiled code for the purposes of designing, developing and testing your own customized implementation.

The Maintenance Connection software suite of Work Order Manager, Reporter, and Service Requester are the Intellectual Property of Maintenance Connection, Inc.

No Additional Rights or Licenses

You acknowledge and agree that except for the rights granted in this Agreement, all other rights, and all title and interest in and to the software (as an independent work and as an underlying work serving as a basis for any application you may develop) and related documentation remain the sole and exclusive property of Maintenance Connection, Inc., and that you will not derive or assert any title or interest in or to the software or related documentation. Without limiting the generality of the foregoing, you do not receive any rights to any patents, copyrights, trademarks rights to the software or related documentation. This Agreement does not authorize you to use Maintenance Connection, Inc.'s name or any of its trademarks.

Non-Compete Agreement

This License Agreement shall also serve as a Non-Compete Agreement. This Agreement is made effective as of the acceptance date of this agreement, by and between Maintenance Connection, Inc., and The Licensee.

Transfer

The software licenses are non-transferable and non-sublicenseable.

Restrictions

Customer shall not (i) modify, copy or make derivative works based on the Maintenance Connection, Inc. Technology; (ii) disassemble, reverse engineer, or decompile any of the Maintenance Connection, Inc.

Press Releases

Maintenance Connection, Inc. may issue press releases related to this Agreement.

Term and Termination

The license granted for the Maintenance Connection software will continue until it is terminated. Maintenance Connection, Inc. may terminate any license granted herein if, after sixty (60) day advance written notice, you fail cure any breach to fully comply with the terms of this Agreement. Upon the termination of a license for any reason, you must promptly return to Maintenance Connection, Inc. or destroy all copies of the software and related documentation covered by the license.

Warranty and Remedies

MAINTENANCE CONNECTION, INC. PROVIDES NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, FOR THE EVALUATION VERSION. THE SOFTWARE AND DOCUMENTATION ACCOMPANYING THE EVALUATION VERSION ARE PROVIDED "AS IS."

For the commercial version, Maintenance Connection, Inc. warrants that the physical media and the documentation will be free from defects in materials and workmanship under normal use for 90 days from the date of delivery to you. Maintenance Connection, Inc. also warrants that the software will be free from significant defects that prevent the software from performing substantially in the manner described in the applicable user manual for a period of 90 days from the date of production within Customer's environment.

If you are not 100% satisfied with the Maintenance Connection, Inc. software within 90 days of your using the software in a production environment, Maintenance Connection will refund the full purchase price upon you removing and returning to Maintenance Connection, Inc. all copies of the software and related documentation covered by the license.

At Maintenance Connection, Inc.'s option, Maintenance Connection, Inc.'s sole responsibility shall be (i) to replace defective media or documentation, as the case may be, (ii) to use reasonable efforts to correct significant defects in the software without charge.

THESE REMEDIES ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO YOU FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND RELATED DOCUMENTATION.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. By way of example, without limitation, Maintenance Connection, Inc. provides no warranties of any kind to any end-users accessing or otherwise using applications developed or otherwise obtained by you.

The warranties do not cover damage or defects caused by or related to misuse, accident, negligence or misapplication. Because programs such as this are inherently complex, Maintenance Connection, Inc. does not warrant that the software is error-free or will operate without interruption. Furthermore, Maintenance Connection, Inc. does not warrant that the software will work with any given database, network or network application.

You acknowledge that due to the complexity of the software, it is possible that use of the software could lead to the unintentional loss or corruption of data. You assume all risks of such data loss or corruption; the warranties provided in this Agreement do not cover any damages or losses resulting from data loss or corruption.

Limitation on Liability

IN NO CASE SHALL MAINTENANCE CONNECTION, INC. BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, WHETHER SUCH DAMAGES ARE BASED UPON A BREACH OF EXPRESS OR IMPLIED WARRANTIES, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY. THIS IS TRUE EVEN IF MAINTENANCE CONNECTION, INC. IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE WILL MAINTENANCE CONNECTION, INC.'s LIABILITY EXCEED THE AMOUNT OF THE LICENSE FEE ACTUALLY PAID BY YOU TO MAINTENANCE CONNECTION.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE WARRANTY LANGUAGE ABOVE MAY NOT APPLY TO YOU. IN SUCH CASE, FRONT OFFICE COMMUNICATION'S LIABILITIES SHALL BE LIMITED BY THE ABOVE LIMITATION OF REMEDIES PROVISION.

Miscellaneous

This Agreement is the complete agreement between you and Maintenance Connection, Inc. concerning the software and related documentation. The failure or delay of Maintenance Connection, Inc. to exercise any of its rights under this Agreement or upon any breach of this Agreement shall not be deemed a waiver of those rights or of the breach.

If you have any questions concerning this Agreement or the software or related documentation, you may contact Maintenance Connection, Inc at 1-888-567-3434 or can visit our website at: www.maintenanceconnection.com.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above

Maintenance Connection, Inc. _____

Account Manager

Date: _____ Date: _____

Approved as to Form: *Hurrahnam*
City Attorney



Agenda Item 8 E

Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Second Reading of Councillor’s Bill No. 32 Vacating the Final Plat for Westminster Center Subdivision, Filing No. 1

Prepared By: David W. Loseman, Assistant City Engineer

Recommended Board Action

Pass Councillor’s Bill No. 32 on second reading vacating the entire final plat for Westminster Center Subdivision, Filing No. 1 and any streets dedicated by this plat.

Summary Statement

- The Westminster Center Urban Reinvestment Project (WURP), formerly the home of the Westminster Mall, is bounded by Sheridan Boulevard, 88th Avenue, Harlan Street and 92nd Avenue, and is in the early stages of being redeveloped.
- In January 2015 a Final Plat was approved for the WURP property titled, “Westminster Center Subdivision, Filing No. 1” This was done in response to a developer’s request and the desire at that time to quickly convey certain portions of the property.
- Since then, the City has revised the approach to the development of this project and plans to work with developers on a block by block buildout of the project. This decision required some modifications to the earlier plan which requires a new final plat for the entire property. A replat of the property in this case would not work since the street rights-of-way dedicated by the earlier final plat have to be vacated by ordinance to comply with Colorado Revised Statutes.
- All utilities located within the street rights-of-way shown on this plat are either no longer in use or will be relocated when the new roads for the project are constructed.
- A copy of the plat to be vacated is included as Exhibit A.
- This Councillor’s Bill was passed on first reading on July 13, 2015.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments - Ordinance
Final Plat

BY AUTHORITY

ORDINANCE NO. **3788**

COUNCILLOR'S BILL NO. **32**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

Briggs - Seitz

A BILL

FOR AN ORDINANCE VACATING ALL STREET RIGHTS-OF-WAY DEDICATED ON THE PLAT FOR WESTMINSTER CENTER SUBDIVISION, FILING NO. 1

WHEREAS, the Westminster Economic Development Authority, the owner of property bounded by 92nd Avenue, Sheridan Boulevard, 88th Avenue and Harlan Street, and specifically described as the Westminster Center Reinvestment Project, has requested the City vacate all street rights-of-way dedicated on the final plat for Westminster Center Subdivision, Filing No. 1; and

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

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

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

Section 2. The street rights-of-way for Westminster City Center Subdivision, Filing No. 1 as recorded under Reception No. 2015002087 in the records of the Clerk and Recorder for Jefferson County, Colorado as described in Exhibit A, attached hereto and incorporated herein by this reference, are hereby vacated, pursuant to Section 43-2-303(3), C.R.S.

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

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

INTRODUCED, PASSED ON FIRST READING AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of July, 2015.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

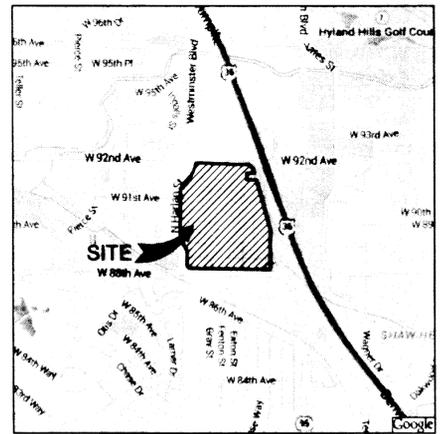
City Attorney's Office

FINAL PLAT

WESTMINSTER CENTER SUBDIVISION, FILING NO. 1

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 24, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF JEFFERSON STATE OF COLORADO

SHEET 01 OF 03

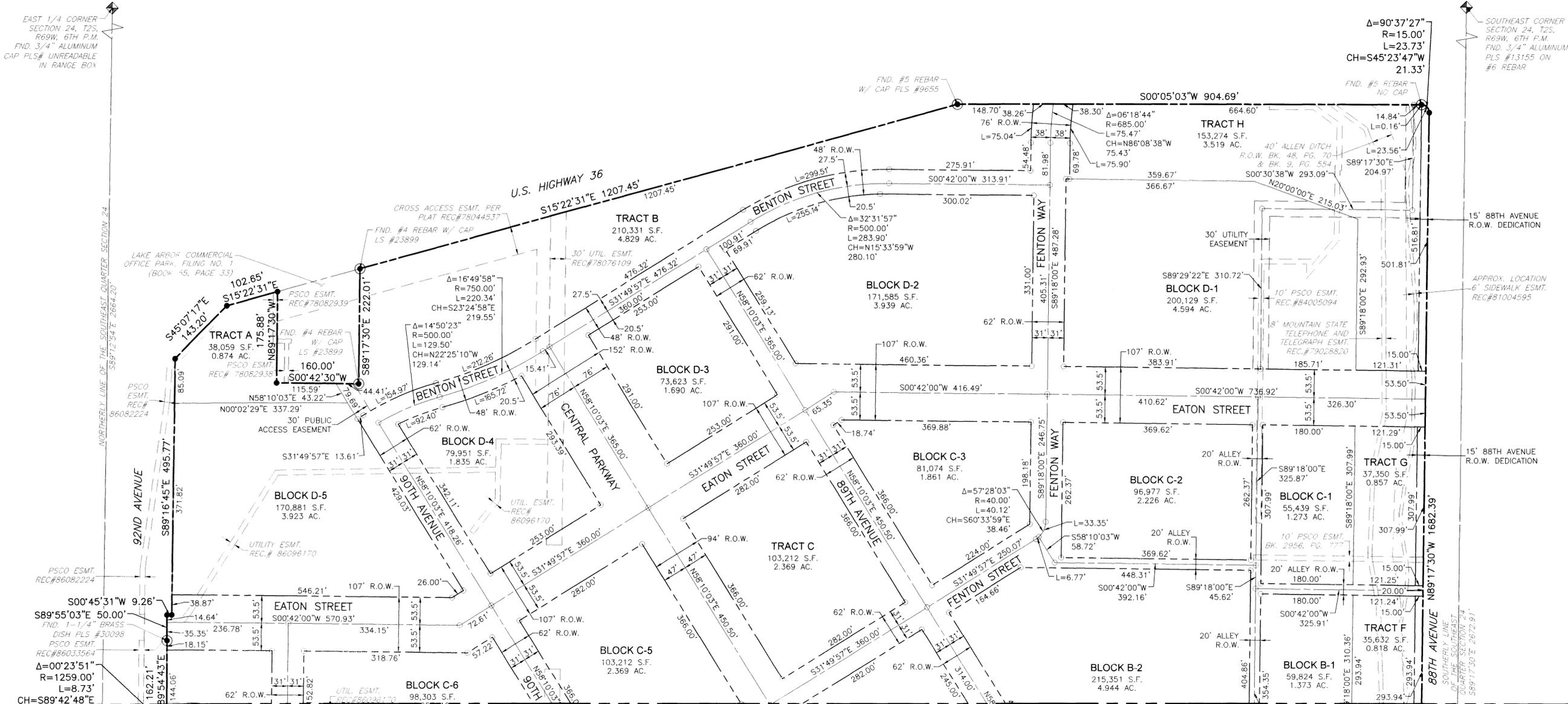


FINAL PLAT

WESTMINSTER CENTER SUBDIVISION, FILING NO. 1

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 24, TOWNSHIP 2 SOUTH,
RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
CITY OF WESTMINSTER, COUNTY OF JEFFERSON
STATE OF COLORADO

SHEET 02 OF 03



Location: G:\latter\13.0463-Downtown Westminister\PLANS\PLAT\02-03-PLAN.dwg
 Drawn By: SH
 Job Number: Sheet Number:
 Project Manager:
 Surveyed By:

LEGEND

—	EXISTING	—	PROPOSED
—	PROPERTY LINE	—	PROPERTY LINE
—	RIGHT-OF-WAY LINE	—	RIGHT-OF-WAY LINE
—	BLOCK LINE	—	BLOCK LINE
—	SECTION LINE	—	SECTION LINE
—	EASEMENT	—	EASEMENT
○	POINT OF CURVATURE/INTERSECTION	○	POINT OF CURVATURE/INTERSECTION
●	SET #4 REBAR W/ CAP PLS #23899 (UNLESS OTHERWISE SPECIFIED)	●	SET #4 REBAR W/ CAP PLS #23899 (UNLESS OTHERWISE SPECIFIED)
◊	SECTION CORNER	◊	SECTION CORNER
—	DRIVE	—	DRIVE

SCALE: 1"=100'
ALL DIMENSIONS SHOWN ARE U.S. SURVEY FEET



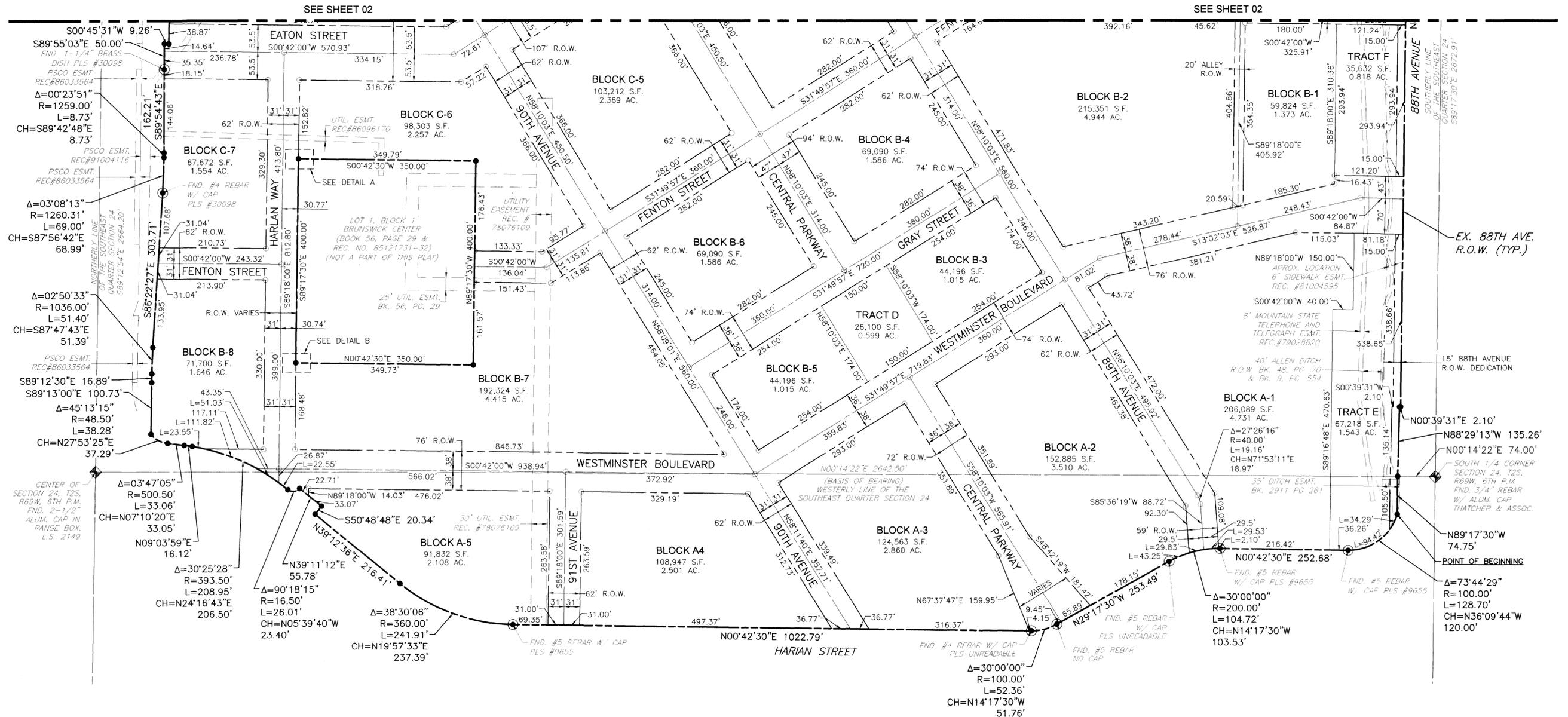
DECEMBER 17, 2014
 NOVEMBER 20, 2014
MARTIN/MARTIN
 CONSULTING ENGINEERS
 12499 WEST COLFAK AVENUE, LAKEWOOD, COLORADO 80015
 MAIN 303.431.6100 MARTINMARTIN.COM

FINAL PLAT

WESTMINSTER CENTER SUBDIVISION, FILING NO. 1

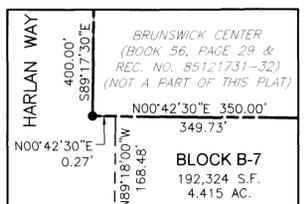
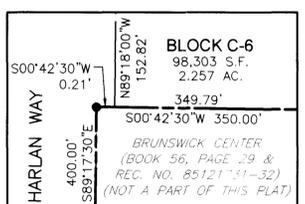
A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 24, TOWNSHIP 2 SOUTH,
RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
CITY OF WESTMINSTER, COUNTY OF JEFFERSON
STATE OF COLORADO

SHEET 03 OF 03



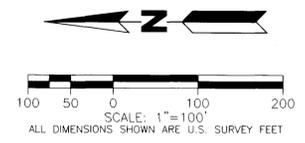
SEE SHEET 02

SEE SHEET 02



LEGEND

EXISTING	PROPOSED
	PROPERTY LINE
	RIGHT-OF-WAY LINE
	BLOCK LINE
	SECTION LINE
	EASEMENT
	POINT OF CURVATURE/INTERSECTION
	SET #4 REBAR W/ CAP PLS #23899 (UNLESS OTHERWISE SPECIFIED)
	SECTION CORNER
	DRIVE



DECEMBER 17, 2014
NOVEMBER 20, 2014

MARTIN/MARTIN
CONSULTING ENGINEERS

12499 WEST COLFAX AVENUE, LAKEWOOD, COLORADO 80215
MAIN 303.431.6100 MARTINMARTIN.COM

Plot Date: _____
Project Manager: _____
Drawn By: _____
Job Number: _____
Sheet Number: _____
Surveyed By: _____



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Second Reading of Councillor's Bill No. 33 Appropriating Funds from the Regional Transportation District

Prepared By: John Burke, Senior Projects Engineer

Recommended City Council Actions

Pass Councillor's Bill No. 33 on second reading appropriating a total of \$4,055,525 to the Westminster Station Garage/Grove Street project from the Regional Transportation District per the Intergovernmental Agreement between the City and the District, executed in June 2012.

Summary Statement

This Councillor's Bill was passed on first reading on July 13, 2015.

The City and the Regional Transportation District (RTD) entered into an intergovernmental agreement (IGA) pertaining to the Northwest Rail Electrified Segment - Westminster Station in June 2012. The IGA allows the City to implement an alternative approach to RTD's originally proposed base plan for the design and construction of commuter rail and bus access, parking and pedestrian areas that will support the Westminster Station. Per the IGA, the City is required to provide 350 parking spaces within the proposed parking structure for RTD patron use by the opening day of the station in mid-2016. The Beck Group was awarded the design/build contract at the June 23, 2014 City Council meeting and initiated the design phase of the project.

Council action is requested to appropriate funds to be reimbursed by RTD per the Intergovernmental Agreement between the City and RTD for this project.

Expenditure Required: \$4,055,525
Source of Funds: General Capital Improvement Fund—Westminster Station Garage/Grove Street Project

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments

- Councillor's Bill
- Vicinity Map

BY AUTHORITY

ORDINANCE NO. **3789**

COUNCILLOR'S BILL NO. **33**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

Garcia - Briggs

A BILL

FOR AN ORDINANCE AMENDING THE 2015 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2015 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2015 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3737 is hereby increased by \$4,055,525. This appropriation is due to payments which will be received by the City of Westminster from the Regional Transportation District as the result of an Intergovernmental Agreement regarding the Westminster FasTracks Rail Station project.

Section 2. The \$4,055,525 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item #10 B-C, dated July 13, 2015, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$4,055,525</u>
Total	<u>\$4,055,525</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, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of July, 2015.

ATTEST:

Mayor

City Clerk



Vicinity Map

72nd Ave

Lowell Blvd

Federal Blvd

71st Ave

Hooker St

Parking Structure Location

PARKING
STRUCTURE

PERMANENT
BUS TRANSFER
FACILITY

HOOKER ST
GROVE ST

0 50 100 200
Feet



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Second Reading of Councillor's Bill No. 34 Amending Title VI, Chapter 7 W.M.C., with Code Updates

Prepared By: Hilary Graham, Deputy City Attorney
Kim Barron, Neighborhood and Support Services Commander
Kelli Jelen, Animal Management Supervisor

Recommended City Council Action

Pass Councillor's Bill No. 34 on second reading making revisions to Title VI, Chapter 7 of the Westminster Municipal Code.

Summary Statement

- Staff proposes updates to the Westminster Municipal Code (W.M.C.) to remain current with animal management trends and consistent with State requirements. As a result, the majority of the list of proposed updates are "housekeeping" in nature, while some are more substantive.
- This Councillor's Bill was approved on first reading on July 13, 2015.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment: Councillor's Bill No. 34

BY AUTHORITY

ORDINANCE NO. **3790**

COUNCILLOR'S BILL NO. **34**

SERIES OF 2015

INTRODUCED BY COUNCILLORS
Seitz - Baker

A BILL FOR AN ORDINANCE AMENDING TITLE VI, CHAPTER 7, OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING ANIMALS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 6-7-1 W.M.C., is hereby AMENDED to read as follows:

6-7-1: DEFINITIONS: (1463 1890 1973 2066 2576 3062 3288) The following words, terms and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Abandon” shall mean leaving of an animal for more than 24 hours by its owner or custodian without making effective provisions for its proper care. This shall include, but is not limited to, depositing or dropping off an animal on public property or on property other than that of the owner or custodian without prior permission of the property owner.

“Animal” shall mean any living dumb creature, domestic or wild-organism in the kingdom animalia, other than a human being.

“Animal Management Officer” shall mean an employee or agent of the City authorized by the Chief of Police to enforce the provisions of this Chapter.

“Animal Shelter” shall mean any premise designated by the City for the purpose of boarding or the caring of any animal impounded under the provisions of this Chapter or any other ordinance of the City or law of the State the animal shelter designated by contract for care and shelter of abandoned or neglected animals or animals impounded by the City, and authorized by this Chapter to provide other services for animals on behalf of the City. The designated shelter is, until changed by the City or the shelter, the Foothills Animal Shelter, formerly known as Table Mountain Animal Center.

“Cat” shall mean a domestic cat (felis catus) of either sex, including one neutered regardless of gender that can be vaccinated against rabies.

“Common Area” shall mean and include areas such as but not limited to the yards, grounds, garden areas, play areas, clubhouses, swimming pools, walkways, common garage areas, entryways, hallways, and driveways of condominiums, townhouses, apartment complexes, motels, hotels and mobile home parks.

“Countywide Licensing Administrator” shall mean the entity to which authority to issue dog licenses for all dogs within the City, regardless of County of residence, and to collect fees for said licenses has been delegated by the parties to the Animal Shelter/Dog Licensing/Funding Intergovernmental Agreement, dated August 15, 2012, as may be amended from time to time.

“Dog” shall mean a domestic dog (canis domesticus-canus lupus familiaris) of either sex, including one neutered regardless of gender that can be vaccinated against rabies.

“Dog License” shall mean current indication that the dog has been registered with the Countywide Licensing Administrator within the previous 365 days.

“Domestic Animal” shall mean domesticated or household dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, and invertebrates, commonly found in a pet store and intended

to live and breed in a tame condition. It shall also include pot-bellied pigs, except livestock and exotic endangered and prohibited animals.

“Endangered Species” shall mean any species of animal, bird or reptile that is currently listed as endangered by the United States Department of Interior or the Colorado Department of Natural Resources.

“Exotic Animals” shall mean a rare or unusual animal or pet kept within human households and not commonly thought of as a pet ~~arachnids, crocodilians over one foot (1') in length and other reptiles that are not prohibited animals that are not commonly kept or harbored as a household pet.~~

“Feral” shall mean an animal that has escaped from domestication and returned, partly or wholly, to a wild state.

“Guard Dogs” shall mean any dog disciplined through special training to protect ~~placed within an enclosed area for the protection of persons or property by attacking or threatening to attack any person found within the enclosed area patrolled by such dog.~~

“Harboring” shall mean the act of keeping and caring for an animal or of providing a premises to which the animal returns for food, shelter or care.

“Humane Trap” shall mean a box-type trap that does not cause bodily harm to the animal intended to be captured or to any other animal or person coming in contact with such trap.

“Kennel” shall mean premises where more than five (5) non-livestock animals, excluding offspring not exceeding four (4) months of age belonging to one (1) of the adult animals, are kept for any purpose, including boarding, foster care or training. The term "kennel" does not include pet shop.

“Livestock” shall mean any animal commonly kept or harbored, as a source of food, hides, income through agricultural sale, as a pack animal or draft animal or for use as transportation. Livestock includes, but is not limited to, horses, mules, sheep, goats, cattle, swine, chickens, ducks, geese, pigeons, turkeys, pea fowl, guinea hens, and bees. In the event of uncertainty concerning whether a particular animal is a species of livestock, the presumption shall be that such animal is a species of livestock until the owner of such animal proves by a preponderance of the evidence to the satisfaction of the Municipal Court that the animal is not a species of livestock.

“Owner” shall mean any person who has right of property in an animal or harbors an animal or allows an animal to remain about his premises for a period of seventy-two (72) hours or longer; claims responsibility for an animal; or is declared by court decree to be the responsible party for an animal or the authorized agent of any such person. The parent or guardian of any minor claiming ownership of an animal shall be deemed to be the owner of the animal for purposes of this Chapter.

“Person” shall mean any natural person, corporation, partnership, association, or other entity.

“Pet Shop” shall mean an establishment engaged in the business of breeding, buying or selling animals, other than livestock, in commercial, wholesale or retail trade.

“Potbellied Pig” shall mean a pig registered with a bona fine potbellied pig registry and weighing less than ninety-five (95) pounds.

“Potentially Dangerous Animal” shall mean any animal that may reasonably be assumed to pose a threat to public safety as demonstrated by any of the following behaviors:

- (1) Causing an injury to a person or domestic animal that is less severe than a serious injury;
- (2) Without provocation, chasing or menacing a person or domestic animal in an aggressive manner; or

(3) Actings in a highly aggressive manner within a fenced yard/enclosure and appears to a reasonable person able to jump over or escape while encroaching onto public or private property, from a vehicle, or from the owner's yard through, on or over a fence.

“Prohibited Animal” shall mean any animal that is ordinarily found in an unconfined state and is usually not kept as a household pet, including, but not limited to, lions, tigers, cheetahs, panthers, leopards, cougars, mountain lions, ocelots, any wild members of the genus felis, lynx, bobcats, foxes, minks, skunks, raccoons, bears, nonhuman primates, wolves and coyotes; poisonous or venomous snakes and lizards; lethal toads and arachnids (spiders, scorpions, and tarantulas), crocodilians and nonpoisonous snakes over six feet (6') in length. "Prohibited animal" shall not include domestic ferrets (mustelia furo), ~~livestock~~, rabbits, dogs, cats, and small rodents. Alleged domestication of any prohibited animal shall not affect its status under this definition. In the event of uncertainty whether a particular animal is a prohibited animal, it shall be presumed prohibited until proven not prohibited by a preponderance of the evidence to the satisfaction of the Municipal Court.

“Proper Enclosure” shall mean secure confinement indoors or secure confinement in a locked pen, fenced yard, or structure measuring at least six feet (6') in width, twelve feet (12') in length, and six feet (6') in height, capped with secure sides and constructed at the bottom so as to prevent escape by digging, which provides proper protection from the elements for the animal, is suitable to prevent the entry of young children, and is designed to prevent the animal from escaping while on the owner's property. The proper enclosure must comply with all zoning and building ordinances/regulations of the City, be kept in a clean and sanitary condition, and be approved by ~~the~~ an Animal mManagement eOfficer, and such approval shall not be unreasonably withheld.

“Rabies Vaccination” shall mean inoculation of a domestic animal with an anti-rabies vaccine approved by the Colorado Department of Health and administered by a licensed veterinarian. The vaccination shall be valid for the period of time specified in writing by the veterinarian for the specific vaccine used.

“Responsible Person” shall mean a person at least eighteen (18) years old who is familiar with the animal, and has the size, strength, and experience to be able to keep the animal under complete control at all times.

“Running at Large” shall mean an animal off the premises of the owner and not under the physical control of the owner.

“Serious Injury” shall mean death or any physical injury that results in severe bruising, muscle tears, or skin lacerations requiring professional medical treatment or requires corrective or cosmetic surgery.

“Shelter” shall mean a moisture-proof structure made of durable material that allows retention of body heat and is of suitable size to accommodate the animal.

“Stray Animal” shall mean any animal for which there is no identifiable owner.

“Vicious Animal” shall mean any animal that:

- (1) Causes a serious injury or death to a person or domestic animal; or
- (2) Has a previous potentially dangerous animal conviction and continues to engage in behavior that poses a threat to public safety as described in this Chapter's definition of potentially dangerous animal; or
- (3) Has engaged in or been trained for animal fighting as described and prohibited in Section 18-9-204, C.R.S.; or
- (4) Has a demonstrated history of behavior that would cause a reasonable person to believe that the animal may inflict serious injury or death upon any person or domestic animal.

“Wild Animal” shall mean all wildlife, including but not limited to, raptors, furbearers, all game animals, and all other species of animals, which exist in their natural, unconfined state and are usually not domesticated.

Section 2. Section 6-7-2, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

(A) VACCINATIONS: It shall be unlawful for any owner of a dog or cat ~~six-four~~ (64) months of age or older to fail to have such animal vaccinated against rabies. All dogs and cats shall be vaccinated at ~~six~~ four (64) months of age and revaccinated thereafter at the expiration of the validity of the vaccine used, as shown on the written document prepared by a licensed veterinarian. The vaccination shall be valid for the period shown on the document. Any person moving into the City from a location outside the City shall comply with this Section within thirty (30) days after having moved into the City by having the animal vaccinated or showing proof of current, valid vaccination. If the dog or cat has inflicted a bite on any person or another animal within the last ten (10) days, the owner of said ~~dog-animal~~ shall report such fact to a veterinarian, and no rabies vaccine shall be administered until after ~~a ten (10) day~~ the required observation or quarantine period.

(B) PROOF OF VACCINATION: It shall be unlawful for any person who owns a vaccinated animal to fail or refuse to exhibit his copy of the certificate of vaccination upon demand to any person charged with the enforcement of this Chapter. A current rabies tag, if provided by the veterinarian administering the vaccine, shall be attached to a collar, harness or other device and shall be worn by the vaccinated dog or cat at all times. The requirement for a dog to display a current rabies tag shall not apply to a dog that is displaying a current dog license tag affixed to a collar, harness or other device worn on the dog in compliance with Section 6-7-4, W.M.C.

Section 3. Section 6-7-3, subsection (D), W.M.C., is hereby AMENDED to read as follows:

(D) CONFINEMENT OF ANIMALS: Any dog or cat-animal capable of transmitting or carrying the rabies virus that has bitten a person shall immediately be confined to be observed for symptoms of rabies unless the animal is submitted to a laboratory for analysis. An Animal Management Officer shall determine the length of time that said animal must remain in confinement based upon the guidelines and requirements of the Colorado Department of Health. may either be observed for a period of ten (10) days from the date of the bite, or analyzed for rabies virus by a laboratory. Ferrets, potbellied pigs, wolf hybrids, wolves and other wildlife that have bitten a person must be observed for a period of not less than thirty (30) days, or tested for rabies if required by Colorado Division of Wildlife or Department of Health regulations. The procedure and place of observation or analysis shall be designated by the investigating officer or responsible agency. If the animal is not confined on the owner's premises, confinement shall be by impoundment in the City Animal Shelter, a pet shop with a Class B license, or at any veterinary hospital of the owner's choice within the City of Westminster. Such confinement shall be at the expense of the owner. Stray animals whose owners cannot be located shall be confined as designated by the City. The owner of any animal that has been reported to have inflicted a bite on any person shall on demand produce said animal for impoundment, as prescribed in this Section or for laboratory analysis. Refusal to produce said animal constitutes a violation of this Section, and each day of such refusal shall constitute a separate and continuing violation.

Section 4. Section 6-7-4, subsection (A), W.M.C., is hereby AMENDED to read as follows:

(A) DOG LICENSE REQUIRED:

(1) It shall be unlawful for any owner of any dog being kept in the City of Westminster, including both Adams and Jefferson Counties, over the age of ~~six-four~~ (64) months, or within thirty (30) days of acquisition of said dog, whichever occurs last, to fail to obtain a License for such animal as required by this Section. Any dog present in the City that has been kept or harbored in the City for 30 days or more within the prior 365-day period shall have a current Dog License.

(2) The ~~Jefferson County Animal Control Division~~ Countywide Licensing Administrator will administer the City of Westminster's ~~Ddog Licenseing~~ program (the "dog license") and distribute the ~~Ddog License~~ tags. Application for a ~~Ddog License~~ shall be made to the ~~Jefferson County Animal Control Division~~ Countywide Licensing Administrator or to such agents as designated by the ~~County of Jefferson Administrator~~. Dog ~~L~~licenses and tags shall be issued, renewed, replaced and expired in accordance with ~~Jefferson County's~~ the Countywide Administrator's requirements, including, but not limited to, proof of current rabies vaccination and reduced ~~Ddog license~~ License fee if the dog is spayed or ~~/~~neutered.

(3) A dog owner may request an exemption to these Dog License provisions if, for medical reasons the dog cannot be vaccinated. In this event, a dog owner must submit an affidavit from a licensed veterinarian stating the reasons why the dog is unable to be vaccinated.

~~(3)~~(4) It shall be unlawful for a dog owner to fail to renew a ~~Ddog License~~ once every three hundred sixty-five (365) days.

~~(4)~~(5) The ~~Ddog License~~ fee, including the fee for replacement ~~L~~licenses, shall be in amounts as set by the ~~Jefferson County Board of Commissioners~~ Countywide Licensing Administrator.

~~(5)~~(6) It shall be unlawful for an owner of an assistance or service dog to fail to obtain a ~~Ddog License~~ as required by this Section. An individual person with a disability who owns a service dog is exempt from ~~any~~ the annual licensing fees ~~that might otherwise apply in connection with owning an assistance dog as set forth in Section 24-34-803, C.R.S.~~

(7) Any dog owner or any entity exempt from Jefferson County's ~~the~~ Countywide Licensing Administrator's ~~dog~~ Ddog Licenseing requirements shall be exempt from the provisions of this Section.

Section 5. Section 6-7-5, subsection (A), W.M.C., is hereby AMENDED to read as follows:

(A) ANIMALS RUNNING AT LARGE PROHIBITED:

(1) It shall be unlawful for any owner of an animal to fail to restrain the animal by physical means from running at large. Running at large includes unattended animals chained or tied in public places or in common areas. In addition to being a violation of this Section, an animal running at large is declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code. This subsection (A)(1) shall not apply to dogs running off-leash at an off-leash dog site as established in Section 13-1-3(Z), W.M.C.

~~(2)~~ Neutering/spaying required. Subject to the discretion of the Municipal Court, it shall may be unlawful for any owner of an animal running at large to allow the animal to remain in a non-neutered or unspayed condition.

(3) It shall be the burden of the owner to prove that the animal is neutered or spayed by the production of a veterinarian's opinion or other documentary evidence.

Section 6. The Title of Section 6-7-7, W.M.C., is hereby AMENDED to read as follows and subsection (C) is hereby DELETED:

6-7-7: DISTURBANCE; PUBLIC NUISANCE: (1463 1635 1973 2576 3288)

(A) It shall be unlawful for any owner of any animal to allow the animal to disturb any person by barking, howling, yelping, or other audible sound. In addition to being a violation of this Section, the same is hereby declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code.

(B) (1) No person shall be charged with violating this Section unless a written warning was given to the owner or person in custody of the animal by an Animal Management Officer or police officer within

twelve (12) months preceding the first date alleged as a date of violation in the complaint. A warning is given under this subsection if it is personally given to the owner or person in custody of the animal, or it is posted upon the property of the owner or person in custody or mailed first-class to such person. Such records are prima facie evidence that such warnings were given.

(2) No summons shall be issued and no person shall be convicted at trial for violating this Section unless two (2) or more witnesses from different households testify to the loud and persistent or loud and habitual nature of the noise, or unless there is other evidence corroborating the testimony of a single witness. An Animal Management Officer or a police officer who can corroborate the elements in this Section may issue summons and testify as the second witness.

~~(C) It shall be unlawful for any owner to fail to exercise proper control of the animal to prevent it from becoming a public nuisance. In addition to public nuisance declared in other provisions of this Code, the following shall be deemed a public nuisance:~~

~~(1) An animal harassing passersby by encroaching on public or private property, including snarling or growling while leaning on, over or through fences or walls.~~

~~(2) Unattended animals chained or tied in public places, or in private property open to the public, or in the common ground of condominiums, townhomes, apartment complexes and mobile home parks.~~

Section 7. Section 6-7-9, subsections (B) and (D), W.M.C., are hereby AMENDED to read as follows:

(B) **DISPOSITION OF IMPOUNDED ANIMALS:** As soon as practicable after impoundment, a bona fide effort shall be made to give notice of impoundment to the owner. Any impounded animal shall be released to the owner upon payment of the impoundment fee, boarding fee, veterinary care charges, and any other costs associated with impoundment. If such animal is not redeemed within five (5) days ~~the time period contained within C.R.S. § 35-80-106.3~~, it shall be considered abandoned and may be euthanized or placed for adoption at the discretion of the Animal Shelter. The failure of the owner to redeem an animal shall release the City and the Animal Shelter, and their officers, employees, and agents, from any and all liability for the animal's subsequent euthanization or adoption.

~~(D) **SALE:** Animals impounded and kept for five (5) days in a pet store with a Class B license that have not been claimed by an owner shall be deemed abandoned and may, at the discretion of the pet shop, be retained on the sixth (6th) day of impoundment and sold in lieu of reimbursement for all applicable boarding costs and veterinary fees.~~

~~(E)~~ **FAILURE TO PRODUCE ANIMAL:** The owner of any animal subject to impoundment under paragraph (A) of this Section shall, on demand of ~~the~~ an Animal Management Officer, or other person who may be so authorized by this Chapter, produce the animal for impoundment as prescribed in this Section. It shall be unlawful for the owner of any such animal to fail or refuse to produce the animal on demand.

Section 8. Section 6-7-10, subsection (B), W.M.C., is hereby AMENDED as follows:

(B) **LICENSES: ISSUANCE; RENEWAL:** Kennel licenses shall expire on the thirty-first (31st) day of December each year. No kennel license shall be issued until an inspection certificate has been issued by ~~the~~ an Animal Management Officer or designee. The license issued shall specify the maximum number of animals permitted. It shall be unlawful for the licensee to keep any number of animals in excess of the maximum specified on the license. All applicants for a kennel license within the City, if required to be licensed by the Colorado Department of Health or the Colorado Department of Agriculture, must have a valid license issued by said Department to qualify for licensing by the City. The possession of a State license, however, shall not in itself assure that a City license will be granted to anyone. Standards and regulations affecting kennels may be adopted by the City that are more restrictive than applicable State standards.

Section 9. Section 6-7-12, subsections (A), (D), (E) and (F), W.M.C., are hereby AMENDED and a new subsection (G) is ADDED to read as follows:

6-7-12: RESTRICTIONS ON SALE AND POSSESSION OF ANIMALS: (1463 1890 1973 2066 3062 3288)

(A) ANIMALS IN RESIDENTIAL DISTRICTS:

(1) It shall be unlawful for anyone to knowingly possess, harbor, keep, maintain, or permit on any property within the City zoned for residential use more than ten (10) domestic animals, of which no more than three (3) shall be a combination of dogs or cats over the age of four (4) months.

- ~~(a) A combination of more than three (3) dogs or cats;~~
- ~~(b) More than one (1) potbellied pig;~~
- ~~(c) More than three (3) rabbits;~~
- ~~(d) More than five (5) exotic animals or a combination of more than five (5) domestic and exotic animals; or~~
- ~~(e) More than ten (10) domestic animals.~~

(2) In addition to being a violation of this Section, the same is hereby declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code.

If the keeping of animals under this subsection (A) is in conflict with any provision of this Chapter concerning exotic, endangered, or prohibited animals, or any state or federal statute or regulation, such other provision, statute or regulation shall control. This subsection (A) shall not include fish.

(D) FEDERAL AND STATE STATUTES AND REGULATIONS: It shall be unlawful for any person to import, offer for sale, sell, keep, possess or willfully maintain, harbor or permit in the City any animal in violation of any state or federal statute or regulation.

(E) EXCEPTIONS: The prohibitions in subsections (B) and (C) of this Section shall not apply to any of the following:

- (1) A bona fide publicly or privately owned zoological park.
- (2) A bona fide research institution using animals for scientific research.
- (3) A circus duly authorized to do business in the City.
- (4) A veterinary hospital operated by a veterinarian currently licensed by the State of Colorado.
- (5) Wildlife rehabilitators, falconers, or scientific collection permit holders who are currently licensed by ~~the Colorado Division Parks and of Wildlife.~~

(F) POTBELLIED PIGS: It shall be unlawful for any person to possess, harbor, keep, maintain or permit at his dwelling within the City any potbellied pig or any pig purporting to be a potbellied pig, unless the owner complies with the requirements of this Section. It shall be unlawful for any owner to fail to comply with these requirements.

(1) The pig must be registered through a bona fide potbellied pig registry.

(2) The owner of any potbellied pig four (4) months of age or older shall ~~procure a license obtain a permit issued by the City of Westminster~~ for the pig. Upon proof of registration through a bona fide potbellied pig registering and proof of neutering, the City shall issue a permit, dated and numbered receipt and corresponding tag. ~~In the event of loss or destruction of the original license tag, the owner shall obtain another tag from the City. Pig licenses are not transferable. It shall be unlawful for any person to use or attempt to use a tag for any pig other than the pig for which the tag was originally issued.~~

(3) ~~The license~~ An identification tag with the owner's name and phone number shall be attached to a harness and worn by the pig at all times.

(4) A potbellied pig shall be neutered prior to four (4) months of age.

(5) A potbellied pig shall not exceed ninety-five (95) pounds in weight.

(6) No more than one (1) potbellied pig shall be permitted on any residential property.

(7) A potbellied pig kept on residential property shall be kept as a pet for personal enjoyment, and not kept or raised for breeding, sale, or human consumption.

(G) PUBLIC SALE OF ANIMALS: It shall be unlawful for any person to knowingly sell an animal follows:

(1) From a public highway, street, park or any public property adjacent to a public highway, street or park; or

(2) From any commercial private property without the express written consent of the owner or lessee of the property; or

(3) That is weak, sick, or un-weaned; or

(4) That is a cat or dog fewer than eight (8) weeks of age.

Section 10. Section 6-7-13, subsections (A), (B), (C), (E), (F) and (H), W.M.C., are hereby AMENDED and a new subsection (I) is ADDED to read as follows:

6-7-13: CARE AND TREATMENT: (1463 1973 2576)

(A) CRUELTY TO ANIMALS: It shall be unlawful for any person knowingly, recklessly or with criminal negligence to overload, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate, needlessly kill, carry or confine in or upon any vehicle in a cruel or reckless manner, or allow to be housed in a manner that results in chronic or repeated serious physical harm ~~or to otherwise mistreat or neglect any animal, or, having the charge or custody of any animal, fail to provide it with proper food, drink or protection from the weather, or to abandon it.~~ Neglect of an animal resulting in the death of the animal shall constitute cruelty. Ownership of the animal or the commission of such acts on private property shall not be a defense to prosecution for violation of this Section.

(B) POISONING: It shall be unlawful for any person to knowingly poison any domestic animal or livestock, or to knowingly distribute poison or toxicants on public or private property in any manner whatsoever that causes the poisoning of any domestic animal or livestock. This provision shall not apply to the extermination of undesirable pests as defined in Articles 7, 10, and 43 of Title 35, C.R.S.

(C) NEGLECT OF ANIMALS: It shall be unlawful for the owner or any person entrusted with the care of any animal to deprive or fail to provide such animal of adequate and wholesome food, and water, or protection from the elements weather as shall be consistent with the keeping of the species, breed, and type of animal involved; to fail to provide the animal with proper protection from extremes in temperatures; to fail to provide the animal with an opportunity for exercise; to fail to provide the animal with adequate veterinary care; or to otherwise neglect the animal in such a manner as to endanger its health or cause it to suffer or die.

(D) SANITATION: It shall be unlawful for the owner of any animal to fail to maintain the premises upon which animals are kept in a clean and sanitary condition, which premises shall be subject to inspection at all reasonable hours by City representatives.

(E) **ABANDONING ANIMALS:** It shall be unlawful for any person to knowingly abandon an animal by leaving the animal with intent not to return within a reasonable time. Abandonment includes, but is not limited to, the dumping of an animal from a moving or stationary motor vehicle. This Section shall not apply to voluntary relinquishments to the Animal Shelter, an Animal Management Officer or to a licensed veterinarian.

(F) **CONFINEMENT OF ANIMALS:** Every person who keeps an animal confined in an enclosed area shall provide it with an adequate exercise area as well as adequate shelter, food, and water. If the animal is restricted by a leash, rope, chain or cable, it shall be affixed in such manner that it will prevent the animal from becoming entangled or injured, and permit access to adequate shelter, food and water.

(G) **DISPLAY OR SALE OF DYED OR IMMATURE ANIMALS:** It shall be unlawful for any person to possess, display, sell, barter or give away, dyed, colored or in any way artificially treated baby chicks, ducklings, fowl, rabbits or any other animal as pets, playthings, novelties, gifts or for any other purpose.

(H) **FIGHTING ANIMALS:** It shall be unlawful for any person to cause, sponsor, instigate, allow or encourage any animal to fight with another of its own species or with another of a different species. It shall be unlawful for any person to train, breed or keep any animal for the purpose of fighting. It shall be unlawful for any person to maintain a place where animals are permitted to fight for exhibition, wager or sport.

(I) FEEDING OF WILD ANIMALS: It shall be unlawful to knowingly place or provide food for any wild animal. This prohibition shall not apply to squirrels or birds.

Section 11. Section 6-7-14, subsection (D), W.M.C., is hereby AMENDED to read as follows:

(D) It shall be unlawful for any person to set or cause to be set any steel-jaw leg hold trap, snare, or any trap other than a humane trap for the purpose of capturing an animal, whether wild or domestic, excepting a licensed or recognized business that has been given permission by ~~the Colorado Division Parks and Wildlife~~, the Colorado Department of Health, or the animal management officer to trap problem wildlife. Any trapping authorized under this Chapter must be in compliance with the Colorado Constitution and Statutes.

Section 12. Section 6-7-17, subsection (D), W.M.C., is hereby AMENDED to read as follows:

6-7-17: PENALTIES: (3288 3345)

(A) The following provisions of this Chapter are hereby deemed criminal violations of this Code. Any person who violates any of the provisions of this Chapter listed in this subsection (A) shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine or by confinement in jail, or by both such fine and imprisonment as specified in Section 1-8-1, W.M.C., subject to any recommended minimum fines:

Section 6-7-3	Animal Bites
Sections 6-7-8(B) and (C)	Vicious Animals and Potentially Dangerous Animals
Section 6-7-9(D E)	Failure to Produce Animal
Section 6-7-10(E)	Care of Animals
Section 6-7-11(D)	Care of Animals
<u>Section 6-7-12(G)</u>	<u>Sale of Animals</u>
Section 6-7-13(A)-(I)	Care and Treatment
Section 6-7-16	Interference

(B) The Animal Management Officer, or the City Attorney or his designee, may recommend that one (1) or more special sanctions or conditions be levied against any owner convicted of a violation pursuant to Section 6-7-8(B) or 6-7-8(C), W.M.C. This recommendation may be presented to the Municipal Judge as a proposed condition of sentencing upon conviction and may be in lieu of or in addition to the

requirements and penalties specified in this Chapter. Proof that a recommended sanction or condition has been previously satisfied or would not serve its intended purpose may be presented to the Municipal Judge for consideration in sentencing.

