



CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 4) is reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration.

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings** (October 12, 2015)
4. **Citizen Communication (5 minutes or less)**
5. **Report of City Officials**
 - A. City Manager's Report
6. **City Council Comments**
7. **Presentations**
 - A. National Family Caregiving Month Proclamation

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 September 2015
 - B. Quarterly Insurance Claims Report, July – September 2015
 - C. Revised Employment Agreement with Donald M. Tripp
 - D. GIS Support Maintenance
 - E. Downtown Westminster Parking Structure on Block C-2 Design Build Contract
 - F. Contract for Underwriter Consulting Services
 - G. Bond and Disclosure Counsel for the Refunding of Sales and Use Tax Revenue Bonds (POST) Series 2007D
 - H. City/WEDA/Downtown GID Intergovernmental Cooperation Agreement
 - I. Intergovernmental Service Agreement with City of Westminster Downtown General Improvement District
 - J. Semper and NW Water Treatment Facilities HVAC Repair and Replacement Engineering Design Contract
 - K. Second Reading of Councillor's Bill No. 49 Amending the Adopted 2016 Budget
 - L. Second Reading of Councillor's Bill No. 50 Amending W.M.C. re Municipal Judge 2016 Salary
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
 - A. Continued Public Hearing on Park 12 Hundred Rezone, Comprehensive Plan Amendments, PDP, and ODP
 - B. Councillor's Bill No. 47 re Park 12 Hundred Comprehensive Plan Amendments
 - C. Councillor's Bill No. 48 Rezoning Park 12 Hundred to PUD
 - D. Park 12 Hundred Preliminary Development Plan
 - E. Park 12 Hundred Official Development Plan
 - F. Councillor's Bill No. 51 Creating the Inclusivity Board
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Miscellaneous Business and Executive Session**
 - A. City Council
13. **Adjournment**

NOTE: Persons needing an accommodation must notify the City Clerk no later than noon on the Thursday prior to the scheduled Council meeting to allow adequate time to make arrangements. You can call [303-658-2161](tel:303-658-2161)/TTY 711 or [State Relay](mailto:lyeager@cityofwestminster.us) 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, OCTOBER 12, 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, Alberto Garcia, Emma Pinter, and Anita Seitz were present at roll call. Councillor Maria De Cambra was absent. Also present were City Manager Donald M. Tripp, City Attorney David Frankel, and City Clerk Linda Yeager.

CONSIDERATION OF MINUTES

Councillor Briggs moved, seconded by Councillor Baker, to approve the minutes of the regular meeting of September 28, 2015, as presented. The motion carried unanimously.

CITIZEN COMMUNICATION

Linda Graybeal, 6504 West 95th Place, thanked Council for its support of the Westminster Historical Society and the society's efforts to preserve the City's history.

Eleanor Scott, Chairman of the Westminster Area Community Awareness Action Team (CAAT), provided historical information about the founding of CAAT in 1981 and its dedication to promoting a drug-free lifestyle. CAAT appreciated support garnered by the City Council's prohibition of marijuana dispensaries, retail stores and grow operations within the City.

CITY MANAGER'S REPORT

Mr. Tripp welcomed members of the Youth Advisory Panel, of the Westminster Area Community Awareness Action Team, and of the public. He reported there would be no post meeting following adjournment of tonight's Council meeting and the General Improvement Districts meeting.

COUNCIL REPORTS

Mayor Pro Tem Briggs reported having attended the celebration of completing the Standley Lake bypass pipeline project. While hoping it would never be needed, the project would provide treated water should something adverse happen to Standley Lake.

Councillor Garcia appreciated the crowded audience and thanked everyone for participating in local government. On October 2, he had attended the annual Colorado Firefighters Chili Cook-off to benefit for the Muscular Dystrophy Association. Firefighters from around the country attended and Westminster's chili had tasted the best in his opinion. This event was another example of how active public safety officers were in the community. He also had been pleased to serve on the selection committee to choose nine sculptures to be displayed for a year in the Sculpture Garden at 3915 West 73rd Avenue. He urged the public to visit the garden and enjoy the work of amazing artists.