(C) If the Animal Management Officer, or the City Attorney or his designee, recommends destruction of the animal in an expeditious and humane manner, or permanent removal of the animal from the City, the Municipal Judge shall conduct a judicial hearing to determine the disposition of the animal. At such judicial hearing, the Municipal Judge may take into consideration the severity of the incident, the prior history of the owner and/or animal, and the recommendation of the animal management officer, City Attorney, or an animal behavior professional. The provisions of this paragraph shall not in any way limit the power of the Municipal Judge, on his own motion, to impose special sanctions as he deems appropriate.

(D) The failure or refusal to produce an animal pursuant to Section 6-7-9(~~DE~~), W.M.C., shall subject the owner to immediate arrest, should probable cause exist to believe that the owner is harboring or keeping the animal and refuses to produce it upon such demand. Upon arrest, the owner shall be held to appear before the Municipal Judge, who may order the immediate production of the animal. Each day of such willful refusal to produce the animal shall constitute a separate violation and offense.

(E) All violations of this Chapter not listed in subsection (A), above, are hereby deemed civil infractions of this Code and, upon conviction thereof, may be punished by a recommended fine.

(F) **RECOMMENDED MINIMUM FINES:** Recommended minimum fines upon conviction may be imposed as listed below:

(1) First Offense – recommended fine of not less than seventy-five dollars (\$75). Second and subsequent offenses – recommended fine of not less than one hundred dollars (\$100):

- 6-7-2(B) Refusal to Provide Proof of Vaccination
- 6-7-2(C) Harboring Unvaccinated Dogs and Cats
- 6-7-2(D) Non-Transferability - Vaccination Certificates or Tags
- 6-7-3(A) Duty to Report Animal Bite
- 6-7-3(C) Failing to Report Suspected Rabies
- 6-7-3(D) Refusal to Produce Animal
- 6-7-3(E) Removal of Animals from Confinement
- 6-7-4(B) Failure to Display Dog License Tag
- 6-7-5(B) Failure to Confine
- 6-7-6(A) Removal of Animal Excrement
- 6-7-6(B) Damage to Property
- 6-7-7(A) Disturbance
- 6-7-7(C) Failure to Exercise Control
- 6-7-10(E) Failure to Care for Animals
- 6-7-11(D) Failure to Care for Animals
- 6-7-12(F) Potbellied Pig Requirements
- 6-17-13(D) Sanitation
- 6-7-13(F) Confinement of Animals

(2) First Offense – recommended fine of not less than one hundred dollars (\$100). Second and subsequent offenses – recommended fine of not less than one hundred fifty dollars (\$150):

- 6-7-2(A) Failure to Have Dog or Cat Inoculated
- 6-7-4(A) Failure to Have Dog Licensed
- 6-7-4(C) Transfer of Dog License Tag
- 6-7-9(~~ED~~) Failure to Produce Animal
- 6-7-10(A) Unlicensed Kennel
- 6-7-11(A) Unlicensed Pet Shop
- 6-7-12(A) Animals in Residential Districts Limited

- 6-7-12(B) Livestock Limited
- 6-7-12(C) Prohibited, Endangered and Exotic Animals
- 6-7-12(D) Federal or State Prohibited Animals
- 6-7-12(G) Sale of Animals
- 6-7-13(A) Cruelty to Animals
- 6-7-13(B) Poisoning Animals
- 6-7-13(C) Neglect of Animals
- 6-7-13(E) Abandoning Animals
- 6-7-13(G) Displaying or Sale of Dyed or Immature Animals
- 6-7-13(H) Fighting Animals
- 6-7-13(I) Feeding of Wild Animals
- 6-7-16 Interference

(3) Reduced fine for neuter or spay:

6-7-5(A) Animals Running at Large: First Offense – A recommended fine of not less than two hundred seventy-five dollars (\$275), except that if the animal has been neutered or spayed, the fine may be reduced to seventy-five dollars (\$75). Second and subsequent offenses – recommended fine of not less than three hundred dollars (\$300), except that if the animal has been neutered or spayed, the fine may be reduced to one hundred dollars (\$100).

6-7-8(B) Requirements for Possession of a Potentially Dangerous Animal: First Offense – A recommended fine of not more than three hundred dollars (\$300), except that if the animal has already been neutered or spayed, the fine may be reduced to one hundred dollars (\$100).

6-7-8(C) Requirements for Possession of a Vicious Animal: First Offense – recommended fine of not less than three hundred dollars (\$300), except that if the animal has already been neutered or spayed, the fine may be reduced to two hundred dollars (\$200).

(4) Any other section hereof not specifically listed above:

First Offense – recommended fine of not less than fifty dollars (\$50).

Second and subsequent offenses – recommended fine of not less than seventy-five dollars (\$75).

Section 13. Section 6-7-18, W.M.C., is hereby AMENDED to read as follows:

6-7-18: GUARD DOGS: (3288) It shall be unlawful to place or maintain ~~any a guard dog~~ in any area for the protection of persons or property unless the following conditions are met:

(1) The dog is physically confined to a specific enclosed area at a commercial establishment, and is under complete and absolute control that is adequately built or constructed to ensure that the dog will not escape; or

(2) The dog is under the complete and absolute control of the handler at all times; and

(3) Warning signs are conspicuously posted indicating the presence of the guard dog and such signs will include a current telephone number where some person responsible for controlling the guard dog can be reached at all times; and

(4) The dog has a current Dog License.

Section 14. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 13th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this day of July, 2015.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Item 8 H

Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Second Reading on Councillor's Bill No. 35 to Lease 7225 Bradburn Blvd. to the South Westminster Arts Group

Prepared By: John Carpenter, Community Development Director

Recommended City Council Action

Pass Councillor's Bill No. 35 on second reading authorizing the execution of a lease agreement in substantially the same form as the attached agreement for property located at 7225 Bradburn Boulevard, Westminster, CO 80021, to the South Westminster Arts Group (SWAG).

Summary Statement

- SWAG is proposing to assume operations within the 7225 Bradburn Boulevard property by entering into a lease with the City to utilize the building on a month-to-month basis. Upon approval of a lease, SWAG would sublet the premises to individual artists to use as studio space for artists.
- The form of lease for the property has been approved by the City Attorney's Office and by the tenants.
- This Councillor's Bill was approved on first reading by City Council on July 13, 2015.

Expenditure Required: \$0

Source of Funds: NA

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Ordinance
Lease Agreement

BY AUTHORITY

ORDINANCE NO. **3791**

COUNCILLOR'S BILL NO. **35**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

Garcia - Briggs

A BILL

**FOR AN ORDINANCE APPROVING A LEASE AGREEMENT FOR LEASE OF THE
PROPERTY LOCATED AT 7225 BRADBURN BOULEVARD, WESTMINSTER, CO 80030**

WHEREAS, the City of Westminster owns the property located at 7225 Bradburn Boulevard, Westminster, CO 80030; and

WHEREAS, the City intends to lease the property to the South Westminster Arts Group (SWAG) on a month-to-month basis, for the purpose of making the premises available for use by SWAG as temporary space for artists for studio space; and

WHEREAS, SWAG has been screened and determined to be a suitable tenant for the property; and

WHEREAS, the final form of the lease agreement has been agreed to by the parties; and

WHEREAS, the City Charter requires such lease be approved by ordinance.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease Agreement between SWAG and the City for the property located at 7225 Bradburn Boulevard, Westminster, CO 80030, in substantially the same form as attached as Exhibit A to this Ordinance, is approved.

Section 2. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of July, 2015.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

EXHIBIT A

LEASE AGREEMENT

This **Lease** is made between the **CITY OF WESTMINSTER**, a Colorado public housing authority (hereinafter called “Lessor” or “City”), and **SOUTH WESTMINSTER ARTS GROUP**, a Colorado nonprofit corporation (hereinafter called “Lessee” or “SWAG”).

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

1. Premises. The Premises consist of the building and property located at 7225 Bradburn Boulevard, Westminster, CO, and as depicted in Exhibit 1 attached hereto and incorporated herein by reference.

2. Term and Rent. Lessor demises the above Premises to the Lessee on a month-to-month basis beginning July 1, 2015, or sooner as provided herein (hereinafter, the “Term”), and terminating without cause within 30 days of provision of written notice of termination of lease by Lessor, at (\$0) cost to Lessee. Upon termination of lease, Lessee will not be entitled to any relocation benefits or any compensation of any sort to cover expenses associated with vacating premises.

3. Use. Lessee shall make the Premises available for, temporary use to artists or groups for the purpose of creating art or supporting activities and functions. The Premises shall not be used for other purposes unless approved in writing by the Lessor. SWAG will maintain records of all third-party rentals of the property and the City, through its staff, shall retain the right to inspect such records at any time.

4. Utilities, Care and Maintenance of Premises.

a. Lessee’s responsibilities: Lessee acknowledges and accepts the Premises in their “as-is” condition. Lessee shall, at its own expense and at all times during the Term of this Lease, maintain the Premises in good and safe condition, and shall surrender the same, at termination hereof, in the same condition as received, normal wear and tear excepted. In addition, Lessee shall be responsible for:

- paying the cost of utilities as defined in paragraph 8, below.
- the routine care and maintenance of the interior of the building on the Premises of a housekeeping nature, including custodial and janitorial services, normal and reasonable cleaning, and the replacement of all consumable or expendable items such as light bulbs, cleaning, bathroom and office supplies and all items brought into the building by the Lessee.
- keeping the exterior of that portion of the Premises constituting the lot at 7225 Bradburn Boulevard clean and free of weeds.
- assuring that no parking or obstruction, of the area marked “No parking in this area” on Exhibit 1, hereto, be allowed in order to maintain access to the community garden adjoining the Premises.

b. Lessor’s responsibilities: The Lessor shall be responsible for all general repairs relative to the building on the Premises, including roofing, plumbing, mechanical and electrical equipment, that individually do not exceed \$500.00 in cost. The Lessor shall not be obligated to make substantive repair to any of said components should the cost for repair or replacement of any one component exceed \$500.00. Should the cost exceed \$500.00, repairs shall only be made upon approval of the

City Manager. The Lessor reserves the right to terminate the Lease immediately should the repair and replacement allowances as provided for above be exceeded, or upon a determination by the City of Westminster that the premises constitute a clear and present danger to the public health, safety and welfare.

5. Alterations. Lessee shall not make any interior or exterior alterations, additions, or improvements to the building on the Premises without first obtaining the prior written consent of City staff. Any such alterations, additions, or improvements approved by the City regardless of the party installing the same, become fixtures appurtenant to the Premises.

6. Ordinances and Statutes. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.

7. Assignment, Subletting, and unauthorized Use. Lessee shall not assign this Lease, nor sublet or allow utilization of any portion of the Premises without the prior written consent of the Lessor, which shall be granted or refused in Lessor's sole discretion. Any such assignment, subletting or impermissible utilization without Lessor's consent shall be void and, at the option of the Lessor, grounds for Lessor's immediate termination of this Lease. Notwithstanding the foregoing, Lessor acknowledges that the parties anticipate that Lessee will license portions of the Premises to individuals for private artist studio use on a short term basis. The City will provide Lessee with a standard license form for such use.

8. Utilities. The Lessee shall provide and pay for utility charges as they become due, including those for heat, electricity, water and sewer for the duration of the lease. All applications and connections for other services desired by Lessee for the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for such charges as they become due, including those for cable, Internet, alarm and telephone services.

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

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

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

12. Insurance.

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

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

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

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

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

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

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

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

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

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

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

23. Survival. Paragraphs 8, 11, and 16 through 20 inclusive shall survive any termination of this Lease by either Lessee or Lessor.

Signed as of this ___ day of _____, 2015.

CITY OF WESTMINSTER

SOUTH WESTMINSTER ARTS GROUP

By: _____
City Manager

By: _____
Debbie Teter, Chair

Attest: _____
City Clerk

Attest: _____

APPROVED AS TO LEGAL FORM:

By: _____
Office of the City Attorney

Exhibit 1



Location Map – 7225 Bradburn Boulevard

Community Garden Access
No parking at any time in this area
by tenants or visitors.





Agenda Item 10 A-B

Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Public Hearing and Action on the Thirteenth Amended Preliminary Development Plan for Northpoint Center (aka Westminster Promenade West)

Prepared By: Michelle N. Stephens, AICP, Senior Planner

Recommended City Council Action

1. Hold a public hearing.
2. Approve the Thirteenth Amended Preliminary Development Plan for Northpoint Center based on a finding that the criteria set forth in Sections 11-5-9(A)(2)(b) and 11-5-14 of the Westminster Municipal Code have been met.

Summary Statement

- This Preliminary Development Plan (PDP) amendment is a City-initiated action with the larger purpose of facilitating the proposed Westminster Promenade West PDP (see separate City Council action elsewhere on the July 27th Agenda for Westminster Promenade West Subdivision PDP, Master ODP, and Comprehensive Plan Amendment) by removing the area proposed in the Westminster Promenade West PDP from the Thirteenth Amended Preliminary Development Plan for Northpoint Center. The area to be removed from the Northpoint Center PDP is 32 acres, inclusive of the entirety of the Westminster Promenade West Subdivision. Westminster Promenade West Subdivision is located west of Westminster Drive and excludes the City-owned parking lot.
- The Westminster Municipal Code (W.M.C.) Section 11-5-9(A)(2)(b) allows the City to initiate a Preliminary Development Plan amendment and this proposed PDP amendment is in conformance with those requirements.
- The City is acting on behalf of all of the property owners because at the time of application, the W.M.C., Section 11-5-9(A)(2)(a) required “All owners of the property covered by the Preliminary Development Plan” to initiate an amendment to the Preliminary Development Plan. It has been difficult to coordinate all of the property owners to initiate a PDP Amendment to remove the property included in the proposed Westminster Promenade West PDP. Staff has proactively endeavored to resolve this issue in order to facilitate the redevelopment of the Promenade area as part of implementing the Church Ranch Focus Area as identified in the Comprehensive Plan. Recently, a new ordinance has been adopted that allows an individual property owner to process a PDP Amendment without gathering all of the signatures of the other property owners within the PDP area.
- The Thirteenth Amendment will ensure the boundaries between developments are as simple as possible while still enabling the redevelopment of the Westminster Promenade West.
- The City is also initiating the proposed amendment as the current PDP no longer meets the requirements of W.M.C., Section 11-5-14; specifically, the current Northpoint Center PDP has a significant adverse impact upon the future land uses and development of the area proposed to be included in the Westminster Promenade West PDP (Section 11-5-14(A)(6), W.M.C.).

Expenditure Required: \$0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission met on Tuesday, November 11, 2014 to consider the amendment to the Northpoint Center PDP and voted unanimously (7-0) in favor of approving the proposed amendment. No one spoke in favor or opposition to the proposal.

As the Thirteenth Amendment of the Northpoint Center PDP is only necessary if the Westminster Promenade West Subdivision PDP, Master ODP, and Comprehensive Plan Amendment are approved, Staff postponed the City Council review of the Northpoint Center PDP Amendment until the Westminster Promenade West project was ready for City Council review.

Policy Issues

1. Should the City initiate an amendment to the Thirteenth Amended PDP for Northpoint Center based on the criteria set forth in the Westminster Municipal Code Section 11-5-9(A)(2)(b)?
2. Should the City approve an amendment to the Thirteenth Amended PDP for Northpoint Center to exclude the area to be included in the Westminster Promenade West Subdivision (see separate application)?

Alternatives

Deny the proposed Thirteenth Amended PDP for Northpoint Center based on the criteria set forth in Section 11-5-9(A)(2)(b), W.M.C. Instead, the existing Northpoint Center PDP could be retained. The existing Northpoint Center PDP has been very successful in establishing the area as a whole and has been amended as required to facilitate development of individual blocks. However, the Comprehensive Plan specifically identifies Westminster Promenade as playing a unique, mixed-use role in the Church Ranch Focus Area and therefore staff believes that this project should be accommodated by its own PDP. This will not only facilitate development of the Promenade now, but will enable ease of development in the future as the owners of the Westminster Promenade West will control their individual PDP.

Background Information

The Twelfth Amended PDP for Northpoint Center was a City-initiated PDP amendment approved in August of 2014. The Twelfth Amendment cleaned-up and simplified the PDP boundaries to ensure seamless boundary closure and eliminate overlapping boundaries. Now, the Thirteenth Amendment proposes to remove the area included in the Westminster Promenade West PDP from the Northpoint Center PDP, thus keeping the boundaries between developments as simplified as possible, but enabling the redevelopment of the Promenade.

The Westminster Promenade West project began the planning process in May 2013. The project aims to facilitate the revitalization of the area by providing a framework for a mixed-use development that includes a combination of residential, commercial and office uses in an urban setting.

Currently, the Westminster Promenade West project site is within the Northpoint Center PDP. At the time of the application for the Westminster Promenade West project, the W.M.C. required the approval of all the Northpoint Center property owners for an amendment to the PDP in order to expand the list of allowed uses and create eight new blocks within the Westminster Promenade West Subdivision. The City Code has subsequently been amended to allow an individual property owner to process a PDP amendment without gathering all of the signatures of the other property owners within the PDP area.

In order to streamline the redevelopment of the Promenade, the PDP amendment was initiated by the City per Section 11-5-9(A)(2)(b), W.M.C.

Location

The Northpoint Center PDP is bounded by the Axis Development PDP and the southern boundary of the Sheridan Green subdivision to the north, US 36 to the west, Mercedes Benz, The Butterfly Pavilion and Big Dry Creek open space to the south and City Park to the east.

The proposed Westminster Promenade West PDP sits on the western edge of the Northpoint Center PDP. Please see attached vicinity map.

Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	Comprehensive Plan Designation	Use
Axis; North	PUD	R-36 Residential	Vacant
US36; West	N/A	N/A	N/A
Westminster City Park; East	O-1	Public Parks	Parks and Recreation
Big Dry Creek Open Space; South	PUD	City-owned open space, Service Commercial	Vacant

Public Notification

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

- **Published Notice:** Notice of public hearings scheduled before City Council shall be published at least four days prior to the public hearing. Notice was published in the Westminster Window on July 23, 2015.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Four signs were posted on the property on July 16, 2015.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner's associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on October 30, 2014 and again on July 16, 2015.

Applicant

CITY OF WESTMINSTER
4800 West 92nd Avenue
Westminster, Colorado 80031

Property Owner

CITY OF WESTMINSTER
4800 West 92nd Avenue
Westminster, CO 80031

WILLOW PROPERTIES, LLC
216 The Knoll
Orinda, CA 94563

WESTCOL CENTER, LLC
909 Walnut, Suite 200,
Kansas City, MO 64106

WESTCOL THEATRE, LLC
909 Walnut, Suite 200,
Kansas City, MO 64106

EMERUS DEVELOPMENT COMPANY, LLC
10077 Grogans Mill Road, Suite 100,
The Woodlands, TX 77380

ROCKY MOUNTAIN BUTTERFLY CONSORTIUM
6252 W. 104th Avenue
Westminster, CO 80020

WESTMINSTER PROMENADE DEVELOPMENT CO, LLC
PO BOX 351979
Westminster, CO 80035

WESTMINSTER BOULEVARD FINANCE, LLC
1050 17th Street, Suite 2300,
Denver, CO 80265

TT OF WESTMINSTER INC.
505 S. Flagler Drive, Suite 700,
West Palm Beach, FL 33401

WESTMINSTER PROMENADE CO. II, LLC
10650 Westminster Blvd
Westminster, CO 80030

Project Information

The following information provides an explanation of compliance with the City's land development regulations and the criteria contained in Sections 11-5-9(A)(2)(b) and 11-5-14 of the Westminster Municipal Code (attached).

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies. *The proposed PDP amendment modifies the boundary to facilitate development that would otherwise be prohibited by the current PDP. No other modifications to the current PDP, which would change its compliance with Sections 11-5-9(A)(2)(b) and 11-5-14 are proposed.*
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles. *The extraction of Westminster Promenade West from the Northpoint Center PDP boundary facilitates redevelopment of Promenade West (see separate application) which proposes a framework plan that staff believes exhibits the application of sound, creative, innovative, and efficient planning principles.*
3. Any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan. *No exceptions from the standard Code requirements are proposed with this PDP amendment.*

4. The PUD is compatible and harmonious with existing public and private development in the surrounding area. *The proposed boundary change has no effect on the compatibility or harmony with existing public and private development in the surrounding area. The boundary change will however, facilitate redevelopment of Promenade West (see separate application) which proposes a framework plan consistent with the goals specified for the Church Ranch focus area in the Comprehensive Plan.*
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development. *The provisions within the existing PUD that provide for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development (landscape, buffering, and fencing) are not proposed to be modified.*
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area. *The PUD is proposed to be amended to eliminate significant adverse impacts upon existing or future land uses within the Westminster Promenade West PUD and upon the future development of the Westminster Promenade West PUD. The aspiration would be that the extraction of the Westminster Promenade West Subdivision would allow for redevelopment of that site which would in turn, reinvigorate the whole Church Ranch area.*
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic. *The proposed boundary modification to the PDP will not affect any of the existing or proposed access or traffic conditions.*
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City. *The proposed boundary modification to the PDP will not require any additional street width or additional easements, or additional public land.*
9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans. *The proposed boundary modification to the PDP will not affect any of the existing utility systems and storm drainage facilities.*
10. Performance standards are included that insure reasonable expectations of future Official Development Plans (ODP) being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15. *No changes to the performance standards are proposed with the PDP boundary modification. The existing standards insure reasonable expectations of future ODPs being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15.*
11. The applicant is not in default or does not have any outstanding obligations to the City. *The applicant is the City, but the City is not aware of any of the landowners being now in default, nor having any outstanding obligations to the City.*

Traffic and Transportation

No changes to traffic and transportation within the Northpoint Center PDP are proposed with this PDP amendment; however changes to the area included in the proposed Westminster West Promenade PDP and ODP are under review with separate application.

Site Design

No changes to the site design within the Northpoint Center PDP are proposed with this PDP amendment; however, changes to the area included in the proposed Westminster West Promenade PDP and ODP are under review with separate application.

Architectural Design

No changes to the existing architectural design requirements within the Northpoint Center PDP are proposed with these PDP amendments; however, changes to the area included in the proposed Westminster West Promenade PDP and ODP are under review with separate application.

Landscape Design

No changes to the existing landscape design within the Northpoint Center PDP are proposed with this PDP amendment; however, changes to the area included in the proposed Westminster West Promenade PDP and ODP are under review with separate application.

Public Land Dedication

No public land dedication is required for this PDP amendment.

Park Development Fee

No park development fee is required for this PDP amendment.

School Land Dedication

No school land dedication or fee is required for this PDP amendment.

Signage

No changes to the signage standards are required for this PDP amendments.

Service Commitment Category

No changes to the service commitments are required for this PDP amendment.

Neighborhood Meeting(s) and Public Comments

A neighborhood meeting was held for the Westminster Promenade West PDP and Master ODP on March 31, 2014. The site plan attached to the meeting notification as well as the materials presented at the meeting, showed the Westminster Promenade West project extracted from the overall Northpoint Center PDP. No concerns were raised at that time. Additionally, no responses were received from the public hearing notification mailing.

Strategic Plan

The proposed PDP amendment meets the City Council's Strategic Plan Goals of *Excellence in City Services and Dynamic Diverse Economy*. By initiating the PDP amendment the City is demonstrating our commitment to property owners and streamlined business development.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments

- Attachment A – Vicinity Map
- Attachment B – Criteria and Standards for Land Use Applications

Thirteenth Amended Preliminary Development Plan Northpoint Center - Vicinity Map



-  13th Amended PDP Northpoint Center
-  Unincorporated
-  Westminster City Limit

Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

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

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

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

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

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

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

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

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

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

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

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

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

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

Official Development Plan (ODP) Application

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

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

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

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

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



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Public Hearing and Action on the Fourth Amended Preliminary Development Plan for Olson Technological Park

Prepared By: Walter Patrick, Planner

Recommended City Council Action

1. Hold a public hearing.
2. Approve the Fourth Amended Preliminary Development Plan for Olson Technological Park. This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met.

Summary Statement

- This Preliminary Development Plan amendment proposes the addition of Studios as an allowed land use for lots 2A, 3A, 4A, 5A and 5B (Attachment A) of the Olson Technological Park.
- Studio is defined as a small, single purpose facility, containing no more than 4,000 square feet, for activities such as dance, martial arts, visual arts or calisthenics for improving strength and circulation or other similar uses as deemed appropriate by the City.
- The Comprehensive Plan designation for this property is Flex/Light Industrial. This designation allows a studio as a secondary use.
- Olson Technological Park is located at the northeast corner of Wadsworth Parkway and 108th Avenue.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission met on Tuesday, June 23, 2015 to consider the amendment to the Olson Technological Park Preliminary Development Plan and voted unanimously (7-0) in favor of approving the proposed amendment. No one spoke in opposition to the proposal.

Policy Issue

Should the City approve an amendment to the Olson Technological Park Preliminary Development Plan (PDP) to include studio as additional land use that is not presently listed on the Olson Technological Park PDP?

Alternatives

1. Deny the PDP amendment to the Olson Technological Park to add studio as additional land use for lots 2A, 3A, 4A, 5A. This alternative is not recommended as the additional land use will expand opportunities for the property owner to lease empty space within the existing development and provide additional exercise and recreation opportunities to the development and City residents. In addition, staff believes that a studio use would not have negative impacts on surrounding properties.
2. Approve a studio use on only one lot or fewer lots than requested by the applicant. This alternative is not recommended, as a studio use is already limited to 4,000 square feet of floor area and limited to 10 percent of the gross floor area of the development.

Background Information

Nature of Request

A property owner in the Olson Technological Park would like to add Studios as a new use to the PDP for lots 2A, 3A, 4A, 5A and 5B. Studio uses would include single use facilities such as dance, martial arts, visual arts, or calisthenics for improving strength and circulation or other similar uses.

Background Information

Early in 2014 the property owner of lots 2A, 3A, 4A, 5A and 5B leased space to a dance studio, which was not listed as an allowed use on the PDP. After the City became aware of the non-conforming use the property owner was advised that an approved PDP amendment, adding Studios as an allowed land use, would be necessary for the dance studio to remain in operation. At that time, the City Code required the applicant to obtain the signature of every different property owner within Olson Technological Park in order to apply for a PDP amendment. The process of obtaining the signature of every property owner in a PDP in order for one owner to request a change for their property can become onerous for the applicant. The City decided to bring forth the application as a City initiated PDP Amendment (which does not require all owner's signatures) in an effort to help a small business which, in staff's opinion, would not have impacted the development any more than uses already permitted in the development. On September 9, 2014, the Planning Commission recommended the City Council approve the PDP Amendment by a vote of 4-3 (Colling, Dunn, Litzau). However, within days after this meeting, staff learned that the dance studio was no longer in operation and therefore, did not continue the PDP Amendment request to the City Council.

Since that time, the requirement that all property owners covered in the same PDP must sign an application when one property owner proposes a change for only his property, has been removed from the Westminster Municipal Code. However, proper notification to all property owners in the PDP within 300 feet of the applicant's property is required. Although the dance studio is no longer in operation, the property owner still wishes to add studio as an allowed use for lots 2A, 3A, 4A, 5A and 5B in the development, since a new studio use is interested in locating within Olson Technological Park.

Location

The site is located at the northeast corner of Wadsworth Parkway and 108th Avenue.

Public Notification

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

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice for the City Council hearing was published in the Westminster Window on July 16, 2015.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Two signs were posted on the property on July 16, 2015.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner's associations registered with the City within 300 feet of the subject property. The required notices were mailed on June 9, 2015.

Neighborhood Outreach

On April 30, 2015 a neighborhood meeting was held to discuss the proposed land use addition to the PDP. Notification for the neighborhood meeting was sent to all property owners within 300 feet of lots 2A, 3A, 4A, 5A and 5B in the Olson Technology Park. Two people attended the meeting. The attendees had several concerns including traffic issues, potential parking problems, potential noise created by studios, and that a studio would begin to change the professional nature of the business park. Staff also received emails (see attachment B) from several adjacent property owners expressing their opposition for the studio land use.

Staff Analysis

In staff's opinion, the introduction of studios limited to 4,000 square feet in size as a permitted use to the development would not have greater impacts than some of the existing uses currently allowed. For example, some of the uses permitted in the PDP include Distribution, Light Manufacturing, Fabrication, Assembly, Medical/Dental Offices, and Banking. The property's Comprehensive Plan designation of Flex/Light Industrial allows Studios as a secondary support commercial use. Secondary support commercial uses would also include the ancillary uses permitted on the PDP (sit down restaurants and print shops). To protect the development from the potential impacts of this type of use, the Comprehensive Plan restricts any combination of support commercial uses to a maximum of 10 percent of the gross floor area of the development, or 15,000 square feet, whichever is less. With this restriction, and the 4,000 square foot restriction, staff does not expect significant impacts to the surrounding development.

Transportation patterns around Olson Technological Park were also considered. The primary access point to the subdivision is from 108th Avenue onto Dover Street. Per the City's Comprehensive Roadway Plan, 108th Avenue (at two lanes) could carry approximately 18,000 vehicles per day with congestion being noticed at about 13,000 vehicles per day. Currently, 108th Avenue is carrying about 9,900 vehicle per day. The addition of a studio would not be expected to have a significant effect on these numbers.

The City's current Parking Code requires 1 parking space per 300 square feet of gross floor area for studios. This is the same requirement as for banks, medical/dental offices and traditional offices. The current PDP for the property requires 1 parking space per 200 square feet of gross floor area for secondary support commercial uses and medical/dental offices. This is a higher requirement than the City's current Parking Code requirement. City staff surveyed the parking lot, for the 5 buildings east of Dover Street, at 2:00 pm

on a Tuesday afternoon and found there was a total of approximately 340 vehicles parked in the parking lots of these buildings. There are currently 601 parking spaces available for these buildings. Information currently available to the City's Economic Development Division shows a vacancy rate of less than 5 percent between all 5 buildings. The abundance of empty parking spaces and the low vacancy rate indicate there is no shortage of parking in this development. The addition of a studio use should have minimal impacts to the existing parking conditions.

Some of the adjacent property owners within the development have also expressed concerns about the potential for noise due to amplified music that might be used in a dance or exercise studio. The studio use is only proposed for lots 2A, 3A, 4A, 5A, and 5B. The emails received by staff, expressing concerns about potential noise, are from property owners located in separate buildings on Lots 4B and 5C where the studio use is not being proposed. Therefore, potential noise impacts from the applicant's buildings should not affect property owners on Lots 4B and 5C as there would be no shared walls with the applicant's buildings. Potential noise in the applicant's buildings could be contained by noise reducing insulation or drywall. It would not be in the applicant's best interest to allow excessive noise in his own leased buildings.

Property Owner

Walnut Creek Lots 2A, 3A, 4A, and 5A LLC
420 Corporate Circle
Golden, CO 80401

Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	Land Use	CP Designation
North: Unincorporated Jefferson County		Vacant	Airport Property
South: K-L Plaza and Unincorporated Jefferson County	PUD	Vacant Land and Large Lot Residential.	Retail Commercial and Unincorporated Jefferson County
East: Unincorporated Jefferson County and Green Knolls Subdivision	PUD	Single Family Detached Residential in the Green Knolls Subdivision and City of Broomfield	R 3.5 and Unincorporated Jefferson County
West: Ball Corporation	PUD	Vacant land	Flex/Light Industrial

Project Information

The following information provides an explanation of compliance with the City's land development regulations and the criteria contained in Section 11-5-14 of the Westminster Municipal Code (See Attachment C).

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies. *If approved, the proposed additional land use would be in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.*
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles. *Staff believes that the addition of Studios as a permitted use on the PDP will not affect the underlying principles of the PDP. The impacts of a studio are similar to uses already permitted within the PDP.*
3. Any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the

Preliminary Development Plan. *No exceptions from the standard code requirements are proposed with this PDP amendment.*

4. The PUD is compatible and harmonious with existing public and private development in the surrounding area. *The existing PDP permits commercial uses such as banks, medical offices, and sit-down restaurants. Staff believes that the addition of studios as a use in the PUD is compatible and harmonious with existing public and private development in the surrounding area. The proposed use is limited to an area of 4,000 square feet and is permitted in the property's Comprehensive Plan designation as a secondary support commercial use limited to 10% of the development.*
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development. *The provisions within the existing PUD that provide for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development (landscape, buffering, and fencing) are not proposed to be modified. Staff believes a studio to be generally equivalent in intensity and impact as those uses currently allowed in the PUD such as banks, sit-down restaurants, and medical/dental offices.*
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area. *Staff believes that the PUD changes will have no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area. Studios are permitted, with restrictions, as a secondary use in the Flex/Light Industrial category of the Comprehensive Plan. In addition, the parking requirements for studios are the same as other potential uses such as medical/dental offices, banks and general office uses.*
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic. *The proposed additional land use to the PDP should not have a significant effect on any of the existing streets, access points, or the free flow of traffic. 108th Avenue provides adequate capacity for this use and the parking requirements for a studio are equivalent to permitted uses in the development.*
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to the Official Development Plan (ODP) or plat approvals by the City. *The proposed use to be added to the PDP does not require additional street width, additional easements, or additional public land.*
9. Performance standards are included that insure reasonable expectations of future Official Development Plans (ODP) being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15. *No changes to the performance standards are proposed with the additional use in the PDP. The existing standards insure reasonable expectations of future ODPs being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15.*
10. The applicant is not in default or does not have any outstanding obligations to the City. *The City is not aware of the landowner being now in default, and/or having any outstanding obligations to the City.*

Traffic and Transportation

No significant transportation impacts are anticipated with the proposed land use for this PDP. The additional use proposed is similar in character and traffic demand to the currently allowed uses and the existing development's circulation design has been designed to adequately handle the existing uses. No physical changes to the PDP site are proposed.

Site Design

No changes to the site design are proposed with this PDP amendment.

Architectural Design

No changes to the existing PDP architectural design requirements are proposed with this PDP amendment.

Landscape Design

No changes to the existing PDP landscape design requirements are proposed with this PDP amendment.

Public Land Dedication

No public land dedication is required for this PDP amendment.

Park Development Fee

No park development fees are required for this PDP amendment.

School Land Dedication

No school land dedication or fee is required for this PDP amendment.

Signage

No changes to the signage standards are required for this PDP amendment.

Strategic Plan

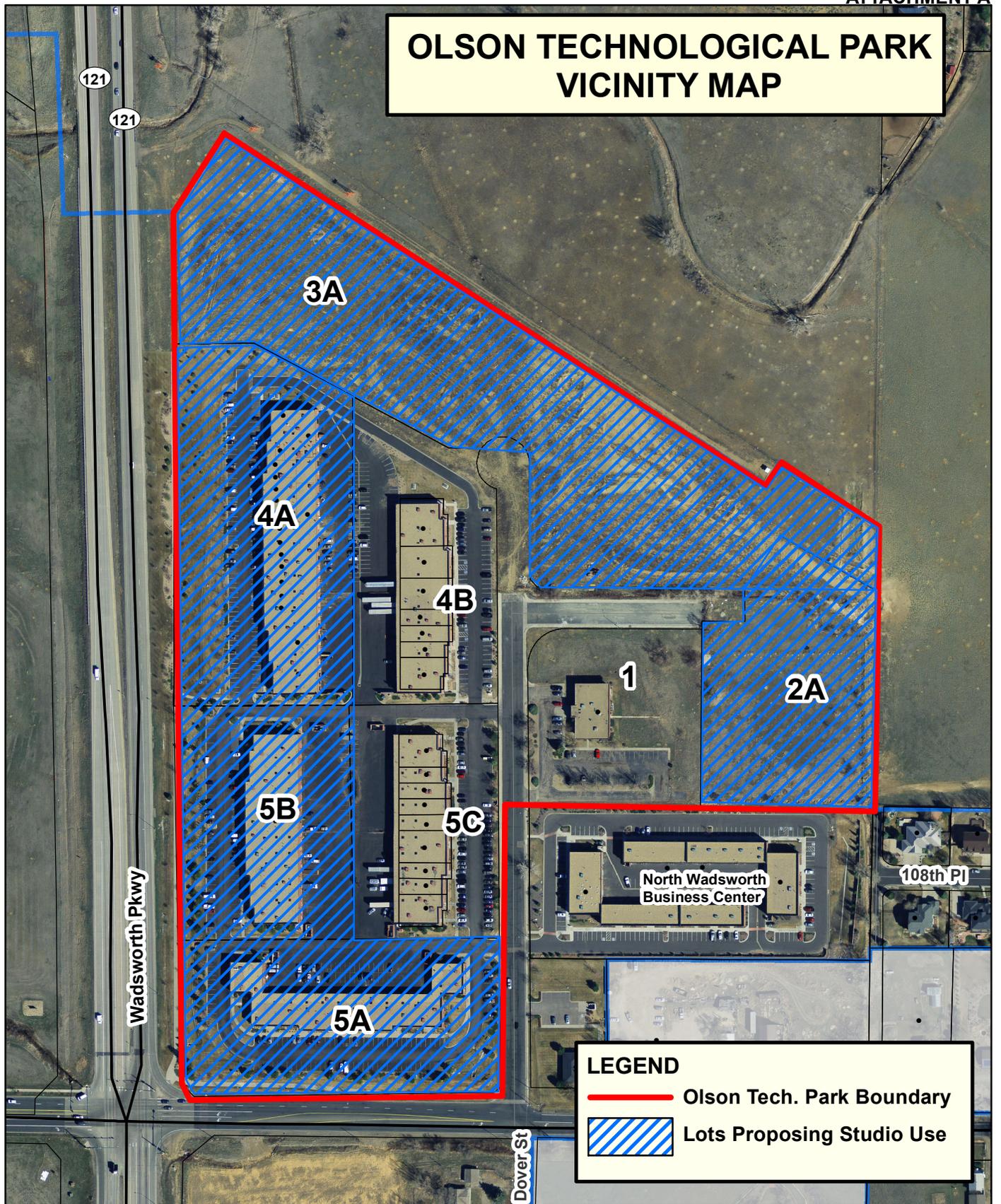
The PDP amendment meets the City Council's Strategic Plan goal of *Dynamic, Diverse Economy*. The additional use will allow the development an opportunity to attract new businesses.

Respectfully submitted,

Donald M. Tripp
City Manager

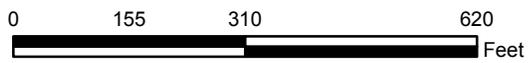
Attachments: ATTACHMENT A - Vicinity Map
ATTACHMENT B – Letters from Adjacent Property Owners
ATTACHMENT C – Criteria and Standards for Land Use

OLSON TECHNOLOGICAL PARK VICINITY MAP



LEGEND

-  Olson Tech. Park Boundary
-  Lots Proposing Studio Use





4/30/2015

wpatrick@CityofWestminster.us

Dear Mr. Patrick,

I am writing to you regarding the Community Meeting concerning the Olson Technology Park PDP and ODP Amendments. Automotive Business Solutions owns and occupies the space in Suite 300. Unfortunately, we cannot attend the Community Meeting. However, we would like to voice our objection to the proposed amendment to allow the area parcels to be used for Studios.

Our concern with this change is the following:

- 1) Our business park has professionals such as medical companies, engineering, law firms, and a pharmaceutical distributor. The walls are not designed to contain high noise levels from music, children, teachers shouting to be heard over the music, and thumping on the dance floor. This would certainly be disruptive to our businesses and harm our productivity.
- 2) The use of the premises as a studio(s) would increase the amount of parking demand. Parking at Walnut Creek Business Park is already difficult to come by. The increased demand would create difficulties for employees of the current offices.
- 3) Traffic congestion at 108th and Dover is a problem. There is no stop light and it is already excessive during rush hour.
- 4) As a result of the above items, the owners of the condos in the development would be limited by future potential buyers, and consequently, suffer from lower property values.

While it clearly benefits all owners of the Walnut Creek Business Park to have high occupancy rates in the area, there is certainly a reason why the original proposed use of the development did not include studio use. History of studio use must certainly demonstrate problems for neighboring businesses. Thank you for considering our objection to this proposal.

Sincerely,

A handwritten signature in black ink that reads 'Richard Ruel'. The signature is written in a cursive, slightly slanted style.

Richard Ruel, President
Automotive Business Solutions Inc.

Patrick, Walter

From: Bob Wilkinson <bob@cps-partitions.com>
Sent: Thursday, April 30, 2015 10:52 AM
To: Patrick, Walter
Cc: Steve Bell
Subject: Meeting tonight - 6:00 PM

Mr. Patrick – we will be unable to attend the meeting tonight at Westview Recreation Center regarding land use changes at the Walnut Creek Business Park.

It is our understanding that the issue at hand is whether to allow dance studio, exercise studio, fitness studio type of businesses into the Park.

We object to having that type of business in our condominium flex space building for two significant reasons:

1. It would be impossible to keep amplified music noise from creating severe distraction in adjacent spaces
 - a. the construction of the buildings was designed to keep normal office noise from filtering into adjacent spaces, not amplified sound
2. Parking is already very limited and barely sufficient for a few office personnel at each space
 - a. Traffic in the parking lot plus the volume of cars needing to park would overload the design capacity of the lots

It appears that the primary uses permitted (professional offices, research and development labs, warehousing, fabrication facilities, repair shops, wholesale distributors and light manufacturing) are all quiet businesses with limited numbers of employees. The regulation specifically does not permit objectionable levels of noise.

We recommend that there be no changes to the permitted types of business in our park, in order to protect our investment and productivity.

Thank you for your consideration

Respectfully,

Robert Wilkinson, Vice President
B & W Real Estate, LLC. And
Continental Partition Systems, Inc.
www.cps-partitions.com
303-396-0[REDACTED]
800-487-8[REDACTED]



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877.460.1111 (p) / 303.460.1111 (f)

April 29, 2015

Letter Transmitted Via Email (wpatrick@cityofwestminster)

Walter Patrick
Planner
City of Westminster

RE: Olson Technology Park – Proposed PDP/ODP Amendments

Dear Mr. Patrick:

On behalf of Luxury Holdings, LLC (“Luxury”), the owner of Units 800-1200 at 11005 Dover Street, Westminster, Colorado (the “Property”), and its tenant occupying the Property, Superior Medical Supply, Inc. (“Superior”), I am writing to express our strong objections to the proposed Olson Technology Park PDP and ODP Amendments. I will not be able to attend the Community Meeting regarding these proposed Amendments on April 30, 2015, and in advance of that meeting, I provide the City of Westminster (“City”) with these written objections.

The Property contains approximately 14,000 square feet of combined office/warehouse space, making Luxury the largest single owner of condominium units at 11005 Dover in Walnut Creek. Superior occupies and utilizes the Property as corporate headquarters for its nationwide pharmaceutical distribution operations, a highly-regulated industry requiring stringent security. When Luxury identified the Property as a potential business location for Superior’s operations, a significant consideration in pre-acquisition due diligence was whether the Property offered a quiet, professional and secure office environment with minimal public foot and vehicle traffic – one which would offer a secure and relatively anonymous location for the storage and handling of valuable pharmaceuticals, and facilitate regular shipping service without undue delays.

By their very nature, pharmaceutical distribution warehouses like Superior’s hold large stockpiles of valuable drugs that are in extremely high public demand, including drugs in market shortage around the country, as well as narcotic controlled substances that are in great demand on the “street” and can be very readily – and illegally – sold on the black market for huge profits. This makes pharmaceutical distribution centers highly attractive targets for criminals, addicts and other miscreants intent on drug theft and diversion. For these reasons, pharmaceutical distribution centers are typically large, secure facilities that tend to be very anonymous in appearance to avoid attracting the attention of such would-be thieves.

*Luxury Holdings, LLC and Superior Medical Supply, Inc.
Objections to Proposed Olson Technology Park Amendments
April 29, 2015*

Page 1 of 4



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877.460.1 (p) / 303.460.8 (f)

Today, the Walnut Creek development boasts an attractive mix of adjacent commercial businesses that are compatible with each other because they are decidedly “professional” in nature, including medical, legal, tax/accounting, pharmaceutical, design, manufacturing, etc. Notably, none of the existing permitted businesses within Walnut Creek is of a “retail” nature or involves any significant storefront foot or vehicle traffic. Ultimately, Walnut Creek was selected as the preferred business location for Superior’s pharmaceutical distribution facility because the development exhibited an appropriate professional business environment, and because the Olson Technology Park PDP/ODP would ensure that the character of the development continued to be quiet, discrete, and professional over time.

Not only would the proposed Amendments significantly increase pass-through traffic in Walnut Creek and potentially jeopardize both the security and shipping efficiency of Superior’s operations, but permitting dance/yoga/exercise studios in Walnut Creek would fundamentally change the character of the development in a manner directly contrary to the original intent and purpose of the Olson Technology Park. From its inception, the Olson Technology Park was envisioned by both its developers and the City as an “office/industrial park designed to provide an attractive environment compatible with adjacent uses.” *See Preliminary and Official Development Plan Olson Technology Park*, at ¶ 6; and *Second Amended Preliminary Development Plan Olson Technology Park*, at ¶ 2. To that end, the PDP/ODP clearly provides that “office/warehouse shall be the only allowed use on Lots 1A, 2, 3, 4, [and] 5” of Walnut Creek, and prohibits any “retail uses” in the development unless they are purely “ancillary to office/warehouse uses such as print shops and sit-down restaurants.” The PDP/ODP firmly states that “no other uses are permitted.” *See Second Amended Preliminary Development Plan*, ¶ 4.B.; *accord Preliminary and Official Development Plan*, ¶ 8.B.4.

The goal of restricting public traffic within Olson Technology Park is evident from the PDP/ODP’s emphasis on only “ancillary” retail uses -- i.e., **retail uses that would provide necessary support to the primary warehouse/office uses within Walnut Creek,**¹ such that any public use of such retail facilities would be largely incidental and, thus, limited in scope. While it is conceivable how a quick print shop or a sit-down restaurant may be allowable “retail” uses because they would serve the copy/printing and dining needs of the existing professional businesses within Walnut Creek, it is a stretch to characterize a dance/yoga/exercise studio as a use that would truly serve a supplementary or supporting role to the primary office/warehouse uses in the development, consistent with the ODP/PDP’s original intent and purpose.

¹ Ancillary is defined as: “Providing necessary support to the primary activities or operation of an organization, institution, industry, or system.” *See* http://www.oxforddictionaries.com/us/definition/american_english/ancillary. From this definition, it is easy to see what the City envisioned for the Olson Technology Park from the beginning, and why the strict restrictions on retail uses were included in both the original and amended ODP/PDP.

*Luxury Holdings, LLC and Superior Medical Supply, Inc.
Objections to Proposed Olson Technology Park Amendments
April 29, 2015*



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The concern with limiting pass-through traffic is also evident from the following prohibition contained in the ODP/PDP: "No fast food restaurants, carry-out restaurants or drive-through facilities shall be permitted within the complex." *See Second Amended Preliminary Development Plan Olson Technology Park*, ¶ 4.D., at page 1. These kinds of "retail" uses were, and still are, undesirable because they would generate more regular and persistent traffic flow within Walnut Creek, thereby undermining the ODP/PDP's primary objective of maintaining a compatible mix of professional office/warehouse businesses. Allowing a dance/yoga/exercise studio in the development today would cause the same kind of increased traffic congestion that would be generated by these prohibited "retail" uses, due to members of the public attending regularly-scheduled dance/yoga/exercise classes throughout each day.

Walnut Creek is nearly built out today and, with that maturation, has come the usual increase in traffic and a resulting decrease in available parking for many of the existing owners/employees, as well as their customers, business partners, and common carriers. During rush hour, it is already often difficult to enter or exit the development at the intersection of Dover Street and 108th Avenue because of the growth in local traffic, and it has become increasingly hard to find convenient parking in the development during normal business hours. The intersection of Dover and 108th is presently the sole point of ingress-egress to the development, which creates a "bottleneck" that significantly compounds the existing traffic problem in and around Walnut Creek. The distance between Dover Street and 108th Avenue is likely too small to install another traffic light at that intersection to ease congestion, and frankly, another access point to the development from Wadsworth Parkway or elsewhere will ultimately be necessary in order to eliminate this bottleneck. And all this growth has also brought the development to nearly full occupancy, with a resulting increase in ambient and background noise that now bleeds through the thin, hollow commercial walls utilized in Walnut Creek, which offer minimal sound barrier and would be poor at filtering out the noise expected to be generated by a normal dance/yoga/exercise studio (e.g., music, thumping sounds, voice commands, laughter, chanting, folks coming and going, etc.).

To now allow a dance/yoga/exercise studio is a slippery slope which, like a fast food restaurant or a drive-through facility, would not only increase traffic and noise in Walnut Creek, but also erode and eventually destroy the very project concept on which the development was based from the very beginning. And as noted, any increase in public foot traffic and congestion within the development also represents a potential decrease in the anonymity of Superior's sensitive pharmaceutical operations – and a corresponding increased security risk – that Luxury and Superior assumed would not be a problem when they acquired ownership in Walnut Creek.

*Luxury Holdings, LLC and Superior Medical Supply, Inc.
Objections to Proposed Olson Technology Park Amendments
April 29, 2015*



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We strongly oppose the proposed studio use which, if approved, would mark a fundamental shift in the ODP/PDP for Olson Technology Park. Studio use falls squarely into the limited "retail" use category under the ODP/PDP, yet as demonstrated above, fails to constitute a use that is purely "ancillary" to the existing professional businesses in Walnut Creek. The proposed use would be flatly contrary to the ODP/PDP's protective provisions that have always been a part of the Olson Technology Park, and which should remain in place to limit undue traffic, congestion and noise within the development and thereby preserve the professional office environment that Luxury and Superior banked upon in originally acquiring Units 800-1200.

At a minimum, prior to any approval of the Amendments, actual traffic impact studies should be required showing no undue impacts from the proposed Amendments, both within Walnut Creek and at the critical junction of Dover Street and 108th Avenue. The factual assessment of such internal impacts to Walnut Creek must include whether there is adequate parking to accommodate anticipated studio patrons and visitors without undue inconvenience to existing businesses, including the warehouse shipping needs of the existing professional businesses. And the factual assessment of traffic impacts at the intersection of Dover and 108th must necessarily consider whether there is adequate ingress-egress to the Walnut Creek development to accommodate necessary public services, such as law enforcement and fire protection, and to enable evacuation of the development in the event of a public disaster. The City Fire Department, in particular, should be asked to weigh in on this issue.

In providing these written objections, Luxury and Superior want to make it clear that they are not seeking to cause hardship to any existing tenants or put them out of business. The Walnut Creek development, however, has been characterized by a long history of the developer doing what it wants without much regard to municipal land use regulations, the development's restrictive covenants, or the needs and desires of the other business owners in the development. The fact that there may currently be a dance studio in Walnut Creek is an unfortunate testament to this pattern of asking for forgiveness after the fact, rather than permission up front. We might not even be here today objecting to these proposed Amendments if the developer had simply done the right thing and gone about these changes in a more honest and forthright manner.

*Luxury Holdings, LLC and Superior Medical Supply, Inc.
Objections to Proposed Olson Technology Park Amendments
April 29, 2015*



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877.460.4444 (p) / 303.460.8888 (f)

Sincerely,

A handwritten signature in black ink, appearing to read "MS", is written over a horizontal line.

Mark Snyder
Member-Manager, Luxury Holdings, LLC
President/CEO, Superior Medical Supply, Inc.

*Luxury Holdings, LLC and Superior Medical Supply, Inc.
Objections to Proposed Olson Technology Park Amendments
April 29, 2015*

Page 5 of 4

Patrick, Walter

From: Mark Henault <mhenault@synchroness.com>
Sent: Wednesday, April 29, 2015 5:07 PM
To: Patrick, Walter
Cc: Mike Walraven
Subject: FW: Development plan amendment for lots 2A, 3A, 4A, 5A and 5B to allow studios

Dear Mr. Patrick,

We are currently owners of multiple units in Olson Technological Park (10875 Dover Street, Units 100, 200, 500, 600, 700 and 800). We have received notice of a proposed PDP/ODP amendment to allow studio facilities within the development. We own the property through 2 LLC's – L-Cubed Holdings and L-Cubed Properties. In total we own 50% of the building directly behind 5B on the plat (a total of almost 18,000 sq ft).

The information that we have received is very limited, other than it appears that the city (working with/for MIE Properties?) is again trying to allow studios (such as dance, martial arts, etc.) in this complex. A similar request was made by MIE (and withdrawn) approximately 8 months ago, which we also voiced our opposition to.

I am not going to be able to attend the hearing scheduled for tomorrow evening, my schedule is booked.

I did want to go on the record, that our company is AGAINST the allowance of Studios in these buildings. We have had issues in the past with damage being done to the units/property in the evenings, such that MIE had to install security cameras all around the property, which has helped to reduce, but not eliminate, this damage/vandalism. We feel that allowing studios to operate in this complex, will just ensure much higher after-hours traffic which we feel will lead to more vandalism/issues. We purchased in a business park, where the buildings were to be used during normal business hours.

We also have considerable issues with parking and the current access route is not adequate to handle an increase in traffic. Parking space is at a premium and there are insufficient parking spaces in this complex to allow a single unit to hold classes with 20-30 people coming in during the day and needing to park. If studios are to be allowed, then we would request that MIE (who we believe is the one asking for this change, as they own all the rental buildings facing Wadsworth, versus the "condos" in the East facing buildings we are in) install a large parking lot and alter the ingress/egress directly onto Wadsworth Parkway to handle the increased traffic that this will create. Allowing studios in a complex not designed to handle such a volume of vehicles will negatively impact the existing commercial property owners and their businesses.

I just wanted to send you this, so you would have a record of our opinion on the matter. Please feel free to contact me if you have any questions.

Thank you.

mark henault
cto

The logo for Synchroness, featuring the word "synchroness" in a stylized, lowercase font with a textured, slightly blurred appearance.

P 720.257.██████
M 303.596.██████
F 303.429.██████
T 877.429.██████



11005 Dover Street #500 Westminster, CO 80021 Phone: 303.404. Fax: 303.460.0276

LCD Systems
PACS
Components
Service

April 21, 2015

VIA EMAIL wpatrick@CityofWestminster.us

Dear Mr. Patrick,

I am writing to you regarding the Community Meeting concerning the Olson Technology Park PDP and ODP Amendments. JJAG Properties owns the unit at 11005 W. Dover Street, Suite 500. Unfortunately, I am unable to attend the Community Meeting. Therefore, I would like to voice our objection to the proposed amendment to allow the area parcels to be used for Studios.

Our concern with this change is the following:

- 1) Our business park has professionals such as medical companies, engineering, law firms, and a pharmaceutical distributor. The walls are not designed to contain high noise levels from music, children, teachers shouting to be heard over the music, and thumping on the dance floor. This would certainly be disruptive to our businesses and harm our productivity.
- 2) The use of the premises as a studio(s) mandates waves of high parking demand. Parking at Walnut Creek Business Park Condos II is clearly inadequate to accommodate this level of parking from teachers and parents.
- 3) Traffic congestion at 108th and Dover is a problem. There is no stop light and it is already excessive during rush hour.
- 4) As a result of the above items, the owners of the condos in the development would be limited by future potential buyers, and consequently, suffer from lower property values.

While it clearly benefits all owners of the Walnut Creek Business Park to have high occupancy rates in the area, there is certainly a reason why the original proposed use of the development did not include studio use. History of studio use must certainly demonstrate problems for neighboring businesses. Furthermore, while I would like to believe MIE would consider the negative impact such changes would have on other businesses in the area, their previous actions have proven they have only their sole interest in mind. For over 3 years the suffering our company and others endured as a direct result of MIE knowingly leasing, and later selling a unit to a pepper processing business proves it's complete disregard of other businesses.

Your thoughtful assessment of this situation as related to the long-term vitality of all businesses in the area is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Amy Lloyd".

Amy Lloyd
JJAG Properties, Owner
Double Black Imaging Corp, CFO
4246 Golfview Drive
Jordan, MN 55352

Patrick, Walter

ATTACHMENT B
PAGE 10

From: Brett W. Martin Esq. <brett@brettwmartin.com>
Sent: Tuesday, June 23, 2015 5:21 PM
To: Patrick, Walter
Subject: Olson Technology Park - Proposed PDP/ODP Amendments
Attachments: Ltr_Follow-Up_Walter Patrick_Olson Technology Park Amendment_06 16 15.pdf;
ATT00001.htm

Mr. Patrick,

I will be unable to attend the Planning Commission meeting tonight regarding the proposed PDP/ODP Amendments. I join in the opposition expressed by Mark Snyder on behalf of Luxury Holdings.

I am attaching a copy of the letter Mark sent you and concur in the position expressed.

June 17, 2015

Sent Via Email (wpatrick@cityofwestminster)
and United States Mail

Walter Patrick
Planner
City of Westminster
Department of Community Development
4800 West 92nd Avenue
Westminster, Colorado 80031

RE: Olson Technology Park – Proposed PDP/ODP Amendments

Dear Mr. Patrick:

On behalf of Luxury Holdings, LLC (“Luxury”), the owner of Units 800-1200 at 11005 Dover Street in the Walnut Creek Business Park (the “Property”), I provide this written objection to City of Westminster (“City”) regarding the proposed Olson Technology Park PDP and ODP Amendments (the “Proposed Amendments”). As you know, I previously submitted a statement of objection, dated April 29, 2015, and this letter will merely supplement those prior objections. I understand that a Planning Commission (the “Commission”) meeting has been scheduled for June 23, 2015. Since I may not be available to attend that meeting, I would ask that you distribute copies of these comments to each Commission member for purposes of that meeting.

Luxury is the single largest property owner at 11005 Dover in Walnut Creek. For many years, Luxury has leased the Property to others for use as a pharmaceutical distribution/shipping warehouse and company headquarters. These tenants have found Walnut Creek to be ideal for their business operations because it has a quiet and discrete professional office environment appropriate for the storage and handling of valuable pharmaceuticals, which require significant security systems and protocol. Luxury has invested substantially in building-out the Property to accommodate the very specialized security needs of these tenants, and we are concerned that the Proposed Amendments will fundamentally undermine the professional office environment of Walnut Creek and ultimately devalue Luxury’s investments in the Property.

As I write this letter today, the Walnut Creek development boasts an attractive mix of businesses that are compatible with each other because they are decidedly “professional” in nature, such as medical, legal, tax/accounting, pharmaceutical, design, manufacturing, corporate headquarters, company showrooms, etc. Notably, none of the existing professional businesses within Walnut Creek has any sort of “retail” presence or “storefront” visibility that generates any significant public traffic (whether from pedestrians or vehicles). Despite this favorable state of

*Luxury Holdings, LLC – Objections to Proposed
Olson Technology Park Amendments
June 17, 2015*

affairs, as Walnut Creek has approached buildout, it has become evident to everyone within the development that there is now a growing problem with vehicular traffic entering and exiting 108th Avenue from the sole point of ingress/egress provided by Dover Street – particularly during rush hour, when it is notably difficult to turn left (East) in exiting the Walnut Creek development, because of steady traffic on 108th Avenue mostly traveling West from its intersection with Wadsworth Parkway.

While it might seem that the concern over traffic in the Olson Technology Park is a new one borne of economic growth, the objective of limiting public traffic has been a key feature of the development plan from the very beginning: “No fast food restaurants, carry-out restaurants or drive-through facilities shall be permitted within the complex.” See *Second Amended Preliminary Development Plan Olson Technology Park*, ¶ 4.D., at page 1. These kinds of uses would not only undermine the goal of maintaining a compatible mix of professional office/warehouse businesses, but they would also generate a more constant traffic flow within Walnut Creek, which is problematic because of the very limited access to public roadways.

In fact, I conducted some research in the City of Westminster’s archives and determined that this very same traffic concern has existed for almost two decades – including the entire history of MIE Properties’ attempts to develop the Olson Technology Park. This historical information set forth below chronologically provides the Commission with a clear basis to deny the Proposed Amendments:

1. In March 1996, the prior developer of the Olson Technology Park, Lee Kunz Development Co., proposed to add ice arenas as a permitted use to the Preliminary Development Plan (PDP) and to approve the then-proposed Official Development Plan (ODP) for an ice arena on Lot 5 of the development. The ODP was proposed to be approved only on condition of “specific roadway improvements along 108th Avenue” in order “to meet the ultimate traffic needs of the business park.” On the question of access, City staff reported that:

Access is permitted only from Dover Street, where two full movement access points are located. Any future access to the pad site reserved for future development will be restricted to those points with most traffic using the southernmost access point. . . .

The traffic report indicates that the . . . majority of project traffic will pass through the 108th/Wadsworth Parkway intersection with sixty percent of the total oriented towards the south. Prior to project completion, the site’s developer is expected to widen 108th along the site frontage from two to four lanes. In the future, 108th is expected to be widened to a basic five-lane cross-section in conjunction with other future adjacent development projects. Furthermore, future buildout traffic activity is calculated to require the addition of a second left-turn lane to all 108th/Wadsworth Parkway intersection approaches. With these improvements,

*Luxury Holdings, LLC – Objections to Proposed
Olson Technology Park Amendments
June 17, 2015*

the traffic to be generated by the subject development can be accommodated at acceptable peak-hour levels of service. **Without signalization of 108th and Dover, however, left-turns from Dover are projected to experience significant peak-hour delays when the business park fully develops. Approximately 80% of the traffic . . . would come from, Wadsworth Parkway, to the west.**

See City Council Agenda Packet for March 25, 1996 at 25-29 (Agenda Memorandum by David Falconieri, Planner III) (emphasis added). Therefore, over 19 years ago, the City had identified Dover Street as a potential bottleneck that could cause significant delays during rush hour – due to traffic flowing from Wadsworth Parkway – and we are now seeing that prediction come eerily true today yet we are not even at full build out in Walnut Creek!

2. In May 1997, after MIE Properties acquired the Olson Technology Park, it sought City approval of the Second Amended Preliminary Development Plan to add light industrial uses to Lot 5 of the business park. At the Planning Commission hearing on the proposal, however, several adjacent property owners raised concerns “regarding the traffic flow into the park. They were concerned that the proposed use would negatively impact traffic on 108th Avenue.” And on that question of access, City staff reported as follows:

No change is proposed [by MIE Properties] for the access points to the property. No access shall be permitted from either Wadsworth Parkway or 108th Avenue and will only be allowed from Dover Street.

See City Council Agenda Packet for May 12, 1997 at 39-40 (Agenda Memorandum by David Falconieri, Planner III) (emphasis added). At that time, presumably because of these access and traffic concerns, and since MIE Properties did not seek to expand access beyond Dover Street, the City tabled the Second Amended Development Plan for Olson Technology Park and continued the public hearing on MIE Properties’ proposal.

3. Upon continuation of that public hearing, to address the access and traffic concerns that had been raised, MIE Properties and the City proposed approval of the Second Amended Development Plan for Olson Technology Park “on condition” that “Office/warehouse shall be shown as the only allowed use,” including “light manufacturing, distribution, processing, fabrication, assembly, general research, laboratories, warehousing, enclosed outdoor storage, office, medical/dental, banking and retail uses which are ancillary to office/warehouse uses such as print shops and sit-down restaurants.” On these issues, City staff reported that:

The applicant [MIE Properties] has agreed to changing the use designations so that only office/warehouse uses are allowed on Lots 1A through 5 [of the Olson Technology Park]. . . .

*Luxury Holdings, LLC – Objections to Proposed
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At the May 12th hearing, Council members expressed concern that the uses within the PDP were too broad. **The applicant [MIE Properties] has agreed that their product is the office/warehouse type building which may have several different uses within it. Therefore they have agreed to eliminate the use categories Industrial and Commercial in order to make it clearer that the uses shown on the PDP are to be performed only within the limited scope of the office/warehouse building.**

See City Council Agenda Packet for May 19, 1997 at 10-11 (Agenda Memorandum by David Falconieri, Planner III) (emphasis added). After agreeing to eliminate “commercial” use from Walnut Creek 18 years ago, MIE Properties is now seeking to add commercial “studio” use back into the development scheme. But the history of the Olson Technology Park set forth above makes it clear that such use has been intentionally limited within Walnut Creek because of the longstanding access and traffic concerns, which are compounded by the fact that the sole public access point on Dover Street is located within earshot of a major intersection on a busy roadway. These concerns have not changed today and, in fact, are much more pronounced due to population growth and increasing development in the general area around Walnut Creek.

4. Despite this limited public access to Walnut Creek, in September 2008, MIE Properties sought and obtained the City’s approval to vacate portions of the public rights of way for both Dover Street and 110th Avenue. On the proposed vacation, City staff reported that:

The portions of Dover Street and 110th Avenue remaining as dedicated public streets after this proposed vacation is accomplished . . . will provide adequate access to the lots within this development. The City of Westminster does not need the portions of the roadways that are proposed to be vacated because they do not connect to any other developed roadways in the City.

. . . .
MIE Properties . . . has requested that the City vacate a portion of Dover Street and 110th Avenue so that the land covered by these rights-of-way can revert back to their ownership and be used for private development purposes.

See Revised City Council Agenda Packet for September 8, 2008 at 26-32 (Agenda Memorandum by Tiffany Ewing, Civil Engineer) (emphasis added). In the name of even more development in an already crowded situation, MIE Properties shortsightedly sought to vacate portions of unimproved roadways that might have eventually been developed and connected to other established public rights of way to provide additional access points to the development!

5. Later in September 2008, City Council approved the roadway vacations unanimously, finding that:

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

See City Council Agenda Packet for September 22, 2008 at 69 (Agenda Item 8 F; Councillor's Bill No. 34) (emphasis added). With a complete lack of foresight, and apparently without regard to the longstanding access/traffic dilemma at Olson Technology Park, the City approved these roadway vacations requested by MIE Properties! This was ostensibly done to facilitate further development in the area, which would only exacerbate the traffic jam that occupants of Walnut Creek experience every day.

6. Speaking of additional development in the Walnut Creek area, I understand that there is a proposal to develop the vacant land to the southeast of the 108th/Wadsworth intersection into a retail shopping center that "would serve the surrounding employment uses in the Westmoor and Walnut Creek business parks." Staff Report – Comprehensive Land Use Plan Update at 4 (July 23, 2013). I find this very troubling in light of the history of the Olson Technology Park. This proposal, if approved, would be located directly across the street from Walnut Creek and would only further compound the already difficult access/traffic situation at Walnut Creek. With the Colorado Department of Transportation's access point distance requirements, it is unlikely that this parcel is located a sufficient distance from the 108th/ Wadsworth intersection to develop a separate point of ingress and egress on Wadsworth Parkway; it is more likely, instead, that the access point(s) for this proposed project would be located along Dover Street and/or 108th Avenue, thus further aggravating the situation at Walnut Creek and, ultimately, necessitating an additional traffic signal at Dover to provide reasonable public access to both developments.

Based on the history of Olson Technology Park described above, I strongly urge the Commission to deny the Proposed Amendments, or to strictly condition approval of the Proposed Amendments on MIE Properties (1) developing at least one additional access point to public roadways from the Walnut Creek development, and/or (2) paying for the costs of installing a traffic signal at Dover Street ASAP to ease the increasing congestion. Thank you.

Sincerely,



Mark Snyder
Member-Manager, Luxury Holdings, LLC

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June 17, 2015*

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April 29, 2015

wpatrick@cityofwestminster.us

Walter G. Patrick, AICP
Planner
City of Westminster
Department of Community Development

Re: Olson Technology Park – PDP Amendment and ODP Amendment

Dear Mr. Patrick:

BDMartin Investments, LLC, is the owner of units 100 and 200 located at 11005 Dover Street, Westminster, CO 80021, which is part of the Olson Technology Park and affected by the proposed PDP/ODP amendments to permit studio facilities within the development. I am one of the managing members and owners of BDMartin Investments, LLC.

I received the April 14, 2015 notice of a community meeting to be held on April 30, 2015 regarding the proposed PDP/ODP amendments. Although I will be unable to attend the meeting, be advised that I do not support the proposed amendments to permit studio facilities within the development.

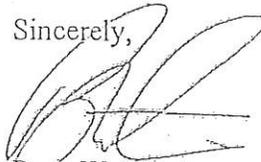
As I recall, the developer, MIE, sought to amend the PDP/ODP previously to permit studios and then withdrew its application. I appeared at the hearing before the planning commission to oppose the proposal. My reasons in opposition, as expressed at that hearing, remain the same: there are insufficient parking spaces available to accommodate dance, martial arts, visual arts or exercise studios or facilities within the development, and such activities are inconsistent with the current business activities. In addition to parking issues, the current access route to and from the development is not conducive to a lot of traffic going in and out. Access is from 108th Avenue and north on Dover Street. There are no traffic lights or other controls at the intersection of 108th and Dover, and during rush hour, it is difficult to exit from Dover onto 108th due to heavy traffic. Additional vehicle traffic from persons going to or from the proposed studio facilities will only make it more difficult and likely unsafe. Has the fire marshal looked at the proposal and considered the safety impact?

Walter G. Patrick, AICP
Planner

April 29, 2015
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Has any consideration been given to building a large parking area immediately adjacent to Wadsworth Parkway together with access directly from Wadsworth rather than via 108th and Dover Street? MIE, I believe, still owns the units that are near Wadsworth Parkway and my assumption is that the proposed studios would occupy those units. Having a large parking area with access via Wadsworth Parkway to those units may be an alternative without adversely impacting the existing commercial property owners and their businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett W. Martin", written over a horizontal line.

Brett W. Martin

Criteria and Standards for Land Use Applications

Comprehensive Plan Amendments

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

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

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

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

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

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

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

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

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

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

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

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

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

Official Development Plan (ODP) Application

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

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

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

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

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



Agenda Item 10 E-I

Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Public Hearing and Action on the Westminster Promenade West Subdivision - Preliminary Development Plan, Master Official Development Plan, and Councillor’s Bill No. 36 Amending the Comprehensive Plan from Mixed Use Center to Mixed Use for Blocks 1A, 1B, and 2 of the Promenade West Subdivision.

Prepared By: Michelle N. Stephens, AICP, Senior Planner

Recommended City Council Action

1. Hold a public hearing.
2. Pass Councillor’s Bill No. 36 on first reading approving a Comprehensive Plan Amendment from Mixed Use Center to Mixed Use for Blocks 1A, 1B, and 2 (approximately 12.147 acres) of the Promenade West Subdivision (32 acres total), based on a finding that the criteria set forth in Section 11-4-16(D)(4), W.M.C., have been met.
3. Approve the Westminster Promenade West Subdivision Preliminary Development Plan, based on a finding that the criteria set forth in Section 11-5-14, W.M.C., have been met.
4. Approve the Westminster Promenade West Subdivision Master Official Development Plan, based on a finding that the criteria set forth in Section 11-5-15, W.M.C., have been met.
5. Adopt a motion approving a vested right, pursuant to Section 11-5-18, W.M.C., for a Site-Specific Development Plan consisting of the Preliminary Development Plan and the Master Official Development Plan for the Westminster Promenade West Subdivision for a period of ten (10) years.

Summary Statement

- The Westminster Promenade West Subdivision Preliminary Development Plan (PDP), which includes the entire area proposed to be removed from the Northpoint Center PDP (see City-initiated Northpoint Center PDP Amendment), facilitates the redevelopment of this important focus area by providing a framework for a mixed-use development that includes a combination of residential, commercial, and office uses in an urban setting.
- The Westminster Promenade West Subdivision Master Official Development Plan (ODP) provides a comprehensive structure to guide future development by outlining the design and land use parameters for future phases of development. Future phases include retail, mixed-use, residential, commercial, and entertainment uses. Detailed architectural and urban design guidelines are also included both on the Master ODP and in separate Architectural and Urban Design Standards and Guidelines document.
- The project site is currently designated in the Comprehensive Plan as Mixed Use Center. It is proposed that Blocks 1A, 1B, and 2 instead be designated Mixed Use in order to increase the economic viability of the site while still planning for a mixed-use, pedestrian-friendly urban environment.
- The applicant has requested and staff supports granting a vested right to develop the project site under the approvals for the Westminster Promenade West Subdivision PDP and Master ODP for a period of ten years.

Expenditure Required: \$0

Source of Funds: N/A

Planning Commission Recommendation

On Tuesday, November 11, 2014, the Planning Commission voted unanimously to recommend approval by the City Council of the Preliminary Development Plan, Master Official Development Plan, and an amendment to the Comprehensive Plan from Mixed Use Center to Mixed Use for the entire Westminster Promenade West Subdivision (Blocks 1A, 1B, 2, 3, 4, 5, 6, and 7).

The proposed amendment to the Comprehensive Plan Land Use designation from Mixed Use Center to Mixed Use for the entire Westminster Promenade West Subdivision (Blocks 1A, 1B, 2, 3, 4, 5, 6, and 7) would limit the maximum density of the site to 36 units/acre and would not require a minimum Floor to Area Ratio (FAR) to be met. At their meeting, the Planning Commission voiced support of the concept of higher density and encouraged the applicant to consider any solution that might increase that density back towards the 80 du/acre at a future date. Staff has since worked with the applicant and are now recommending that the an amendment to the Comprehensive Plan from Mixed Use Center to Mixed Use be applied only to Blocks 1A, 1B, and 2, which is approximately 12 acres of the 32 acre site. By amending the Comprehensive Plan designation from Mixed Use Center to Mixed Use for a smaller portion of the site a larger portion of the site (Blocks 3-7) remains available for the higher density land use envisioned by the Comprehensive Plan. Staff feels this solution is consistent with the Planning Commission recommendation, meets the Comprehensive Plan goals, and is acceptable by the applicant. Additionally, staff would remain supportive of a future amendment for Blocks 1A, 1B, and 2 back to the Mixed Center Land Use designation.

Also at the Planning Commission public hearing, one individual, Mr. Mathew Campfield, voiced concerns about the increase in traffic and the impact it will have on Sheridan Green. City Engineer, Dave Downing, stated that he anticipated more detailed traffic investigations as the individual projects are brought forward.

Policy Issues

1. Should the City approve the Westminster Promenade West Subdivision Preliminary Development Plan?
2. Should the City approve the Westminster Promenade West Subdivision Master Official Development Plan?
3. Should the City approve an amendment to the Comprehensive Plan from Mixed Use Center to Mixed Use for Blocks 1A, 1B, and 2?
4. Should the City approve vesting of the development for 10 years?

Alternatives

1. Deny the Westminster Promenade West Subdivision PDP. This alternative is not recommended because the PDP is in compliance with the criteria set forth in Section 11-5-14 of the Westminster Municipal Code (W.M.C.). Additionally, the PDP provides a clear framework for the redevelopment of this focus area until such time as the City can develop a Specific Plan for the overall area.
2. Deny the Westminster Promenade West Subdivision Master ODP. This alternative is not recommended because the Master ODP is in compliance with the criteria set forth in Section 11-5-15, W.M.C. The Master OPD also provides clear design guidelines that will implement the vision set out in the Comprehensive Plan for this area, which in turn will facilitate quality development.
3. Approve the Westminster Promenade West Subdivision PDP and Master ODP with conditions. Components of the PDP, Master ODP or design guidelines can be amended if City Council considers elements require refining.
4. Deny the proposed Comprehensive Plan Amendment (from Mixed Use Center to Mixed Use) for Blocks 1A, 1B, and 2. This alternative is not recommended as the amendment is in compliance with the criteria outlined in Section 11-4-16(D)(4), W.M.C., and is supported by the Planning Commission.
5. Deny the proposed 10-year vesting period, which would limit the vested rights period to three years. This alternative is not recommended as staff has worked closely with the applicant to

develop detailed design standards that accomplish the Comprehensive Plan goals for this portion of the Church Ranch Focus Area. Additionally, build-out of this development in a manner consistent with the Comprehensive Plan is expected to take longer than three years under current market conditions.

Background Information

Nature of Request

The Westminster Promenade West Subdivision has a long history as an important project within the City. The existing Promenade was established in 1996 when the City Council approved an ODP to create a leisure/cultural/entertainment complex designed to serve the northwest metropolitan area. This included a 24-screen AMC theatre and a plaza that is located in front of the theatre leading to a promenade of shops and restaurants. This promenade extends to a pedestrian bridge over Westminster Boulevard connecting Westminster Promenade West with the Westin hotel and the Ice Centre (Westminster Promenade East).

The original ODP for the Promenade included some architectural design guidelines and had the objective of creating a “turn of the century” Colorado downtown using traditional materials such as stone, brick and glass and featured custom lighting, signage and site furnishings.

Currently, Westminster Promenade West is underperforming as a retail/entertainment destination. Some of the major physical issues with the site include lack of visibility into the core of the project, lack of physical presence at key intersections and along roadways, and a use mix that does not encourage daytime or extended evening visits. The proposed PDP, Master ODP and Design Guidelines aim to revitalize this development and enhance the original vision for this area.

Westminster Promenade West is within the Church Ranch Focus Area in the recently adopted Comprehensive Plan. The Comprehensive Plan provides a clear vision for this area and sets as a policy (F-P-28) that master plans be developed for each area within the Church Ranch Focus Area. Additionally it defines the provisions for the Westminster Promenade West Mixed Use Center, stating:

“Ensure the master plan for the Westminster Promenade Mixed Use Center area includes a mix of uses, including retail, entertainment, hotel, office, and residential development. This area should act as the heart of the focus area with the highest intensity of development. A vertical mix of uses should be emphasized, with retail at the ground floor and residential, office, and hotel uses on upper floors.”

The master plan proposed by Westminster Promenade West Subdivision Master ODP, when fully implemented, will accomplish the type of center envisioned in the Comprehensive Plan.

Westminster Promenade West PDP

The proposed PDP establishes eight new development blocks. Each block proposes multiple uses such as residential, office, retail and entertainment, including vertically and horizontally mixed uses. Other components of the proposed PDP include permitted and prohibited uses, vehicular access points and multi-modal connectivity such as a new bike path along Promenade Drive South which connects to the existing RTD bus stop.

Westminster Promenade West Master ODP

The Master ODP establishes a framework and vision for future development setting out the street network, streetscape palette, setbacks, parking, landscape, architectural guidelines and signage with the aim of creating a pedestrian-oriented, human-scaled urban environment.

As projects develop, each subsequent block, building, pad or development site will be required to submit an individual and more specific and detailed ODP or ODP Amendment that is consistent with the PDP and Master ODP. Each individual ODP or ODP Amendment will utilize the Promenade West’s Architectural and Urban Design Guidelines to ensure that Westminster Promenade West maintains a cohesive and unique character.

The existing pedestrian promenade of shops and restaurants that spans from the AMC theatre to the pedestrian bridge over Westminster Boulevard is a significant public space that requires careful design consideration, as there is an opportunity to achieve a cohesiveness of design elements between Westminster Promenade West and Westminster Promenade East. For these reasons, no changes to this space are proposed with this application. Instead, a subsequent ODP Amendment will be submitted for this area following a design charrette with City staff and the applicant for this project.

A comprehensive set of *Architectural and Urban Design Standards and Guidelines* accompany the Master ODP. The guidelines regulate individual block development in order to achieve a coherent design aesthetic where each individual building contributes to the goals for the overall vision. The guidelines also strive to provide both predictability and flexibility in order to ensure a high quality yet diverse environment. The proposed *Promenade Architectural and Urban Design Standards and Guidelines* are consistent with the City's Retail Commercial Design Guidelines and are similar in nature to the urban form standards found within the Downtown Specific Plan. The *Promenade Architectural and Urban Design Standards and Guidelines* are described in more detail below and include specific items such as build-to lines and a master architectural materials palette. There are four main components of the design guidelines: Site Design, Architecture, Urban Design and Signage.

Site Design

The site design components provide specific criteria for the development of the overall site as well as individual blocks as they develop. These elements include lot and block patterns, street design, vehicular, pedestrian and cyclist access and circulation, public open space, landscape design, parking lot design, water quality and sustainable site design.

Architecture

The architectural standards and guidelines establish the urban form of the Promenade. These criteria are focused on addressing building form and the relationship between the buildings and the public domain through controlling height and massing, build-to lines and setbacks, variety and scale and building materials as well as detailed design elements that focus on creating pedestrian-oriented building frontages.

Urban Design

The components outlined in the urban design requirements apply to all development within the Promenade. Many of these requirements address function aspects of design such as parking lot design and lighting as well as providing direction for streetscapes, fixtures, furnishings as well as the design of public spaces.

Signage

Supplemental standards and guidelines for signage including sign location, materials, quality, design and signage lighting are outlined in this chapter. The development will follow the WMC sign regulations with exceptions listed on the Master ODP and in the *Promenade Architectural and Urban Design Standards and Guidelines*, including:

- 2 monument signs per frontage;
- Additional monument sign area;
- Additional monument sign height;
- The name of the center is not required on the joint tenant identification signs; and
- Additional wall sign height allowed for the theater.

Comprehensive Plan Amendment

The applicant is also requesting a change from the Mixed Use Center land use designation to the Mixed Use land use designation for Blocks 1A, 1B, and 2 in order to increase the economic viability of the site whilst still planning for a mixed-use, pedestrian-friendly urban environment. The primary difference between the Mixed Use Center and Mixed use land use designations is the intensity of development as regulated by FAR and density limitations. The table below outlines these differences:

Land Use District	Density Min	Density Max	FAR Min	FAR Max
Mixed Use	8.0 du/ac (when provided)	36.0 du/ac (when provided)	0.10 Commercial when Residential is Provided	1.5 Combined Residential and Commercial
Mixed Use Center	18.0 du/ac (when provided)	No Maximum	0.75 Combined Residential and Commercial	2.0 Combined Residential and Commercial (Greater FARs may be Permitted)

The Westminster Municipal Code (Section 11-4-16) requires the owner of the property requesting an amendment to the Comprehensive Plan (CP) to prove the amendment is in the public good and in overall compliance with the purpose and intent of the CP.

Staff believe the proposed Comprehensive Plan amendment from Mixed Use Center to Mixed Use meets the criteria outlined in Section 11-4-16, W.M.C., as the change facilitates development that meets the long-range vision outlined in the Plan while also allowing development of early phases (Blocks 1A, 1B, and 2) that are consistent with the current market demand, which may have a lower floor to area ratio (FAR). Redevelopment of this site (Blocks 3-7), as outlined in the Master ODP, into a transit supportive urban neighborhood is in the interest of the public good and meets the intent of the Comprehensive Plan.

Location

The 32-acre site is located in the Church Ranch Focus Area, as designated in the Comprehensive Plan, and is bounded on the west by US Highway 36, to the south by West 104th Avenue, and to the east by Westminster Boulevard. The properties to the north and east are within the Northpoint Center Planned Unit Development (PUD). (Please see attached vicinity map).

Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	CP Designation	Use
North: Axis Development	PUD	Mixed Use Center	Entertainment, Hotel, Undeveloped
South: Northpoint Center Filing 1	PUD	Retail Commercial	Butterfly Pavilion, Commercial
EAST: Westminster Promenade East	PUD	Mixed Use Center	Entertainment, Hotel, Undeveloped
West: US36	PUD	-	-

Public Notification

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

- **Published Notice:** Notice of public hearings scheduled before City Council shall be published and posted at least 4 days prior to such hearing. Notice was published in the Westminster Window on July 16, 2015.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Four signs were posted on the property on July 16, 2015.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner's associations registered

with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on July 16, 2015.

Applicant

EPR Properties
C/O Acumen Development, LLC
ITS Authorized Agent
4600 S Syracuse Street, Suite 1450
Denver, CO 80237

Property Owner

Westcol Center, LLC
Westcol Theater, LLC
909 Walnut Street, Suite 200
Kansas City, MO 64106

Project Information

The following site plan information provides a few examples of how the proposal complies with the City's land development regulations and guidelines; and the criteria contained in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached).

- Circulation and Parking:

The Westminster Promenade West Subdivision provides for an interconnected network of pedestrian paths, trail/open space connections, and walkable streets. The two existing connections to Westminster Boulevard are maintained (Promenade Drive North and Promenade Drive South). The existing connection to West 104th Avenue will also be maintained and extended northwest to form a central street (Street A) within the development connecting to the existing parking areas (owned by City of Westminster) to the northeast of the project. Streetscape improvements such as enhanced paving, street furniture, landscaping, and lighting are all included in the Master ODP and Design Guidelines.

In addition to on-street and some small surface parking, structured parking will be developed in conjunction with future development and reviewed through individual ODP approvals. Once built-out, it is envisioned the site will 3,900 parking stalls. This represents a surplus of 126 parking stalls using the current WMC Off-Street Parking Standards (11-7-4).

- Site Design and Landscape Design:

The PDP and Master ODP define the framework that future ODP approvals will be granted; therefore no specific site approvals are included with this Master ODP approval. The overall site design of the public realm, including infrastructure and landscape design is included in this Master ODP. The use of a variety of brick pavers and pavement materials combined with a coherent landscape theme and street furniture is intended to create a pedestrian-friendly environment. Key pedestrian crossings provide wide crosswalks and bulb-outs that create an environment that encourages walking. Gathering and socializing are also encouraged by the creation of blocks of development connected by a coherent street grid punctuated with a mix of uses.

Three buildings, the AMC Theater (Block 3), Dave and Busters (Block 2) and Fat Cats (Block 7) and their associated parking are envisioned to remain. Streetscape improvements around these blocks and potential façade upgrades are anticipated.

- Public Land Dedication/School Land Dedication:

Development of the individual blocks that include residential components will be required to meet the WMC requirements for land dedication. Fees for School Land Dedication will be determined at the time of each individual ODP. Staff is proposing to accept cash in lieu of Public Land Dedication at this location rather than the dedication of land. The Public Land Dedication Fee will be established at

\$5.00 per square foot, which amount shall be increased annually commencing in 2016 by the CPI for the Denver Metro area.

- **Parks/Trails/Open Space:**
No new parks, or open space are being proposed with PDP and Master ODP. The existing pedestrian connection to the existing Promenade overpass, which connects to City Park, is maintained. Additionally, a new shared path is proposed along Promenade Drive South that passes the RTD bus stop and connects around to Promenade Drive North. Development of the individual blocks that include residential components will be required to meet the W.M.C. requirements for park development fees.

Over the whole development, a minimum total of 12.5% open space (4 acres) is required including one contiguous open space a minimum of 4% of the gross area.

- **Architecture/Building Materials:**
The design guidelines include detailed standards for site design, architecture, urban design, and signage. Staff has worked closely with the applicant to ensure the design guidelines will result in development that meets the vision for the Church Ranch Area defined in the Comprehensive Plan.

Design intent, design standards, and design guidelines are included for all elements of the development. Build-to-Lines combined with standards for transparency, building materials, and entries all contribute to the walkability of the overall development.

- **Signage and Lighting:**
The design guidelines also provide clear direction for signage and lighting that work together with the architecture and site design to create a cohesive development with a clear sense of place. Exceptions (described above) to the W.M.C. Signage regulations have been identified in the Master ODP and the *Promenade Architectural and Urban Design Standards and Guidelines*.

Westminster Municipal Code Requirements

The following information provided complies with the City's land development regulations and design guidelines; and the criteria contained in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached). Staff is of the opinion that the approval of the proposed Westminster Promenade West Subdivision PDP and Master ODP satisfy all of the following criteria.

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

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

1. *The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.*
Staff Comment: Staff believes that the land use proposed by this project is in conformance with the City's Comprehensive Plan and all City Codes, ordinances and policies. The addition of the proposed land uses is essential in encouraging a vibrant, mixed-use development.
2. *The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.*
Staff Comment: The PUD (including its design guidelines) includes criteria for development of the site with buildings, landscaping, parking, pedestrian and vehicular circulation that is consistent with best planning practices.
3. *Any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.*

Staff Comment: There are no exceptions from standard Code requirements proposed with the PDP.

4. *The PUD is compatible and harmonious with existing public and private development in the surrounding area.*

Staff Comment: Staff believes that the proposed project is compatible and harmonious with existing development and future development in the surrounding area. The site will have landscaped buffering on all property boundaries, including blocks that face private streets. The buildings and urban design will be compatible with, and function like, the other buildings in the Church Ranch Focus Area.

5. *The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.*

Staff Comment: Staff believes that this criterion has been met. The project is consistent with the Comprehensive Plan and provides design guidelines, which ensure mitigation of potential adverse influences.

6. *The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.*

Staff Comment: No adverse impacts are anticipated as the proposed PUD is consistent with the Comprehensive Plan vision set for the Church Ranch focus area.

7. *Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions, and in a manner that creates minimum hazards for vehicles and pedestrian traffic.*

Staff Comment: The PDP proposes to maintain all existing access points into the development. The new streets proposed within the Promenade have been carefully designed to ensure minimum hazards for vehicles and pedestrians including the provision of multiple, clearly-marked pedestrian crossings.

8. *The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.*

Staff Comment: The PUD meets this criterion. An additional accel/decel lane on 104th is noted on the Master ODP and will be required when the City determines it is necessary.

9. *Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in Section 11-5-15, W.M.C.*

Staff Comment: The project includes clear performance standards via the design guidelines which will guide all future project design.

10. *The applicant is not in default or does not have any outstanding obligations to the City.*

Staff Comment: The applicant is in compliance with this criterion.

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

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

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

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

Staff Comment: The plan generally complies with this criterion. The plan is in conformance with the Comprehensive Plan Church Ranch focus area vision and the intent of the Mixed Use Center designation. It is proposed that a portion of the site (Blocks 1A, 1B, and 2) be designated Mixed Use in order to increase the economic viability of the site whilst still planning for a mixed-

use, pedestrian-friendly urban environment. Exceptions to the W.M.C. relating to signage are listed on the Master ODP.

2. *The plan is in conformance with an approved Preliminary Development Plan (PDP) or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).*

Staff Comment: The plan is in compliance with the proposed PDP being processed concurrently with the Master ODP.

3. *The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.*

Staff Comment: Staff believes that the building, landscaping, parking, pedestrian and vehicular circulation proposed in this Master ODP and the design guidelines are consistent with best planning practices. The proposed Master ODP and associated design guidelines detail the planning objectives and strategies for each plan component ensuring each subsequent ODP also meets this criterion.

4. *For Planned Unit Developments, any exceptions from standard Code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.*

Exception to WMC Chapter 11 – Signage Regulations are also proposed and noted on the Master ODP and in the *Promenade Architectural and Urban Design Standards and Guidelines*. These exceptions and variations are similar to what was allowed at the Orchard Town Center are due to the nature and scale of the development. These exceptions include:

- 2 monument signs per frontage;
- Additional monument sign area;
- Additional monument sign height;
- The name of the center is not required on the joint tenant identification signs; and
- Additional wall sign height allowed for the theater.

It should be noted that a maximum of two signs are allowed per street frontage (monument signs/ ID signs or a combination of the two).

5. *The plan is compatible and harmonious with existing public and private development in the surrounding area.*

Staff Comment: Staff believes that the proposed Master ODP and design guidelines are compatible and harmonious with existing development and future development in the surrounding area. The plan builds on and enhances the original vision for the Promenade.

6. *The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.*

Staff Comment: The plan is compatible and harmonious with existing development and future development in the surrounding area. The site will have landscaped buffering on all property boundaries, including blocks that face private streets.

7. *The plan has no significant adverse impacts on future land uses and future development of the immediate area.*

Staff Comment: No adverse impacts are foreseen upon future land uses or other development in the immediate area. Staff believes this development will lead the way in achieving the vision for this area established by the Comprehensive Plan.

8. *The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.*

Staff Comment: This proposed development is designed to be compatible and harmonious with the adjacent developments in terms of uses and structures. The Master ODP provides the framework for future development which will be submitted as individual ODPs.

9. *Building height, bulk, setbacks, lot size, and lot coverage are in accordance with sound design principles and practice.*

Staff Comment: Building height, bulk, setbacks are all specified both on the Master ODP and within the architectural and urban design standards and guidelines. Each block, building or pad site will have an individual ODP which will apply the framework established by the guidelines.

10. *The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.*

Staff Comment: Although no structures are proposed with this Master ODP, the design guidelines specify detailed architectural requirements including form, height, massing and materiality.

11. *Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.*

Staff Comment: Setbacks and a variety of landscape and streetscape treatments provides an appropriate visual buffer adjacent to the development. Further mitigation will be considered with the review of the individual ODPs for development of the blocks within the Master ODP.

12. *Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.*

Staff Comment: The streetscape landscaping design is well considered and diverse. Further landscaping will be considered with the review of the individual ODPs for development of the blocks within the Master ODP.

13. *Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.*

Staff Comment: A traffic impact study was completed for this project that assessed capacity and existing traffic volumes. The report concluded that the existing roadway system will operate well at build-out without major roadway improvements. However, the future need for an additional accel/decel lane on 104th is noted on the Master ODP and will be required when the City determines it is necessary through the individual ODP review processes.

14. *Streets, parking areas, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.*

Staff Comment: The new streets proposed within the Promenade have been carefully designed to ensure minimum hazards for vehicles and pedestrians including the provision of multiple, clearly-marked pedestrian crossings.

15. *Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.*

Staff Comment: An extensive network of sidewalks and pedestrian crossings will minimize conflict between vehicles and pedestrians. Pedestrian routes, including access to the Park and Ride, Westminster Boulevard and 104th Avenue are included in the plan.

16. *Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.*

Staff Comment: A number of utility and drainage improvements are noted on this ODP. These include the upsizing of the sanitary sewer currently located behind the AMC theatre and a proposed 12" water main to be constructed in Street A. Approval is conditional upon outstanding engineering items in the drainage and utility studies being addressed.

17. *The applicant is not in default or does not have any outstanding obligations to the City.*

Staff Comment: The applicant is in compliance with this criterion.

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

Service Commitment Category

175 Service Commitments were awarded in the 2014 competition, which represents half of the commitments required for the total proposed residential development. Additional service commitments may be requested by the applicant as market demand permits.

Referral Agency Responses

A copy of the proposed plans was sent to the following agencies: Xcel Energy, Comcast, Century Link, Jefferson County R-1 School District, City and County of Broomfield Planning department and the Rocky Mountain Regional Airport. Staff received responses from Xcel Energy and the Rocky Mountain Regional Airport.

Xcel energy determined the Public Service Company has an existing electric transmission line and associated land rights as shown within this property. The existing transmission line is now clearly marked on the ODP and any future development that will impact that easement must be reviewed.

The Rocky Mountain Regional Airport identified that the Promenade development is partially within the Airport Critical Zone and recommended that residential be located outside the identified zone. Staff acknowledges the importance of the airport critical zone, but considers the current proposed placement of residential development to be the best planning outcome. In addition, the airport had four recommendations for the project including filing the appropriate FAA Form 7460-I Notice of Proposed Construction and the design of all future structure to be attenuated to achieve a 25dB sound reduction of inside noise levels. These recommendations will be implemented for each future ODP approval.

Neighborhood Meeting(s) and Public Comments

On Monday 31st March 2014, a neighborhood meeting was held to solicit feedback on Westminster Promenade West. Six people attended including representatives from the Butterfly Pavilion, the Ice Centre and The Westminster Window. Generally, people were very supportive of the proposed development and welcomed the additional activity, new restaurants and residential development potential.

Additionally, notice of the public hearing was sent on July 1, 2015, to all adjacent property owners within 300 feet of the PDP boundary. City staff have not received any comments or inquiries as a result of the public hearing notification.

Vested Rights

State law requires that a vested property right shall be granted for a period of three years when a project meets certain conditions as specified in Sections 24-68-101 et seq., C.R.S., and the City has adopted its own vested property rights ordinance in order to implement the statute. The statute and Westminster's ordinance permit a property owner to request a duration longer than three years where it is warranted in light of all relevant circumstances, including the size and phasing of the development, economic cycles, and market conditions. The applicants have requested a ten-year vesting period as current market conditions are not anticipated to provide pressure for the intensity of development that is contemplated by the Comprehensive Plan within the next three years. Staff believes this is a reasonable assumption and supports the applicant's request for a longer vesting period.