Councillor Seitz welcomed those in the audience and appreciated their desire to engage in local government. Upcoming events in the community included the Legacy Foundation's Wine, Beer, and Spirits Tasting on Saturday, October 17, at the Westin Hotel; and Surviving Zombie Land at Standley Lake would provide entertainment for children 8 to 11 years old also on Saturday. In conclusion, she had also attended the celebration of completing the Standley Lake bypass pipeline project and thanked staff for its dedication and vision to protect the best interests of Westminster residents today and tomorrow.

Councillor Pinter reported attending the recent grand opening of the Whistling Hare Distillery, which benefited the Legacy Foundation and its efforts. While there, she met a new resident who was employed by the Colorado Department of Public Health as a Water Engineering Specialist and was able to promote the Westminster History Museum's exhibit on the history of Westminster's water source. She thanked Linda Graybeal and the members of the Westminster Historic Society for their work to preserve Westminster's history and to educate the community.

Councillor Baker relayed a story about a \$6.98 bill he had received for recently using I-25 northbound. It reminded him of other societal wrongs that had been imposed by elected officials and impacted the public long after their terms of office had ended. He cited the cost of recent improvements to US 36 that would be paid by taxpayers for the next 50 years as a result of a contract that turned control of the highway to a private company. Elections should be the public's opportunity to change the direction government was taking; and contracts should not be executed that exceeded an elected official's term of office. TABOR provisions prohibited long-term debt without public approval at an election.

PROCLAMATIONS

Councillor Seitz presented the Red Ribbon Month proclamation to members of the Westminster Area Community Awareness Action Team. This was the 28th consecutive year that the City had issued the Red Ribbon proclamation in support of efforts to stand up against the use of illegal drugs. This year's theme was "Respect Yourself. Be Drug Free." Accepting the proclamation were Eleanor Scott and Phyllis and Phil Aschenbrenner.

Mayor Atchison and Councillor Garcia presented a proclamation recognizing the members of the 2015-2016 Youth Advisory Panel. A large number of members, all students from area high schools, accepted the proclamation and looked forward to engaging in local activities with the City Council.

CONSENT AGENDA

Clerk's Note: There were two items on the Consent Agenda and Mayor Atchison announced that a Council member had requested both items be removed for individual consideration.

DOWNTOWN WESTMINSTER CONTRACT AMENDMENT WITH DREXEL, BARRELL AND COMPANY

It was moved by Councillor Seitz and seconded by Mayor Pro Tem Briggs to authorize the City Manager to execute a second amendment to the design contract with Drexel, Barrell and Company for the Downtown Westminster Roadway Design in the amount of \$289,574, thus raising the design contract total amount to \$1,131,800. The motion carried by a 5:1 vote with Councillor Baker voting no.

REVISED EMPLOYMENT AGREEMENT WITH DAVID FRANKEL

Councillor Garcia moved, seconded by Councillor Seitz, to authorize the Mayor to execute a revised employment agreement with David R. Frankel for his services as City Attorney for 2016 with an effective date of January 1, 2016, and an automatic renewal for 2017, 2018, 2019 and 2020 unless terminated pursuant to the terms of the agreement. The motion passed on a vote of 5:1 with Councillor Baker dissenting.

PUBLIC HEARING ON PARK 1200 REZONE, COMPREHENSIVE PLAN AMENDMENTS, PDP, AND ODP

At 7:40 p.m., the Mayor opened a public hearing to consider the Park 12 Hundred Project, which included the Lucent Technologies 2nd Replat Subdivision to amend Comprehensive Plan designations, a rezone, as well as a Preliminary Development Plan (PDP) and an Official Development Plan (ODP). Mac Cummins, Planning Manager, entered the agenda memorandum and its associated attachments labeled A through K, as well as additional email received after distribution of the agenda packet. In a PowerPoint presentation, evidence was entered that proved legal notification required by the Westminster Municipal Code had been satisfied. Mr. Cummins provided background information