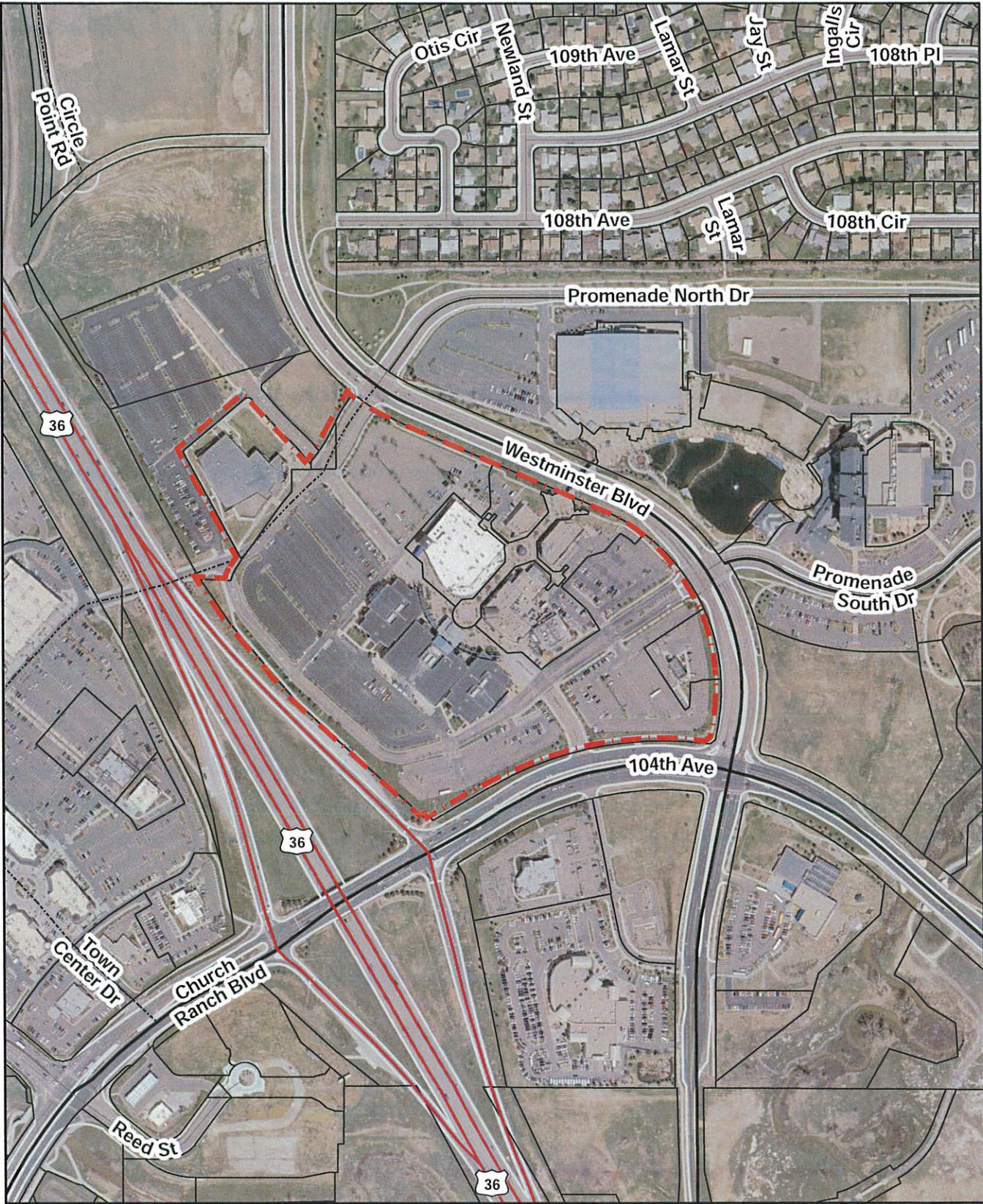
Strategic Plan

The Promenade West project and proposed Comprehensive Plan amendment meet the City Council's Strategic Plan Goals of *Vibrant & Inclusive Neighborhoods; Dynamic Diverse Economy; and Ease of Mobility*. The Promenade's overall master plan outlines a framework to redevelop an already successful neighborhood into a more pedestrian-oriented, human-scaled, transit friendly development, which in turn supports our economy and provides easy access to amenities and shopping.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Attachment A – Vicinity Map
Attachment B – Criteria and Standards for Land Use Applications
Attachment C - Comprehensive Plan Map
Comprehensive Plan Ordinance



GIS-Apps\WestGIS\ArcGIS93\Templates\Westminster_Base_93.mxd

Westminster Promenade West - Vicinity Map



Criteria and Standards for Land Use Applications

Comprehensive Land Use Plan Amendments

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

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

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

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

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

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

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

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

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

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

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

City Initiated Rezoning

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

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

Official Development Plan (ODP) Application

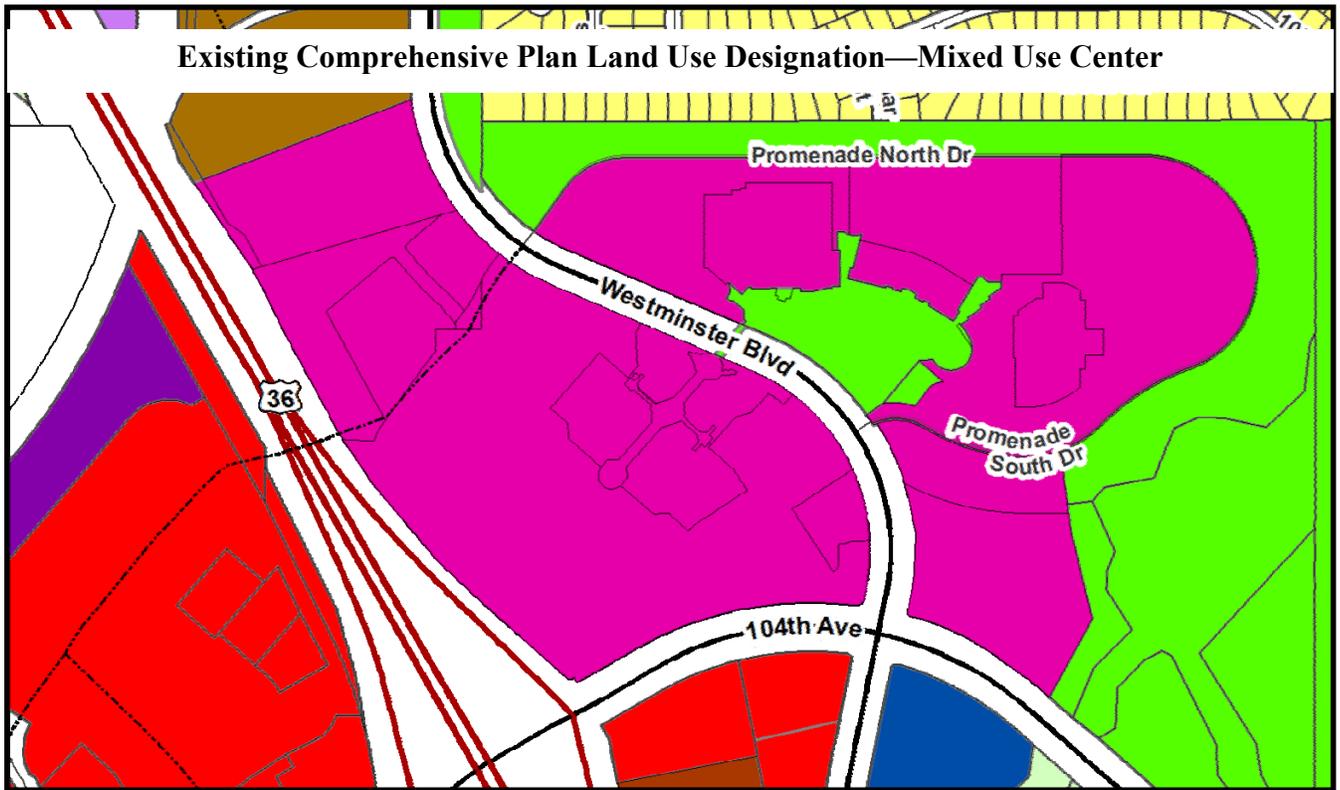
11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

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

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

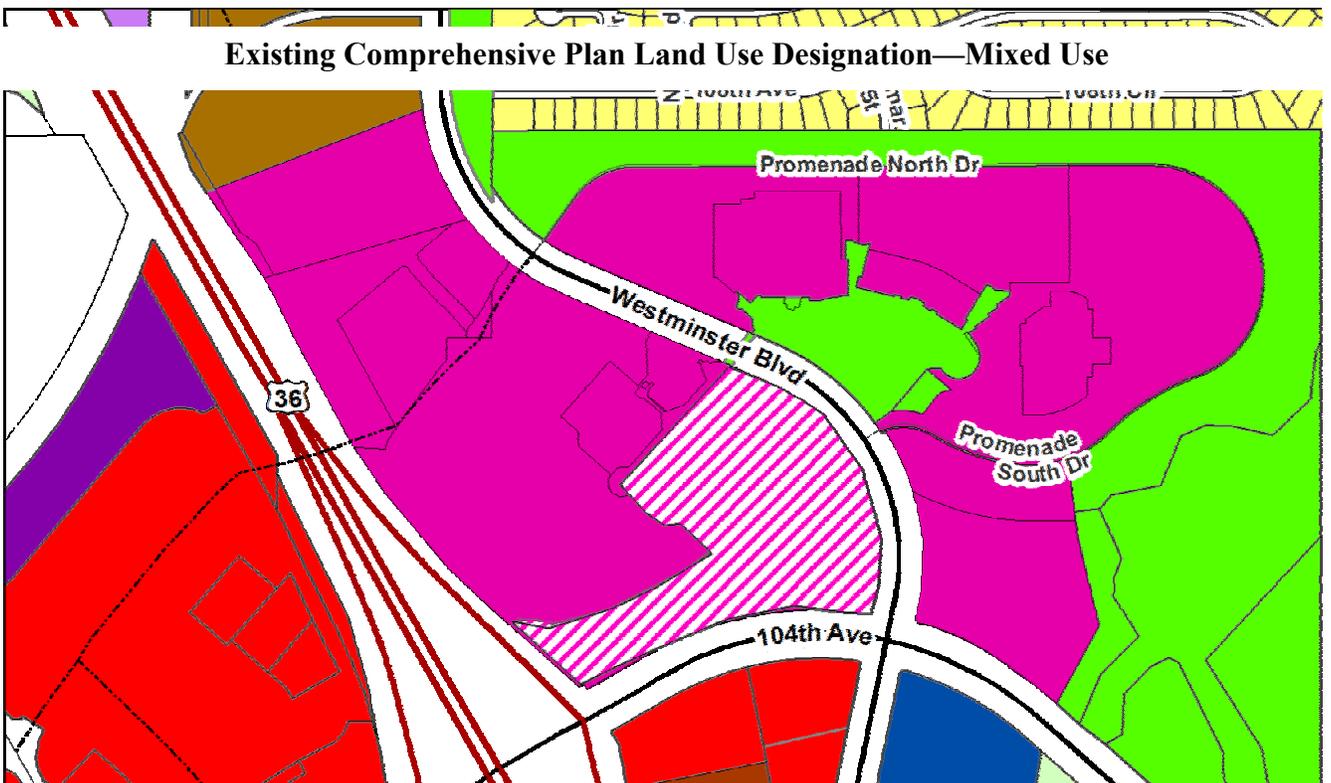
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned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

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



LEGEND

	R-1		R-36		Office		Private Park / Private Open Space
	R-2.5		TMUND		Office/RD Low		Golf Courses
	R-3.5		Mixed Use		Office/RD High		Public/Quasi Public
	R-5		Mixed Use Center		Flex/Light Industrial		Major Creek Corridor
	R-8		Retail Commercial		City Open Space		RxR ROW
	R-18		Service Commercial		Public Parks		



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **36**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER
COMPREHENSIVE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds that:

a. An application for an amendment to the Westminster Comprehensive Plan has been submitted to the City for its approval pursuant to Section 11-4-16(D), W.M.C., by the owners of the properties described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from "Mixed Use Center" to "Mixed Use" for a 12.147 acres portion of the 32 acre parcel bounded on the west by US Highway 36, to the south by West 104th Avenue, and to the east by Westminster Boulevard.

b. Such application has been referred to the Planning Commission, which body held a public hearing thereon on November 11, 2014, after notice complying with Section 11-4-16(B), W.M.C., and has recommended approval of the requested amendments.

c. Notice of the public hearing before Council has been provided in compliance with Section 11-4-16(B), W.M.C., and the City Clerk has certified that the required notices to property owners were sent pursuant to 11-4-16(D), W.M.C.

d. Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. The owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Plan. The change from the Mixed Use Center land use designation to the Mixed Use land use designation will increase the economic viability of the site while still planning for a mixed-use, pedestrian-friendly urban environment envisaged by the Comprehensive Plan.

Section 2. The City Council approves the requested amendments and authorizes City staff to make the necessary changes to the map and text of the Westminster Comprehensive Plan to change the designations of the properties more particularly described on attached Exhibit A to Mixed Use which is incorporated herein by reference.

Section 3. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 10th day of August, 2015.

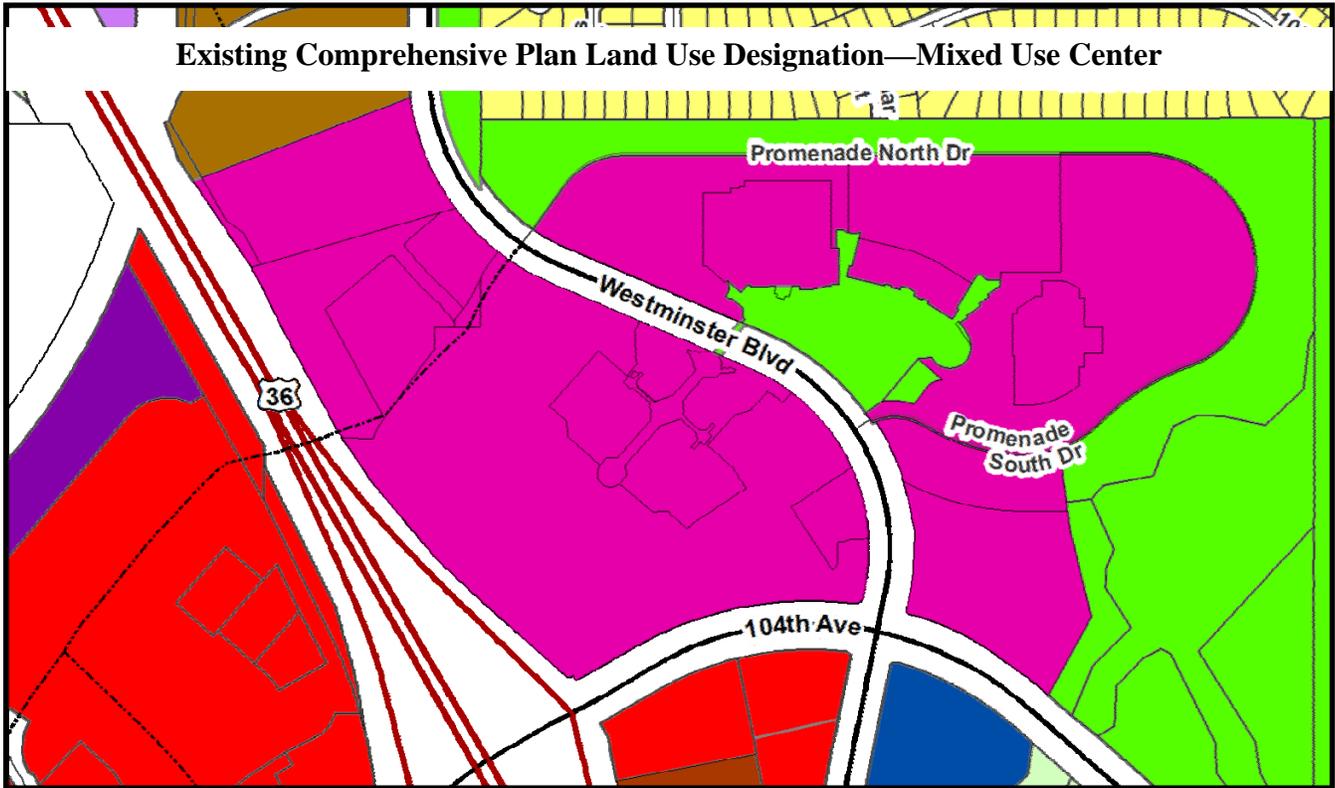
ATTEST:

Mayor

City Clerk

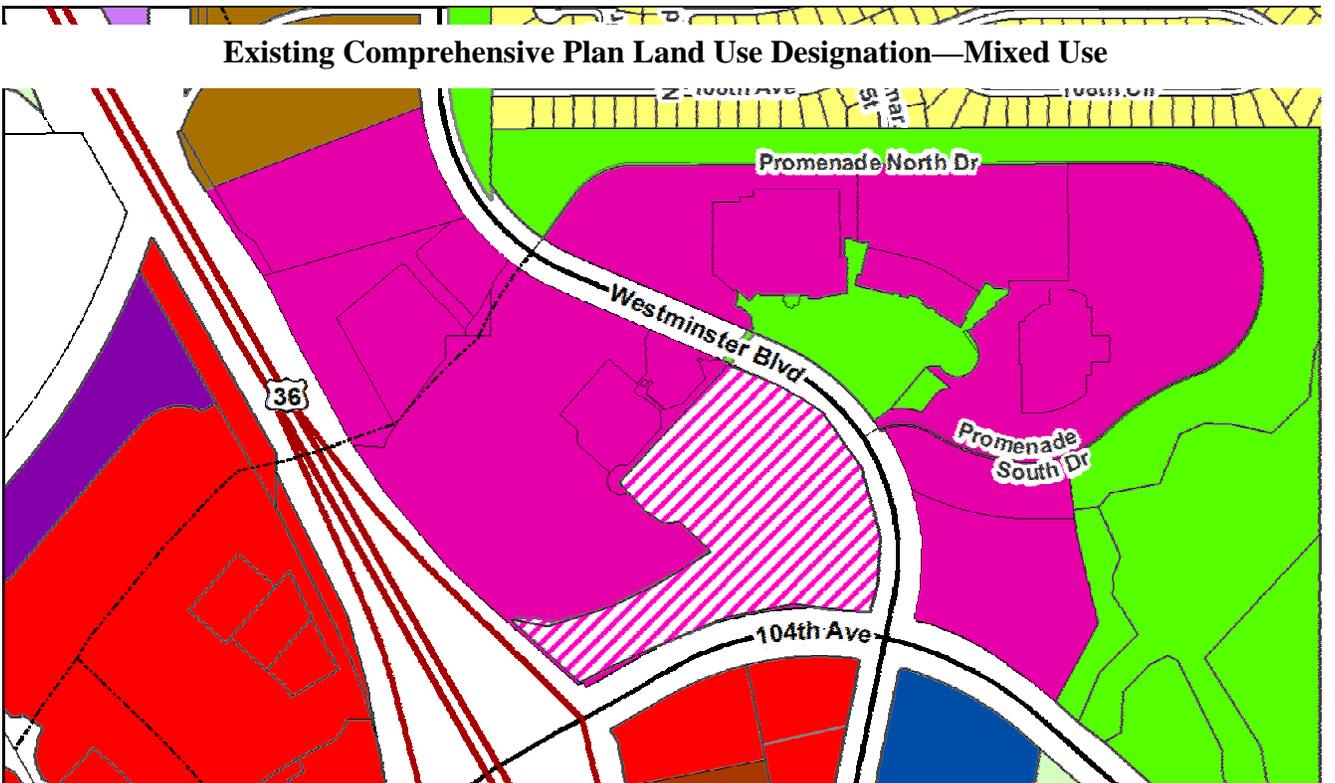
APPROVED AS TO LEGAL FORM:

City Attorney's Office



LEGEND

	R-1		R-36		Office		Private Park / Private Open Space
	R-2.5		TMUND		Office/RD Low		Golf Courses
	R-3.5		Mixed Use		Office/RD High		Public/Quasi Public
	R-5		Mixed Use Center		Flex/Light Industrial		Major Creek Corridor
	R-8		Retail Commercial		City Open Space		RxR ROW
	R-18		Service Commercial		Public Parks		





Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Councillor’s Bill No. 37 Appropriating Funds from the Regional Transportation District, Awarding the Westminster Station - Phase 1 Infrastructure Project, Amending Design Services Contract with Martin/Martin, Inc. and Authorizing a Construction Engineering Contract with Martin/Martin, Inc.

Prepared By: John Burke, Senior Projects Engineer
Seth Plas, Engineer

Recommended City Council Action

1. Pass Councillor’s Bill No. 37 on first reading appropriating a total of \$3,136,237 received from the Regional Transportation District to the Westminster Station Drive North Infrastructure project per the Intergovernmental Agreement between the City and the District.
2. Authorize the City Manager to award the bid and execute a contract with Concrete Express, Incorporated, in the amount of \$6,722,509.15 for the construction of the Westminster Station - Phase 1 Infrastructure project; and authorize a construction contingency of \$670,000 which may include the bid alternates such as a snow melt system in the North Station Plaza, concrete wall finish or a stone veneer on the retaining walls for a total authorized expenditure of \$7,392,509.15.
3. Authorize the City Manager to execute a contract amendment with Martin/Martin, Inc. in the amount of \$36,453 for the Westminster Station - Phase 1 Infrastructure project design services.
4. Authorize the City Manager to execute a contract with Martin/Martin, Inc. in the amount of \$255,033 plus a contingency of \$25,503 for a total of \$280,536 for the construction engineering services for the Westminster Station - Phase 1 Infrastructure project.

Summary Statement

- Staff recommends that the City proceed with the construction of Westminster Station Drive, Hooker Street and the North Station Plaza to satisfy the requirements of the Intergovernmental Agreement (IGA) between the City and the Regional Transportation District (RTD) pertaining to the Westminster Station project.
- Council action is requested to appropriate funds received from RTD per the IGA between the City and RTD.
- Requests for bids for the construction of the project were advertised in the Daily Journal and on web-based DemandStar for three weeks. The bids were due on June 29, 2015, and only one bid was received. This bid was from Concrete Express, Incorporated.
- A design contract amendment is also requested for re-designing retaining walls due to the proximity to the Burlington Northern Santa Fe Railroad tracks “Zone A” influence area.
- Staff recommends that the City proceed with construction engineering services offered by Martin/Martin, Inc. to perform inspections and review submittal documents for this project.

Expenditure Required: \$7,709,498.15

Source of Funds: General Capital Improvement Funds – Westy Station Drive/North Plaza Project

Policy Issues

- Should City Council approve receipt and appropriation of funds from the RTD for the Westminster Station - Phase 1 Infrastructure project?
- Should City Council proceed with awarding the construction contract to Concrete Express, Incorporated, an engineering design services change order with Martin/Martin and construction engineering services with Martin/Martin, and for the Westminster Station - Phase 1 Infrastructure project?

Alternatives

1. City Council could choose not to appropriate the funds from the RTD for this project, however, Staff does not recommend this option as these funds are needed to complete this work.
2. City Council could choose to not move forward with this project. However, the City has an IGA with the RTD to provide the infrastructure detailed in this project by an agreed upon revenue date. If the City is not able to provide this infrastructure, it could be subject to delay claims of \$8,965 per day. As such, Staff recommends awarding this construction contract, engineering design services change order and the construction engineering contract to meet this deadline.

Background Information

In June 2012, City Council approved an IGA with the RTD that describes the parties' responsibilities for designing and building Westminster Station, the commuter rail station to be located at approximately 70th Avenue and Irving Street. Through its concessionaire, Denver Transit Partners (DTP), RTD will be responsible for all track work, the station platform and the pedestrian tunnel. These features will allow rail users to pass from the transit-oriented development (TOD) area located north of the tracks to the station platform. As part of RTD's Eagle P3 Program, rail service for this short portion of the Northwest Rail Line is intended to open in mid-2016. The Eagle P3 Program also includes service along the East Corridor (to Denver International Airport) and the Gold Line (to Arvada and Wheat Ridge).

Under the IGA, the City is responsible for providing streets and utility infrastructure sufficient to support station operations. This project extends Hooker Street from south of 71st Avenue to the proposed North Station Plaza at Westminster Station Drive and also constructs Westminster Station Drive from Hooker Street to Federal Boulevard where a new traffic signal and access were approved by the Colorado Department of Transportation (CDOT). Street lights, electrical work, landscaping and a sidewalk on the southern portion of Westminster Station Drive will be included in this construction.

Requests for bids for the construction of the project were advertised in the Daily Journal and on web-based DemandStar for three weeks. Staff also contacted various contractors directly. The bids were due on June 29, 2015, and only one bid was received. That bid was from Concrete Express, Incorporated in the amount of \$7,025,713.40. Various other contractors were contacted about this project but were simply too busy to prepare a bid for this project, which seems to be a common theme in the current construction market.

Even though only one bid was received, time is of the essence to complete this work per the IGA with RTD. During its review of the 178 bid items, Staff identified a few arguably high unit prices compared to

industry standard. As such, Staff contacted CEI and through a brief meeting found that CEI was unable to secure bids from concrete, landscape and lighting subcontractors and therefore put in higher than expected unit prices to protect its financial interest. Through this discussion, CEI offered to solicit subcontract bids from additional suppliers and was able to reduce their overall cost by \$303,204.25. The amount of the contract to be awarded to CEI is now \$6,722,509.15.

Staff has reviewed the bidding procedures and recommends that Concrete Express, Incorporated be awarded the contract for construction of the project in the amount of \$6,722,509.15. Staff has worked with Concrete Express, Incorporated on other projects and is confident that the company will complete this project in a timely and professional manner. The requested 10% construction contingency of \$670,000 is typical for the size and complexity of this kind of project and may include the addition of the bid alternates such as a snow melt system on the North Station Plaza, enhanced concrete wall finish or a stone veneer on the retaining walls.

The bid alternate for the snow melt system was \$265,000 and will reduce the ongoing maintenance in the North Station Plaza area during winter conditions since the plaza area is on the north side of the sixteen-foot tall retaining wall and will be in the shade most of the year. Staff will work with the contractor to identify value engineering alternatives to solidify the costs for this snow melt system as it wasn't very refined in the bid package. Staff will add it to the scope of the project if contingency funds are not needed for items currently in the contract. In similar fashion, the costs for the stone veneer were \$504,000 which was higher than can be absorbed in the current budget. As such, Staff will need to value engineer this design to reduce the cost without drastically impacting the aesthetics of the project. Lastly, if the stone veneer bid alternate is not implemented, Staff requested a bid for enhanced concrete finish that leaves a "nicer" gray concrete finish at a cost of \$52,500.

Martin/Martin staff provided the design for the roadway, utility infrastructure, and North Station Plaza that formed the bid documents advertised for bidders, and have direct knowledge of the existing conditions. As such, staff recommend using Martin/Martin for the construction engineering services for this project. These services include construction inspection, materials testing and submittal document review. Staff believes Martin/Martin's fee, including contingency, for the construction engineering services totaling \$280,536, is appropriate for the tasks described in the proposal. This is approximately 4% of the total construction costs, which is very reasonable for this type of construction engineering services.

There were multiple reasons for the additional engineering design services in this amended contract. The amended engineering design services contract is recommended due to change orders that were added or unforeseen when Staff sought City Council approval for the original contract and amended contracts. These unforeseen conditions included the re-designing and relocating of numerous retaining walls within the North Station Plaza to avoid BNSF's "Zone A influence area" that would cause these to be designed for train loads. Just for reference, the "Zone A influence area" is effectively a 2:1 slope down from the track ballast that BNSF has determined is a high risk area for any excavation or construction, and, therefore, any work in this zone requires significant structural upgrades for items such as the retaining walls.

By re-designing and relocating these walls, it significantly reduced the construction costs. The added engineering design services also included value engineering for the light fixtures. There were various light fixtures and pole options to review and ultimately select that would meet the City's and RTD's criteria. Staff reviewed light-emitting diode (LED), metal halide and fluorescent lights that were aesthetically

pleasing, energy efficient, easily operated and maintained as well as able to meet RTDs stringent light output requirements for a commuter rail station. This effort took additional review and cost-benefit analysis. In the end, Staff believe this extra effort will save the City operations and maintenance funds that will exceed the additional design fees.

Per the IGA with RTD, staff is requesting the appropriation of funds as detailed in the attached Councillor’s Bill. This appropriation will amend the General Capital Improvement Fund revenue and expense accounts account as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Contributions	7500.43100.0000	\$0	<u>\$3,136,237</u>	\$3,136,237
Total Change to Revenues			<u>\$3,136,237</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Westy Station Drive/North Plaza	81475030071.80400.8888	\$0	<u>\$3,136,237</u>	\$3,136,237
Total Change to Expenses			<u>\$3,136,237</u>	

The cost for all contracts mentioned in this agenda memo will be paid from the General Capital Improvement Fund – Westy Station Drive/North Plaza Project.

This project meets elements of three goals in the City’s Strategic Plan: *Beautiful, Desirable, Environmentally Responsible City; Dynamic, Diverse Economy; and Ease of Mobility.*

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Councillor’s Bill
Vicinity Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **37**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2015 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2015 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2015 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3737 is hereby increased by \$3,136,237. This appropriation is due to payments which will be received by the City of Westminster from the Regional Transportation District as the result of an Intergovernmental Agreement regarding the Westminster FasTracks Rail Station project.

Section 2. The \$3,136,237 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 J-M, dated July 27, 2015, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$3,136,237</u>
Total	<u>\$3,136,237</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 27th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of August, 2015.

ATTEST:

Mayor

City Clerk

Irving St

W 71st Ave

Hooker St

WEST 71st AVE

Grove St

Unincorporated

 Westminster City Limit

Project Area

Hooker St

PARKING STRUCTURE

PERMANENT BUS TRANSFER FACILITY

Grove St

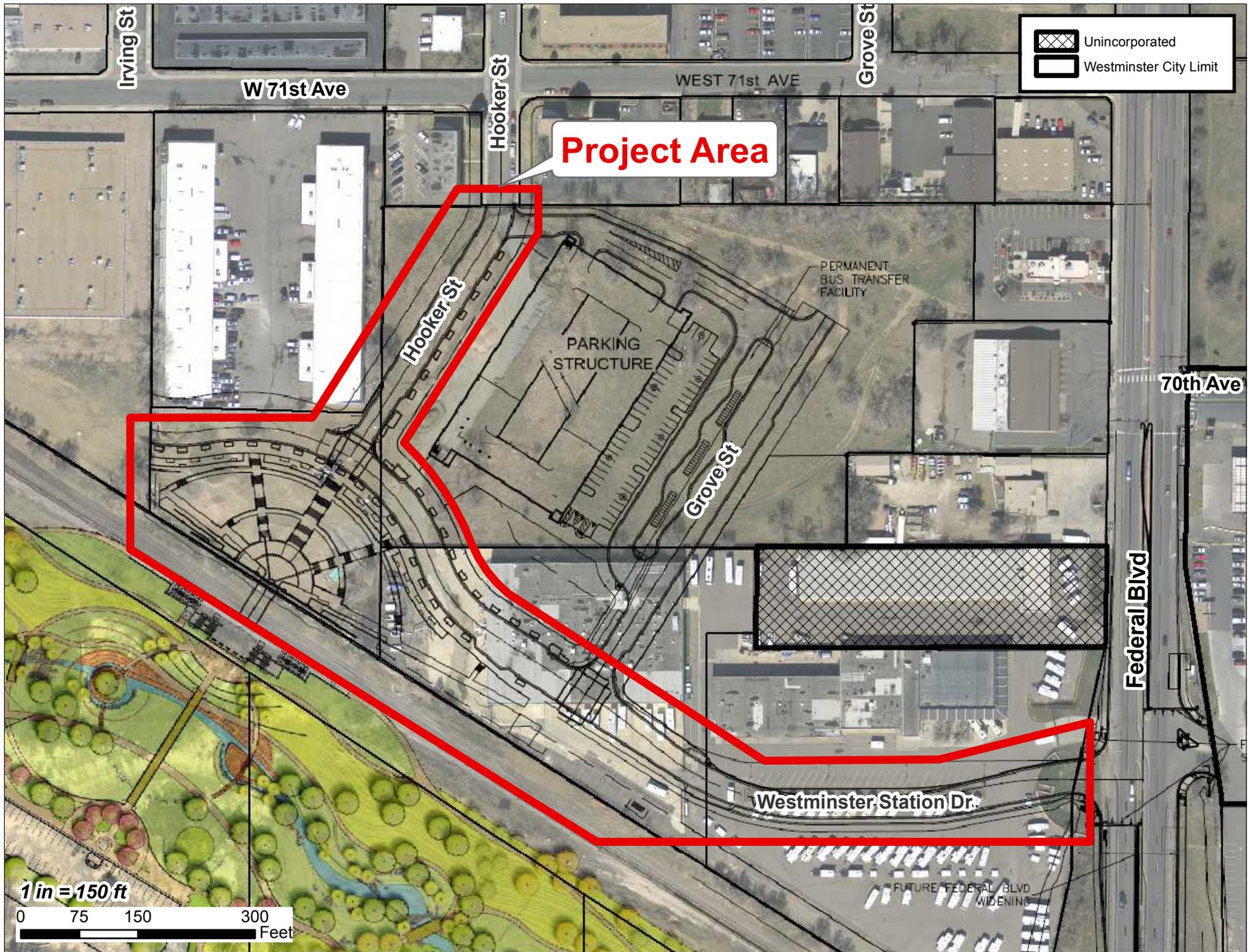
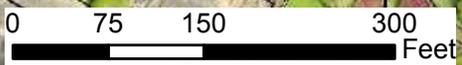
70th Ave

Federal Blvd

Westminster Station Dr.

FUTURE FEDERAL BLVD WIDENING

1 in = 150 ft





City Council Meeting
July 27, 2015



SUBJECT: Councillor's Bill No. 38 re Updates to Section 6-7 of the Westminster Municipal Code Regarding Beekeeping and Chicken Husbandry on Single-Family Detached Residential Properties

Prepared By: Grant Penland, Principal Planner
David German, Associate Planner
Kim Barron, Police Commander

Recommended City Council Action

Pass Councillor's Bill No. 38 on first reading updating animal regulations in Title VI of the Westminster Municipal Code.

Summary Statement

- The City Code currently prohibits beekeeping and chicken husbandry on residential properties.
- Staff has carefully reviewed the existing Animal Code and has drafted proposed revisions to the regulations that will allow for the keeping of bees and chickens on single-family detached residential properties.
- The proposed regulations are intended to provide safe, humane, and well-managed environments for bees and chickens, to promote healthy honey and egg production, to promote and support urban agriculture, and to provide sustainable alternative food supply options.
- Staff discussed possible regulations for beekeeping and chicken husbandry with the City Council at the August 4, 2014, and the April 6, 2015, Council Study Sessions, and at the May 11, 2015, Council Post Meeting. Staff has also conducted public outreach meetings for the topics and prepared a draft ordinance for review by the City Council.
- At the May 11, 2015, City Council Post Meeting, Council instructed Staff to make minor changes to the proposed new Municipal Code Amendment, including that renters should be allowed to keep bees and chickens, and that the ordinance would take effect ninety days after the second reading of the ordinance to allow for adequate implementation timing. Council also wanted to explore what other communities are doing in terms of noticing requirements. This information has been ascertained and incorporated into this memorandum.

Expenditure Required: \$54,244 Annually (Estimated by the Animal Management Staff in the Police Department, but not currently budgeted.)

Source of Funds: TBD

Policy Issue

Should the City initiate revisions to Title VI, Chapter 7, of the Westminster Municipal Code (Animal Code) as proposed by staff to allow the regulated keeping of bees and chickens on single-family residential lots?

Alternatives

1. Take no further action and leave the Municipal Code section regarding animals unmodified. This alternative requires no action by the City and results in no additional expenditure of funds. This alternative might not adequately address concerns raised by City of Westminster residents regarding their interest in backyard chicken husbandry and beekeeping. Further, the City might be missing a potential opportunity to adopt a more environmentally sustainable stance.
2. Adopt the Municipal Code amendment provided with this Agenda Memorandum after modifying some or all of the revisions presented therein. The City Council may wish to adopt the currently proposed revisions with one or more changes, based on feedback received by citizens and other factors. Further, the Council may wish to expand the allowances for beekeeping to include City-owned open space and/or Community Gardens. Under the current language of the Westminster Municipal Code, beekeeping is allowed on City-owned properties that are zoned O-1 (which is commonplace in designated Open Space areas). In previous years, Open Space staff has allowed a beekeeper to use property in the Westminster Hills Open Space for beekeeping. This limited beekeeping has, so far, been successful with very minimal impact to the property and no incidents of vandalism. However, before such a program is created, several critical issues will need to be studied in more detail. These issues include: liability, vandalism, fencing, locations, access to locations, permitting, staffing levels, equipment, food sources, water sources, predator activity, usage of pesticides, and public outreach/education.

Background Information

For the past several years, cities around the country have been adopting ordinances permitting the keeping of urban chickens at the urging of residents who cite local healthy food production, humane treatment of animals, a lower-cost food source, sustainability, and personal enrichment as a few of the many benefits of raising chickens on their properties.

Additionally, a number of communities have incorporated standards for beekeeping into their local health, animal control, or land development codes. The sanctioning of beekeeping is often desired by residents for the purposes of honey production for their consumption, along with the potential benefit of pollination services and ensuring an extant bee population. This is especially important because bees and other pollinators have suffered significant losses in their populations across North America, and a great number of food crops depend on the positive effects of these pollinators. In June of 2014, President Obama directed an interagency task force to create a “Strategy to Promote the Health of Honey Bees and Other Pollinators,” after seeing an alarming decline in their numbers. In May of 2015, this task force, under the leadership of the United States Department of Agriculture, released its strategy, which included calls for increased research into pollinator losses, behavior, migration patterns, and causes for declining health. Other parts of the strategy included increasing the quality and quantity of pollinator habitats, reducing pollution, and stemming the incorrect use or overuse of pesticides. Further, the strategy advocated a strong outreach and public education component, giving citizens the information they need to make a difference. Creating “bee-friendly” or “pollinator-friendly” environments, reducing the use of pesticides, and keeping bees and other pollinators (such as bats) are all identified as steps that individuals can take to improve the plight of pollinators.

Currently, the Westminster Municipal Code regulates keeping of chickens and bees through the Police Regulations of Title VI, which regulates livestock (including both bees and chickens). Section 6-7-12

states, "It should be unlawful to keep or maintain livestock in residential, business, commercial, and industrial zoned districts, and Planned Unit Developments unless specifically allowed in the PUD, excepting that livestock should be permitted in parcels zoned O-1 or in parcels of ten (10) acres or more in size in all zoning districts prior to commencement of construction on the parcel. In any case, the number of animals kept in a Planned Unit Development (PUD) should not exceed the number permitted by the provisions of the Official Development Plan (ODP). Livestock, excluding fowl, should have one-half (1/2) acre of pasture available for each animal." This prohibition currently includes bees and chickens, which are included in the definition of "Livestock" found in Section 6-7-1 of the Municipal Code.

In 2012, the City of Westminster asked its citizens what they thought of keeping bees and/or chickens on their properties in the City's *Citizen Survey*. The response was 52% of respondents "strongly" or "somewhat" opposing honey bees, and 60% "strongly" or "somewhat" opposing chickens. There was no *Citizen Survey* in 2013, and in 2014, the *Citizen Survey* did not ask any questions regarding chickens or bees. The 2012 survey was randomly distributed to 3,000 households. About 4% of the surveys were returned due to various mailing difficulties (housing unit was vacant, bad address, etc.). Of the 2,871 households that received the survey, 874 (about 30%) chose to respond.

From September of 2012 through May of 2014, *WestyConnect* received four new threads that support residential chicken husbandry, and one new thread that supported residential bee keeping. These threads received thirty-two positive votes, twenty-three positive comments, and five negative comments. From April 3, 2015, to April 26, 2015, 230 distinct participants made comments through *WestyConnect*. The tone of these comments was generally supportive of both bees (155 comments in favor; 35 opposed), and chickens (45 comments in favor; 15 opposed).

On May 7, 2014, the City conducted a telephone survey (the *Telephone Town Hall* survey). Of the 305 total respondents on the question of allowing chickens on residential properties, 56% responded "no," while 44% responded "yes." On the question of allowing honey bees on residential properties, 66% of 313 total respondents said "yes," while 34% said "no."

Between May 20, 2014, and May 4, 2015, the Planning Division has received ten inquiries through the *Access Westminster* application, and via direct phone call/email. Seven of the inquiries supported chickens, three were opposed to chickens, and none of the inquiries dealt with bees.

Currently, there is still interest in bee and chicken "Urban Agriculture," as evidenced by continued public inquiry on the subject. The City Council, in recognizing this interest, directed Planning Division staff to research the keeping of bees and chickens on residential lots within the City, and considered this initial research at a Study Session on August 4, 2014. At that time, the City Council directed staff to continue researching the topic, and to bring forth recommendations for possible changes to the Westminster Municipal Code (W.M.C.), which was done on April 6, 2015. The City Council then asked that public outreach meetings be conducted. Staff held two Public Outreach meetings to offer residents the opportunity to provide input about residential beekeeping (April 16, 2015) and chicken husbandry (April 23, 2015). Twenty-six residents attended the Beekeeping Meeting, of these, twenty-three expressed "support" for bees, two were "opposed," and one was "undecided."

Specific modifications to the proposed beekeeping regulations were proposed by some of the meeting attendees as follows:

- Provide an exception requiring the flyaway barrier for people who have a six-foot fence along property line or if hive can be placed twenty-five feet from property line. (Staff agrees with the six-foot privacy fence as a flyaway barrier alternative, but not the twenty-five-foot separation, as this distance will not necessarily change the altitude of a low-flying honeybee.)

- Require hive owners to join a state/local club that provides education, resources, and support. (While staff agrees that state and local clubs provide a wealth of resources, joining such a club should not be a requirement for beekeepers, in staff's judgement.)
- Allow renters to also own beehives. (This was asked for by participants at the Beekeeping Open House and is provided in the new Municipal Code Amendment at the direction of the City Council.)
- Require notice to adjacent landowners as part of permit application. (Staff sees the benefit of communication between homeowners, but is not recommending prior notice due to enforcement difficulties, and the potential conflicts and confrontations that might arise.)
- Require the owner to be responsible for any property damage incurred. (Staff agrees with this idea, and has recommended language in the ordinance that makes the beekeeper fully responsible for all aspects of his or her beekeeping endeavor.)

Additionally, continued outreach and education regarding urban agriculture and backyard beekeeping was requested by several of the participants of the open house, including one recommendation to maintain a list of professional beekeepers.

The turnout for the Chicken Keeping Meeting a week later was decidedly stronger, with fifty-one people attending. Forty-three residents expressed "support" for backyard chickens, seven were "opposed," and one was "undecided." A log of specific comments received is included as an appendix to this Agenda Memo. Specific modifications to the proposed chicken husbandry regulations were proposed by the meeting attendees as follows:

- Increase the number of chickens permitted per lot size by two, and eliminate the lot-size-per-chicken ratio and allow a maximum of eight-ten chickens for any single-family, owner-occupied lot. (After further consideration, Staff agrees that increasing the minimum number of chickens (from four to six) and eliminating the lot-size-per-chicken ratio would be advantageous. The multi-tiered ratio system originally introduced has been replaced with a two category system—under two acres, and two acres or more. This change is also in keeping with what most of Westminster's neighboring localities are doing, and is easier to enforce.)
- Modify the setback requirement for chicken coops. Some commenters requested the setback to the property line be reduced to zero feet, while others proposed the setback be increased to 150 feet from occupied structures. (Staff believes that the previously proposed ten-foot-setback is in the best interests of the City, and provides a reasonable separation in most residential lot configurations.)
- Require at least two complaints from different neighbors before taking enforcement action (protecting the interests of chicken owners), or, conversely, allow the immediate removal of chickens for any neighbor complaint regarding chickens (protecting the interests of the person filing a complaint). (The City's Animal Management Unit will investigate all complaints and inquiries, and take enforcement action, as warranted. Every complaint situation is unique, and the factors involved with each case must be weighed on their own merits.)
- Require a class (certification) on chicken care prior issuing backyard chicken permit. (While staff agrees that classes and certification may lead to a more successful operation that receives fewer complaints, requiring such education (certification) should not be a requirement for chicken keepers, in staff's judgement.)
- Allow limited time for chickens to "free range" in the backyard under the supervision of the owner. (The proposed ordinance has been revised to allow chickens to be out of their coop during daylight hours, providing that their flight capability has been disabled, and that the rear yard they are in is fully fenced in and enclosed.)
- Allow renters to also have backyard chickens. (This was asked for by participants at the Chicken Keeping Open House and is provided in the new Municipal Code Amendment at the direction of the City Council.)
- Require notice to adjacent landowners as part of permit application. (Staff sees the benefit of communication between homeowners, but is not recommending prior notice due to enforcement difficulties, and the potential conflicts and confrontations that might arise.)

- Require the owner to be responsible for any property damage incurred. (Staff agrees with this idea, and has recommended language in the ordinance that makes the chicken keeper fully responsible for all aspects of his or her chicken keeping endeavor.)

The opposition also voiced concern about the impact to City resources, such as animal management. There was genuine concern that it would be very difficult, if not impossible, to mitigate all impacts associated with chicken husbandry in residential neighborhoods.

It should be noted that while backyard beekeeping and chicken husbandry received a great deal of attention and generally positive feedback from these various public outreach efforts (*WestyConnect*, outreach meetings, etc.), the vast majority of Westminster's Citizens have offered no feedback at all. The United States Census Bureau estimates a population of 110,945 for the City of Westminster as of July 1, 2013. Based on this total population number, less than one percent of the City's population has been involved in the discussion. If the Citizen Surveys are included, (and assuming that each public involvement effort reached different citizens, each time), the percentage is higher, but still under two percent. The 2012 Citizen Survey had the broadest reach, with 874 respondents, and had a majority negative opinion for both bees and chickens.

Concerns and Enforcement:

The major objections to beekeeping are the fear of being stung and the increased potential of the nuisance relating to bee swarms. Concerns regarding raising chickens in an urban area generally encapsulate three particulars: odor, noise, and disease. Also, both beekeeping and chicken husbandry may increase the likelihood of elevated predator and nuisance animal activity in the area, which, in turn, may lead to an increase in zoonotic diseases in pets and other animals in the region.

From an enforcement perspective, the Animal Management staff receives an average of two calls per month in reference to problems associated with chickens in residential areas. For a compilation of enforcement data gathered by our Animal Management staff, please see Appendices II-A and II-B.

The allowance of beekeeping and/or chicken husbandry is likely to have an impact on existing City resources, including the potential licensing, monitoring and enforcement of these practices. It can be expected that Animal Management's calls for service for noise and odor complaints, pet limit issues, animals at large, nuisance complaints, and welfare/neglect checks may increase and create additional service demands on staff that have not been factored into Animal Management's current staffing levels. The Animal Management Unit staff believes that core services may need to be reduced in order to address additional responsibility call loads associated with the new chicken and/or bee ordinance changes. If staffing levels in that Unit increase, an additional vehicle would become necessary. The Animal Management Unit staff estimates a resultant cost increase to the City of \$54,244, (+ benefits), which breaks down as follows: additional staff: \$21,244 salary, (plus benefits; this estimate is based on a 0.5 FTE); additional equipment and uniforms: \$5,000; additional vehicle and equipment: \$28,000). Animal Management staff did identify several other issues and questions to consider, many of which have now been addressed, including:

- A one-time permit will be required. The fees will be reasonably set by the City Manager or his/her designee in an amount to cover the costs of administering the permit program. No prior inspection of a property will be conducted prior to issuing a permit;
- Residents would not need to obtain permission from, or otherwise notify, surrounding neighbors as part of the permitting process;
- The City of Westminster Animal Management Unit will be responsible for enforcing the ordinance(s) pertaining to chickens and bees. This Unit may revoke permits for failing to meet, or otherwise violating, the Bee and Chicken ordinances;

- If, upon inspection, the City suspects that bees are being neglected, or that they are aggressively swarming or otherwise becoming a nuisance, a private professional beekeeper will be enlisted by the City to come and inspect (and, if needed, resolve) the situation. The cost of hiring this professional would be an expense collected from the property owner through the City's nuisance abatement process and court assessment of costs—a lengthy and involved process requiring the staff time of the municipal court, the City attorneys, and Animal Management staff.
- Based on the instruction received from City Council, only legislation to allow bees and chickens is currently under consideration. No other animals are being discussed with this effort;
- Under the rules currently under consideration bees and chickens will not count against the current pet limit allowed to Westminster property owners. Currently¹ allowed on each property in the City are, three (3) cats/dogs in any combination. In addition, a resident may have one (1) potbellied pig, three (3) rabbits, five (5) exotic animals or a combination of five (5) domestic and exotic animals, or no more than ten (10) domestic animals. Domestic animals are defined as: domesticated dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, and invertebrates, except livestock, chickens, and exotic endangered and prohibited animals.

When reviewing this material, it should be noted that individual subdivisions that are regulated by Covenants, Controls, and Restrictions (CC&Rs), or otherwise controlled by Homeowner's Associations (HOAs) may further restrict or prohibit the keeping of bees and/or chickens within the subdivision. Currently, approximately 65 percent of the single-family detached homes located within the City are governed by an HOA. In March, the Planning Division sent out letters to the ninety-seven known HOAs in the City of Westminster (see attached sample letter), asking if their covenants restricted beekeeping or chicken husbandry, and soliciting any comments that the HOAs might have. To date, fourteen responses have been received (Advantage at Wood Creek, Asbury Park, The Nines at Legacy Ridge, Hyland Greens East, The Abby of Westminster, The Pointe, Wadsworth Estates, Promontory Point, Franklin Square, Meade Manor, Wild Flower at the Ranch Condominiums, High Pointe, Lexington, and Huntington Trails) with thirteen (13) HOAs indicating that their covenants prohibit beekeeping and chicken husbandry. Only one responding HOA, (Asbury Park), indicated that it has no regulations on the subject. Note that the City ordinance will not supersede these covenants.

While there have been no universal standards applied to regulating beekeeping and chicken husbandry in the residential districts of the neighboring jurisdictions that were researched, most communities have incorporated some level of administrative oversight and legal restrictions regarding these activities within municipal boundaries, primarily to address issues of public health and nuisance concerns.

What follows are elements that were considered when drafting the current proposed ordinance. These elements have been developed based on the practices of many localities in our region, as referenced in the attached Appendices.

Research Information: Beekeeping:

Many communities nationwide have incorporated standards for beekeeping into their animal control or land development codes. Local beekeeping standards typically restrict the number and location of hives based on the size of the lot or the zoning district where the bees are being kept. Typically, a beehive will accommodate one bee colony; healthy colonies typically consist of 30,000 to 75,000 bees or more. Many codes specify a minimum distance between hives and adjacent buildings or property lines, and some require beekeepers to obtain a permit. Some codes also require a "flyway barrier" (typically five to six feet high) to prevent bees from flying onto other properties at elevations that would disturb neighboring residents. Another relatively common provision is a requirement that hives have access to clean water

¹ Animal Management has proposed changes to the number of animals allowed as part of a comprehensive Title VI, Chapter 7, clean-up ordinance that, at the time of this writing, was scheduled for 1st Reading on July 13th, and 2nd Reading on July 27th. Further updates will be made to Title VI, Chapter 7 with the Municipal Code Amendment discussed in this Agenda Memorandum that will remove bees and chickens from the definition of "Livestock."

on-site to minimize the risk of bees congregating at other freestanding water sources (such as neighboring swimming pools or bird feeders). Typically, a permit or hive registration is required, and many localities reserve the right to inspect hives, if needed.

Staff researched the zoning codes of fourteen Front-Range jurisdictions, and, additionally, contacted these communities seeking insight regarding their regulation of beekeeping. Among the fourteen Colorado communities surveyed, eleven specifically allow beekeeping in residential zoning districts. Two of the remaining communities do not address beekeeping in their ordinances, and the final locality allows beekeeping on only large lot or “Estate Lot” residential properties. Contact was made with several Planning Managers in those communities, and it was generally conveyed that no substantive negative impacts have been noted. Discussions with the Code Enforcement and Animal Management units in those other localities did reveal problems however, with complaints ranging from beehives being located too close to property lines, to bee stings, to bee swarms becoming nuisances. Appendices I-A and I-B show a listing of the surveyed jurisdictions, and how their codes are applied with regard to beekeeping.

Pros and Cons: Beekeeping:

Common supporting arguments associated with allowing beekeeping in residential zoning districts are as follows:

- Bees in residential areas can provide important pollination of community gardens, home vegetable gardens, and fruit trees.
- It is estimated that honeybees pollinate two-thirds of all food crops, and in recent years, have suffered significant losses. Some experts assert that these losses are caused or exacerbated by the use of pesticides, the stress of constant travel to different farms to pollinate crops, and the lack of plant diversity in rural environments. The continued existence of honeybees might be assisted by hobbyist beekeepers who do not subject their colonies to such stressors.
- Some people believe that honey contributes to a healthy lifestyle by providing a minimally-processed sweetener, and through its various uses as a homeopathic remedy.

Common opposing arguments associated with allowing beekeeping in residential zoning districts are as follows:

- Bees travel in swarms to establish a new hive. Bees can create a nuisance or be seen as a danger if they become aggressive or swarm on neighboring property.
- The increased risk of injury from bee stings and the potential life threatening consequences to individuals who are allergic to bee stings is a recurring concern.
- There are several types of pest animals that are attracted to the presence of bees and their honey. These include raccoons, skunks, insects, and even larger animals like black bears. These opportunistic visitors may pose a threat to household pets in neighboring yards, which may, in turn, lead to complaint calls to the City. They may also carry zoonotic diseases which are diseases that may be transmitted between animals and humans, such as distemper, staphylococcal, and terrestrial rabies.

Research Information: Chicken Husbandry:

As with residential beekeeping, many cities around the country have adopted ordinances permitting the keeping of urban chickens, as well. These ordinances are typically located in the zoning section or in the animal control title of local codes and typically only allow the keeping of female chickens (hens). To this end, staff researched the municipal codes of fourteen Front-Range jurisdictions, and also contacted several communities for additional insight regarding their regulation of chicken husbandry. Among these fourteen jurisdictions, ten of the communities specifically allow the ownership of chickens in residential zoning districts. Two of the remaining communities do not allow residents to own and keep chickens in

residential zoning districts, and one only allows chicken husbandry on only large lot or “Estate Lot” residential properties. The final jurisdiction surveyed does not address chicken husbandry in its municipal code. Staff contacted several of the Planning Managers from those communities that have allowed chicken husbandry who generally conveyed that no substantive negative impacts have been noted. Discussions with the Code Enforcement and Animal Management units in those other localities did reveal problems however, with complaints ranging from chickens wandering loose through residential neighborhoods, rooster noise, exceeding the allowable numbers of birds, neglect, predation of improperly protected chickens, smells, attracted nuisance animals, lack of cleaning (of pens/coops), and persons keeping chickens without a permit. Appendices II-A and II-B show a listing of the selected Colorado jurisdictions, and how their codes are applied with regard to the owning and keeping of chickens.

Pros and Cons: Chicken Husbandry:

Common supporting arguments associated with allowing hens in residential zoning districts are as follows:

- Hens provide a fresh, locally produced, and inexpensive source of food to families at a time when food prices are increasing due to cost increases in production, fuel, shipping, and packaging costs.
- Hens eat food scraps, dandelions, mice, and insects and may contribute to reductions in the waste stream.
- The hen droppings may be used as a natural fertilizer which may be used in backyard gardens.
- Some people point to being able to control what the chickens are eating, resulting in fewer chemicals and unknown substances in the eggs and meat produced. There is often a belief that eggs from backyard chickens are more wholesome and nutritious than mass-produced eggs from large farming and ranching conglomerates.

Common opposing arguments associated with allowing hens in residential zoning districts are as follows:

- The presence of hens may attract predators and nuisance animals such as foxes, coyotes, and raccoons into residential neighborhoods, putting pet animals like dogs and cats at greater risk of attack or infection. Each year, Westminster Animal Management officers respond to numerous complaints from citizens who have lost pets to coyote and other predator attacks while their animals were in their own backyards. Citizens have voiced their displeasure with the limited resources offered by the City of Westminster in response to wildlife calls. Introducing chickens will likely increase the predator activity—and thus—result in an increase in pet losses. Additionally, an increase in predators in the region leads to the spread of zoonotic diseases. Last year, both Jefferson and Boulder counties had confirmed distemper and terrestrial rabies in skunks and raccoons. These and other similar diseases are on the rise in our region. A recent (May 2015) letter from the State Veterinarian’s Office (State of Colorado Department of Agriculture) is included as an appendix to this agenda memorandum. The letter outlines concerns related to the recent rapid spread of “bird flu,” more properly called “Highly Pathogenic Avian Influenza,” or HPAI for short. While direct effects to humans are unlikely, this disease can severely harm both commercial and residential chicken operations, and other animals.
- Keeping hens may lead to unsanitary conditions due to owner neglect, increasing the risk of disease transfer through feces as well as the origination of undesirable odors.
- Hens may take flight in short bursts and are capable of clearing a six foot privacy fence.
- There might be an increase in complaints associated with roosters. When individuals buy chicks, they may not be able to distinguish between a hen and rooster. Owners may be reluctant to part with roosters that they raised from chicks, as they become emotionally attached to their animals.
- Contrary to what some say, hens do make noise, and, depending upon their location, may be heard on neighboring properties, which might be objectionable.

Staff talked to Dr. Jacquie Jacob, University of Kentucky, who was referred as a resource through the Colorado State University (CSU) Extension program, about potential concerns linked to keeping

chickens. She agreed that more wildlife activity (attracted by the presence of chickens on a given property) could potentially lead to higher incidence of disease, but she also stressed that a well-managed chicken coop would tend not to attract predator or nuisance animals. She also pointed out that increased activity by wildlife animals in suburban and urban areas is most often a result of loss of natural habitat more than anything else, and that the presence of chickens might not necessarily be to blame. While Dr. Jacob provided a great deal of useful information to our research effort, the most common thread was simple: if property owners conscientiously take care of their coops, problems with chicken keeping will be minimized. If the coops (and/or the birds) are neglected, problems are likely to arise.

Staff recommends that the City Council consider the following regulations, which are reflected in the ordinance language found in the attached Councillor's Bill:

Proposed Regulations: General:

- These regulations would apply to all areas within the City that are zoned for Single Family Detached home residential use (either through traditional Euclidian or Planned Unit Development (PUD) zoning), except that Official Development Plans (ODPs) may specifically prohibit bees or chickens. (ODPs that are silent on the issue will be interpreted to allow bees and chickens). The restrictions and limitations set forth in the final version of the ordinance will not supersede or negate any prohibitions contained in HOA covenants.
- Bees and chickens may attract predators such as owls, hawks, foxes, coyotes, bears, raccoons, and skunks. These animals can damage property, cause injury to humans, and/or harm the bees or chickens. Thus, beekeeping and/or chicken husbandry activities would be undertaken at the sole risk of the property owner who chooses to engage in them. Further, the City will accept no liability for civil claims or damages arising from the private keeping of bees or chickens, including the loss of property or bees/chickens to predators, bee stings, aggressive bee swarms, or other hazards.
- Bees and/or chickens that are kept on a given property may be owned by the owner of that property, or by renters of that property. In the latter case, the bee keeper / chicken owner must provide the name, address, and phone number of the property owner on the corresponding permit application (see below). This will assist City enforcement efforts where the property owner must be notified of a problem situation.
- Those wishing to have bees and/or chickens would be required to apply for a permit with a one-time fee to help ensure compliance at the onset, and to allow for any conflicts arising to be resolved as quickly as possible through the timely identification of bee/chicken owners. The permit process would provide for the right of City staff to inspect the property if a citizen complaint is received. Permits would provide a mechanism for a) collecting a nominal amount of money to help defray the cost of permitting and enforcement costs, b) a database for identifying owners and addressing complaints; c) an acknowledgement on the part of the applicant that the City is not responsible for losses caused by, or the inherent risks of, bee and/or chicken keeping, and d) authorization by the owner for City staff to enter the owner's property, as needed, for inspections and complaint resolutions. The permitting process, as currently envisioned, would not include a noticing component, which was a question posed by the City Council at its May 11 Post Meeting. In conjunction with this question, staff was asked to investigate the notice practices of other communities.

Staff found that the City of Golden was the only city researched to have implemented a notice requirement. Golden requires permits for both bees and chickens. Since 1999, Golden has issued fifty-two permits for chickens and twelve permits for bees. Permitting is applied for with a Special Use Permit that carries a \$45 fee. Applicants must organize a neighborhood meeting that includes all of their neighbors within 100 feet of the applicant's property. City of Golden staff monitors this

meeting, and if there is no strong opposition, the permit(s) are granted. If there is strong opposition, then the applicant must go before the Golden Planning Commission for consideration, and this body determines whether a permit is issued. Golden is currently considering dropping this noticing requirement, citing that it is very time-consuming and rather burdensome to applicants—and that there is rarely any opposition to the applications received.

The City of Westminster’s Planning and Animal Management staff do not recommend this type of noticing / neighborhood meeting / public hearing approach. This is due to the significant staff time requirements and administration costs that would be involved. The public hearing aspect also would also force the City to choose “winners and losers,” possibly creating animosity between neighbors, and potentially preventing the keeping of bees and/or chickens in what might otherwise be considered benign circumstances.

Proposed Regulations: Bees:

Bees Allowed versus Lot Size

Lot Size (in Acres):	Lot Size (in Square Feet):	Number of Hives (Colonies) Permitted:
One-quarter-acre or less	10,890 square feet or less	Two (2)
Greater than one-quarter-acre up to one-half-acre	10,891 to 21,780 square feet	Four (4)
Greater than one-half-acre up to three-quarters of an acre	21,781 to 32,670 square feet	Six (6)
Greater than three-quarters of an acre or more	32,671 square feet or more	Eight (8)

(The quantities selected for this table are very representative of what is being allowed in other nearby jurisdictions. It should be noted that, Citywide, most of Westminster’s single family detached lots are under one quarter-acre (10,890 square feet) in size, as shown below.)

Lot Size Distribution: Single Family Homes (Bees)

Lot Size (in Acres):	Lot Size (in Square Feet):	Number of Single-Family Detached Lots in City
One-quarter-acre or less	10,890 square feet or less	22,665
Greater than one-quarter-acre up to one-half-acre	10,891 to 21,780 square feet	3,061
Greater than one-half-acre up to three-quarters of an acre	21,781 to 32,670 square feet	190
Greater than three-quarters of an acre or more	32,671 square feet or more	157
		<i>(Total Lots: 26,073)</i>

- A fresh water supply for the bees must be maintained on the property at all times, and located within close proximity of the hive. (Beyond just being part of the humane treatment and care of bees generally, bees will seek out available water elsewhere if it is not provided to them onsite. This rule keeps bees from becoming nuisances by frequenting swimming pools, dog water bowls, bird baths,

and other water sources on neighboring properties. Technically, this standard is already embedded in our Animal Code, Section 6-7-13(C), W.M.C.)

- Bees must be provided with a properly designed beehive. The hive should:
 - a) Be of a secure design that provides a safe environment for the bee colony. (This promotes healthier bees, and by extension, a larger colony with better honey production);
 - b) Provide adequate protection from inclement weather conditions, including shelter from sun, wind, rain, snow, hail, and extreme temperatures;
 - c) Not exceed a maximum gross floor area of nine square feet, and may be no more than six feet in height, excluding the roof element. A roof element may be allowed to a height up to seven feet above the ground. (This requirement will provide enough area to accommodate hives of a typical size, while not allowing a structure so large that it requires a Building Permit. By keeping the overall height to six feet or less, hives will be screened in many yards that feature a surrounding six-foot privacy fence.);
 - d) Be set back from side and rear property lines by a minimum of ten feet (This requirement is more robust than what is required in the W.M.C. for accessory structures, but the distance is average amongst the other localities surveyed and is intended to reduce the impact to neighbors and abate complaints);
 - e) Not count against the two-accessory-building maximum permitted to each SFD lot (Play houses or dog houses are not considered to be accessory structures, and most beehives will likely be similar in size and stature). Note: “Beehive” would need to be added to the list of structures that are not considered to be accessory structures under our “Definitions” section (see Section 11-2-1, W.M.C.).
 - f) A flyaway barrier or privacy fence within the rear yard shall be erected and maintained in good condition at all times. The barrier or privacy fence should be a solid wall or fence built, or dense hedge grown, to a height of six feet. (Fences and walls erected on private property must be properly permitted with fence permits; see Section 11-4-6(P), W.M.C.). (Flyaway barriers “train” bees to fly at higher elevations. This typically serves to make the bees less disturbing to neighbors, because they are flying higher than the neighbors typically stand—rather than right at them. Thus, flyaway barriers help to reduce conflicts and complaints from neighbors.)
 - g) Bees may only be kept in the rear yard of single-family-detached-home properties. (By keeping bees in rear yards, rather than side or front yards, there is a better opportunity for visual screening and physical separation from other neighbors. Staff believes that greater separation and screening will result in fewer neighbor and neighborhood complaints and concerns.)
- Honeycomb that is removed from a hive must immediately be moved away from the hive and placed in a bee-and-predator-proof location, building, or storage container. Unused hive components, beekeeping equipment, and supplies must be kept in a bee-proof location, building, or storage container. (If bees detect honeycomb or bee keeping equipment away from their hive, they may be drawn to it, and may even exhibit aggressive tendencies. Thus, honeycomb, unused hive components, and other unused equipment and supplies must be promptly stored in a suitable location or container.)
- Aggressive bee colonies (bees stinging without provocation, excessive swarming behavior, etc.) must be re-queened by the beekeeper. Queens should be selected from stock bred for gentleness and non-swarming characteristics. (Aggressive or “Africanized” bee colonies are more likely to sting and/or

be a nuisance to people on surrounding properties. It is best to remove aggressive queens quickly, which, in turn, keeps the rest of the colony in a more docile state.)

- These regulations are focused on the intentional private keeping of honey bees on residential properties. They are not intended to regulate “wild” or “naturally occurring” bee colonies that choose, on their own, to occupy a given space. The regulations are also not intended to apply to Mason bees or other bee species that are not kept for honey production, which are neither prohibited nor regulated by the City. As with all animals, reptiles, birds, and insects, those bees, (regardless of species), that demonstrate themselves to be dangerous to humans or other animals, invasive, or damaging to property are subject to removal under the authority of the City of Westminster Animal Management Unit.

Proposed Regulations: Chickens:

Chickens Allowed versus Lot Size

Lot Size (in Acres):	Lot Size (in Square Feet):	Number of Female Chickens Permitted:
Less than two acres	Up to 87,120 square feet	Six (6)
Two acres or more	87,121 square feet or more	Twelve (12)

(The quantities selected for this table are very representative of what is allowed in other nearby jurisdictions. It should be noted that, Citywide, the vast majority of single family detached lots are under two acres (87,120 square feet) in size, as shown below. It is also important to point out that staff modified its recommended allowances for chickens from what was previously presented to the City Council at the April 6, 2015 Study Session, based on many of the comments received from the chicken husbandry open house attendees, who stressed that chicks are typically sold in lots of six birds, and that four hens were not really sufficient to produce the right quantity of eggs for a typical four-person family.)

Lot Size Distribution: Single Family Homes (Chickens)

Lot Size (in Acres):	Lot Size (in Square Feet):	Number of Single-Family Detached Lots in City
Less than two acres	Up to 87,120 square feet	26,062
Two acres or more	87,121 square feet or more	11
<i>(Total Lots: 26,073)</i>		

- Only hens (female chickens) are permitted. (Of the surrounding jurisdictions that staff researched, those localities that allowed chickens all banned roosters (male chickens). This was especially due to noise issues, and to a lesser degree, the desire for egg production (rather than chick production)).
- Chickens may only be kept in the rear yard of single-family-detached-home properties. (By keeping chickens in rear yards (rather than side or front yards), there is a better opportunity for visual screening and physical separation from other neighbors. The hope is that greater separation and screening will result in fewer neighbor and neighborhood complaints and concerns.)

- A fresh water supply would be required to be maintained for the chickens at all times. (This concept promotes the humane treatment of the animals. Technically, this standard is already embedded in our Animal Code, Section 6-7-13(C), W.M.C.)
- Chicken feed would be required to be properly stored in a re-sealable, airtight, vermin-proof container, and not allowed to accumulate within coops to minimize the presence of rodents, insects, and other similar nuisances. (The purpose of this is to cut down on vermin and nuisance animal e.g., skunks, raccoons, mice, rats, etc. activity on lots where chickens are kept. These animals contribute to unsanitary conditions, potentially spread diseases, and may damage property and/or harm the chickens.)
- Chickens would be required to be kept in a predator-resistant coop at all times. (EXCEPTION: Chickens that have been rendered unable to fly may be allowed out of their coop into a fully enclosed rear yard, but only from dawn to dusk.) Only one coop, not exceeding a maximum gross floor area of 120 square feet, or a maximum height of six feet, should be permitted per property. (This requirement protects chickens from predators, and helps to minimize the chance of chickens escaping their own yard. Coop regulations help ensure that the chickens are provided a safe and humane environment in which to live. The requirement also promotes healthier birds, and, by extension, better egg production and healthier eggs and meat. This will also provide for a single, large coop, while not allowing a structure so large that it requires a Building Permit.)
- The design of chickens coops should:
 - a) Provide a minimum of six square feet of living space per bird;
 - b) Be secure, fully enclosed (having floors, walls, and roofs to protect the birds from predators), and well-ventilated;
 - c) Provide adequate protection against inclement weather conditions. This would include protection from sun, wind, rain, snow, hail, and extreme temperatures;
 - d) Be fully concealed by 6-foot tall privacy fencing around the yard, or only the chicken coop, in a manner that visually screens the chicken coop to its full height. EXCEPTION: On properties adjacent to City-owned Open Space, and bounded by the traditional two-or-three-rail open fencing typically used by the City to delineate Open Space areas, no privacy fencing or screening would be required. (This screening requirement is intended to reduce the impact to neighbors and abate complaints);
 - e) Be set back from side and rear property lines by a minimum of ten feet. It is important to point out that several comments were received at the April 23 chicken husbandry open house regarding a sentiment that this requirement might be too stringent. Staff continues to recommend maintaining this minimum setback to minimize potential noise and odor impacts to neighbors. (This requirement is more robust than what the W.M.C. requires for accessory structures, but the distance is common in the other localities surveyed, including Denver and Littleton);
 - f) Not count against the two-accessory-building maximum permitted to each single family detached lot (The W.M.C. does not require permits for play houses or dog houses, and most chicken coops will likely be similar in stature). Note: “Chicken coop” would need to be added to the list of structures that are not considered to be accessory structures under the City’s “Definitions” section (see Section 11-2-1, W.M.C.).
- Chicken coops should be maintained in good repair, and cleaned regularly. Animal waste should be properly disposed of, and sanitary conditions maintained, to minimize the presence of flies and other

insects, and to minimize odor and potential for disease. While proper maintenance of animal areas is already embedded in our Animal Code, (Sections 6-7-13 (C)(D), and (F), W.M.C.), it is a hallmark of most of the other codes that staff reviewed. Because disease, insects, and odor are all more likely with poor sanitation practices, and these, in turn lead to more conflict and complaints, staff felt it paramount to propose the inclusion of this language in the Code. A clean, well-maintained coop also provides a better and more humane living environment for the chickens.)

- The slaughtering of chickens is not permitted outdoors on residential properties. To avoid potential health hazards and neighbor complaints, any “at-home” slaughtering of chickens must be done indoors. Ideally, the chicken owner would take his/her bird(s) to a professional slaughterhouse or butcher equipped for this task, but staff recognizes that this is often not what happens.

As previously mentioned, most communities researched that have allowed beekeeping or chicken husbandry have incorporated some level of administrative oversight and legal restrictions for the activities, primarily to address issues of public health and nuisance concerns. A “best practices” approach was used as the basis for the regulations proposed above, and represent the most common constraints found in the ordinances of the neighboring jurisdictions that were researched.

It should be further noted that the City of Westminster Animal Management Unit staff has identified several other changes to the Animal Section of the Westminster Municipal Code that warrant possible consideration for revision. These changes, brought before Council on July 13th, are separate from and not dependent on approval of the Municipal Code Amendment discussed in this Agenda Memorandum.

These proposed regulations support the City Council’s *Beautiful, Desirable, and Environmentally Responsible City* Strategic Goal by encouraging local healthy food production, and providing sustainable food source options for the City’s citizens. They also serve to help support and protect an at-risk environmental asset, the honey bee.

Respectfully submitted,

Donald M. Tripp
City Manager

- Attachments: Councillor’s Bill (*Beekeeping and Chicken Husbandry on Single-Family Detached Residential Properties*)
- Appendix I-A: Bee Research
 - Appendix I-B: Bee Enforcement Research
 - Appendix II-A: Chicken Research
 - Appendix II-B: Chicken Enforcement Research
 - Appendix III: Citizen Comments Received: Bee Meeting
 - Appendix IV: Citizen Comments Received: Chicken Meeting
 - Appendix V: HOA Sample Letter
 - Appendix VI: Avian Flu Warning from the State Veterinarian

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **38**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING TITLE VI, CHAPTER 7, OF THE WESTMINSTER MUNICIPAL CODE CONCERNING BEE KEEPING AND CHICKEN HUSBANDRY ON SINGLE-FAMILY DETACHED RESIDENTIAL PROPERTIES

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 6-7-1, W.M.C., is hereby AMENDED by the addition and revision of definitions to read as follows:

6-7-1: DEFINITIONS: (1463 1890 1973 2066 2576 3062 3288) The following words, terms, and phrases, when used in this Title, shall have the following meaning unless specifically defined in another Chapter:

“Bee” shall mean the hymenopterous insects in the genus Apis, especially Apis mellifera, primarily distinguished by honey and wax production in colonial, perennial, docile hives, when the hives are intentionally initiated and maintained on residential property for honey production. Bee shall not refer to naturally occurring bee colonies, mason bees, or other bee species that are not intentionally kept for honey production.

“Chicken” shall mean a domestic fowl kept for its eggs or meat, excluding ducks, geese, pigeons, turkeys, pea fowl, and guinea hens.

“Domestic Animal” shall mean domesticated or household dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, and invertebrates, commonly found in a pet store and intended to live and breed in a tame condition. It shall also include pot-bellied pigs and expressly does not include Bees or Chickens.

“Fowl” shall mean ducks, geese, pigeons, turkeys, pea fowl, guinea hens, and the like. For purposes of this Title, Fowl expressly does not mean Chickens.

“Livestock” shall mean any animal commonly kept or harbored, as a source of food, hides, income through agricultural sale, as a pack animal or draft animal or for use as transportation. Livestock includes, but is not limited to, horses, mules, sheep, goats, cattle, swine, ~~chickens~~, ducks, geese, pigeons, turkeys, pea fowl, and guinea hens, and bees. In the event of uncertainty concerning whether a particular animal is a species of livestock, the presumption shall be that such animal is a species of livestock until the owner of such animal proves by a preponderance of the evidence to the satisfaction of the Municipal Court that the animal is not a species of livestock.

Section 2. Section 6-7-12, subsection (A) sub-subsection (1), W.M.C., is hereby AMENDED to read as follows:

6-7-12: RESTRICTIONS ON SALE AND POSSESSION OF ANIMALS: (1463 1890 1973 2066 3062 3288)

(A): ANIMALS IN RESIDENTIAL DISTRICTS:

(1) It shall be unlawful for anyone to knowingly possess, harbor, keep, maintain, or permit on any property within the City zoned for residential use more than ten (10) domestic animals, of which no more than three (3) shall be a combination of dogs or cats over the age of four (4) months; or more than the number of bee hives allowed in Section 6-7-12(H), W.M.C.; or more than the number of female chickens allowed in Section 6-7-12(I), W.M.C.

Section 2. Section 6-7-12, subsection (B), W.M.C., is hereby AMENDED in the title and by the addition of sub-subsection (2) to read as follows:

(B) LIVESTOCK-ANIMALS LIMITED:

(1) It shall be unlawful to keep or maintain livestock in residential, business, commercial, and industrial zoned districts, and Planned Unit Developments unless specifically allowed in the PUD, excepting that livestock shall be permitted in parcels zoned 0-1 or in parcels of ten (10) acres or more in size in all zoning districts prior to commencement of construction on the parcel. In any case, the number of animals kept in a PUD shall not exceed the number permitted by the provisions of the Official Development Plan. Livestock, excluding fowl, shall have one-half (1/2) acre of pasture available for each animal.

(2) It shall be unlawful to keep or maintain bees or chickens within the City except in lots zoned 0-1; or in lots of ten (10) acres or more in size in all zoning districts prior to commencement of construction; or in single-family detached residential lot pursuant to the requirements of Section 6-7-12(H) and Section 6-7-12(I), W.M.C, unless specifically prohibited by the lot's applicable Official Development Plan. In addition to being a violation of this Chapter, the keeping of bees or chickens in violation of this Chapter is declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code.

Section 3. Section 6-7-12, W.M.C., is hereby AMENDED by the addition of new subsections (H) and (I) to read as follows:

(H) BEEES: It shall be unlawful for any person to possess, harbor, keep, maintain or permit on his property within the City bees or bee hives, unless the owner or occupant of the property complies with the requirements of this Chapter. It shall be unlawful to fail to comply with these requirements.

(1) The intentional keeping of bees shall require a permit issued pursuant to this Chapter, and such permit shall be issued only to the owner or occupant of the property where the bees are to be kept.

(2) Bees may only be kept in a hive located in the rear yard of a single-family detached property with an existing residence.

(3) The maximum number of hives per single-family detached lot shall be allowed as follows:

(a) One-quarter (1/4) acre or less: two (2) hives;

(b) More than one-quarter (1/4) acre up to and including one-half (1/2) acre: four (4) hives;

(c) More than one-half (1/2) acre up to and including three-quarters (3/4) of an acre: six (6) hives;

(d) More than three-quarters (3/4) of an acre: eight (8) hives.

(4) At all times, bees must be provided with a properly designed beehive meeting the following requirements:

(a) All hives shall provide a secure design, sufficient to protect the bee colony from predators;

(b) All hives shall provide adequate shelter from inclement weather conditions, including protection from sun, wind, rain, snow, hail, and extreme temperatures;

- (c) Each hive shall not exceed a maximum gross floor area of nine (9) square feet;
- (d) Each hive shall not exceed six (6) feet in height, as measured from the ground, excluding the roof element, which may cause the hive's total height to measure not more than seven (7) feet from the ground;
- (e) Each hive shall be set back from all rear yard property lines by a minimum of ten (10) feet;

(6) A six-foot tall flyaway barrier or privacy fence within the rear yard shall be erected and maintained in good condition at all times.

(7) A fresh water supply for the bees shall be maintained in the rear yard of the property at all times, in a location readily accessible to all bees kept in the rear yard of the property.

(8) Honeycomb that is removed from a hive must immediately be moved away from the hive and enclosed in a bee-proof and predator-proof location, building, or storage container.

(9) Unused hive components, beekeeping equipment, and supplies associated with beekeeping must be enclosed in a bee-proof location, building, or storage container and inaccessible to bees.

(10) Aggressive or Africanized bees are prohibited.

(11) In addition to being a violation of this Chapter, the keeping of bees in violation of this Chapter is declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code.

(I): CHICKENS: It shall be unlawful for any person to possess, harbor, keep, maintain or permit on his property within the City any chickens, unless the owner or occupant of the property complies with the requirements of this Chapter. It shall be unlawful to fail to comply with these requirements.

(1) The keeping of chickens shall require a permit issued pursuant to this Chapter, and such permit shall only be issued to the owner or occupant of the property where the chickens are to be kept.

(2) Chickens may only be kept in the rear yard of a single-family detached property with an existing residence and with a proper chicken coop meeting the following requirements:

(a) A coop shall be fully enclosed, having floors, walls, and roofs sufficient to protect the chickens from predators;

(b) Each coop shall provide a minimum of six square feet of living space per chicken;

(c) A coop shall provide adequate shelter from inclement weather conditions, including protection from sun, wind, rain, snow, hail, and extreme temperatures;

(d) Each coop shall not exceed a maximum gross floor area of one hundred twenty (120) square feet;

(e) A coop shall not exceed six (6) feet in height as measured from the ground;

(f) A coop shall be set back from all rear yard property lines by a minimum of ten (10) feet;

(g) Only one (1) coop is allowed per rear yard;

(3) Only hens (female chickens) are permitted.

(4) The maximum number of chickens per single-family detached lot shall be as follows:

(a) Lots up to two (2) acres: six (6) chickens;

(b) Lots more than two (2) acres: twelve (12) chickens.

(6) Chickens shall be securely kept within a coop in the rear yard from dusk until dawn. If allowed to roam within the enclosed rear yard at any time from dawn until dusk, chickens shall be rendered unable to fly.

(7) A rear yard with chickens shall be fully screened by a privacy fence a minimum of six (6) feet in height located on or inside all property lines of the rear yard; except that lots opening to City-owned open space are not required to erect a privacy fence along the property line shared with the City.

(8) Animal excrement shall be properly disposed of, and sanitary conditions maintained in order to minimize the presence of flies and other insects, and to minimize odor and potential for disease.

(9) A fresh water supply for the chickens shall be maintained in the rear yard property at all times, in a location readily accessible to all chickens.

(10) Chicken feed shall be enclosed in a re-sealable, airtight, vermin-proof container.

(11) The slaughtering of chickens is permitted only indoors and slaughtering shall be limited only to those chickens allowed by permit for the specific property. Entrails and remains shall be disposed of properly. The slaughtering of chickens outdoors is prohibited.

(12) In addition to being a violation of this Chapter, the keeping of chickens in violation of this Chapter is declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code.

Section 4. Section 6-7-13, subsections (C) and (D), W.M.C., are hereby AMENDED to read as follows:

6-7-13: CARE AND TREATMENT: (1463 1973 2576)

(C) **NEGLECT OF ANIMALS:** It shall be unlawful for the owner or any person entrusted with the care of any animal or bees to deprive or fail to provide such animal or bees of adequate and wholesome food, water, or protection from the weather as shall be consistent with the keeping of the species, breed, and type of animal or bees involved; to fail to provide the animal with proper protection from extremes in temperatures; to fail to provide the animal with an opportunity for exercise; to fail to provide the animal with adequate veterinary care; or to otherwise neglect the animal or bees in such a manner as to endanger its health or cause it to suffer.

(D) **SANITATION:** It shall be unlawful for the owner of any animal or bees to fail to maintain the premises upon which animals or bees are kept in a clean and sanitary condition, which premises shall be subject to inspection at all reasonable hours by City representatives.

Section 5. Section 6-7-15, W.M.C., is hereby AMENDED and a new subsection (C) is ADDED to read as follows:

6-7-15: FEES: Fees for permit, license, impound, adoption, and other services rendered under this Chapter shall be as listed below. Fees are in addition to any fines or penalties imposed in Court proceedings. (1463 1890 1973 2576)

(C) The fee for a bee permit, a chicken permit, or a pot-bellied pig permit shall be set by the City Manager or his designee in an amount to cover the costs of administering the permit program.

Section 6. Section 6-7-17, W.M.C., subsection (F) sub-subsection (1), is hereby AMENDED and a new subsection (G) is ADDED to read as follows:

6-7-17: PENALTIES: (3288 3345)

(F) RECOMMENDED MINIMUM FINES: Recommended minimum fines upon conviction may be imposed as listed below:

(1) First Offense – recommended fine of not less than seventy-five dollars (\$75). Second and subsequent offenses – recommended fine of not less than one hundred dollars (\$100):

6-7-2(B)	Refusal to Provide Proof of Vaccination
6-7-2(C)	Harboring Unvaccinated Dogs and Cats
6-7-2(D)	Non-Transferability - Vaccination Certificates or Tags
6-7-3(A)	Duty to Report Animal Bite
6-7-3(C)	Failing to Report Suspected Rabies
6-7-3(D)	Refusal to Produce Animal
6-7-3(E)	Removal of Animals from Confinement
6-7-4(B)	Failure to Display Dog License Tag
6-7-5(B)	Failure to Confine
6-7-6(A)	Removal of Animal Excrement
6-7-6(B)	Damage to Property
6-7-7(A)	Disturbance
6-7-7(C)	Failure to Exercise Control
6-7-10(E)	Failure to Care for Animals
6-7-11(D)	Failure to Care for Animals
6-7-12(F)	Potbellied Pig Requirements
6-7-12(H)	<u>Bee Keeping Requirements</u>
6-7-12(I)	<u>Chicken Husbandry Requirements</u>
6-7-13(D)	Sanitation
6-7-13(F)	Confinement of Animals
6-7-19	<u>Bee Permitting</u>
6-17-20	<u>Chicken Permitting</u>

(G) An Animal Management Officer may, in his or her professional judgment, determine that bees are aggressive or Africanized, as prohibited by Section 6-7-12(H)(10), and may pursue summary abatement of a hive or bees to prevent imminent danger of serious injury to persons or property, as authorized by Section 8-4-4, W.M.C.

Section 7. Chapter 7 of Title VI, W.M.C., and the index therefor, is hereby amended BY THE ADDITION OF TWO NEW SECTIONS, 6-7-19 and 6-7-20 to read as follows:

CHAPTER 7

ANIMALS

6-7-1:	DEFINITIONS
6-7-2:	RABIES CONTROL
6-7-3:	REPORTING ANIMAL BITES
6-7-4:	DOG LICENSING
6-7-5:	ANIMALS RUNNING AT LARGE
6-7-6:	REMOVAL OF ANIMAL EXCREMENT; DAMAGE TO PROPERTY
6-7-7:	DISTURBANCE; PUBLIC NUISANCE
6-7-8:	VICIOUS ANIMALS AND POTENTIALLY DANGEROUS ANIMALS
6-7-9:	IMPOUNDED ANIMALS
6-7-10:	KENNELS
6-7-11:	PET SHOPS
6-7-12:	RESTRICTIONS ON SALE AND POSSESSION OF ANIMALS
6-7-13:	CARE AND TREATMENT
6-7-14:	CAPTURING ANIMALS
6-7-15:	FEES
6-7-16:	INTERFERENCE

6-7-17: PENALTIES

6-7-18: GUARD DOGS

6-7-19: BEE PERMITTING

6-7-20: CHICKEN PERMITTING

Section 8. Title VI, Chapter 7, W.M.C., is hereby AMENDED by the ADDITION of a new Section 6-17-19, "Bee Permitting," which shall read as follows:

6-7-19: BEE PERMITTING

(A) BEE PERMIT REQUIRED. It shall be unlawful for any owner or keeper of bees to fail to obtain a permit as required by this Chapter prior to the arrival of the bees on the property. It shall be unlawful to own, keep, maintain or allow on property within the City bees in a manner that violates the provisions of this Chapter.

(B) PERMIT REQUIREMENTS. At the time of applying for a permit, an owner or occupant of qualifying residential property, as defined in Section 6-7-12(B)(2), W.M.C., shall provide the following to the City in such form as may be reasonably required by the City:

(1) Permit fee;

(2) Complete permit application;

(3) Rear yard plot plan showing location of setbacks, fencing, fly away barriers, water supply, and hives;

(4) The owner or occupant's signed acknowledgement that he or she shall be the permit holder and acknowledgement that the permit holder shall be responsible to reimburse the City for bee-related nuisance abatement costs as may be assessed pursuant to Section 8-4-4, W.M.C.;

(5) The permit holder's signed consent to the City's, or an agent of the City's, entry into and inspection of the rear yard at all reasonable hours to confirm compliance with this Chapter;

(6) The permit holder's signed acknowledgement of his or her personal liability for injury or damage to persons or property caused by the permit holder's bees;

(7) If the permit holder is the occupant of rental property, the permit holder shall provide the name and contact information of the property owner; and

(8) Such other information as may be reasonably required by the City.

(C) PERMIT REVOCATION. A bee permit may be denied, cancelled, or revoked for any violation of the provisions of this Chapter related to the keeping of bees.

Section 9. Title VI, Chapter 7, W.M.C., is hereby AMENDED by the ADDITION of a new Section 6-17-20, "Chicken Permitting," which shall read as follows:

6-7-20: CHICKEN PERMITTING

(A) CHICKEN PERMIT REQUIRED. It shall be unlawful for any owner of a chicken to fail to obtain a permit as required by this Chapter prior to the arrival of a chicken on the property. It shall be unlawful to own, keep, maintain or allow on property within the City a chicken in a manner that violates the provisions of this Chapter.

(B) PERMIT REQUIREMENTS. At the time of applying for a permit, an owner or occupant of qualifying residential property, as defined in Section 6-7-12(B)(2), W.M.C., shall provide the following to the City in such form as may be reasonably required by the City:

(1) Permit fee;

(2) Complete permit application;

(3) Rear yard plot plan showing location of setbacks, fencing, coop, and water supply;

(4) The owner or occupant's signed acknowledgement that he or she shall be the permit holder;

(5) The permit holder's signed acknowledgement of owner's personal liability for injury or damage to persons or property caused by the permit holder's chickens;

(6) The permit holder's signed consent to the City's, or an agent of the City's, entry into and inspection of the rear yard at all reasonable hours to confirm compliance with this Chapter;

(7) If the permit holder is the occupant of rental property, the permit holder shall provide the name and contact information of the property owner; and

(8) Such other information as may be reasonably required by the City.

(C) PERMIT REVOCATION. A chicken permit may be denied, cancelled, or revoked for any violation of the provisions of this Chapter related to the care, keeping or maintenance of animals.

Section 10. This ordinance shall take effect ninety (90) days after its passage on second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of , 20__.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Bee Research - Selected Localities

(Updated 04-30-2015 / DWG)

Appendix I-A

City:	Bees		BEES						
	Allowed?		Quantity Permitted in Residential Zones: <i>(Note: Colony = Hive)</i>	Permit Required?	Flyaway Barrier?	Setbacks?	Yard Allowed?	Storage Requirement?	Notes:
	Yes:	No:							
Adams County		X	Under 1 acre = NONE; 1 acre to 5 acres = 5 (SUP required); More than 5 acres = (varies, no SUP needed)	Yes	(Not Addressed)	(Not Addressed)	(Not Addressed)	(Not Addressed)	(More allowed in Agriculture and Residential Estate Zones)
City of Arvada	X		2 colonies for 1/4 acre or less, 4 colonies for 1/2 acre, 6 colonies for 3/4 acre, 8 colonies for 1 acre or more	No	(Not Addressed)	25' from all property lines	Side, Rear	Yes	(N/A)
City of Aurora	X		2 colonies for 1/4 acre or less, 4 colonies for 1/2 acre, 6 colonies for 3/4 acre, 8 colonies for 1 acre or more; Unlimited on tracts maintaining 200'+ setbacks in all	No	Yes: 6' tall, 20'+ long	5' from all property lines	(Not Addressed)	Yes	Back of hive to face nearest adjoining property
City of Boulder	X		Any	(Not Addressed)	(Not Addressed)	(Not Addressed)	(Not Addressed)	(Not Addressed)	Must meet extensive nuisance, noise, rodent, sanitation regs
City and County of Broomfield	X		1/4 acre or less: 2; 1/4+ acres to 1/2 acre: 4; 1/2+ acres but less than 1 acre: 6; 1+ acre: 8; Unlimited on tracts	Yes	Yes	10' from all property lines	Side, Rear	(Not Addressed)	Recently Approved: 09 March 2015; Regulations become effective 180 days later
City of Denver	X		2 colonies per SFD lot	No	Yes: 6' tall	Rear 3rd of lot; 5' from all property lines	Rear	Yes	Screening of hives required, 5' setback to side and rear property lines required.
City of Federal Heights	(Not addressed in City Code)		(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)
Jefferson County	X		2 colonies per SFD lot, 4,000 sq. ft. or less, + 1 colony for every additional 4,000 sq. ft.	Yes	5' high yard fence req.	Setbacks as per zone district, unless screened	Side, Rear	(Not Addressed)	Bees shall be kept for personal use only
City of Lafayette	X		2 colonies for under 1/4 acre, 4 colonies for 1/4 acre, 6 colonies for 1/2 acre, 8 colonies for 1 to 5 acres	Yes	(Not Addressed)	10' from all property lines	(Not Addressed)	(Not Addressed)	Fresh Water supply, no hive taller than 6', no aggressive colonies
City of Littleton	X		2 colonies for 4,000 square foot (or less) lot; one additional colony for each additional 4,000 square feet	Yes	(Not Addressed)	Same setbacks of principal structure, as per zoning district	Side, Rear	(Not Addressed)	Flyaway fencing required if bees are kept within 25' of property line (Jefferson County Regs)
City of Longmont	X		4 colonies permitted per lot	No	No	No	Any	No	Section 9.04.020 of the Longmont Code, unchanged since 1912.
City of Louisville	X		2 colonies: 1/4 acre or less, 4 colonies: more than 1/4 up to 1/2 acre, 6 colonies for more than 1/2 up to 1 acre	(Not Addressed)	(Not Addressed)	10' from all property lines	Side, Rear	(Not Addressed)	Beehives not in compliance with code are a public nuisance
City of Northglenn	(Not addressed in City Code)		(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)
City of Thornton	X		2 colonies for 1/4 acre or less, 4 colonies for 1/2 acre, 6 colonies for 3/4 acre, 8 colonies for 1 acre or more; Unlimited on tracts maintaining 200'+ setbacks in all directions	Yes	Yes, if bees are kept within 25' of any property line (6' tall, 20'+ long)	5' from all property lines	Rear	Yes	City may inspect at any time and remove/destroy non-compliant and/or nuisance colonies. Specific zones and areas, along with SFD lots permitted.
City of Westminster (Proposed)	X		2 colonies for 1/4 acre or less, 4 colonies for 1/2 acre, 6 colonies for 3/4 acre, 8 colonies for 1 acre or more	Yes	Yes: 6' tall, 6'+ long, + 6' tall and 3' long wing fences	10' from all property lines	Rear	Yes	Adequate protection from the elements, predator resistant hives, water source, aggressive colonies (swarming, etc.) must be re-queened, not more than 9 sq. ft. gross floor area, not more than 7' high

Bee Enforcement Research - Selected Localities

(Compiled 04-30-2015 by Animal Management; Revised 05-06-15)

City:	Bees Allowed?		BEES									
	Yes:	No:	Permit Required:	Cost:	Issued By:	Inspection Required:	Permit Requirements:	Enforced By:	Community Gardens:	Types of complaints:	FTE's/10,000k population:	Comments:
Adams County:		X	No	(N/A)	(N/A)	(N/A)	(N/A)	CE	(N/A)	(N/A)	4	Agriculture Zoned Only
City of Arvada:	X		No	(N/A)	(N/A)	(N/A)	(N/A)	CE	Yes (no bees or chickens)	Swarms of bees on occasion	0.4	Purchased bee suits for CE officers.
City of Aurora:	X		Yes; (One Time)	\$30	CE	No	Neighbors have no say	CE	Yes-bees only. Beekeeper must update contact info every month with CE	(N/A)	0.4	Adopted bees last year. If person moves, permit is voided
City of Boulder:	X		No	(N/A)	(N/A)	(N/A)	(N/A)	AM	Yes (no bees)	(N/A)	2.2	None
City and County of Broomfield:	X		Yes; (One Time)	\$25	Planning/ Bldg	No	10' setback	CE and AM	No	(N/A)	1.1	Recently Approved: 09 March 2015; Regulations become effective 180 days later
City of Denver:	X		No	(N/A)	(N/A)	(N/A)	(N/A)	CE	Yes (no bees)	(N/A)	0.2	None
City of Federal Heights:	(Not Addressed in City Code)		(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)
Jefferson County:	X		Yes; (One Time)	\$60	Planning/ Zoning	NO	Neighbors and HOA must be notified	Planning/ Zoning Inspectors	Y (no bees)	(N/A)	5	22 Bee permits to date
City of Lafayette:	X		Yes; (One Time)	\$30	Community Development	NO	Site plan submitted	AM	Y (no bees)	(N/A)	1	(N/A)
City of Littleton:	X		No	(N/A)	(N/A)	(N/A)	(N/A)	CE	Y (no bees)	Bees too close to property line	0.5	Would recommend permits be used to track and monitor
City of Longmont:	X		Yes; (One Time)		City	Yes (by city)		CE	No	(N/A)	0.4	Not many issues with bees
City of Louisville:	X		No	(N/A)	(N/A)	(N/A)	Zoning Restrictions	CE/AM	Y (no bees)	(N/A)	2	(N/A)
City of Northglenn:	(Not Addressed in City Code)		(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)
City of Thornton:	X		Yes; (One Time)	30	Bldg Dept.	No	Site plan submitted, notification to adjacent neighbors, property owner certification	AM	No	None regarding bees	0.3	Bees allowed, City Clerk sends PD list of bee permit holders
City of Westminster: (Proposed)	X		Yes; (One Time)	(TBD)	Animal Management	No	Site plan submitted, completed application, payment of permit fee	AM	No	Complaint that a neighbor has a hive (not currently allowed)	0.5	(N/A)

AM = Animal Management; CE = Code Enforcement

Chicken Research - Selected Localities

(Updated 04-30-2015 / DWG)