about the 320-unit apartment complex to be built at the northeast corner of 116th Avenue and Pecos that was proposed by Crescent Properties. The 82.421-acre parcel was currently designated Flex/Light Industrial in the Comprehensive Plan and zoned M-1. Requested Comprehensive Plan amendments included: 1) a change in designation of a 17.58-acre portion of the parcel from Flex/Light Industrial to R-18 to allow the multi-family residential project; 2) a change in designation of a 7.71-acre portion of the parcel from Flex/Light Industrial to Public Park to allow dedication and construction of a public park as part of the overall redevelopment; and 3) a change in designation of a 0.945-acre portion of the parcel from Flex/Light Industrial to Private Parks/Open Space for a detention pond that would remain the ownership of the developer. A rezone to Planned Unit Development (PUD) and approval of the PDP for the entire 82.421-acre site would promote development of a regional employment center complete with housing. The proposed ODP would allow for the construction of the 320 multi-family rental units along with accessory parking and community space. Dave Downing, City Engineer, interpreted details of the traffic study prepared in conjunction with the proposed development. Questions from Council focused on park land that would be added to the area by the proposed development; calculations of the number of school-aged children that would be housed in the proposed 320-unit apartment complex; the number of parking spaces to be added for the proposed development; the number of projected public safety calls to the proposed development; proximity to, and accessibility and capacity of the Wagon Road Regional Transportation District (RTD) Park and Ride.

Clerk's Note: The Mayor declared a recess at 8:45 p.m. and reconvened the meeting at 8:55 p.m.

Carolyn White, land use counsel for the applicant, Marty Farnsworth, representing the property owner, Jim Colley of Crescent Properties, and Wendi Birchler of Norris Design addressed Council concerning the proposal, providing an overview of the overall property, as well as design and layout of the proposed apartment complex, amenities, and landscaping. Questions from Council focused on walkability from the proposed apartments to the Wagon Road Park and Ride; a \$6 million incentive from the City to Digital Globe, which was not owned by this property owner; the mix of housing unit sizes and range of monthly rental prices; the intensity of uses allowed in the M-1 zone; connectivity of sidewalks and bicycle paths to meet consumer needs of apartment residents; and the Park 1200 General Improvement District that the property owner requested the City form to generate future revenues to maintain the planned public park.

The Mayor opened the hearing to public comment. The following residents of The Ranch provided a unified position in opposition to development as proposed: Ken Harris, 11625 Shoshone Way; Ron Post, 1641 West 115th Circle; Marilyn Durkee, 11603 Shoshone Way; Delmott Davis, 2178 West 116th Avenue; Patricia Gilmour and Don Shantz, 1610 West 116th Court; Carol Menard, 1657 West 116th Circle; Noreen Raphel, 11630 Shoshone Way; Larry Roybal, 11642 Quivas Way; and Stu Assay, 1687 West 115th Circle. Their PowerPoint presentation focused on land use recommendations; high-density housing; property values impact and rental market; crime statistics; quality of life impact; Comprehensive 2035 Plan requirements; and environmental concerns. Others who spoke in opposition were: Lori Hanegan, 11585 Quivas Way; Dave Sanders, 1765 West 115th Circle; and Mike Byrne, 2391 Ranch Reserve Ridge.

Those attending, who did not speak but wanted their names entered in the record as being opposed were: Lloyd Wade, 11317 Quivas Way; Phil Orotelli, 1100 West 120th Avenue; Paul and Sandy Waldmiller, 11617 Shoshone Way; Mike and Nita Lyons, 11634 Country Club Drive; Henry and Deidre Lawnhurst, 11624 Shoshone Way; Alisa Houpt, 1655 West 113th Avenue; John and Coral Walters, 11206 Quivas Loop; Casey Ireland and Jason Daughenbaugh, 11208 Quivas Loop; Cindy Green, 1648 West 115th Circle; Paul Cunningham, 11618 Shoshone Way; Lee and Katie Stelzer, 11605 Quivas Way; Mari Perczak, 2322 South Country Club Loop; Gustavo Carrasco, 11240 Raritan Street; David and DeeAnn Baer, 11241 Raritan Street; Ken Chavez, 11245 Raritan Street; George Allaman, 11275 Raritan Street; J. Sale Swenarton Kalovsek, 11287 Ranch Place; Casimir Paulk, 11936 Wyandot Circle; Rhiner Groenoyk, 1759 West 113th Avenue; Adam & Elizabeth Garduno, 11269 Raritan Street; John and Susie Noland, 11314 Quivas Way; Ron Coffman, 11937 Wyandot Circle; Mike Salter, 2353 Country Club Loop; Paul Stout, 11925 Wyandot Circle; and John Roller and Kathy Sapio, 2563 Country Club Court.