City:	Chickens Allowed?		CHICKENS						
	Yes:	No:	Defined as:	Number Permitted:	Coop Standards?	Setbacks?	Slaughtering Allowed?	Yard Allowed?	Notes:
	Adams County		X	Non-Commercial Livestock/Poultry	(None in Single Family Residential Zone Areas)	(N/A)	(N/A)	(N/A)	(N/A)
City of Arvada	X		Domestic fowl other than pet animals	5 chickens OR 2 turkeys OR 3 chickens AND 2 turkeys	(Not Addressed)	35' setback to residential other than owner's home	(Not Addressed)	(Not Addressed)	Only hens permitted
City of Aurora	X		Livestock/Poultry	4 chickens per lot	Yes (Size, Weather, Predators)	15' setback from any side/rear property line	No	Rear	Only hens permitted
City of Boulder	X		(Undefined)	Any, however owner is responsible for any noise, sanitation, or other disturbance.	(Not Addressed)	(Not Addressed)	(Not Addressed)	(Not Addressed)	Must meet extensive nuisance, noise, rodent, sanitation regulations that apply to all residential districts and uses
City and County of Broomfield	X		Livestock/Fowl	5 chickens per lot (License Required; one-time \$25 fee)	Yes (Predators)	10' setback from any side/rear property line	May not be done outside	Side, Rear	Building permit required for large chicken coops; In Rural Residential districts up to 30 hens or roosters are permitted; In Urban Residential districts, only hens permitted
City of Denver	X		Livestock/Fowl	Up to 8 ducks and/or chickens with permit; must maintain 16 sq ft permeable area per animal	Yes (Weather, Predators)	15' setback from any side/rear property line	No	Rear	Only hens permitted
City of Federal Heights	(Not Addressed in City Code)		(Undefined)	(Not Addressed)	(Not Addressed)	(Not Addressed)	(Not Addressed)	(Not Addressed)	(N/A)
Jefferson County	X		(Accessory SFD Residential Use)	6 chickens per lot; (minimum lot size 4,000 square feet)	Yes	(Not Addressed)	No	Side, Rear	Only hens permitted
City of Lafayette	X		Animals	6 chickens per lot	Yes (Size, Predators)	5' setback from any side/rear property line	No	Rear	Only hens permitted
City of Littleton	X		(Accessory SFD Residential Use)	4 chickens per lot	Yes (Predators)	15' setback from any side/rear property line	No	(Not Addressed)	Must prevent nuisance conditions; only hens permitted
City of Longmont	X		Animals	4 chickens per lot (License Required; \$30 fee)	Yes	6' setback from any side/rear property line	(Not Addressed)	Rear	Hens only. No penalty for attacking animal if stray chicken is killed off its home property
City of Louisville	X		Animals	6 chickens per lot	Yes (Size, Predators)	Yes, based on zone	Yes, must be screened	Side, Rear	Only hens permitted
City of Northglenn		X	(Undefined)	None	(N/A)	(N/A)	(N/A)	(N/A)	(Prohibited in City Code)
City of Thornton		X	Animals	None	(N/A)	(N/A)	(N/A)	(N/A)	Permitted ONLY in "Residential Estate" Zoning District; A total of 10 ducks, rabbits, and/or chickens per lot; Requires proper fencing/enclosures, and manure disposal
<i>City of Westminster (Proposed Regulations shown in italics)</i>	X		Livestock	<i>Six (6) chickens permitted for lots under two acres; Twelve (12) chickens permitted for lots of two acres or more.</i>	<i>Yes (Weather, Predators, Size)</i>	<i>10' setback from any side/rear property line</i>	<i>Yes, indoor only</i>	<i>Rear</i>	<i>Only hens permitted; One-time permit required; visual screening (or privacy fenced-yard) required; Cleanliness requirements; Feed Storage requirements</i>

Chicken Enforcement Research - Selected Localities

(Compiled 04-30-2015 by Animal Management; Revised 05-06-15)

Appendix II-B

City:	Chickens Allowed?		CHICKENS									
	Yes:	No:	Permit Required:	Cost:	Issued By:	Inspection Required:	Permit Requirements:	Enforced By:	Community Gardens:	Types of complaints:	FTE's/10,000k population:	Comments:
Adams County:		X	No	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	Chickens in Residential Areas	4	Poultry is only allowed in residential zoned
City of Arvada:	X		No	(N/A)	(N/A)	(N/A)	(N/A)	AM	Yes (no chickens)	Rooster (noise), birds at large, pet limit, neglect, predation	7	Only hens permitted
City of Aurora:	X		Yes; (One time)	\$30	CE	No	Drawing or photo must be submitted of planned coop prior to issuance of permit. Coop must be min. 4' setback.	CE	Yes (no chickens)	Roosters (noise), and chicken droppings not being cleaned up.	0.4	Adopted chickens last year, no roosters. If person moves, permit is voided
City of Boulder:	X		No	(N/A)	(N/A)	(N/A)	(N/A)	AM	Yes (no chickens)	Nuisance, noise, running at large	2.2	
City and County of Broomfield:	X		Yes; (One time)	\$25	Planning/ Bldg Dept.	No	10' setback	AM, CE	No	At large chickens, pet limit, roosters	1.1	Adopted ord. last year. Five chickens max; no roosters.
City of Denver:	X		Yes; (One time)	\$25	Den. Animal Shelter	No	None	AM	Yes (no chickens)	Roosters	0.2	Change the fee to annual v. one time fee
City of Federal Heights:	(Not Addressed in City Code)		(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)
Jefferson County:	X		Yes; (One time)	\$60	Planning/ Zoning	No	Neighbors/HOA notified	Planning/ Zoning	Y (no chickens)	People w/o permits	5	60 permits to date have been issued.
City of Lafayette:	X		Yes; (One time)	\$30	Community Dev.	No	Site plan submitted	AM	Y (no chickens)	At large, roosters	1	
City of Littleton:	X		No	(N/A)	(N/A)	(N/A)	(N/A)	CE	Yes (no chickens)	Too many chickens or too close to property line	0.2	In hindsight, would require permits to track / monitor.
City of Longmont:	X		Yes; (One time)	\$30	City	Yes (by City)	Prior to 2-1-09, <6' setback allowed with neighbor agreement in writing, after 2-1-09 min. of 6' setback req. All abutting property owners must consent in writing for free ranging chickens	AM-noise and neglect	No	Roosters, rats, mice	0.4	Barking dog complaints due to chickens are referred to mediation. Do not respond to chicken at large calls. No roosters. Not many issues w/chickens.
City of Louisville:	X		No	(N/A)	(N/A)	(N/A)	Set backs/Square Footage	CE/AM	Y (no chickens)	At large, roosters	2	
City of Northglenn:		X	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(Prohibited in City Code)
City of Thornton:		X	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)
<i>City of Westminster: (Proposed)</i>	<i>X</i>		<i>Yes; (One time)</i>	<i>TBD</i>	<i>Animal Management</i>	<i>No</i>	<i>Site plan, completed app., payment of fee</i>	<i>AM</i>	<i>No</i>	<i>Noise, Poor Sanitation, Animals at large</i>	<i>0.5</i>	<i>(N/A)</i>

AM = Animal Management; CE = Code Enforcement

Backyard Beekeeping Open House April 16, 2015
 Comment Card Summary

Appendix III: Citizen Comments Received:
 Bee Meeting

1. Please rate your support or opposition on a scale of 1-5, where 1 is greatly in favor of allowing beekeeping and 5 is greatly opposed to allowing beekeeping in residential neighborhoods.	2. What is your primary reason for supporting/opposing beekeeping in residential neighborhoods?	3. Please rate your support of opposition on a scale of 1-5 where 1 is greatly in favor of allowing beekeeping in Public Open Spaces and 5 is greatly opposed to allowing beekeeping in Public Open Spaces.	4. General Comments	5. Provide contact info
4	Closeness to home	--	--	-
1	Improving our food system. Helping avoid colony collapse.	1	--	--
1	--	1	--	--
1	We need our bees.	1	--	--
1	--	1	--	--
2	Why not bees?	1	--	X
1	Bees are an essential part of the ecosystem. The pollinate 70% of all produce. With a place like the Butterfly Pavilion in Westy, I think the City should encourage more bees.	1	Westminster is a progressive City and should encourage all aspects of urban agriculture. With the threats to bee colonies today, allowing bee keeping in the City will be apart of the solution in the bigger picture. Westminster should support those who want to devote time and money to a hobby that is a benefit to all. Honeybees already exist in our City (Butterfly Pavilion employs many!) why not allow them throughout.	X

Backyard Beekeeping Open House April 16, 2015
 Comment Card Summary

Appendix III: Citizen Comments Received:
 Bee Meeting

1. Please rate your support or opposition on a scale of 1-5, where 1 is greatly in favor of allowing beekeeping and 5 is greatly opposed to allowing beekeeping in residential neighborhoods.	2. What is your primary reason for supporting/opposing beekeeping in residential neighborhoods?	3. Please rate your support of opposition on a scale of 1-5 where 1 is greatly in favor of allowing beekeeping in Public Open Spaces and 5 is greatly opposed to allowing beekeeping in Public Open Spaces.	4. General Comments	5. Provide contact info
1	Honeybees are threatened by neonics and mites and disease. Neighborhood beekeepers can help return them to our neighborhoods.	1	Bees only sting to defend their hive, not attack people.	X
1	They help feed us.	1	--	--
1	To enhance protect natural environment.	1	I support the hives in open spaces to protect and enhance the landscape and ecological [illegible]. Also to pollinate agricultural lands nearby.	x
1	Bees are not as aggressive as people think and can work in residential neighborhoods. I'd like bees for honey and personal enjoyment.	1	I have a concern with current proposal and requirement for flyaway barrier. I feel that there should be an exception for people that have 6-foot fence along property already. There should also be an exception for those that can place the hive at least 25 feet from the property line.	X
1	Hobby, local food, pollination.	1	--	--

Backyard Beekeeping Open House April 16, 2015
 Comment Card Summary

Appendix III: Citizen Comments Received:
 Bee Meeting

1. Please rate your support or opposition on a scale of 1-5, where 1 is greatly in favor of allowing beekeeping and 5 is greatly opposed to allowing beekeeping in residential neighborhoods.	2. What is your primary reason for supporting/opposing beekeeping in residential neighborhoods?	3. Please rate your support of opposition on a scale of 1-5 where 1 is greatly in favor of allowing beekeeping in Public Open Spaces and 5 is greatly opposed to allowing beekeeping in Public Open Spaces.	4. General Comments	5. Provide contact info
1	For a healthy and thriving environment. Also a great source of local product.	1	--	--
1	They need support. Pesticides are killing them we need more hives to offset the loss.	1	Have list of professional keepers on the web site that Westy has had give talks or teach, set hikes, etc. Require hive owners to join the state club and/or the local club = classes, resources, help, guidance No permits, but must show membership if (illegible) - CSBA.	--
1	Liberty	1	--	--
1	Honeybees are needed for the pollination of crops, we also want honey. Bring back the bees.	1	--	--
1	We need bees in our environment and I like honey.	1	--	--

Backyard Beekeeping Open House April 16, 2015
 Comment Card Summary

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1	Liberty. Honey production. Pollination.	1	All cities/towns surrounding Westminster already allow bee keeping. Since bees have a 3-mile radius they will travel from their hive, bees are already coming into Westminster from these neighboring town hives. Let's let our Westminster citizens benefit from pollination and honey production! Also, let liberty prevail!	X
1	Increase urban horticulture, promote local foods.	1	--	--
1	--	1	--	--
1	--	1	--	X

Backyard Beekeeping Open House April 16, 2015
 Comment Card Summary

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1	I am a beekeeper who loves to watch my girls come and go day by day. Better than visiting as necessary on a farm.	1	We do not live in a sterile vacuum. We are part of nature, which includes pollinators, flowers, wildlife. We should be a part of a healthy living fabric, not sanitize and stamp out everything but ourselves and our pets.	X
1	The world needs bees to support plant life and food for everyone.	1	I believe not everyone would want to be a beekeeper so I don't think that if you allow it there will be a lot of bees to make people complain. I would use open space to do my bees if I could. Thanks.	x
1	Pollination by the bees of local yards and gardens.	1	There is a large die-off of honey bees. Having more local beehives will help in their overall survival.	X
3	--	3	--	--

1. Please rate your support or opposition on a scale of 1-5, where 1 is greatly in favor of allowing backyard chickens and 5 is greatly opposed to allowing backyard chickens.	2. What is your primary reason for supporting/opposing backyard chickens in residential neighborhoods?	3. Please describe any experience you have had with backyard chickens.	4. General Comments	5. Provide contact info
1	Self-sufficiency, deeper connection to our food, hobby, making our yard and garden more of a permaculture set-up.	I have had a hand in raising and caring for chickens in both Chicago and Seattle.	--	--
1	Connection to food and animal welfare; also it's fun!	I kept chickens when I was living in Seattle, and it was a great experience. I also work at the Longmont Agricultural Heritage Center, where we keep around 18 chickens.	--	--
1	I would like to have a choice rather than have a dictate forbidding ownership of chickens. I do believe that eggs that come from chickens with a controlled diet that I provide are much healthier just as the product from my garden is better.	My experience thus far has been positive. They do not make a lot of noise, eat bugs so no insecticides needed.	I really think that property owners should have rights and as long as they maintain animals, all animals in a proper, clean environment they should be allowed to have them. When people abuse the privilege it should be removed. But the entire City should not pay the price for the fault of few.	Yes
1	Self sufficiency. Sustainable way to have hormone-free eggs.	We used to have chickens and small animals in our back yard all the time. I was raised with them and it helped me develop great compassion for animals.	I believe in a good-sized back yard it not only provides sustainable food source, but also it provides a beneficial manure. Children will learn to love and care for them. It facilitates a sense of responsibility. Their mess and distraction is much less than dogs and cats! I have a dog myself. Having an animal of any kind comes with a set of responsibility. This can and should be regulated: yard size, # of chickens, complaints from neighbors (hygiene and noise). Thank you for considering the issue.	Yes
1	--	--	--	--

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1	I believe we should have the choice to own or not. The experience of raising chickens and enjoying their healthy eggs is wonderful for children (along with learning responsibilities, etc.)	I grew up with chickens (laying hens (Rhode Island Reds)), which we also butchered and ate. Every day collecting eggs was like an Easter egg hunt (although they were always in the little cubbies my dad built).	The proposed 10' from property line seems ridiculous. First that puts the chicken coop in the middle of most people's yards. Second, if the goal is to make them the least obtrusive, hiding it up against the fence would make more sense (with the fence obscuring most, if not all view). I've raised chickens, not 100% sure yet I want them (Love the fresh eggs we would get! and experience for daughters); however I believe Westminster residents should have the CHOICE as to whether or not to embark on this adventure. Also, it would be nice, if bother w/ enough to feed our family, if we could one a couple/few more (while we're at it) to sell to friends to help offset costs.	Yes
1	I would like to have my own organic eggs: knowing where my eggs come from. Move to CO to have /raise chickens to have my own eggs, grow my own veggies.	I used to raise chickens during my childhood. Having fresh eggs was great!!	--	--
1	Closer access to healthier fresh eggs. Using manure for composting.	Observing	--	--
1	Sustainability!! Knowing what in what you eat.	I grew up in a ranching community in NW CO and bought eggs weekly from next door neighbors!	Should be regulated to ensure that animals are properly cared for. No more than X amount per sq. ft. Proper shelter. Proper feeding and containment. City could charge for permits to cover costs of enforcement and regulations.	Yes
1	I would like fresh organic eggs for my family. Denver, Broomfield, Arvada and many other cities allow chickens. Not sure why Westminster is so reluctant.	My daughter lives in Co. Springs and has chickens, rabbits, and goats all in a neighborhood setting. Her chickens eat veggie scraps reducing her trash. They also chase mice.	I believe that as property owners and taxpayers we should have a choice. Chickens are no different than dogs, cats, etc. if proper care is taken. I have had neighbors who tie up their dogs and must listen to it bark for most of the day. Certainly a chicken isn't louder than that. The key is good pet care. Please don't discriminate against chickens.	--

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1	This is another way for me to be in charge of my food source. Organic, costs - If I'm raising I know for sure what is in my food source.	Only experience I had is being around other friends or family that are raising their own.	--	Yes
1	Personal control and responsibility for foods we consume. Educational value, family activity value, and more.	As a former resident of Upstate NY, I've personally raised chickens on a small/backyard scale and have worked with a number of other friends and families with similar experiences.	Essentially to the greatest degree possible any citizen should enjoy the right to produce foods for their consumption and to trade or share with others in their neighborhood/community so long as the experiencing of those rights is conducted in a manner that neither impinges on the rights of others in the course of enjoying their own property rights.	Yes
1	Gives people a source of high quality food, teaches children where food comes from and responsibility.	None	I understand the reasoning behind the predator-resistant coop, but would like to see chickens able to be outside with predator-resistant fencing, along with their coop. City Council should allow bees and chickens asap so people can get their chicks soon, rather than having to wait another year.	Yes
1	Liberty	--	--	--
1	Provide families with healthy produce, the are quiet animals that do not cause disruptions to others.	I was raised in a home with chickens. They never caused us problems with neighbors and provided my family with great eggs.	Quiet, healthy produce, maintainable, takes us to our roots.	Yes
1	Having your own chickens is not only a money saver, but then you can monitor the quality and health/wellness of your chickens/eggs yourself.	We used to have chickens when we lived in Arvada. They provided wonderful eggs, and a nice chore for the kids. They were quiet as well.	Easy to maintain. Quiet. Get along with other wildlife/pets. Tasty eggs!	Yes
1	I would like to have chickens.	I have friends in other cities that have chickens.	--	Yes

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1	Liberty! Chickens (non-roosters) are quieter than dogs, are great pets, and you get the benefit of fresh eggs.	I know many owners of chickens in Lafayette and the experience has been very positive without controversy.	This is a liberty issue. There should not be a requirement to have licenses for any household for any pets. People don't have to license their kids, and this should be the same for dogs and chickens. The City should not prohibit chickens or ducks on PERSONAL PROPERTY. If problems arise, the homeowners may be fined for the use of Animal Services. There are many reasons to allow chickens, but liberty is at the top of the list.	Yes
1	We should have the opportunity to raise food for our families that is fresh and healthy as long as it doesn't negatively affect our neighbors.	The hens are quiet and friendly, the eggs are amazing.	I feel that hens are just pets with benefits. They aren't as loud as the barking dogs in the neighborhood. I think they attract as much wildlife as small dogs, cats, and all the rabbits in the neighborhood.	Yes
1	I would like to have access to fresh eggs, pest removal, fresh manure, and the silly antics that chickens provide.	From 2006-2009, while living in Hotchkiss, CO, our family managed a flock of 20-25 chickens. We harvested eggs, and let the chickens range freely on the 10 fenced acres.	Allowing chickens in residential areas will present challenges, and opportunities. Regulations and management will be required to make sure chicken owners don't infringe on their neighbors' rights to a reasonably clean, quiet environment. Input from other front range communities seems to show that with even a minimum of regulation, complaints regarding chickens in residential areas are infrequent. Raising chickens isn't any more complicated than raising dogs, cats, or other larger pets. Our daughters were in elementary and jr. high school when we had chickens. They helped with gathering eggs, cleaning, and butchering. We believe this helped them better understand where their food came from and the challenges in caring for livestock. The one benefit I haven't seen mentioned is entertainment. Chickens are hilarious! Watching them peck, scratch, etc., is great fun.	--

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1	Fresh eggs - healthy eggs - less Gov/City Council	A friend has them in Denver and one friend in Thornton has some. They let me know what is going on with them.	--	--
1	Self sufficiency of own food source. Retaining agricultural history of Westminster. Great lesson in life cycles / food source for children.	Grew up an have cared for chickens for my formative years.	I think it would be fun and nice and chickens are really nice and sweet. Fresh eggs are better than gross factory eggs.	--
1	People can save money on eggs because chickens make eggs.	I grew up with chickens.	The opposition may claim the bringing of predators/unwanted raccoons, etc. or noise. From my lifetime experience of raising and tending chickens; if the proper space/coop bedding, etc. it provided and maintained there is no problem with coyotes etc. The residential area is too populated and has already too much available food source to claim it's the chickens that would draw them. Different breeds "Americana" are very quiet. Our children and we deserve the right to provide our own food source!	Yes
1	eggs, family time, learning, fertilizer	--	Quantity of 6 chickens. Free range in back yard with clipped wings if necessary. Renters should be able to have chickens with owner's permission. Please vote in may so we can get started while supplies last.	Yes
1	Family enjoyment and learning - eggs. Fertilizer growing our own food. Sustainability.	Fresh eggs, sounds of happy kackling, clean coops, family bonding.	1) Please approve 6+ vs 4. 2 more hens won't take up any more room in the coop. This is to have enough eggs and offset expense of coop. 2) They aren't designed to stay in a coop 100% of the time. They need to come out a few minutes each day and while we clean the coop. If we clip one wing (not both) they won't / can't fly away. 3) Please don't discriminate against renters if there landlord agrees in writing. Not everyone can afford a down payment for a house yet. 4) Please vote in may while people can still get chicks.	Yes

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1	After careful research I would consider having 2-3.	None, but minor research.	Not sure about support for Roosters.	Yes
1	eggs.	0	Concern with roosters.	Yes
1	I live in Lafayette and own 5 chickens. They are not a bother to anyone.	I'm an owner and they are great.	--	--
1	Quiet - more so than dogs - food source	Several chicken coop open houses - very impressed	I don't feel will cause harm to neighborhoods. Educational. Healthy activities.	Yes
1	It will support the citizens trying to maintain a healthy lifestyle.	Visited some owners.	By moving the majority of the population from farms to very small city lots, we've decreased their ability to harvest their own food. This puts them a the mercy of mass food suppliers.	Yes
1	Safe eggs, backyard sustainability, responsibility for children, fertilize the ground, they eat bugs. Chickens are quiet and essential.	We have raised chickens before.	Our family believes backyard chickens will change our quality of life. We have raised farm animals before and know the benefit and responsibility of raising chickens.	Yes
1	My husband wants to have them and my neighbors have no objections.	None. But my son grew up with chickens.	I think that hens and no roosters would be fine as long as people are able to take care of chickens. Having a license or permit can help support making sure complaints are addressed quickly so good people can still keep their chickens. Having chickens fenced would make sure that coyotes would not come around neighborhoods.	Yes
1	I would support backyard chicken(s) due to the fact that chicken(s) is also a pet.	My experience with chickens is genuine and knowledgeable enough to take care of chickens when they are sick.	--	--
1	Westminster is a country urban community and chickens are an easy critter to manage. Quieter and less smelly than dogs.	Decade on farm on Olympic Peninsula WA in an area with fox, lynx, coyote, wolves, cougars, and raptors.	--	--
1	Eggs - Children - Pets	Friends	Chickens provide healthy eggs for my family. They also make good pets and will be a great education for my children.	Yes
1	Teach my kids about how to care and where eggs come from. Know what my chickens are eating and know what are in my eggs.	None, read lots of websites and videos	I vote pro chicken. A lot of other councils allow this and Westminster should also.	Yes

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1	I strongly support the urban agriculture movement. Owning chickens is a great way. Should be included in this lifestyle.	We owned chickens on 2 acres until we were ticketed and told to get rid of them. They are not smelly or noisy animals. They are sweet, quiet, giving pets.	Westminster will not be the first to change the laws regarding backyard chickens. With 65% of Westminster in HOAs I believe any negative impacts will be minimum or none at all. Those who will be able to own them will be the families that will not invest the time and money in owning chickens to turn around and neglect them.	Yes
1	Health benefits for me and my family and the humane treatment of chickens.	I have had chickens in the past for several years.	Chickens make a lot less noise than dogs do. Chickens make less mess and smell than dogs. Chicken waste is compostable.	--
1	To be closer connected to my food source (eggs), knowing more about the inputs into my eggs. I'm also interested in the great byproducts like manure and bug control.	My parents have 4 chickens in Broomfield and have had a wonderful experience. They average 3 eggs per day, the birds are quiet (better for noise than dogs!), and there is neither foul odor nor eye sore. My toddler loves chasing the chickens and it's great having them so close!	I believe the wise management of backyard chickens will benefit many citizen of Westminster. The keeping of backyard chickens will encourage people to investigate and care about the quality of their food and sustainable, healthy practices. Chickens are not disruptive and are very practical and beneficial. I've been hoping for a law change to allow chickens in Westminster since I moved here 2 years ago. I hope Westminster will join the ranks of many of our neighbor cities!	Yes
1	It just makes sense. The majority of communities surrounding us have chickens/bees. With the dire situation of the decline of bees they area a small but needed pollinators.	Several friends in Denver, Arvada, Longmont, Boulder have chickens / bees all with positive results.	--	--
1	They make great pets - better than noisy dogs. They can be fairly quietly contained - unlike dogs.	In Michigan I had a flock. The eggs were great - the manure was great for the garden. They're controllable.	I actually though Westminster allowed them based on surrounding cities. Chickens in the Colorado area are basically caged animals because of predators. They aren't the "free range" nuisance dogs are. I am surrounded by dog owners and wish they had chickens instead - more control and they sleep at night.	Yes

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1	Our family would like to raise chickens.	We have some back in Mexico and they are fun to have and watch.	First I would buy a chicken coop good enough for that no any animals can't com in. Eating healthier eggs. Better than barking dogs.	Yes
1	Westminster has a relaxed urban-country feel whose roots hail from farming.	10 years on a farm (non-commercial) - had lots of chickens (and roosters) - no problems except for a pregnant coyote.	I can totally see this as an interesting and folksy addition to our urban lifestyle. The negative impact would be minimal - perhaps as little as 1-2 coops per 100 households. Education is key! I read over the proposed regulations and they are well thought-out, protective, and inclusive. Chickens are super friends and easy for children to take care of. As part of a healthy lifestyle, chickens are key.	Yes
3	Because there is always someone who think they are above the law.	Illegal chicken coop down my street - attracts varmints, etc.	Concerns on odor, feather allergies, varmints (can they sell eggs?), slaughter house, noise.	--
5	--	--	Be concerned about kids near hives! Bees - Ok if property is 2 acres or over. Chickens - who pays for the "health" inspections? What about avian flu? What about the noise? If you really want chicken go to Wishbone or king Soopers!	Yes
5	Not practical at this time.	No	Cost / scheduling of poultry inspection. Additional zoning regulation and issues. Cleanliness issues. Bird flu issues. Noise. Responsibility / knowledge of chicken owner. Westminster is a City not a rural village.	--
5	The noise and the smell and being able to fly over my 6' fence.	Someone in our area had chickens. They were loud and smelled.	I would not like chickens in my neighborhood. I also would not like ducks allowed either. I feel people would not take all the care needed to keep the smell and noise away and would not follow the requirements set by the City and would keep the City busy trying to keep up with complaints.	--

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5	People can't take care of their dogs.	None. But back-yard dogs! I think that chickens would just promote more barking.	Chickens belong in the country, not in the Suburbs. Chickens bring foxes and other predatory animals. Neighbors would put their chicken coops as far away from them.	Yes
5	Nuisance, smell, encroachment, increased concern for predator invasion, disease.	None - on purpose.	I have additional concern for animal control staff as I know from other agencies enforcement is burdensome.	--
5	7.5 million chickens have been "recalled." We don't know all about Bird Flu, plus the water demands; Plus regulation costs. Do not strap the citizens with the noise, possible in time health issues for all of Westminster being threatened by harm and costs and noise.	--	The nuisance to their neighbors is not the right to infringe on having chickens.	--
5	Brings in predators.	My neighbor has/had chickens and slaughters them in time. I have had skunks, fox, and raccoons in my yard.	See answer above. A raccoon came into my neighbor's yard after his chickens and decided to claw into my attic. I had to call animal relocates at my expense. My grandson had tried to see what was up in the attic and was surprised and fell through the ceiling. The raccoons (mom and babies) had peed through the ceiling. Altogether it cost me over \$550.00 because the chickens attracted raccoons. As to the skunks, my dog and I both got sprayed - costing loss clothing, etc. A couple months ago we saw a fox in our yard. It jumped the fence to the neighbors yard. We have also seen coyotes.	Yes



WESTMINSTER

March 10, 2015

City of Westminster
Department of
Community Development

4800 West 92nd Avenue
Westminster, Colorado
80031

303-658-2400
FAX 303-706-3922

Re.: Beekeeping and Chicken Husbandry in Your Subdivision

Dear Sir or Madam:

The City Council of the City of Westminster is weighing the possibility of allowing beekeeping and/or chicken husbandry in the City's residential single-family home neighborhoods. To this end, the Planning Division is reaching out to all of the City's listed HOAs to ask them for their input. Please answer the following question:

Do your HOA covenants, controls, and restrictions currently allow for the keeping of bees and/or chickens on the single-family home lots of your subdivision?

PLEASE NOTE: Any potential changes in City regulations will NOT impact your existing HOA covenants or restrictions related to beekeeping and/or chicken husbandry within your subdivision.

You are welcome to include any additional comments related to beekeeping and chicken husbandry in your subdivision. Please also let us know if you would like to be notified of any related outreach efforts or public hearings.

Respectfully,

The City of Westminster Planning Division
Department of Community Development

COLORADO DEPARTMENT OF AGRICULTURE



Animal Health Division

May 2015

We've moved!

As of May 19, 2014, our new address is:

305 Interlocken Parkway
Broomfield, CO 80023
(303) 869-9130

Inside this Issue

- High Path Avian Influenza
- Official Animal Identification
- Trichomoniasis Rule Change
- ...and much more!

Greetings!

The Animal Health Division Newsletter is back! From Official Animal Identification to Vesicular Stomatitis to Highly Pathogenic Avian Influenza, we have quite a few things to report. Read on for these and more!

Also, as a reminder, if you

suspect a reportable disease in an animal or observe a situation involving morbidity or mortality outside the normally expected clinical picture, please contact the State Veterinarian's Office immediately at (303) 869-9130. To reach us outside of regular business hours, call

the same number to obtain the phone number of the staff veterinarian on call.

For a list of [Colorado reportable diseases](#) [click here](#), or visit www.colorado.gov/aganimals

Thank you for your help, & let us know how we can help you!



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The United States Dept of Agriculture's Animal and Plant Health Inspection Service (USDA-APHIS) has confirmed the presence of HPAI H5N2 and H5N8 in poultry flocks in thirteen states: Arkansas, California, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, North Dakota, Oregon, South Dakota, Washington, and Wisconsin. HPAI has been confirmed in wild birds in five additional states: Kentucky, New Mexico, Montana, Utah, & Wyoming.

"There are currently no cases of HPAI in Colorado. However, poultry producers and bird owners are encouraged to increase their disease prevention practices to help prevent the infection in our state," says State Veterinarian Dr. Keith Roehr. "Wild birds appear to be the vector for

HPAI infection of domestic poultry, and HPAI virus strains can travel in wild birds without making them appear sick; therefore it is especially important to limit the exposure of poultry to wildlife, wildlife areas, or through people who may have had contact with both."

Although USDA is developing an HPAI H5 vaccine as a backup tool, vaccines are not commonly used to control HPAI outbreaks due to trade regulations, and because no vaccine covers all viral strains.

Disease prevention is the best way to prevent HPAI.

- Avoid contact with sick or dead poultry or wildlife
- If contact occurs, wash hands with soap and water, and change clothing before having contact with healthy domestic poultry or birds

- Keep tools & equipment clean
- Poultry owners should not have contact with other flocks

As part of existing avian health programs and disease response plans, federal, state, and university partners are working jointly on HPAI surveillance and monitoring in Colorado.

The Centers for Disease Control considers the risk to people and our food supply from the HPAI H5 infections in birds to be low.

Report sick birds or bird deaths:
State Veterinarian (303)869-9130
USDA (303) 231-5385

Submit dead birds (free AI test)
CSU Vet Dx Lab (970) 297-1281

Questions about sick/dead birds:
CO Avian Health Call Line (CSU) (970) 297-4008

For symptom information and HPAI resources, see [page 6](#) of this newsletter.



"Cattle do not have to be run through a chute to record UHF electronic IDs, and UHF ear tags can be read from a greater distance. Therefore, ear tag information can be captured from a pen of cattle."

Official Animal Identification

Dairy cattle of any age, and all beef cattle older than 18 months, must have official animal ID ear tags applied for importation into Colorado. Official IDs for the cattle older than 18 months must be individually listed on the CVI.

Exceptions

Official ID requirements are waived for cattle being shipped

directly to a Colorado Approved Feedlot or directly to slaughter.

Official ID ear-tags include:

- 15-digit Animal Identification Number: 840-series ear-tag (visual tag, RFID tag, or combination of the two)
- Silver "brite" metal ear-tag with state of origin two-digit code (NUES tag)
- Orange Brucellosis (OCV) ear tag

Note: 900-series ear-tags can no longer be used for official animal ID, although animals with 900-series tags applied *before* March 11, 2015 are considered to meet official ID requirements.

Electronic Health Certificates

Electronic health certificates (eCVI and iCVI) are a convenient and streamlined method of collecting CVI data, and are being put to use by an increasing number of veterinarians.

eCVI

A fillable pdf that contains data which can be extracted into CDA's animal health information management system, USAHerds.

iCVI

An iPad App, which sends the CVI electronic data directly into USAHerds, without any need for manual data entry.

Why should you use electronic health certificates?

- Time savings and improved efficiency
- Copies are sent electronically to shipping & receiving state offices – no postage costs!
- Multiple ID numbers can be imported into the certificate – no writing out tag numbers
- No need for attached sheets
- Improve legibility & accuracy
- Allow for real-time information exchange

Electronic CVIs provide valuable efficiency to veterinarians & clients, & ensure compliance with traceability requirements.

In the past twelve months, 327 eCVI users and 126 iCVI users in Colorado have registered through CDA, and have issued 4252 electronic health certificates.

To get started with electronic health certificates, contact the State Veterinarian's Office at (303) 869-9130 or take a look at the resources available on our [website](#).

New Technology for Cattle ID – the UHF Project

A USDA project to place ultra-high-frequency (UHF) cattle ear tags is underway at two livestock auction markets in Colorado; The Livestock Exchange (LE) in Brush, and the Western Slope Cattlemen's Livestock Market.

The project places electronic UHF ear tags in animals and evaluates the ability to capture ear tag information efficiently and effectively. This technology is different than the current existing

electronic ear tags and capture equipment in that cattle do not have to be run through a chute to capture electronic IDs and UHF ear tags can be read from a greater distance. Therefore, ear tag information can be captured from walking through a pen of cattle. The project is designed to demonstrate the efficiencies and benefits of using electronic animal ID, and will advance animal traceability in the state and nation. In

addition, CDA is working with Fort Supply, the vendor for this equipment, to allow for automatic integration of animal health information into the CDA database.

LE Veterinarian Paul Chard has applied over 400 tags to adult bred cows for testing. At this point, the new electronic cattle tags show significant promise for improving capture of electronic animal ID data. [Video demonstration available here.](#)

Vesicular Stomatitis Final Report

As of February 2015, the Colorado Department of Agriculture's (CDA) State Veterinarian's Office released all quarantines related to the 2014 Vesicular Stomatitis (VS) outbreak in Colorado. In all, there were 556 livestock investigations in the state resulting in 370 quarantines.

The index case in Colorado occurred in mid-July and the last confirmed case was investigated in November;

quarantines were lifted once the affected animals were completely healed and no longer infectious. This outbreak was one of the longer VS outbreaks for Colorado.

The outbreak response was a collaborative effort between CDA, livestock owners, USDA Veterinary Services, USDA Center for Epidemiology and Animal Health, CSU Veterinary Diagnostic Lab, veterinarians

in private practice, & many others that provided vital time & services during this response.

Canada has recently lifted all restrictions on Colorado related to VS. Recently, OIE has removed the 'foreign animal disease' designation from VS in equines; OIE's actions will lead to regulatory changes in the way VS investigations proceed for the coming year. CDA will communicate these changes as they are released.



"Colorado has one or two cases of EHV-1 every year. Event organizers should consider requiring health certificates and vaccination records, limit direct horse contact and equipment sharing, and have a plan for management of suspect disease."

EHV-1 and Event Biosecurity

As May and June approach and we begin to ramp up to the equine show and event season, the Colorado Department of Agriculture reminds you to be aware of EHV-1. Although the last large outbreak of EHV-1 in Colorado was in 2011, we have 1 or 2 cases every year, and Texas, Michigan, Ohio, and Maryland have all reported EHV-1 cases in 2015. Many of these cases

were identified in horses that attended shows and exhibitions.

Biosecurity is the key to preventing the introduction and transmission of EHV-1, and Colorado Department of Agriculture offers [a Business Continuity Plan for Equine events](#), for use by the event organizers and event veterinarians. This plan, along with a number of

other resources, are available on the CDA website.

Event organizers should consider requiring health certificates and vaccination records, limit direct horse contact and equipment sharing, and have a plan for management of suspected cases of EHV-1. If you have questions, visit our website or contact the office of the State Veterinarian at (303)869-9130.

AgConnect Colorado

AgConnect Colorado is customized data integration software which allows Colorado Department of Agriculture to quickly and efficiently integrate livestock movement data, disease incident information, and other disease response activities so that data can be visualized by mapping software. This data integration can be used both in an outbreak situation and for day-to-day regulatory work.

The 2014 outbreak of Vesicular Stomatitis in Colorado livestock generated more than 500 Foreign Animal Disease (FAD) investigations, completed over a course of less than 5 months, presented significant logistical challenges. AgConnect data integration was a tremendous asset during the outbreak. Its ability to "reach" into USAHerds and generate maps allowed efficient, real-time mapping of premises during the outbreak.

Using this capability, CDA was able to map premises at different stages of quarantine, including under 'Quarantine', under a 'Hold Order' movement restriction, and 'Released Quarantine'. AgConnect enabled CDA to give the agricultural community better information on the outbreak. Additionally, AgConnect allowed CDA to quickly analyze and determine which premises could move livestock, and thus comply with temporary outbreak-specific export restrictions.



"The official trichomoniasis test for import into Colorado or for change of ownership within the state is the PCR test. Culture is no longer considered an official test for regulatory purposes."

Trichomoniasis Rule Change

One of the big rule changes in 2015 for cattle producers is the revision of the trichomoniasis rule. The new revised Livestock Disease Control Rules (8 CCR 1201-19) contains the new trichomoniasis rule, which became effective December 30th, 2014. Overall, the trichomoniasis rule has not changed dramatically, but there are some changes that affect producers & veterinarians.

The main changes:

1. Official trich test:

The official test for import into Colorado or for change of ownership within the state is the PCR test. Here is how it is worded: "Official *T. fetus* PCR test (Polymerase Chain Reaction)" means a method approved by the State Veterinarian that detects, through in vitro amplification, the presence of *T. fetus* DNA. *The previous rule allowed a trichomoniasis culture for import of out-of-state bulls or for a change of ownership.*

Culture will be acceptable for annual diagnostic tests when used as part of a preventative herd health plan but is not considered an official test for regulatory purposes such as change of ownership, importation, or movement to a grazing association.

2. Length of validity of trich test for change of ownership or import into Colorado:

The official trichomoniasis test is now applicable for 60 days prior to importation or change of ownership. *The previous rule stated the test was only valid for 30 days prior to importation or change of ownership.*

3. The test eligible age for bulls:

The new rule requires that bulls over 18 months of age be tested for trichomoniasis whether they are bulls imported from out of state, bulls changing ownership, or bulls commingling in grazing associations. *The previous rule*

required that bulls being imported into Colorado be tested if over 12 months of age and had some provision for virgin bull status.

4. Identification and Laboratory Submission Forms:

There are some additional requirements for official animal ID for bulls being tested for trichomoniasis. The new rule states that the accredited veterinarian shall record the bull's official animal ID eartag on the *T. fetus* test submission form or apply an official animal ID tag to any bull that does not have one and record it on the *T. fetus* test submission form. An approved laboratory is required to immediately report any positive specimen to the State Veterinarian's Office. Such report should include the official animal ID eartag, brand, owner name, address, telephone number and the submitting veterinarian's name, address, and telephone number.

Predator Control Activities

The Colorado Department of Agriculture has drafted a brochure for agricultural producers summarizing the Colorado Parks and Wildlife and Colorado Department of Agriculture regulations relating to control of depredating wildlife. After staff and legal counsel review of the draft language, it will be used along with photos and graphics to create a brochure that can be delivered to ag producers.

The Colorado Wool Growers use guard dogs on public lands to protect their flocks from predators. These guard dogs can be potentially aggressive, and a human – guard dog conflict arose last year.

USDA, CDA, and the Wool Growers Association are proactively working reduce chances of another conflict occurring. The Livestock

Protection Dog brochure is part of this planning, and will aid in increasing public awareness of guard dog use, on behalf of the Colorado wool growers. The brochure is available on the CDA website [here](#). CDA is also looking into funding for guard dog signage on public lands.

Official PIN Tags for Breeding Pigs

As of Jan. 1, 2015, the majority of packers and processors that harvest breeding stock are requiring official premises identification tags (official PIN tags) be present on the animals as a condition of sale and processing.

The requirement DOES NOT apply to feeder pigs, market hogs, or show pigs being sold as market hogs.

There has been concern among small producers who need only a few tags, regarding the ability to order a small quantity of tags. The Colorado Department of Agriculture has contacted approved PIN tag manufacturers to inquire about ordering small quantities of tags. Several Ag companies, after consulting with the National Pork Board and USDA, have changed their rules to no longer require a minimum order for these PIN tags.

Two of the manufacturers – Destron Fearing and Allflex USA, Inc. – will allow producers to order whatever quantity of tags they need, whether that is 1 tag or 100 tags. These companies have been friendly and willing to work with producers ordering a smaller quantity of tags.

Destron Fearing

Usually sell the tags in bags of 25. However, they will sell a smaller quantity as long as the producer specifies how many tags.

Customer service:
[1-800-328-0118](tel:1-800-328-0118)

This number will direct the caller to a distributor, or alternatively, the producer can ask their veterinarian to call and order the tags.

Allflex USA, Inc.

Will sell any quantity of tags.

Most veterinarians can sell these tags. Additionally, distributors and online retailers are listed on the website:

Distributors:
<http://www.allflexusa.com/>

Online retailers:
<http://www.allflexusa.com/online-resources/>

Y-Text

Sells tags only in bags of 25. This company will ship tags directly to the producer.

Producers can order from their current Y-Text distributor. If producers do not have a distributor, they can contact: Colorado Animal Health Longmont, CO
[303-772-2636](tel:303-772-2636)

Information on the National Pork Board website about PIN tags: <http://www.pork.org/programs-and-events/swine-id/pin-tag/>

PIN Tag FAQ Sheet:
http://www.pork.org/wp-content/uploads/2010/04/pin_faqs.pdf



"Several Ag companies, after consulting with the National Pork Board and USDA, have changed their rules to no longer require a minimum order for official PIN tags."

BAP Task Force

Due to ongoing questions and debate about the scope and authority of the Bureau of Animal Protection and its agents, the Commissioner of Agriculture have convened a task force to address a number of concerns with the

Bureau of Animal Protection. Specifically, the task force is addressing interpretation of BAP agent authority and maintaining the original intent of the law. The task force is chaired by Jim Miller, former Deputy Commissioner of

Agriculture, and members that include representatives of the Department of Agriculture, Humane Associations, Law Enforcement, the District Attorney, and veterinarians.

Colorado Department of Agriculture

Animal Health Division
305 Interlocken Parkway
Broomfield, CO 80021

Phone
(303) 869-9130

Fax
(303) 466-8515

Website
www.colorado.gov/pacific/aganimals

Symptoms of HPAI

The current highly pathogenic avian influenza outbreak has caused very high mortality in several species of poultry, with turkeys the most affected, followed by quail and chickens. The most common symptom among domestic poultry is death. Wild birds do not seem to be as severely affected.

Symptoms in domestic poultry include:

- Sudden death
- Swelling of the head, eyelids, comb, wattles, hocks
- Purple discoloration of the wattles, comb, legs
- Nasal discharge, coughing, sneezing
- Diarrhea



Resources for HPAI

USDA: (303) 231-5385

<http://www.usda.gov/birdflu>

<http://healthybirds.aphis.usda.gov>

http://www.aphis.usda.gov/animal_health/birdbiosecurity/AI/

Colorado Dept of Agriculture (State Veterinarian):
(303) 869-9130

www.colorado.gov/pacific/aganimals

CSU Veterinary Diagnostic Lab: (970) 297-9281

<http://csu-cvmb.colostate.edu/vdl/Pages/default.aspx>

AVMA:

<https://www.avma.org/KB/Resources/FAQs/Pages/Avian-influenza-FAQs-general.aspx>

CDC:

<http://www.cdc.gov/flu/avianflu/h5/index.htm>

World Health Organization (WHO):

<http://www.who.int/mediacentre/factsheets/fs215/en/>

FDA:

<http://www.fda.gov/Food/ResourcesForYou/Consumers/ucm085550.htm>

Center for Food Safety & Public Health:

http://www.cfsph.iastate.edu/Factsheets/pdfs/highly_pathogenic_avian_influenza.pdf

About Our Organization

The mission of the Colorado Department of Agriculture is: to strengthen and advance Colorado agriculture; provide a safe high quality, and sustainable food supply; and protect consumers, the environment, and natural resources.

The Animal Health Division, led by the State Veterinarian, works in close cooperation with the livestock industry and veterinary medical organizations, as well as other state and federal agencies, to protect the health, welfare, and

marketability of Colorado livestock.





Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Councillor’s Bill No. 39 re FY2014 Carryover Appropriation into FY2015

Prepared By: Barbara Opie, Assistant City Manager
Steve Smithers, Deputy City Manager

Recommended City Council Action

Pass Councillor’s Bill No. 39 on first reading, appropriating FY2014 carryover funds into the FY2015 budgets of the budgets of the General, General Reserve, General Fund Stabilization Reserve, General Capital Improvement (GCIF), Fleet, Sales and Use Tax, Utility, Utility Reserve, Storm Drainage, General Capital Outlay Replacement (GCORF), and Golf Course Funds.

Summary Statement

- The City Council annually reviews and appropriates carryover funds from the previous year’s budget into the current year budget for the following:
 - those items and services included in the previous year’s budget but not received or provided until the current year’s budget;
 - new items and services not included in the previous year’s budget or funds that were identified as available for these new priorities in late 2014, but the items or services were not received or provided until the current year’s budget; and
 - existing or new capital projects and key operating priorities for which funds are needed and carryover funds are available.
- Total funding of \$12,264,525 to be appropriated for the items recommended in this Agenda Memorandum comes from revenues and unexpended 2014 funds in the various amounts identified.
- Staff is requesting that City Council authorize the proposed carryover items and appropriate FY2014 carryover funds into the FY2015 budgets of the General, General Reserve, General Fund Stabilization Reserve, General Capital Improvement (GCIF), Fleet, Sales and Use Tax, Utility, Utility Reserve, Storm Drainage, General Capital Outlay Replacement (GCORF), and Golf Course Funds.
- Two high priority carryover recommendations are to allocate \$75,000 to the General Fund Reserve and \$460,000 to the General Fund Stabilization Reserve Fund. This continues City Council’s policy of maintaining healthy reserves to address emergencies and future economic downturns.
- The carryover appropriation takes place annually once the audit is completed for the prior year and carryover amounts are finalized. As noted in the July 20 Staff Report, as the carryover is finalized, modifications may be necessary and one minor modification is recommended in the total amount appropriated in the General Capital Improvement and Sales & Use Tax Funds noted below.
- City Council reviewed this item at the July 20th Study Session and directed Staff to schedule 2014 carryover as presented for official action.

Expenditure Required: \$12,264,525

Source of Funds: 2014 Carryover from the General, General Capital Improvement (GCIF), Fleet, Sales and Use Tax, Utility, Storm Drainage, General Capital Outlay Replacement (GCORF), and Golf Course Funds

Policy Issue

Should the City appropriate 2014 carryover funds as proposed?

Alternatives

- City Council could decide not to appropriate any of these funds at this time. This is not recommended as many of the carryover requests are for items and services that have already received City Council approval during the FY2014 Budget process as priority expenditures for the City.
- City Council could choose to approve the carryover appropriation for only previously appropriated operating items. Staff recommends utilizing the carryover funds for the previously appropriated operating items as well as the new operating and capital improvement projects noted in this memorandum to maximize the use of these funds in providing services to residents and businesses.

Background Information

The annual financial audit was completed last month. Upon completion of the annual audit, the City Council reviews and appropriates carryover funds from the previous year's budget into the current year budget. Under previous current practices, all carryover, including the Capital Improvement Program (CIP) funding, is typically appropriated at one time in July or August annually. However, since carryover is such a substantial and critical funding component of the City's CIP, particularly in the GCIF, Staff recommended and City Council concurred in July 2013 continuing to appropriate carryover for operating budgets annually in July or August but only appropriating funds for critical capital projects at that same time; the remaining funds would be incorporated into the biennial budget development or mid-year budget review process.

"Critical" is defined as having an immediate need for the execution of a contract or key purchase of equipment necessary to keep a project moving forward. Non-critical capital project funding from carryover will be incorporated into the following year's CIP plan and reviewed more comprehensively through the normal budget process. This will cause the five-year CIP plan to look larger in the first two years with "actual" carryover built in and lower in the out years with estimated carryover built in as Staff will continue its practice of conservative budgeting. Staff believes by incorporating the carryover into the next year's budget process that greater transparency of available funding is possible as well as helping truly line up Council priorities in one comprehensive CIP document.

This modified approach for carryover is incorporated in the recommendations contained in this Agenda Memorandum; the remaining carryover of \$4,830,043 (\$59,894 in Storm Drainage; \$746,563 in Golf Course; \$2,329,793 in GCIF-general; \$923,668 in GCIF-park/recreation/libraries dedicated; \$131,945 in Conservation Trust; and \$638,180 in POST Funds) will be incorporated into the Mid-Year 2016 CIP budget that City Council will consider in September with the budget development process. As noted in the July 20 Staff Report, as the carryover is finalized, modifications may be necessary and one minor modification is recommended in the total amount appropriated in the General Capital Improvement (GCIF) and Sales & Use Tax Funds. Per the Staff Report, a total of \$6,400,000 was proposed to be allocated from the Sales & Use Tax Fund into the GCIF for the Downtown Westminster project. However, for better tracking purposes, in the attached ordinance, Staff is transferring a portion of the funds (\$689,000) directly from the Sales & Use Tax Fund to the Westminster Economic Development Authority (WEDA) associated with the acquisition of the JC Penny lease hold interest in land to build the Westminster Boulevard. As the land and associated lease are held by WEDA, it is appropriate that these funds be appropriated directly into WEDA for use in this manner. As such, the \$6.4 million proposed in the GCIF is reduced accordingly.

Included within the recommended carryover outlined in this Staff Report, a total of \$7.4 million is associated with City Council's 2015 Strategic Plan action items previously identified so that Staff can make progress on these Council priorities. A substantial amount of the recommended 2014 Utility Fund carryover is proposed to be appropriated at this time to the Utility Fund's Rate Stabilization Reserve

(RSR) and Capital Project Reserve (CPR) pursuant to the Utility Fund Fiscal Policy adopted in January 2011.

PROPOSED RE-APPROPRIATION OF OPERATING ITEMS PREVIOUSLY APPROVED IN 2014

Certain items were budgeted and ordered in 2014 but were not received until 2015. In addition, certain services, authorized in 2014, were not fully performed by the end of the year. Under standard accounting procedures, these remaining funds should be re-appropriated in the new fiscal year to complete the desired purchase or service. Staff recommends the funds described below be re-appropriated in 2015.

GENERAL FUND

Fire Department – One item totaling \$11,475 associated with the Emergency Management Preparedness program. These funds represent department savings incurred during 2014 and is requested for carryover to be spent on Emergency Management Operations in 2015. These funds are the primary source for funding the Emergency Management Program for the City.

General Services – One item totaling \$65,000 for the 2015 public defender contract. As noted in the November 10, 2014, City Council agenda memorandum 8C, the Municipal Court only budgeted \$30,812 in 2015 for the Public Defender contract. The new contract was awarded with a cost of \$70,000 for the Public Defender agreement and an additional \$10,000 to cover additional anticipated expenses as outlined in agenda memo. Also during 2015, numerous appeals cases have been filed. Because of indigency, the Court is required to provide public defender services for the appeals. A conflict attorney has been appointed on six pending appeals. The conflict attorney appointment agreement costs are not to exceed \$12,000. The Court is also required to pay for all transcripts. The Court anticipates costs to be approximately \$3,000 for the transcriber. The Court is requesting an additional \$15,000 to cover these unfunded anticipated appeal costs as a result. Funding is not available within the Court's 2015 budget. It is expected that additional unknown and unfunded costs may arise from additional pending cases. Appropriated funding of \$30,812 will be expended by the end of April 2015.

Parks, Recreation & Libraries – One item totaling \$40,000 for the Library Master Plan. Funds were budgeted in 2014 in the Library Contractual Services account but work was delayed until 2015. Work is well underway on the Master Plan.

Public Works & Utilities – One item totaling \$60,000 for snow removal materials account in the Street Operations Division for the purchase of deicing materials in advance of the snow season. This amount reflects savings in the Snow Removal Materials account. If carried over to the 2015 Street Operations Division budget, the funds would be used to stockpile additional deicing materials for the end of the year. Deicing materials purchased in the "off season," or during the summer months, are less expensive than those purchased during the snow season. When funds are available, Staff works to proactively stockpile deicing materials for the end of the year snow season.

UTILITY FUND

Information Technology – One item totaling \$13,200 to fund an additional 0.2 FTE temporary Internet Software Engineer position to address increased demands for web based projects related to the City's internet and intranet. This temporary position was included within the 2014 budget and these funds are requested to carry forward allowing full staffing in 2015.

Public Works & Utilities – One item totaling \$321,515 for the 2015 purchase of Denver "Moffat" water. As part of the City's water portfolio, Denver Water is required to deliver up to 4,500 acre-feet (AF) of raw water to Westminster each year. This Denver "Moffat" water is delivered from the West Slope through Denver's system into the City's Kinnear Ditch pipeline and stored in Standley Lake. The City's contracts with Denver Water require that the annual delivery occur from July 1st through June 30th the following year, and that the City pays Denver Water the raw water rate for the use of the water each year. In addition, the City has a contractual obligation to pay for 1,750 AF during the same time period, even if the City does not take delivery of any Denver Water. In 2014, \$543,270 was budgeted to pay for the obligatory 1,750 AF for the contract period July 1, 2014, through June 30, 2015. Due to unusually full storage conditions and to significant additional moisture received, the City did not take full water delivery

between July 1 and December 31, 2014, and spent only \$221,755 of the budgeted 2014 funds. Staff is requesting carryover of 2014 funds in the amount of \$321,515 to complete the payment due for water delivery through June 30, 2015. By using 2014 funds for the July 1, 2014, to June 30, 2015, contract period, the 2015 funds will be preserved for the purchase and delivery of water from July 1, 2015, through December 31, 2015, as necessary to keep the City's storage full.

PROPOSED APPROPRIATION OF NEW OPERATING ITEMS

Staff recommends utilizing some of the General and Utility Funds' carryover moneys available to help address new high priority needs in the funds identified below. The items listed below are intended to be proactive measures to help minimize the impact on future budgets for needed items.

GENERAL FUND

City Manager's Office – Four items totaling \$200,000 as follows:

1. \$60,000 to hire an agency to guide the City through the branding process as identified in the 2015 Strategic Plan action item "Build brand identity for Westminster (social media, multi lingual, promote Westminster)." As noted in the June 22 review with City Council, Staff recommends hiring an agency to help align our current brand with the new vision of Westminster as the next urban center on the Front Range. This work would coordinate closely with marketing the new downtown site and with overall economic development efforts for the City. Deliverables would include a branding product, a brand management playbook, messaging, design guidance, etc. This effort would also include a sustainable marketing plan and appropriate marketing materials to ensure the branding message connects with essential audiences. Based on City Council support during that discussion, staff recommends utilization of 2014 carryover funds to allow this work to commence in 2015.
2. \$60,000 to hire a consultant to prepare a baseline assessment of current affordable/workforce housing options in Westminster as identified in the 2015 Strategic Plan action item "Pursue workforce housing." Upon completion of this assessment, Staff would return to a Study Session with City Council to review current policies and affordable housing successes in Westminster and surrounding cities, define exactly what workforce housing means and review options for moving forward.
3. \$20,000 to retain a consultant, including brokerage fees to assist with the 2015 Strategic Plan action item "Recruit and open locally (chef) owned restaurants, starting with at least three in the next 18 months; target at least one in South Westminster in the 73rd Avenue/Arts District area." (Staff is working, per City Council direction at the June 22 Study Session, to refine the phrasing of this action item.) As noted previously, securing three will be difficult to achieve in 18 months, as chef-owned restaurants are often limited by the availability of vacant restaurants to modify and move into. Staff will work with the consultant to put a plan together to aggressively pursue locally owned restaurants. Regarding specific actions, Staff plans to identify available vacant restaurants, put together demographic real estate and other focused marketing materials for restaurant recruitment, develop a focused strategy for the 73rd Avenue area, and work with a retail/restaurant consultant to market properties.
4. \$60,000 associated with the reorganization and staff turnover within the City Manager's Office, including the addition of new staff, temporary staff, and costs associated with staff departures (i.e., general leave payout for long tenured staff).

Central Charges – Four items totaling \$3,534,924 as follows:

1. \$75,000 to the General Reserve Fund. Per the 2014 audit, the balance is \$10,061,528 as of 12/31/2014. An additional \$198,000 from 2015 sales and use tax revenues plus \$81,568 will be added to the General Reserve Fund from projected interest earnings. Per City Council policy, the General Reserve Fund target is 10% of General Fund budgeted operating expenditures, excluding contingency. As the combined sales and use tax revenues and projected interest earnings may be insufficient to fund the reserve, Staff recommends adding carryover funds to ensure the General Reserve Fund balance remains at the 10% mark. The revised year-end estimated balance will be \$10,416,243 (10.07%) if City Council approves these additional funds.
2. \$460,000 to the General Fund Stabilization Reserve (GFSR) created in 2009. The current available carryover balance is \$4,762,255 according to the 2014 audit. Per the Adopted 2015 Budget, an additional \$52,000 from sales and use tax revenues plus \$38,455 will be added to the GFSR from projected interest earnings. Per City Council adopted policy, the GFSR target range is between 5%

and 10% of the total Sales and Use Tax Fund revenues budgeted for the year, as funding allows. For 2015, the Sales and Use Tax Fund revenues budgeted total \$74,923,596; therefore, the target range for 2015 is between \$3,746,179 (5%) to \$7,492,359 (10%). The current GFSR balance is 6.4% of the 2015 Sales and Use Tax Fund total (using the 2014 audited GFSR balance). The additional funds proposed through carryover, added to the 2015 budgeted amount, will bring the total GFSR balance to \$5,312,710 or 7.09%.

3. \$300,000 for South Westminster Urban Renewal Area (URA). For 2015, it is anticipated that the cash available in South Westminster URA will not be sufficient to cover all of the obligations for the URA. Obligations include debt service, economic development agreement payments and interfund loan payments. In order to have sufficient cash to fulfill the listed obligations for 2015, Staff proposes that the General Fund transfer these funds to the Westminster Economic Development Authority Fund for the South Westminster URA and assist with these obligations.
4. \$2,699,924 to the General Capital Improvement Fund (GCIF) balance for use on future capital improvement projects. Some of these funds are proposed to be utilized with this carryover appropriation, but any remaining funds would be available for the 2016 CIP. Per the practice of appropriating carryover funds with the 2015 Budget, this action is proposed to move the remaining carryover funds available in the General Fund over to the GCIF so they may be utilized in updating the Adopted 2016 CIP Budget through the mid-year budget review. As noted previously, any remaining carryover funds would be incorporated into the biennial budget development or mid-year budget review process and reviewed more comprehensively through the normal budget process; this will be part of the City Council budget review in September.

Community Development Department – Two items totaling \$68,420 as follows:

1. \$43,420 for costs associated with the 6.4 new full time equivalent (FTE) positions added to Community Development pursuant to Resolution 22 adopted June 8 by City Council. While funding for salaries was addressed in the corresponding Councillor's Bill No. 27, the costs associated with furniture, computers, and other associated staffing costs were not addressed. This is the estimated cost for the associated cubicle reconfiguration and new cubicle and chair purchases needed to house these new staff as well as computers and cell phone allowances (as applicable).
2. \$25,000 for outreach efforts associated with the 2015 Strategic Plan action item "Complete a Framework Plan for South Westminster to compliment efforts for the Specific Plans for Westminster Station area transit-oriented development (TOD) and Harris Park to maximize TOD and encourage innovative uses by the end of 2017." As noted in the June 22 review with City Council, these funds would assist in the outreach efforts associated with the framework and initial specific plan work for this initiative.

Parks, Recreation & Libraries – One item totaling \$25,000 associated with opening the Irving Street Library on Sundays commencing in September 2015. As noted in the 2015 Strategic Plan action item "Ensure social equity in the amenities we provide," City Council identified the desire to offer Sunday hours at Irving Street Library. Staff is diligently working towards that goal and is proposing to temporarily increase staffing by 1.7 FTE, with a formal request as part of the 2016 mid-year budget review. These funds will cover the temporary salaries, additional custodial services and increased energy costs through year-end.

Public Works & Utilities – One item totaling \$117,000 for the street rehabilitation maintenance/repair account in the Street Operations Division for the continuation of pavement resurfacing on Sheridan Boulevard, from 92nd Avenue south to the US 36 bridge. The US36 Managed Lanes Project was recently completed, which included a widening of Sheridan Boulevard over the US36 bridge and a resurfacing of the pavement on the bridge. Approximately 600 feet of Sheridan Boulevard, from 92nd Avenue south to the US36 bridge, was not resurfaced as part of the project due to cost and timing issues with the Colorado Department of Transportation (CDOT). This section of Sheridan Boulevard (from 88th Avenue to 92nd Avenue) is one of the most heavily traveled roads in Westminster. Numerous potholes were filled during the winter 2014/2015, and there are significant ride-ability issues. Staff recommends resurfacing this section of Sheridan Boulevard to provide a continuous, smooth riding surface for residents and visitors on Sheridan Boulevard from 92nd Avenue all the way to 88th Avenue.

UTILITY FUND

Information Technology – One item totaling \$100,000 to add additional storage capacity at the disaster recovery (DR) center in order to keep backed up files and application longer than 30 days. Part of these funds will also prepare the DR for the SQL cluster. Currently, if there is a disaster, the City could not operate a SQL cluster out of the DR due to the lack of storage, disks that are fast enough and server processing capacity. This request is a result of the Information Technology Department's most recent security audit that recommended additional storage capacity be added to the disaster recovery center in order to archive a longer retention period for backups and for future growth. Staff is also in the process of selecting a SQL cluster solution and the finalists (vendors) all require 10K revolutions per minute (RPM) hard drives at the DR. Currently, the DR does not have an array of disks (hard drives) that meet the minimum requirement for backing up the SQL cluster and activating it in the event there is a disaster at City Hall.

UTILITY RESERVE FUND – WATER AND WASTEWATER

Staff proposes appropriating a total of \$262,552 to the Rate Stabilization Reserve (RSR) and \$1,380,015 to the Capital Project Reserve (CPR).

1. Rate Stabilization Reserve – The RSR was established and funded to meet a specific risk such as revenue loss related to a certain level of water demand curtailment. The reserve is designed to minimize or mitigate service cuts and/or rate impacts. Impacts to the rate stabilization reserves are determined by the annual performance of rates versus the budgeted rate revenue. The target level for this reserve is set at 25% of budgeted revenues for the Water Fund and 10% of budgeted revenues for the Wastewater Fund. The RSR has an upper limit of 140% of the target and a lower limit of 70% of the target. Staff recommends appropriating carryover for the RSR totaling \$198,113 for the Water Fund and \$64,439 for the Wastewater Fund to keep the balances within the upper portion of the reserve balance target range. Per the 2014 audit, the Water RSR balance is \$11,315,283 and the Wastewater RSR balance is \$1,864,942.
2. Capital Project Reserve – This reserve was created to establish and maintain a Capital Improvement Program capable of sustaining long-term utility capital requirements. The City established the CPR to accumulate funds in excess of near-term needs. This policy is intended to foster timely system reinvestment, while providing resources for periodic increases in outlays without undue rate burden. Staff recommends appropriating \$585,400 in carryover to the CPR in the Water Fund and appropriating \$794,615 to the CPR in the Wastewater Fund. The Water CPR balance is \$16,121,202 and the Wastewater balance is \$4,017,825 per the 2014 audit.

STORM DRAINAGE FUND

Central Charges – One item totaling \$24,204 for the 2015 debt service associated with the storm drainage private placement bonds issued in February 2015 financing a portion of the drainage improvements in the transit-oriented development in South Westminster along Little Dry Creek. This was part of the intergovernmental agreement with Adams County approved by City Council in January 2015 formalizing Adams County's financial participation in the improvements whereby the City up fronts the costs and Adams County repays the City \$4.5 million over a ten year period. A short term (five years) bank private placement bond was utilized to cover Adams County's share (total borrowing was \$4.61 million, which includes associated borrowing fees). Each year, including 2015, Adams County will reimburse the City \$456,611 that will be applied towards the debt service during the years 2015-2019. The first payment due in 2015 totals \$480,815 and the funds requested through carryover are the difference not covered by the Adams County payment this year.

Community Development – One item totaling \$20,000 for the regular salaries account in the Engineering Division associated with Storm Drainage Fund operations and capital improvement projects. A total of 2.5 FTE are funded through the Storm Drainage Fund (1.5 FTE Engineer/Sr. Engineer and 1.0 GIS Technician). The salary projections were lower for 2015 than what is needed as a result of the engineers progressing through their professional certifications more quickly than anticipated. Since the Engineering Division within the Storm Drainage Fund only has salaries budgeted, there is no offset available within this fund and division to cover these costs.

GOLF COURSE FUND

Legacy Ridge Golf Course

Parks, Recreation & Libraries – One item totaling \$24,286 for a replacement 4X4 extended cab pickup truck at Legacy Ridge that was ordered in late 2014 but not delivered until 2015. Pursuant to accounting rules, since the vehicle was not delivered until 2015, the expense must match the delivery year.

SALES & USE TAX FUND

Central Charges – Three items totaling \$7,037,908 as follows:

1. \$500,000 is proposed to be transferred from public safety sales and use tax collections to the public safety vehicle purchase account in the General Capital Outlay Replacement Fund (GCORF). These funds will be added to the current balance within this account and be authorized for use by City Council at a future time when revenues impact the City's ability to fund replacement vehicles in a given year. These funds are for vehicles that serve public safety operations in the General Fund. Over the past several years, the fund balance has been tapped to assist with the public safety radio replacement project as well as catch up provisions to maintain a healthy and efficient vehicle fleet. These funds are intended to help offset that spend down and be available for future capital equipment needs. The current balance in the GCORF-PST account is approximately \$1.07 million.
2. \$5,857,908 to the General Capital Improvement Fund (this figure was reduced from \$6,537,908 based on funds being directly transferred into WEDA as noted in the next item). These funds are proposed to be allocated to the GCIF fund balance for use on current and future capital improvement projects. Per the practice of appropriating carryover funds with the 2015 Budget, this action is proposed to move the remaining carryover funds available in the Sales & Use Tax Fund over to the GCIF so they may be utilized with immediate GCIF needs identified within this Staff Report as well as in preparing the amendment to the Adopted 2016 CIP Budget through the mid-year budget review. As noted previously, any remaining carryover funds would be incorporated into the biennial budget development or mid-year budget review process and reviewed more comprehensively through the normal budget process.
3. \$680,000 to the Downtown Westminster project in the WEDA Fund. As noted in the July 20 Staff Report, as the carryover is finalized, modifications may be necessary. This modification reduces the \$6,537,908 originally planned (now reflected above as \$5,857,908) to transfer from the Sales & Use Tax Fund to the GCIF and instead recommends transferring \$680,000 WEDA associated with the acquisition (including closing costs) of the JC Penny lease hold interest in land to build the Westminster Boulevard. As the land and associated lease are held by WEDA, it is appropriate that these funds be appropriated directly into WEDA for use in this manner.

PROPOSED APPROPRIATION FOR EXISTING OR NEW CAPITAL PROJECTS

Staff has completed a review of potential capital improvement projects for the balance of carryover funds. However, as noted, Staff is recommending that carryover funds be appropriated only for the critical Capital Improvement Program (CIP) projects listed below at this time; these are projects with an immediate need to execute a contract or complete an equipment purchase to keep a project moving forward prior to yearend. Non-critical capital project funding from carryover (\$4,830,043) will be incorporated into the mid-year budget review of the Adopted 2016 CIP Budget with City Council later this summer. Better than anticipated expenditure savings and higher than anticipated revenues in the General, Utility, Sales & Use Tax, General Capital Improvement, GCORF, Golf Course, and POST Funds are proposed to be utilized for these projects.

GENERAL CAPITAL IMPROVEMENT FUND

A total of \$7,367,321 (previously \$8,047,321) for capital projects is proposed to be appropriated into the General Capital Improvement Fund (GCIF) as follows:

1. \$225,000 to the Arterial Roadway Rehabilitation project. These funds are proposed to complete the resurfacing of the roadway from Sheridan Boulevard from Ingalls Street to Pierce Street and includes the installation of dedicated bike lanes on 72nd Avenue from Sheridan Boulevard to Pierce Street. This roadway was originally slated for pavement resurfacing and bike lane installation in 2015, but the project was scaled back due to the higher costs of the 2015 concrete bids. The current project (approximately \$250,000) is scheduled to resurface the roadway from Sheridan Boulevard to Ingalls Street, leaving the section from Ingalls Street to Pierce Street untouched until 2016 or later. City

Council has emphasized the importance of ensuring multi-modal transportation options for the City's residents and visitors. 72nd Avenue is a major Westminster thoroughfare, and the addition of bike lanes will increase transportation options in south Westminster. These lanes are considered to be a key piece of the regional on-street bike plan, linking bike lanes from the City of Arvada with those in Westminster. Staff is recommending the completion of this resurfacing project, including the bike lane installation on 72nd Avenue, with carryover funds in the amount of \$225,000. If the project is completed in 2015, traffic will be disrupted only one time (instead of once in 2015 and again in the future), and will provide for the completion of this key bicycle link in the region.

2. \$75,000 to hire a consultant for a comprehensive space study including the Municipal Court, City Hall, Public Safety Center and Municipal Service Center associated with the 2015 Strategic Plan action item "Assess the following major infrastructure categories and develop funding/implementation strategies: municipal court, municipal government buildings, utilities, recreation, golf, streets, parks, open space, police, fire and technology." As noted in the June 22 review with City Council, these funds would fund a consulting contract to a complete space requirement assessment for not only the Municipal Court but also City Hall, the Public Safety Center and the Municipal Service Center to have a more comprehensive approach to space needs in the larger administrative facilities. Staff recommends utilizing carryover funds to allow the space study to commence in 2015.
3. \$600,000 for the selection, acquisition and implementation of an e-permitting system associated with the 2015 Strategic Plan action item "Implement Community Development service enhancement (audit) recommendations." The implementation of an e-permitting system will accomplish many of the concerns identified in the audit, such as increasing transparency, reducing review times, and tracking/publishing review timeframes. An e-permitting system will also reduce the amount of administration tasks required by the case planner and allow more time for project review, applicant communication, and outreach. This may involve updating the Building Division Accela system or going with a new permitting system altogether, which is necessary to ensure seamless transition to the new development review process contemplated in the audit. Proposals are due in early August and Staff hopes to have a consultant selected in early September. Should costs cost in higher than currently proposed, Staff will evaluate cost savings measures for greatest impact and efficiencies but, if needed, will return to Council for consideration of additional funding through the mid-year 2016 budget review.
4. \$5,720,000 (previously \$6,400,000) for the Downtown Westminster Redevelopment Project, which was listed as the cash amount in the sources of funds previously presented to City Council. Separately, Staff identified approximately \$15.3 million in land sales proceeds with City Council as part of the funding sources for this project. The timing of land sales may not happen in a timeline to make the funds available to construct needed infrastructure, including construction of the telecommunication infrastructure and parking garages on the site; should this develop to be the case, Staff may return through the mid-year 2016 CIP budget amendment to request temporary assistance with the cash flow. Construction of the roadway and Utility infrastructures is anticipated to begin in late July. As noted previously, this amount was reduced from \$6,400,000 to \$5,720,000 based on funds being directly transferred to the WEDA Fund associated with the acquisition costs for the JC Penny lease hold interest in land necessary for the construction of the Westminster Boulevard extension through the former mall site.
5. \$447,560 to the Westminster Station Drive/North Plaza project. These are funds received in 2013 and 2014 but not appropriated at that time; these were funds expended from this project on behalf of RTD (associated with the retaining wall design work and value of land transferred to Nolan RV as part of the land sale/swap) and need to be replenished within the project account for other project costs.
6. \$94,751 from the City's share of Adams County road tax revenues (dedicated revenue) to the Creekside Drive and parking lot along the southern edge of the Little Dry Creek drainage way, open space and future park site near the commuter rail Westminster Station under construction. The total project is estimated to cost \$3.63 million; the January 2015 intergovernmental agreement between the City and Adams County previously noted includes a cost sharing agreement whereby the County will contribute \$1,811,190 towards the construction of the Creekside Drive in its entirety along the south side of the Little Dry Creek drainage improvements and future park at Westminster Station. Only \$90,537 of the City's share has been appropriated to date.

7. \$180,000 for consulting services to identify options to extend commuter rail associated with the 2015 Strategic Plan action item “Bring commuter rail to Westminster and Promote commuter rail extension beyond Westminster Station along U.S. 36.” As Staff briefed City Council in early June, Staff recommends engaging a consulting firm to develop a feasibility analysis on the 88th Avenue rail extension.
8. \$20,000 for the City Hall Furniture Replacement project for basic ergonomic adaptations as funding allows. This project was originally created to fund a comprehensive replacement and updating of cubicle furniture within City Hall as the current cubicle system was acquired in 1988 and has been adapted over the last 27 years to meet current needs. Staff has been challenged over the last several years to match existing fabrics and cubicle configurations within the current cubicle system, which is slowly being phased out by the manufacturer. As City Hall is the “corporate headquarters” of City operations, Staff believes it is important to retain the appearance standards adopted when this facility was opened. The funds proposed through 2014 carryover are simply to assist with basic ergonomic adaptations of the existing furniture system. Staff still hopes to identify a future cubicle system but funding for future replacement will need to occur over multiple years and will be incorporated into future five-year CIP budgets as funding allows.
9. \$5,010 for Tree Mitigation Program account for replacement of trees damaged in automobile accidents. These are subrogation funds paid to the City during 2014 that were not appropriated into the capital replacement account during 2014.

UTILITY FUND

One project totaling \$50,000 for the Critical Sewer Repairs project in the Wastewater Fund. This account is used to cover unexpected emergency costs and higher than anticipated bid costs. The current project balance is approximately \$77,000; adding these funds will provide approximately \$127,000 for unexpected needs.

GENERAL CAPITAL OUTLAY REPLACEMENT FUND (GCORF)

A total of \$99,537 is proposed to be distributed as follows:

1. \$36,729 into the general vehicle purchase account. These funds will be added to the current balance within this account and be authorized for use by City Council at a future time when revenues impact the City’s ability to fund replacement vehicles in a given year. These funds are for those vehicles that are non-public safety and serve operations in the General Fund. These funds are the result of 2014 vehicle auction proceeds and interest earnings in GCORF.
2. \$34,539 into the public safety vehicle purchase account. These funds will be added to the current balance within this account and be authorized for use by City Council at a future time when revenues impact the City’s ability to fund replacement vehicles in a given year. These funds are for vehicles that serve public safety operations in the General Fund. These funds are the result of 2014 vehicle auction proceeds and interest earnings in GCORF.
3. \$17,519 into the Citywide PC Replacement account. These funds will be added to the current balance within this account and be authorized for use by City Council during future years when revenues impact the City’s ability to fund replacement computers. These funds are the result of 2014 interest earnings in GCORF.
4. \$4,479 into the Fire wildland truck replacement account. These funds will be added to the current balance within this account and be authorized for use by City Council during future years when revenues impact the City’s ability to fund replacement a truck. These funds are the result of 2014 interest earnings in GCORF.
5. \$6,271 into the Citywide Copier Replacement account. These funds will be added to the current balance within this account and be authorized for use by City Council during future years when revenues impact the City’s ability to fund replacement copiers. These funds are the result of 2014 interest earnings in GCORF.

These proposed carryover items support all eight of the City’s Strategic Plan Goals: Visionary Leadership and Effective Governance; Vibrant and Inclusive Neighborhoods; Comprehensive Community Engagement; Beautiful, Desirable, Environmentally Responsible City; Proactive Regional Collaboration; Dynamic, Diverse Economy; Excellence in City Services; and Ease of Mobility.

REVENUE/EXPENDITURE DETAIL BY FUND

Total funding of \$12,264,525 to be appropriated for the items listed in the July 27, 2015 agenda memorandum comes from revenues and unexpended 2014 funds in the various amounts identified. The attached ordinance reflects a total increase of \$21,451,331; this amount differs from the \$12,264,525 noted in Expenditure Required due to the accounting of transfers required to properly reflect the transactions on the City's books.

REVENUE/EXPENDITURE DETAIL BY FUND

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	1000.40020.0000	\$229,949	<u>\$4,121,819</u>	\$4,351,768
Total Change to Revenues			<u>\$4,121,819</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
CMO-Econ Devel- Regular Salaries	10005340.60200.0000	\$344,502	\$60,000	\$404,502
Contractual Services	10005340.67800.0000	52,000	80,000	132,000
Contract Services	10005387.67800.0000	136,189	60,000	196,189
Transfers Reserve Fund	10010900.79800.0110	0	75,000	75,000
Transfers Stabilization Fund	10010900.79800.0120	0	460,000	460,000
Transfers WEDA	10010900.79800.0680	0	300,000	300,000
Transfers GCIF	10010900.79800.0750	73,009	2,699,924	2,772,933
Professional Services	10012130.65100.0000	159,523	65,000	224,523
Contract Services (EM Grant)	10025260.67800.0545	0	11,475	11,475
Maint/Rep Equip	10030050.66100.0000	13,623	2,500	16,123
Telephone	10030050.66900.0000	5,584	180	5,764
Office Equipment	10030050.75200.0000	0	11,400	11,400
Comp Soft/Hard	10030050.75400.0000	0	1,545	1,545
Prof Services	10030360.65100.0000	27,148	25,000	52,148
Telephone	10030360.66900.0000	2,220	360	2,580
Ofc Equip	10030360.75200.0000	0	1,700	1,700
Comp Soft/Hard	10030360.75400.0000	0	12,135	12,135
Salaries Overtime	10030370.60400.0000	9,600	10,000	19,600
Comp Soft/Hard	10030370.75400.0000	0	1,325	1,325
Telephone	10030380.66900.0000	4,860	180	5,040
Ofc Equip	10030380.75200.0000	16,500	400	16,900
Comp Soft/Hard	10030380.75400.0000	0	1,695	1,695
Maint/Rep - Street Rehabilitation	10035450.66200.0232	3,339,456	117,000	3,456,456
Snow Removal Mtrls	10035450.72000.0000	380,000	60,000	440,000
Salaries Temp	10050620.60600.0000	26,189	22,400	48,589
Electricity & Gas	10050620.67200.0000	42,874	1,600	44,474
Contract Svcs	10050620.67800.0000	250,313	<u>41,000</u>	291,313
Total Change to Expenses			<u>\$4,121,819</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2000.40020.0000	\$0	<u>\$1,218,228</u>	\$1,218,228
Total Change to Revenues			<u>\$1,218,228</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Rate Reserve	20010900.79800.0205	\$0	\$198,113	\$198,113
Transfers Capital Reserve	20010900.79800.0207	0	585,400	585,400
Lease Pay to Others	20035480.67700.0000	2,898,221	321,515	3,219,736
Regular Salaries	20060230.60200.0000	2,351,482	13,200	2,364,682
Comp Soft/Hard	20060230.75400.0000	125,325	<u>100,000</u>	225,325
Total Change to Expenses			<u>\$1,218,228</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2100.40020.0000	\$0	<u>\$909,054</u>	\$909,054
Total Change to Revenues			<u>\$909,054</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Rate Reserve	21010900.79800.0205	\$0	\$64,439	\$64,439
Transfers Capital Reserve	21010900.79800.0207	0	794,615	794,615
Critical Sewer Repairs	81021035974.80400.8888	41,370	<u>50,000</u>	91,370
Total Change to Expenses			<u>\$909,054</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2200.40020.0000	\$42,001	<u>\$24,286</u>	\$66,287
Total Change to Revenues			<u>\$24,286</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Vehicles	22050720.75600.0000	\$0	<u>\$24,286</u>	\$24,286
Total Change to Expenses			<u>\$24,286</u>	

These appropriations will amend the Storm Drainage Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2500.40020.0000	\$0	<u>\$44,204</u>	\$44,204
Total Change to Revenues			<u>\$44,204</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Interest Payments	25010900.78400.0000	\$0	\$24,204	\$24,204
Regular Salaries	25030380.60200.0000	181,396	<u>20,000</u>	201,396
Total Change to Expenses			<u>\$44,204</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	3000.40020.0000	\$0	<u>\$128,974</u>	\$128,974
Total Change to Revenues			<u>\$128,974</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	30010900.79800.0750	\$0	<u>\$128,974</u>	\$128,974
Total Change to Expenses			<u>\$128,974</u>	

These appropriations will amend the GCORF revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	4500.40020.0000	\$0	\$99,537	\$99,537
TRF Sales & Use Tax	4500.45000.0530	0	<u>500,000</u>	500,000
Total Change to Revenues			<u>\$599,537</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Capital Outlay - General	80645010900.80400.8888	\$894,973	\$36,729	\$931,702
Capital Outlay - PST	80645010911.80400.8888	1,068,720	534,539	1,603,259
PC Replacement Outlay	80645010921.80400.8888	39,427	17,519	56,946
Wildland Truck Replacement	81145010911.80400.8888	66,425	4,479	70,904
Citywide Copier Replacements	81245005995.80400.8888	232,251	<u>6,271</u>	238,522
Total Change to Expenses			<u>\$599,537</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	5300.40020.0000	\$0	<u>\$7,037,908</u>	\$7,037,908
Total Change to Revenues			<u>\$7,037,908</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCORF	53010900.79800.0450	\$0	\$500,000	\$500,000
Transfers WEDA	53010900.79800.0680	0	680,000	680,000
Transfers GCIF	53010900.79800.0750	2,680,000	<u>5,857,908</u>	8,537,908
Total Change to Expenses			<u>\$7,037,908</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7500.40020.0000	\$1,981,163	\$1,005,298	\$2,986,461
TRF General Fund	7500.45000.0100	0	2,699,924	2,699,924
TRF Sales & Use Tax	7500.45000.0530	2,680,000	3,657,089	6,337,089
Carryover	7501.40020.0000	514,961	<u>5,010</u>	519,971
Total Change to Revenues			<u>\$7,367,321</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Arterial Roadway Improvements	80475035602.80400.8888	\$1,075,679	\$225,000	\$1,300,679
Tree Mitigation Program	80575050425.80400.8888	20,070	5,010	25,080
City Hall Furniture Replacement	81375005061.80400.8888	10,000	20,000	30,000
Westy Station South	81375030073.80400.8888	5,429,816	120,000	5,549,816
Westy Station Drive/North Plaza	81475030071.80400.8888	0	327,560	327,560
Creekside Drive-S. Westy ADCO Rd Tax	81475030076.80400.8888	90,537	94,751	185,288
Facilities Space Study	81575005137.80400.8888	0	75,000	75,000
WURP-Phase I Public Improvements	81575030085.80400.8888	1,401,420	5,720,000	7,121,420
Feasibility Study	81575030135.80400.8888	0	180,000	180,000
Electronic Permitting System	81575030136.80400.8888	0	<u>600,000</u>	600,000
Total Change to Expenses			<u>\$7,367,321</u>	

SUBJECT: FY2014 Carryover Appropriation into FY2015

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Respectfully submitted,

Donald M. Tripp
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **39**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2015 BUDGETS OF THE GENERAL, WATER, WASTEWATER, LEGACY RIDGE, STORM DRAINAGE, FLEET, GENERAL CAPITAL OUTLAY REPLACEMENT, SALES AND USE TAX, AND GENERAL CAPITAL IMPROVEMENT FUNDS, AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2015 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2015 appropriation for the General, Water, Wastewater, Legacy Ridge, Storm Drainage, Fleet, General Capital Outlay Replacement, Sales and Use Tax, and General Capital Improvement Funds initially appropriated by Ordinance No. 3737 is hereby increased in aggregate by \$21,451,331. This appropriation is due to the appropriation of 2014 carryover.

Section 2. The \$21,451,331 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 O dated July 27, 2015 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$4,121,819
Water Fund	1,218,228
Wastewater Fund	909,054
Legacy Ridge Fund	24,286
Storm Drainage Fund	44,204
Fleet Fund	128,974
General Capital Outlay Replacement Fund	599,537
Sales & Use Tax Fund	7,037,908
General Capital Improvement Fund	<u>7,367,321</u>
Total	<u>\$21,451,331</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 27th day of July, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 10th day of August, 2015.

ATTEST:

Mayor

City Clerk



Agenda Item 10 P

Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Resolution No. 23 Adopting the 2015 Strategic Plan

Prepared By: Barbara Opie, Assistant City Manager

Recommended City Council Action

Adopt Resolution No. 23 officially adopting the 2015 Strategic Plan.

Summary Statement

- City Council completed a comprehensive process to review the previous Strategic Plan and revise it to better reflect their vision, goals and priorities. This process utilized the services Julia Novak with The Novak Group. The Strategic Plan process commenced in February and included a community summit, Division Manager input, all employee input opportunities, a two-day City Council retreat attended by the Department Head group in April, and a feedback feasibility report back loop on identified priorities (actions) with Staff. It culminates with the official adoption of the Strategic Plan. This plan provides direction for an 18-month period, ending December 2016.
- City Council is requested to officially adopt the 2015 Strategic Plan.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council wish to officially adopt the 2015 Strategic Plan as proposed?

Alternative

City Council could choose not to officially adopt the 2015 Strategic Plan by resolution as proposed. The Strategic Plan in previous years has not been officially adopted via resolution. Staff could proceed in that manner should City Council not want to take official action via a resolution. Staff believes that adopting the Strategic Plan by resolution gives it greater visibility and credibility.

Background Information

In 2014, a committee of City Council members selected The Novak Consulting Group to help develop and refine the City Council's Strategic Plan. Julia Novak, President, worked with City Council during 2014. City Council directed Staff in 2015 to continue work with The Novak Consulting Group in the revisit and refinement of the City Council's Strategic Plan.

City Council utilized Mrs. Novak for their New Council Workshop in February 2015. That workshop allowed City Council to discuss their operating protocols with each other and with Staff on issues of concern to the City. It also set the foundation moving forward in the development and refinement of the 2015 Strategic Plan.

As part of the 2015 Strategic Plan process, City Council expressed desire to have greater employee feedback as well as community participation. As such, the activities noted below were conducted in pursuit of that additional employee and community input:

- Division Manager Retreat – A total of 27 of the 30 Division Managers participated in this retreat held March 16. This retreat was facilitated by Julia Novak and the second half of the day was focused on the Division Managers providing input from their departments to the Strategic Plan.
- Department Head Retreat – All 15 members of the Executive Leadership team participated in this retreat held April 7-8. The first day of this retreat was facilitated by Julia Novak and focused on the Strategic Plan.
- Staff Idea-Sharing for Strategic Planning Video – From March 18 to April 7, Staff had multiple opportunities at various facilities and times throughout the City to video a response to share with City Council to the question “What's the one thing you'd like to see in our community in the next 10 years?” A total of 13 different times (totaling 6.5 hours offered) and 11 different locations were offered to Staff to provide feedback; employees also had the option of recording their own video and submitting it. A total of 53 Staff members chose to participate in the video. This video was shared with City Council at the Strategic Plan Retreat. Additional Staff comments received in written format were shared at the Retreat as well.
- Community Summit – Members of the City's Boards and Commissions, Youth Advisory Panel, the Legacy Foundation, and the Inclusivity Task Force, and each member of City Council was encouraged to invite at least 10 additional guests to this base list; were invited to participate in a community meeting held on April 14. A total of 85 people planned to attend and 70 actually signed in at the event. This summit was intended to touch base with representatives in the community about their priorities and how they relate to Council's vision for the City. All seven members of City Council and 15 members of the Department Head group attended this meeting, which was facilitated by Julia Novak.
- City Council Strategic Plan Retreat – The retreat was held April 25-26. City Council and the Department Head group attended this facilitated retreat to review and update the Strategic Plan.

This retreat was facilitated by Julia Novak. The Vision was reframed at this retreat to more boldly state City Council's desired future, "*Westminster is the next Urban Center of the Colorado Front Range. It is a vibrant inclusive, creative, and well-connected City. People choose Westminster because it is a dynamic community with distinct neighborhoods and a resilient local economy that includes: a spectrum of jobs; diverse, integrated housing; and shopping, cultural, entertainment, and restaurant options. It embraces the outdoors and is one of the most sustainable cities in America.*" The total number of goals were refined from 8 to 6 around this reframed Vision. A total of 15 objectives and 40 action items were identified stating what progress City Council expects over the next 18 months.

- City Council Study Session/Post City Council Feasibility Review – Staff reviewed the draft plan with City Council at the June 1 Study Session and more thoroughly at the June 22 Post City Council meeting. The purpose of these follow up meetings was twofold: (1) Staff sought clarification on some items identified in the Strategic Plan update that may have multiple options to implement or pursue so that Staff is following up in a manner desired by City Council; and (2) Staff provided feasibility (i.e., potential cost, staff time, timeline and potential offsets if needed) to implement the Strategic Plan to confirm City Council direction, priorities and potential tradeoffs.
- Mid-Year Budget Review – City Council adopted the 2015/2016 Budget in October 2014. As the Strategic Plan drives the budget, any updates made during the 2015 Strategic Plan Retreat will be reviewed and addressed through the mid-year budget. Staff will return to City Council at an upcoming meeting for consideration of the proposed mid-year budget review process.

Based on direction Staff received at the June 22 Post City Council meeting, Staff refined a few of the actions further (mostly grammatical), particularly the action referencing chef-owned restaurants. The original action presented in the June 22 packet stated: Recruit and open locally (chef) owned restaurants, starting with at least three in the next 18 months; target at least one in South Westminster in the 73rd Avenue/Arts District area. That has been revised to the following statement: Recruit and open unique, local restaurants, starting with at least three in the next 18 months; target at least one in South Westminster in the 73rd Avenue/Arts District area. Staff hopes that this accurately reflects Council's desired action.

While the City has been utilizing a Strategic Planning process for well over 14 years, none have been formally adopted by resolution. Staff recommends adopting the attached Vision and Strategic Plan document officially via resolution to emphasize the importance of these goals and actions that articulate City Council priorities based on input by the community and staff. The resolution states that the plan is projected for an 18-month period, ending December 2016. However, that does not mean these projects simply terminate after December 2016 but rather that significant progress is made during this 18-month period towards these high priority actions identified by City Council.

Adopting the Strategic Plan via the attached resolution supports the new City's Strategic Plan Goals: Visionary Leadership, Effective Governance and Proactive Regional Collaboration; Vibrant, Inclusive and Engaged Community; Beautiful, Desirable, Safe and Environmentally Responsible City; Dynamic, Diverse Economy; Financially Sustainable Government Providing Excellence in City Services; and Ease of Mobility.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Resolution
City of Westminster 2015 Strategic Plan

RESOLUTION

RESOLUTION NO. **23**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

**A RESOLUTION ADOPTING THE 2015 STRATEGIC PLAN
FOR THE CITY OF WESTMINSTER**

WHEREAS, the City Council intends to establish a general policy, to provide guidance and direction to the City, the City Council, and City staff, that addresses the Council's desired priority of issues and matters to be addressed, researched, or acted upon through December 2016; and

WHEREAS, the City of Westminster utilizes a Vision and Strategic Plan for this purpose to identify City Council priorities and goals, to ensure a unified direction as a guidance to Staff in day-to-day operations and priority projects; and

WHEREAS, the City Council, with the assistance of a professional facilitator, utilized an inclusive and iterative process to gain organizational and community input for development and refinement of the 2015 Strategic Plan; and

WHEREAS, based on the feedback and numerous discussions, City Council has developed a Strategic Plan for the City, including the identification of specific goals and actions for achieving the City's Vision.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

1. The City Council hereby approves and adopts the attached 2015 Strategic Plan, with its articulated vision, goals, objectives and actions, as the guiding document for the day-to-day operations and implementation of priority projects for the City of Westminster through December 2016.
2. Notwithstanding its adoption by this resolution, the City Council recognizes that this Vision and Strategic Plan should not be considered as static but rather as viable and shall be revisited annually, or at such time as the Council deems appropriate, for the purposes of revision and updating.

PASSED AND ADOPTED this 27th day of July, 2015.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

City of Westminster 2015 Strategic Plan

Vision

Westminster is the next Urban Center of the Colorado Front Range. It is a vibrant inclusive, creative, and well-connected City. People choose Westminster because it is a dynamic community with distinct neighborhoods and a resilient local economy that includes: a spectrum of jobs; diverse, integrated housing; and shopping, cultural, entertainment, and restaurant options. It embraces the outdoors and is one of the most sustainable cities in America.

Goals, Objectives and Actions

GOAL: Visionary Leadership, Effective Governance and Proactive Regional Collaboration

The City of Westminster has articulated a clear vision for the future of the community. The vision is implemented through collaborative and transparent decision making. Westminster is proactively engaged with our partners to advance the common interests of the region.

- **OBJECTIVE:** Develop communication, management and planning tools that move the City toward its vision while providing excellent government.
 - **ACTION:** Improve the strategic plan and budget process to fully engage City Council, City staff and the community in matching the strategic plan to the appropriation of budget resources.
 - **ACTION:** Develop a more robust community multimedia communications program and Council outreach program.
 - **ACTION:** Provide more online transactions.
 - **ACTION:** Build brand identity for Westminster (social media, multi lingual, promote Westminster).
 - **ACTION:** Complete another biennial survey of citizens in 2016.
 - **ACTION:** Study current community emergency preparedness capacity.
 - **ACTION:** Empower staff where creativity, innovation and ingenuity are used with cross-discipline and cross-functional team approaches to solve problems, improve service delivery/project management, and to help inform and implement City Council goals.
- **OBJECTIVE:** Collaborate with state agencies, counties, school districts, neighboring cities and other governmental and non-governmental entities.
 - **ACTION:** Schedule one planning session with Adams 50, Adams 12 and Jefferson County school districts and Front Range Community College to explore areas of collaborative opportunities.
 - **ACTION:** Schedule semi-annual joint planning sessions with elected officials of Adams County and Jefferson County.
 - **ACTION:** At the staff level, look for opportunities to collaborate and assist our neighboring jurisdictions.

GOAL: Vibrant, Inclusive and Engaged Community

Westminster provides options for an inclusive, demographically diverse citizenry in unique settings with community identity, ownership and sense of place, with easy access to amenities, shopping, employment and diverse integrated housing options. Members of the community are empowered to address community needs and important community issues through active involvement with City cultural, business and nonprofit groups.

- **OBJECTIVE:** Advance strategies that demonstrate Westminster is a regional leader in providing affordable/workforce housing.
 - **ACTION:** Pursue workforce housing.
 - **ACTION:** Pursue housing construction defects ordinance.

- **OBJECTIVE:** Develop programs and strategies that build a unique sense of community in Westminster.
 - **ACTION:** Increase multi-lingual communication mediums.
 - **ACTION:** Ensure social equity in the amenities we provide.
 - **ACTION:** Consider the recommendations of the Inclusivity Task Force regarding the creation and structure of an Inclusivity Board or Commission.
- **OBJECTIVE:** Lead the development of cultural opportunities in Westminster.
 - **ACTION:** Develop strategic partnerships to advance cultural program and event opportunities throughout Westminster; focus on 4-5 high-impact events.
- **OBJECTIVE:** Identify the distinct neighborhoods of Westminster and help them begin to work together, as neighbors, to grow the sense of place and community in their neighborhoods.
 - **ACTION:** Complete St. Anthony North Hospital (84th Avenue) EMS impact analysis and ongoing EMS service delivery impacts.
 - **ACTION:** Decide public policy on chicken and bees in Westminster.

GOAL: Beautiful, Desirable, Safe and Environmentally Responsible City

Westminster thoughtfully creates special places and settings. The City is an active steward, protecting and enhancing natural resources and environmental assets. The City promotes and fosters safe and healthy communities.

- **OBJECTIVE:** Make a Citywide commitment to sustainability.
 - **ACTION:** Complete and promote the City Hall geothermal and landscape project.
 - **ACTION:** Use energy efficiently, conserve resources and educate citizens as to ways they can also support sustainable natural resources behaviors.
- **OBJECTIVE:** Promote ongoing excellent management and maintenance of the City’s parks and open space system.
 - **ACTION:** Complete Phase One of the Little Dry Creek Park Master Plan and start to create a vibrant park identity through beautification of the new TOD and surrounding neighborhood.
 - **ACTION:** Develop and implement Open Space Stewardship Plan, continuing shift in focus to maintenance.
- **OBJECTIVE:** Provide opportunities for residents, visitors and employees to improve their personal wellness – physically, emotionally and intellectually.
 - **ACTION:** Establish specific recreation center, park, open space, golf and library usage growth strategies.

GOAL: Dynamic, Diverse Economy

Westminster is a local government that fosters social, economic and environmental vitality and cultivates and strengthens a wide array of economic opportunities.

- **OBJECTIVE:** Develop an economic development strategy that contributes to City vision attainment and is executed through collaborative work between the City of Westminster, the business community, residents and other partners of Westminster.
 - **ACTION:** Complete a Framework Plan for South Westminster to compliment efforts for the Specific Plans for Westminster Station area transit-oriented development (TOD) and Harris Park to maximize TOD and encourage innovative uses by the end of 2017.
 - **ACTION:** Support economic resilience through a business attraction and retention strategy focusing on primary jobs and supporting innovative initiatives and social entrepreneurs; conduct an audit on small businesses and grow small businesses through incubation.
 - **ACTION:** Implement Community Development service enhancement (audit) recommendations and best practices in the Building Division.
 - **ACTION:** Recruit and open unique, local restaurants, starting with at least three in the next 18 months; target at least one in South Westminster in the 73rd Avenue/Arts District area.

- **ACTION:** Relentlessly pursue the development of Downtown Westminster, consistent with the vision of the project.
- **ACTION:** Construct Westminster Station and recruit developers to develop the TOD area and recruit developers.

GOAL: Financially Sustainable Government Providing Excellence in City Services

Westminster leads the region in a culture of innovation that exceeds expectations in providing value in all city services – the city shall be known for “the Westy Way.”

- **OBJECTIVE:** Develop and maintain comprehensive municipal capital infrastructure master plan and financing strategy.
 - **ACTION:** Assess the following major infrastructure categories and develop funding/ implementation strategies to protect and maintain the City’s investments: municipal court (including options for a new courthouse and potential location), municipal government buildings, utilities, recreation, golf, streets, parks, open space, police, fire and technology.
- **OBJECTIVE:** Promote the organizational culture of Service, Pride, Integrity, Responsibility, Innovation and Teamwork.
 - **ACTION:** Address recent public safety concerns of Colorado Firefighter Safety Act and impacts of national events on the Westminster Police Department, through ongoing, open communication.
 - **ACTION:** Enhance programs to support all employees.
 - **ACTION:** Continue to develop employees’ understanding of the SPIRIT values through training programs and leadership at all levels.
- **OBJECTIVE:** City Manager will develop an annual program of specific department business process improvement reviews.
 - **ACTION:** City staff will develop a long-term financial sustainability plan.
 - **ACTION:** Analyze Fire/EMS alternative service delivery.
 - **ACTION:** Recruit volunteers to adopt trail/park areas.

GOAL: Ease of Mobility

Westminster pursues multi-modal transportation options to ensure the community is convenient, accessible and connected by local and regional transportation options through planning, collaboration, advocacy and execution. Transportation objectives include walkability, bike friendly, drivability, and mass-transit options.

- **OBJECTIVE:** Improve the walkability and bikeability of Westminster.
 - **ACTION:** Review existing bicycle master plan, report on opportunities for short- and mid-term bicycle lane and route improvements, and pursue accelerated implementation of the master plan; promote bicycle lane and route improvements.
 - **ACTION:** Complete the planned study on mobility, including enhanced trail connectivity.
- **OBJECTIVE:** Improve mass-transit options throughout Westminster.
 - **ACTION:** Promote connectivity of regional transportation and the “last mile” to connect commuters with places of employment and residences.
 - **ACTION:** Bring commuter rail to Westminster and promote commuter rail extension beyond Westminster Station along U.S. 36.



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Resolution No. 24 re Intergovernmental Agreements with the Colorado Department of Transportation for the Little Dry Creek Trail: Federal to Lowell Project

Prepared By: Seth Plas, Engineer

Recommended City Council Action

1. Adopt Resolution No. 24 authorizing the City Manager to execute an Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation pertaining to the receipt of \$324,000 from the State of Colorado for the construction of a concrete trail and a 160-foot long pedestrian bridge along Little Dry Creek at Westminster Station.
2. Authorize the payment of \$81,000 toward the project in 2016 as part of the Local Agency Matching Funds requirement.

Summary Statement

- In 2012, City staff, in collaboration with Adams County, applied for and was awarded a Denver Regional Council of Governments (DRCOG) grant to construct a 10-foot wide concrete trail connecting to the Little Dry Creek regional trail system and a pedestrian bridge allowing access to the Westminster Station platform from the proposed Creekside Drive.
- The IGA authorizes the receipt of \$324,000 in DRCOG grant funds to be administered through the Colorado Department of Transportation (CDOT). It also obligates the City to provide Local Agency Matching Funds in the amount of \$81,000 to be expended on this project.
- Due to time limits of the DRCOG grant funding, the City needs to advertise this project in 2015; however, the construction will commence in early 2016 to allow for more favorable construction environment.
- City Council action on the attached Resolution is now necessary to authorize expenditures for the City-requested grant and receive a payment from CDOT for work performed by the City on the Little Dry Creek Trail: Federal to Lowell project.

Expenditure Required: \$81,000

Source of Funds: Stormwater Fund – Little Dry Creek Regional Detention Project

Policy Issue

Should the City enter into an Intergovernmental Agreement with the Colorado Department of Transportation for the construction of concrete trail and a pedestrian bridge for the Little Dry Creek Trail: Federal to Lowell project?

Alternative

The alternative action would be to not adopt the resolutions and elect to not pursue the proposed improvements to the Little Dry Creek Trail: Federal to Lowell project. However, to choose not to proceed with the resolution would result in losing \$324,000 in DRCOG grant funds.

Background Information

In 2012, City staff, in collaboration with Adams County, applied for and was awarded a Denver Regional Council of Governments (DRCOG) grant. The scope of the grant included constructing a 160-foot pedestrian bridge spanning Little Dry Creek as well as approximately 3,000-feet of 10-foot wide concrete trail as part of the Little Dry Creek regional trail system. The project will improve the existing trail system segment from Lowell Boulevard to Federal Boulevard that is deteriorating.

Federal grants, from DRCOG in this case, require the local agency receiving the funds to match at 25% of the awarded dollar amount. For this project, DRCOG awarded the City a \$324,000 grant toward the regional trail work; therefore, the local agency match is \$81,000. As part of this IGA with CDOT, the City will be acknowledging that it will spend that amount towards the project construction.

At the same time, Adams County was successful in obtaining a \$500,000 grant from DRCOG with a County match of \$125,000 for the construction of the pedestrian bridge across Little Dry Creek. Adams County is entering into a similar IGA with CDOT to administer its grant funding. The City and Adams County also entered into an IGA that was approved by City Council on February 9, 2015, whereby the City will manage the construction contract for the project and the County will reimburse the City for work completed.

After the completion of this project, commuters south of the Westminster Station will be able to have ADA access to the station using the pedestrian bridge. The concrete trail will be multi-modal, allowing bicyclists as well as the walking population to enjoy the future park between Lowell Blvd. and Federal Blvd.

This project meets Council's Strategic Plan goals of a *Dynamic, Diverse Economy; Proactive Regional Collaboration; and Ease of Mobility* by providing an improved trail system and Westminster Station access.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Resolution
Intergovernmental Agreement
Vicinity Map

RESOLUTION

RESOLUTION NO. **24**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

A RESOLUTION

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) DEFINING LOCAL FUNDING OBLIGATIONS RELATED TO THE LITTLE DRY CREEK TRAIL: FEDERAL TO LOWELL (CDOT PROJECT STE M356-027, SUBACCOUNT NUMBER 19971)

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution as well as Sections 29-1-201, et seq., and 29-20-205, C.R.S., authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, The Intergovernmental Agreement attached to this Resolution identifies local funding obligations of the City of Westminster and funding obligations administered by the Colorado Department of Transportation for the Little Dry Creek Trail: Federal to Lowell project in the City of Westminster.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

1. The Intergovernmental Agreement between the City of Westminster and the Colorado Department of Transportation for the Little Dry Creek Trail: Federal to Lowell project pertaining to local funding obligations related to construction is hereby approved in substantially the same form with minor changes as may be approved by the City Attorney.
2. The City Manager is hereby authorized to execute and the City Clerk to attest the Intergovernmental Agreement in substantially the same form as attached with minor revisions as may be approved by the City Attorney.

PASSED AND ADOPTED this 27th day of July, 2015.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO
Department of Transportation
Agreement
with
CITY OF WESTMINSTER

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1. PARTIES

THIS AGREEMENT is entered into by and between CITY OF WESTMINSTER (hereinafter called the “Local Agency”), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the “State” or “CDOT”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

i. Federal Authority

Pursuant to Title I, Subtitle A, Section 1108 of the “Transportation Equity Act for the 21st Century” of 1998 (TEA-21) and/or the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA.

D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement or Contract

“Agreement” or “Contract” means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

B. Agreement Funds

“Agreement Funds” means funds payable by the State to Local Agency pursuant to this Agreement.

C. Budget

“Budget” means the budget for the Work described in **Exhibit C**.

D. Consultant and Contractor

“Consultant” means a professional engineer or designer hired by Local Agency to design the Work and
“Contractor” means the general construction contractor hired by Local Agency to construct the Work.

E. Evaluation

“Evaluation” means the process of examining the Local Agency’s Work and rating it based on criteria established in §6 and **Exhibits A** and **E**.

F. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Disadvantaged Business Enterprise), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions), **Exhibit J** (Federal Requirements) and **Exhibit K** (Supplemental Federal Provisions).

G. Goods

“Goods” means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

H. Oversight

“Oversight” means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration (“FHWA”) and as it is defined in the Local Agency Manual.

I. Party or Parties

“Party” means the State or the Local Agency and “Parties” means both the State and the Local Agency

J. Work Budget

Work Budget means the budget described in **Exhibit C**.

K. Services

“Services” means the required services to be performed by the Local Agency pursuant to this Contract.

L. Work

“Work” means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and **Exhibits A** and **E**, including the performance of the Services and delivery of the Goods.

M. Work Product

“Work Product” means the tangible or intangible results of the Local Agency’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM AND EARLY TERMINATION

The Parties’ respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A**. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency’s, Consultants’, or Contractors’ employee(s) for all purposes and shall not be employees of the State for any purpose.

D. State and Local Agency Commitments

i. Design

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.
- b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f) Provide final assembly of Plans and all other necessary documents.
- g) Be responsible for the Plans' accuracy and completeness.
- h) Make no further changes in the Plans following the award of the construction contract to contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. Local Agency Work

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:
 - (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
 - (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - (4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in Exhibit H to administer the Consultant contract.
 - (5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with Exhibit H and 23 C.F.R. 172.5(b) and (d).
 - (6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

- a) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b) The Local Agency shall be responsible for the following:
 - (1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.
 - (2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).
 - (a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).
 - (b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.
 - (c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.
 - (3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.
 - (4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.
 - (a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.F.R. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

- (b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.
- (c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.
- (d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

E. State's Commitments

- a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**.

F. ROW and Acquisition/Relocation

- a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.
- b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.
- d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under the following categories:
 - (1) Right of way acquisition (3111) for federal participation and non-participation;
 - (2) Relocation activities, if applicable (3109);
 - (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

G. Utilities

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

- a) Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:
- b) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- c) Obtain the railroad's detailed estimate of the cost of the Work.
- d) Establish future maintenance responsibilities for the proposed installation.
- e) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- f) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

H. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

I. Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

An option letter may be used to add a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

A. Option to add a phase and/or increase or decrease the total encumbrance amount.

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds remaining the same. The State may simultaneously increase and/or decrease the total encumbrance amount by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

B. Option to transfer funds from one phase to another phase.

The State may require or permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. Any transfer of funds from one phase to another is limited to an aggregate maximum of 24.99% of the original dollar amount of either phase affected by a transfer. A bilateral amendment is required for any transfer exceeding 24.99% of the original dollar amount of the phase affected by the increase or decrease.

C. Option to do both Options A and B.

The State may require the Local Agency to add a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

8. PAYMENTS

The State shall, in accordance with the provisions of this §8, pay the Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Contract Funds shall be used only for eligible costs identified herein.

D. Matching Funds

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C**. The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

E. Reimbursement of Local Agency Costs

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit C. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred).

9. ACCOUNTING

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

A. Local Agency Performing the Work

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

B. Local Agency-Checks or Draws

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

C. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

D. Local Agency-Invoices

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and shall not be submitted more often than monthly.

E. Invoicing Within 60 Days

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until

CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

D. Documents

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

11. LOCAL AGENCY RECORDS

A. Maintenance

The Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and may exercise the remedies available under this Agreement at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal

audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

12. CONFIDENTIAL INFORMATION-STATE RECORDS

The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. Nothing in this §12 shall be construed to require the Local Agency to violate the Colorado Open Records Act, C.R.S. §§ 24-72-1001 et seq.

A. Confidentiality

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

B. Notification

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency is prohibited from providing indemnification to the State pursuant to the Constitution of the State of Colorado, Article XI, Section 1, however, the Local Agency shall be responsible for any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §12.

13. CONFLICT OF INTEREST

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

A. Standard and Manner of Performance

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

B. Legal Authority – The Local Agency and the Local Agency’s Signatory

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency’s authority to enter into this Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

15. INSURANCE

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

A. The Local Agency

i. Public Entities

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the “GIA”), then the Local Agency shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to sub-contractors that are not "public entities".

B. Contractors

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker’s Compensation

Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of the Local Agency’s Contractors, Subcontractors, or Consultant’s employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §15.

16. DEFAULT-BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §18. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §17. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the

notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

ii. Payments

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify the Local Agency of the termination in accordance with §18, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

iii. Payments

If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency’s obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

C. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the Local Agency’s performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State’s directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to the Local Agency until corrections in the Local Agency’s performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed that due to the Local Agency’s actions or inactions cannot be performed or, if performed, would be of no value to the State; provided that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of the Local Agency’s employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State’s best interest.

v. Intellectual Property

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State’s option (a) obtain for the State or the Local Agency the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. If to State:

CDOT Region: 1
Carol Anderson
Project Manager
2000 South Holly Street
Denver, CO 80222
303-512-5993

B. If to the Local Agency:

City of Westminster
John Burke
Project Manager
4800 West 92nd Avenue
Westminster, CO 80031-6387
303-658-2126

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees and of the Local Agency is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §21 applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this

Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §25(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification - General

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Limitations of Liability

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes, but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

I. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein

J. Order of Precedence

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions,
- ii.** The provisions of the main body of this Agreement,
- iii.** **Exhibit A** (Scope of Work),
- iv.** **Exhibit B** (Local Agency Resolution),
- v.** **Exhibit C** (Funding Provisions),
- vi.** **Exhibit D** (Option Letter),
- vii.** **Exhibit E** (Local Agency Contract Administration Checklist),
- viii.** Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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26. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Agreements except where noted in italics.

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. INDEPENDENT CONTRACTOR.

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees. Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement,

including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements]. Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services]. The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number: **15-HA1-XC-00122**

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;">THE LOCAL AGENCY CITY OF WESTMINSTER</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Shailen Bhatt, Executive Director</p> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.

<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Transportation</p> <p>Date: _____</p>
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28. EXHIBIT A – SCOPE OF WORK

This project combines two TIP projects awarded to the City of Westminster (2012-048) and Adams County (2012-083). The City of Westminster project constructs a missing 800-foot link of Little Dry Creek Trail from east of Lowell Blvd to Irving St. to a minimum of 10-foot wide, including two pedestrian bridges to accommodate future regional storm water detention improvements. In addition, the Little Dry Creek Trail improvements will provide direct access to the future Westminster Commuter Rail station.

The Adam's County project constructs a minimum 8-foot wide, approximate 165-foot long ADA-compliant bicycle/pedestrian bridge from the (South) Westminster Station on the Northwest Corridor, across little Dry Creek, to the Creekside drive (new collector road) parking lot.

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29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

STE M356-027 (19971)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$405,000.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds (STP Enhancements @ 80%)				\$324,000.00
b. Local Agency Matching Funds (FY 14 STP Enhancements @ 20%)				\$81,000.00
TOTAL BUDGETED FUNDS				\$405,000.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share (80% of Participating Costs)				\$0.00
b. Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$324,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$324,000.00
FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$405,000.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$405,000.00
NOTE: Construction funds are currently not available. Construction funds will be encumbered when they become Available by option letter or formal amendment.				
WBS Element <<<<<>>>>	Design	3020		\$0.00
WBS Element 19971.20.10	Const	3301		\$0.00

B. Matching Funds

The matching ratio for the federal participating funds of this Work is 80% federal-aid funds (CFDA #20.205) to 20% Local Agency funds, it being understood that such ratio applies only to the \$405,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$405,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$405,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$324,000.00 (For CDOT accounting purposes, the federal funds of \$324,000.00 and the Local Agency matching funds of \$81,000.00 will be encumbered for a total encumbrance of \$405,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. **NOTE: Construction funds are currently not available. Construction funds will be encumbered when they become Available by option letter or formal amendment.** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding more than \$750,000-Highway Funds Only

If the Local Agency expends more than \$750,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding more than \$750,000-Multiple Funding Sources

If the Local Agency expends more than \$750,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

*NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.*

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing #
			Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):

In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*)is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labled as follows: C-2, C-3, C-4, etc.*).

Option B (*Insert the following language for use with Option B*):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be*

made using an formal amendment)..

Option C (Insert the following language for use with Option C):

In accordance with the terms of the original Agreement (*insert CMS routing # of original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4, etc.**; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment*).

(*The following language must be included on ALL options*):

The total encumbrance as a result of this option and all previous options and/or amendments is now (*insert total encumbrance amount*), as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (*indicate total budgeted funds*) as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

**State Controller
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. STE M356-027	STIP No. SR 17012.008	Project Code 19971	Region 1
Project Location Little Dry Creek Trail: Federal to Lowell			Date 08/23/2014
Project Description Little Dry Creek Trail: Federal to Lowell			
Local Agency City of Westminster CDOT Resident Engineer John Vetterling	Local Agency Project Manager John Burke CDOT Project Manager Carol Anderson		
<p>INSTRUCTIONS:</p> <p>This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5.4	Conduct Design Scoping Review Meeting	X	X
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	X
5.11	Justify Force Account Work by the Local Agency	X	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
5.13	Document Design Exceptions - CDOT Form 464	X	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) John Vetterling _____ 08/23/2014 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." John Burke _____ 303-658-2126 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task.		
	<u>John Burke</u> <u>303-658-2126</u> Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews		X
	Provide the name and phone number of the person responsible for this task.		
	<u>John Vetterling</u> <u>303-757-9914</u> CDOT Resident Engineer Phone number		
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed 	X X X	
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products <ul style="list-style-type: none"> • Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices 	X X X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input type="checkbox"/> <ul style="list-style-type: none"> • Generate IAT schedule • Schedule and provide notification • Conduct IAT 	X X X	
9.8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot mix asphalt 	X X	
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	
11.12	Complete and Submit CDOT Form 950 - Project Closure	X	X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist		X

cc: CDOT Resident Engineer/Project Manager
 CDOT Region Program Engineer
 CDOT Region EEO/Civil Rights Specialist
 CDOT Region Materials Engineer
 CDOT Contracts and Market Analysis Branch
 Local Agency Project Manager

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 26

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
 7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
 8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debatement. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debatement as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

37. EXHIBIT J – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. **“Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
 - 1.1.1. Grants;
 - 1.1.2. Contracts;
 - 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
 - 1.1.4. Loans;
 - 1.1.5. Loan Guarantees;
 - 1.1.6. Subsidies;
 - 1.1.7. Insurance;
 - 1.1.8. Food commodities;
 - 1.1.9. Direct appropriations;
 - 1.1.10. Assessed and voluntary contributions; and
 - 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

 - 1.1.12. Technical assistance, which provides services in lieu of money;
 - 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 1.1.14. Any award classified for security purposes; or
 - 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
 - 1.2. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
 - 1.3. **“Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
 - 1.4. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
 - 1.5. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C;
 - 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.5.2. A foreign public entity;

- 1.5.3. A domestic or foreign non-profit organization;
 - 1.5.4. A domestic or foreign for-profit organization; and
 - 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
- 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
- 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
- 4.2. In the preceding fiscal year, Contractor received:
- 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

7. Subrecipient Reporting Requirements. If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 ToSAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

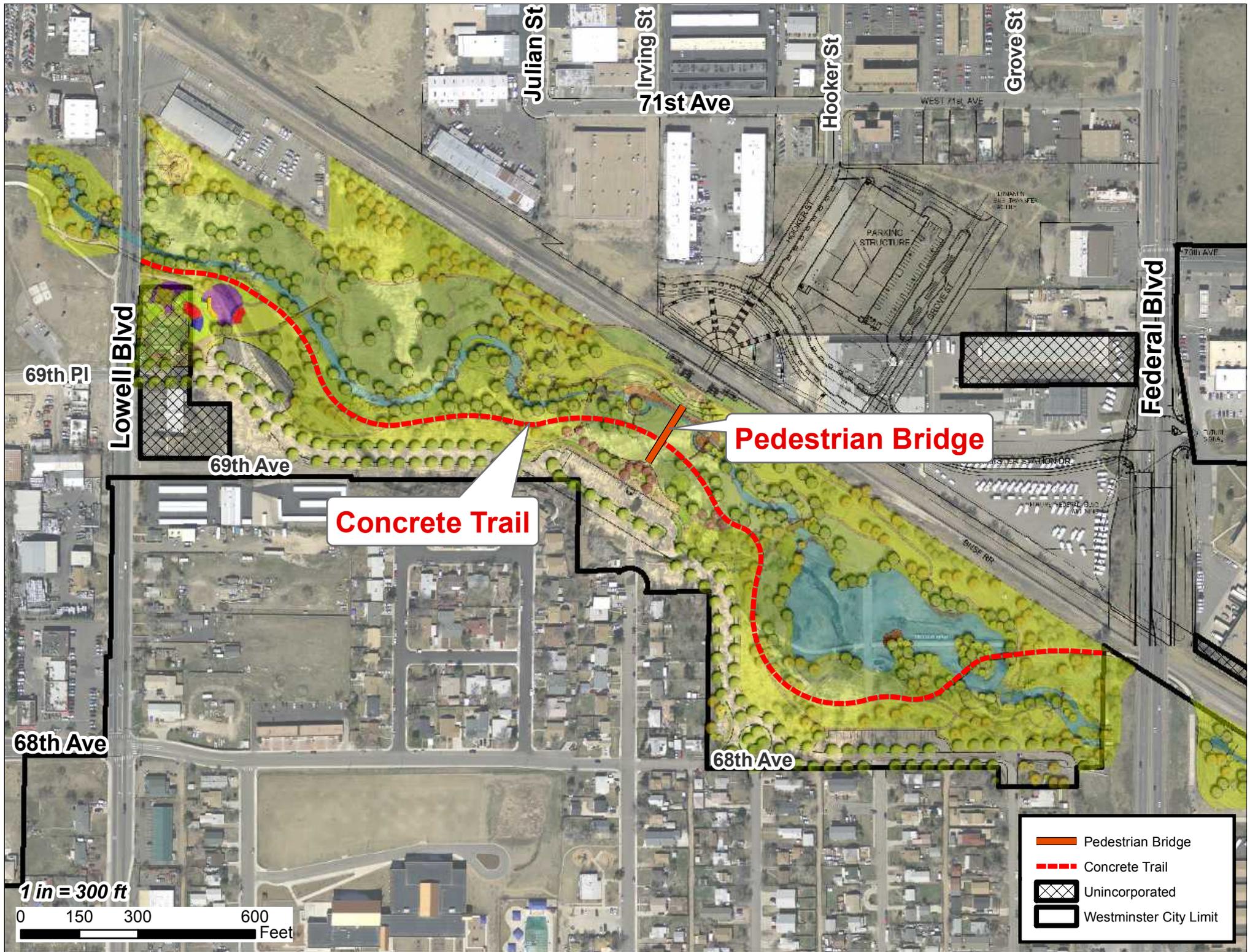
8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.



Concrete Trail

Pedestrian Bridge

-  Pedestrian Bridge
-  Concrete Trail
-  Unincorporated
-  Westminster City Limit

1 in = 300 ft
 0 150 300 600 Feet

69th Pl

Lowell Blvd

69th Ave

68th Ave

68th Ave

Julian St

Irving St

71st Ave

Hooker St

Grove St

Federal Blvd

WEST 71st AVE

73rd AVE

SEASIDE RR

UNINCORPORATED



Agenda Memorandum

City Council Meeting
July 27, 2015



SUBJECT: Resolution No. 25 re: Fall 2015 Adams County Grant Applications

Prepared By: Heather Cronenberg, Open Space Coordinator
Jacob Kasza, Open Space Technician
Nicole Ankeney, Landscape Architect II

Recommended City Council Action

Adopt Resolution No. 25 authorizing the Parks, Recreation, and Libraries Department to pursue two grants from the Adams County Open Space grant program during the 2015 fall cycle in the amount of \$1,100,000 for the LongsView Trail project, which includes trail upgrades and new trail connections along the Big Dry Creek Trail from 120th Avenue to 128th Avenue and \$290,000 for the reimbursement of a portion of the acquisition of property at 6950 Lowell and for the demolition of structures at 6930, 6940, 6950, and 6960 Lowell Boulevard for the Little Dry Creek Park project.

Summary Statement

- Staff recommends pursuing a passive use grant from the Adams County Open Space program for funding assistance with the design and construction of the LongsView Trail project that begins on 128th Avenue near the Big Dry Creek Park entrance and ends near the LongsView development along North Federal Parkway. Staff recommends requesting up to \$1,100,000 for this project using \$206,053.19 from the District 12 Cash-In-Lieu fund and \$364,728 as in-kind match from the LongsView park development fee which represents a 66% grant request.
- Staff would also like to pursue a second grant from the Adams County Open Space program in the amount of \$290,000 for the reimbursement of acquisition funds used to purchase 6950 Lowell Boulevard and for the demolition of the houses and associated improvements at 6930, 6940, 6950, and 6960 Lowell as part of the future Little Dry Creek Park. The City will use a portion of the funds already spent in the amount of \$104,900 to acquire the property at 6950 Lowell as match along with \$105,000 in funds towards the demolition project. This represents a 58% grant request.

Expenditure Required: Grant request for the LongsView Trail- \$1,100,000
Matching funds: \$570,781.19
Grant request for the Little Dry Creek Demolition Project- \$290,000
Matching funds: \$209,900

Source of Funds: District 12 Cash-In-Lieu - \$206,053.19
LongsView ODP - \$364,728 – partner match
POST- Land Purchases - \$104,900
2016 General Capital Improvement Fund - \$105,000

Policy Issue

Should the City seek assistance with the design and construction of trail upgrades and new trail connections along the Big Dry Creek Trail from 120th Avenue to 128th Avenue and for funds to reimburse the POST fund and for the demolition of structures for Little Dry Creek Park from the Adams County Open space Grant Program?

Alternative

Council could choose not to pursue additional funding for the design and construction of the trail upgrades and new connections project and the acquisition and demolition project. This is not recommended because the City does not have the funds to complete either project without funding assistance from the Adams County Open Space program.

Background Information

The City has been successful in applying for, receiving and managing grants from a variety of sources in the past for parks, open space and trail related projects. In recent years, the City has received grant money from the Adams County Open Space grant program for park and trail development projects as well as open space acquisitions. The effective management of these grant funds has enabled the City to develop a strong partnership with Adams County.

The Parks, Recreation, and Libraries Department would like to pursue a grant from the Adams County Open Space grant program in the amount of \$1,100,000 for the LongsView Trail project, which includes trail upgrades and new trail connections along the Big Dry Creek Trail from 120th Avenue to 128th Avenue. Approximately one mile of the Big Dry Creek Trail will be upgraded to a 10-foot wide concrete trail to meet standards in the 2014 Open Space Stewardship Plan and one-third of a mile of trail will be added. The concrete surfacing will provide an all-weather route for school children walking and biking to Arapahoe Ridge Elementary and Silver Hills Middle School, as well as other commuters and recreational trail users. Because of this connection to schools, the project will utilize \$206,053.19 of District 12 Cash-In-Lieu funds as cash match. The improved surfacing will also provide better access for those experiencing a disability, and families with strollers or young children on bikes. To address pedestrian and public safety between the Big Dry Creek Trail, the Home Farm neighborhood and the Village at Harmony Park neighborhood, the project includes a wire-span traffic signal at the entrance to Big Dry Creek Park. Though the impetus of the traffic signal is trail user safety, it will also solve a long-standing traffic issue entering and exiting the park.

The new gravel trails (over one-quarter mile) will connect the LongsView development currently under construction to the Big Dry Creek Trail network. The LongsView developer will provide approximately 8.5 acres of open space, a trailhead and trail as part of their required \$364,728 park development fee, which will be used for in-kind match. The proposed grant project will connect these new trails to the existing Big Dry Creek network.

The Parks, Recreation, and Libraries staff wish to pursue a second grant from the Adams County Open Space grant program for funding assistance to reimburse the POST fund for a portion of the acquisition of 6950 Lowell Boulevard and for the demolition of structures at 6930, 6940, 6950, and 6960 Lowell for the future Little Dry Creek Park. These properties are located on the east side of Lowell Boulevard, south of the railroad tracks and on the western edge of the future Little Dry Creek Park and Open Space area in-between Lowell and Federal Boulevards. The design of the park includes the construction of Creekside Drive in the location of the two southern most homes (6930 and 6940) and a playground where the two northern most homes are located (6950 and 6960).

The City submitted a grant application in the fall of 2014 to request assistance with the acquisition of all four properties. The Adams County Open Space Advisory Board then asked all submitters to lower their grant requests due to a lack of funds to cover all projects. At the time, there was little communication with the owners of 6950 Lowell due to a foreclosure. Staff decided to drop the acquisition of 6950 Lowell from that grant request. After the grant award, the property at 6950 Lowell went on the market and the City was able to purchase it for \$249,900. Staff is recommending that the City submit a reimbursement request for a portion of the acquisition price (\$145,000) using \$104,900 as match for this property through this grant request. The City also needs to demolish the homes and associated structures on all four properties. Staff would like to request \$145,000 from Adams County to assist with the demolition using \$105,000 in General Capital Improvement funds for that will be proposed as part of the 2016 request coming to Council in October. The grant award will be made after adoption of the 2016 Budget and the matching funds will not be needed until 2016.

These grant requests support the “Beautiful, Desirable, Environmentally Responsible City;” “Dynamic, Diverse Economy;” and “Excellence in City Services” by providing more recreational opportunities, increasing revenues that support defined City projects, and providing the City with increased open space and trails.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments

- Resolution
- Site Map for the LongView Trail
- Site Map for 6930, 6940, 6950, and 6960 Lowell Boulevard

RESOLUTION

RESOLUTION NO. **25**

INTRODUCED BY COUNCILLORS

SERIES OF 2015

A RESOLUTION
TO PURSUE TWO GRANT REQUESTS FROM THE
FALL 2015 ADAMS COUNTY OPEN SPACE GRANT PROGRAM
FOR THE DESIGN AND CONSTRUCTION OF THE LONGSVIEW TRAIL AND FOR
REIMBURSEMENT OF THE ACQUISITION OF 6950 LOWELL BOULEVARD AND
DEMOLITION OF STRUCTURES AT 6930, 6940, 6950, AND 6960 LOWELL BOULEVARD

WHEREAS, Adams County has established a local government grant application process to assist municipalities and special districts within the County with the development of recreation capital improvements and open space acquisitions; and

WHEREAS, the City of Westminster considers the design and construction of the LongsView Trail a high priority and has secured matching funds; and

WHEREAS, the City of Westminster considers securing funds to reimburse the City for acquiring the property at 6950 Lowell Boulevard and for the demolition of structures and associated improvements at 6930, 6940, 6950, and 6960 Lowell Boulevard for the Little Dry Creek Park, a high priority and has secured matching funds; and

WHEREAS, grant money received from Adams County will assist the City in designing and constructing the LongsView Trail and for securing funds to reimburse the City for costs associated with purchase the property at 6950 Lowell and for the demolition of improvements at 6930, 6940, 6950, and 6960 Lowell Boulevard for the Little Dry Creek Park.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

That Staff shall submit a grant application to the Adams County Open Space Grant program for the fall funding cycle of 2015, requesting funding not to exceed \$1,100,000 towards the construction of the LongsView Trail. Staff will also submit a second grant application to the Adams County Open Space Grant program for the same funding cycle, requesting funding not to exceed \$290,000 for the reimbursement of a portion of the funds used to purchase 6950 Lowell and for funds to assist the City with the demolition of the homes and associated improvements at 6930, 6940, 6950, and 6960 Lowell Boulevard for the Little Dry Creek Park.

PASSED AND ADOPTED this 27th day of July, 2015.

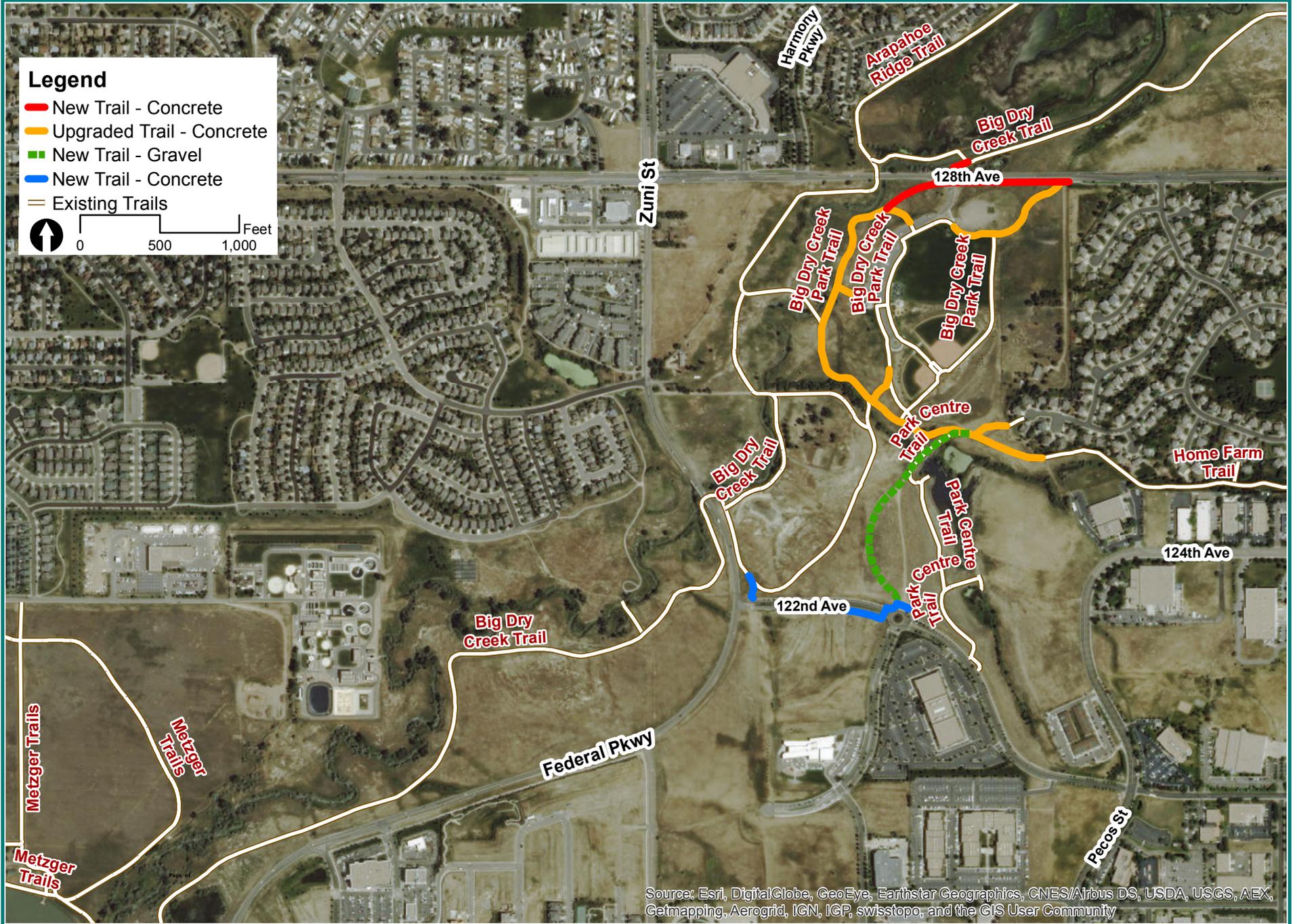
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

By: _____
Office of the City Attorney



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

72nd Ave

City of Westminster Lowell Houses Acquisition and Demolition

71st Pl

Lowell Blvd

71st Ave

Federal Blvd

70th Ave

Future Westminster
FASTracks Station

- 6960 Lowell Blvd
- 6950 Lowell Blvd
- 6940 Lowell Blvd
- 6930 Lowell Blvd

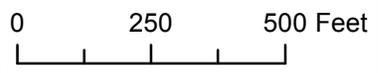
Future Little Dry
Creek Park and
Open Space

Little Dry Creek
Little Dry Creek Trail
Little Dry Creek
Dog Park

69th Pl

Water Quality
Pond

-  Lowell Houses
-  Creekside Drive
-  City Trails
-  Streams
-  Proposed Trails



AGENDA

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
SPECIAL MEETING**

MONDAY, JULY 27, 2015

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (April 27, 2015)
- 3. Public Hearings and New Business**
 - A. Contract Amendment with Torti Gallas and Partners
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, APRIL 27, 2015, AT 8:30 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Bob Briggs, and Board Members Bruce Baker, Maria De Cambra, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were Donald M. Tripp, Executive Director, David R. Frankel, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Vice Chairperson Briggs moved, seconded by Board Member Baker, to approve the minutes of the meeting of February 23, 2015, as written. The motion carried unanimously.

RESOLUTION NO. 163 – U.S. BANK LEASE OF PROPERTY AT 5971 WEST 88TH AVENUE

Board Member Garcia moved, seconded by Board Member De Cambra, to adopt Resolution No. 163 authorizing the Executive Director to execute a Lease Agreement, in substantially the same form as distributed in the agenda packet, with U.S. Bank National Association for the property located at 5971 West 88th Avenue within the Westminster Center Urban Reinvestment Project site. The motion carried unanimously at roll call.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 8:32 p.m.

ATTEST:

Chairperson

Secretary

Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority
July 27, 2015



SUBJECT: Approval for Amendment to Contract with Torti Gallas and Partners

Prepared By: Sarah Nurmela, AICP, Principal Planner

Recommended Action

Based on a recommendation from the Executive Director, find that the public interest will best be served by authorizing the Executive Director to execute an amendment of \$42,850 to an existing contract of \$32,000 with Torti Gallas and Partners for revisions to renderings and graphics for the Downtown Specific Plan and a three-dimensional video illustration of the plan vision.

Summary Statement

- A contract was executed with Torti Gallas and Partners on May 27, 2015, to produce urban design renderings and a three-dimensional digital model for the Downtown Specific Plan and related marketing materials. The original contract amount was for \$32,000.
- After the execution of the contract, additional rendering revisions were identified, primarily for an update to the Downtown Specific Plan, anticipated for August 2015. These revisions will update the regulatory plans and related standards to reflect the modified street grid within the Plan area. The total cost for revisions is \$8,850.
- A three-dimensional digital video of the Downtown site (\$34,000) is also planned and was added to the proposed amendment (of a total \$42,850) to the original contract.
- Including the amendment, the total cost of the amendment will exceed \$50,000 sole source provision for administrative approval.
- Utilizing Torti Gallas and Partners for the work in the proposed amendment is the most cost- and time-effective for the City, as the firm authored the Downtown Specific Plan, has direct and close knowledge of the site and revised street grid, and has already created the underlying model and a portion of the architecture that will be included in the digital model for the video.

Expenditure Required: \$42,850

Source of Funds: WEDA

Policy Issue

Should the WEDA amend the contract with Torti Gallas relating to the revision of Specific Plan renderings and graphics and creation of a digital video for the WURP site that will be used for an imminent update to the Specific Plan, public outreach, and marketing to prospective?

Alternatives

The alternatives in this case are to either attempt to perform this work “in house” with existing City staff or to look for another consultant to perform the work.

Neither of these alternatives is supported by staff. Staff’s skill sets and backgrounds are not sufficient to provide the necessary skills to create the high quality three-dimensional model, photo-realistic renderings or digital video. If an outside firm is not employed for this work, it would not be completed.

In terms of possibly hiring a different consulting firm, this option is not supported as Torti Gallas and Partners has the background, existing files, and expertise for the Downtown site, since the firm produced the Downtown Specific Plan, three-dimensional model and initial renderings. Utilizing Torti Gallas and Partners is the most time- and cost-effective option.

Background Information

On May 27, 2015, a contract with Torti Gallas and Partners was executed to produce urban design renderings and a three-dimensional digital model for the Downtown Specific Plan and related marketing materials. The original contract amount was for \$32,000. Since the contract was executed, additional rendering revisions were identified, primarily for an update to the Downtown Specific Plan, anticipated for August 2015. These revisions will update the regulatory plans and related standards to reflect the modified street grid within the Plan area. The total cost for these revisions is \$8,850.

Separate to the renderings and graphics for the Specific Plan and marketing purposes is a three-dimensional digital video of the Downtown site. The cost of production of a two-minute video showcasing the urban design, scale and public realm of the Plan area is \$34,000. The video will be utilized for both public outreach and outreach and marketing to the development community. The intent of the video is to provide a relatable portrayal of the envisioned scale and quality of development, streetscape, and public realm. It will be very similar to the video prepared for the Westminster Station Area.

Including the amendment, the total cost of the amendment is proposed at \$42,850, resulting in a total contract amount of \$74,850. Staff believes that utilizing Torti Gallas and Partners for the work in the proposed amendment is the most cost- and time-effective approach for the City, as the firm authored the Downtown Specific Plan, has direct and close knowledge of the site and revised street grid, and has already created the underlying model and a portion of the architecture that will be included in the digital model for the video.

Execution of this amendment for final revisions for renderings and graphics and the digital video particularly serves the Strategic Plan goals of a *Strong Balanced Local Economy; Vibrant and Inclusive Neighborhoods; and Beautiful, Desirable, Environmentally Responsible City* in attracting and facilitating high quality development in the Downtown site.

Respectfully submitted,

Donald M. Tripp
Executive Director

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, July 27, 2015

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (January 26, 2015)
- 3. Public Hearings and New Business**
 - A. Resolution No. 61 Approving a Supplemental Appropriation to 2015 Budget
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, JANUARY 26, 2015, AT 8:01 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Bob Briggs, and Board Members Bruce Baker, Maria De Cambra, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were Stephen P. Smithers, Acting Executive Director, David Frankel, Attorney, and Linda Yeager, Administrative Secretary.

MINUTES OF PRECEDING MEETING

Vice Chairperson Briggs moved, seconded by Baker, to approve the minutes of the meeting of December 22, 2014, as written and distributed. The motion carried unanimously.

RESOLUTION NO. 60 – SWAG COOPERATION AGREEMENT AND LEASE OF RODEO MARKET

Board Member Garcia moved, seconded by Pinter, to adopt Resolution No. 60 authorizing the Executive Director to execute a Cooperation Agreement and Lease Agreement, in substantially the same form as attached to the agenda packet, with the South Westminster Arts Group (SWAG) for use of Westminster Housing Authority-owned property at 3915 West 73rd Avenue, commonly known as the Rodeo Market building. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no further business to conduct, the meeting adjourned at 8:04 p.m.

Chairperson

ATTEST:

Administrative Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
July 27, 2015



SUBJECT: Resolution No. 61 re Westminster Housing Authority 2015 Budget Supplemental Appropriation

Prepared By: Dave Downing, City Engineer
Sherri Young, Accountant

Recommended Board Action

Adopt Resolution No. 61 approving a supplemental appropriation to the 2015 Westminster Housing Authority Budget.

Summary Statement

- When necessary, City Staff prepares a resolution to appropriate unanticipated revenues and adjust the budget side of transactions that occur during the year. Typically, supplemental appropriations are prepared on a periodic basis for the Westminster Housing Authority (WHA) to simplify administrative procedures and reduce paper work.
- This is the first supplemental appropriation for WHA in 2015.
- On November 24, 2014, the Board approved the 2015 WHA budget.
- The 2015 proposed amendment is for \$450,613 carryover from prior years to be used for demolition work.
- In 2012, the WHA entered into a development agreement with the City of Westminster and Renaissance I, LLP pertaining to the redevelopment of the City-owned properties and the WHA-owned properties located in the 7200 block of Lowell Boulevard. Under the terms of this agreement, the City, which obtained the WHA-owned parcels in December of 2014, is obligated to make the site “development-ready.” To fulfill this commitment, all of the subject properties with the exception of the current home of the Germinal Stage and the privately owned Penguin Building will be razed within the next few weeks.
- Bid proposals from several demolition contractors have been solicited, and staff is ready to proceed with the selection of a contractor to perform the work. Likewise, residents and business owners of the surrounding neighborhood are anxious for the demolitions to proceed due to the proliferation of vagrancy that has plagued the site for the past several months.

Expenditure Required: \$ 450,613

Source of Funds: Carryover from prior year

Policy Issue

Should the WHA Board appropriate funds as set forth in the attached Resolution?

Alternative

The Board could decide not to appropriate carryover for the demolition of structures located in the 7200 block of Lowell Boulevard. However, the December 2014 sale of the properties located at 7287 Lowell Boulevard and 3630 West 73rd Avenue to the City of Westminster was consummated with the intended purpose of making the site available for redevelopment by a third party. Furthermore, that sale generated over \$400,000 in revenue to provide the WHA with cash funds that could be used to assist with redevelopment activities within the City of Westminster, and Staff recommends that the demolition of buildings in the 7200 block of Lowell Boulevard is the best use of those funds.

Background Information

The Westminster Housing Authority (WHA) was initially created as a means of constructing and operating the Westminster Commons Senior Apartments at 3180 W. 76th Avenue. In 2012, the WHA sold the Westminster Commons senior apartments to Volunteers of America.

In addition to operating the Westminster Commons, the WHA has also been utilized to assist the City in its affordable housing and South Westminster revitalization efforts, including making infrastructure improvements, where necessary, to support these goals. One such proposed revitalization effort is located in the northern one-half of the 7200 block of Lowell Boulevard. Many of the buildings in that half-block were in various states of disrepair and vacancy when they were purchased by the City and/or the WHA within the past few years. Since the dates of those acquisitions, the vacant buildings have become a prime destination for vagrants and graffiti vandals. While a redevelopment plan for the area has not yet been formally submitted to the City for consideration, staff strongly recommends that the vacant City-owned structures be demolished as soon as possible in order to eliminate this habitat for transients. On December 22, 2014, the Board authorized the sale of the WHA properties to the City. At that time the Board was advised that funds from the sale could be utilized to support affordable housing endeavors throughout the City including this redevelopment project at 73rd Avenue and Lowell Boulevard and assisting in the demolition of the buildings on the City owned properties.

Great care will be taken to ensure that the historic Penguin Building is not damaged by the City's demolition contractor during the course of the work. A structural analysis of the building has been performed, and, while it certainly does not meet the current Unified Building Code standards, the Penguin Building is not structurally dependent upon the surrounding structures. Also to be excluded from the pending demolition contract will be the current home of the Germinal Stage theater group. That structure will likely be razed within the next couple of years as a specific redevelopment project becomes more of a reality.

The action requested in this agenda memorandum supports Council's Strategic Plan goals of "*Dynamic, Diverse Economy*" and "*Vibrant Neighborhoods in One Livable Community.*"

Respectfully submitted,

Donald M. Tripp
Executive Director

Attachment: WHA Resolution

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **61**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2015

**2015 WESTMINSTER HOUSING AUTHORITY
BUDGET SUPPLEMENTAL APPROPRIATION**

WHEREAS, the Westminster Housing Authority (WHA) initially adopted the 2015 budget on November 24, 2014; and

WHEREAS, WHA previously entered into an agreement with the City of Westminster and a potential developer to redevelop portions of the northern one-half of the 7200 block of Lowell Boulevard; and

WHEREAS, on December 22, 2014, the WHA Board authorized the sale of certain properties to the City with the intent of the proceeds from the sale to assist the City in the support of affordable housing endeavors throughout the City including the redevelopment project at 73rd Avenue and Lowell Boulevard and assisting in the demolition of the buildings on the City owned properties; and

WHEREAS, WHA has the need to appropriate carryover funds for the demolition contract in 2015; and

WHEREAS, as necessary a resolution to make adjustments to the budget is presented to the Board; and

WHEREAS, there are adjustments to be made to the 2015 budget; and

WHEREAS, the revenue adjustment consists of an increase of \$450,613; and

WHEREAS, the expense adjustment consists of an increase of \$450,613.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Housing Authority:

Section 1. The \$450,613 increase shall be allocated to WHA Revenue and Expenditure accounts as described below:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2600.40020.0000	\$14,990	<u>\$450,613</u>	\$465,603
Total Change to Revenues			<u>\$450,613</u>	

EXPENDITURES

Description	Account Number	Current Budget	Amendment	Revised Budget
Appropriation Holding	81526030134.80400.8888	\$0	<u>\$450,613</u>	\$450,613
Total Change to Expenses			<u>\$450,613</u>	

Section 2. The resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED 27th day of July, 2015.

ATTEST:

Chairperson

Secretary

ATTACHMENT
PROPERTIES LOCATION MAP