Clerk's Note: The Mayor declared a recess at 11:55 p.m. and reconvened the meeting at 12:05 a.m.

Speaking in favor of the proposal were Dan Banjo, owner of Frictionless World, and Nicole Coons, general manager of Springs Fabrication. Both businesses were existing tenants of the former Avaya site and Mr. Banjo and Ms. Coons spoke of the need for housing for their employees, many of whom wanted rental housing rather than to purchase residential property.

Council's questions focused on the following: an acceptable distance to walk for a project being marketed as walkable; the 60-foot building height that could result from development of a M-1 zone use; the provision of safe crosswalks; the distance to required amenities and activity centers for R-18 development; the need to hire more public safety officers for a 320-unit apartment complex; and the school district's calculation concerning the number of students that would be added to the district from a 320-unit apartment complex.

Mayor Atchison entered in the record an email from Jack Keever supporting the proposed development, a flyer circulated to homeowners of The Ranch, and campaign literature paid for by the Jason Blanckaert campaign opposing dense growth and overcrowded neighborhoods that would be created by the Park 1200 Project and the proposed new Downtown. He closed the public hearing to public comment.

The City Council voted unanimously to continue this public hearing to the October 26, 2015, Council meeting at which time the applicant and the Staff would be provided opportunity for closing statements but no further public comment would be received.

The time was 12:55 a.m.

HUMAN SERVICES BOARD 2016 FUNDING RECOMMENDATIONS

Upon a motion by Councillor Garcia, seconded by Councillor Seitz, the Council voted unanimously to accept the Human Services Board recommendations and authorize payment for 2016 funding as outlined in Agenda Item 10 F-H Attachment A, which identified the agencies that the City of Westminster would provide financial support to during FY2016 and the associated dollar amounts.

COUNCILLOR'S BILL NO. 49 AMENDING THE ADOPTED 2016 BUDGET

Mayor Pro Tem Briggs moved to pass Councillor's Bill No. 49 on first reading amending the FY2016 budgets of the General, General Reserve, General Fund Stabilization Reserve, Utility, Utility Rate Stabilization Reserve, Utility Capital Project Reserve, Stormwater Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, General Capital Improvement, Conservation Trust and Property Liability/Workers' Compensation Funds in support of City Council's Adopted 2015 Strategic Plan. The motion was seconded by Councillor Pinter and passed unanimously on roll call vote.

UTILIZATION OF GCORF FOR REPLACEMENT OF PUBLIC SAFETY VEHICLES

It was moved by Councillor Pinter and seconded by Councillor Baker to authorize the utilization of an additional \$195,000 from the General Capital Outlay Replacement Fund (GCORF) public safety account balance for a total of \$376,750 from the GCORF public safety account balance towards the replacement of public safety vehicles as outlined in the background section of Agenda Item 10 F-H. The motion carried unanimously.

REVISED EMPLOYMENT AGREEMENT WITH PRESIDING JUDGE JOHN A. STIPECH

Councillor Garcia moved, seconded by Councillor Seitz, to authorize the Mayor to execute a revised employment agreement with John A. Stipech for his services as Presiding Judge for 2016 with an effective date of January 1, 2016, and an automatic renewal for 2017, 2018, 2019 and 2020 unless terminated pursuant to the terms of the agreement. The motion carried by a 5:1 vote with Councillor Baker dissenting.

COUNCILLOR'S BILL NO. 50 SETTING THE MUNICIPAL JUDGE'S 2016 SALARY

Upon a motion by Mayor Pro Tem Briggs, seconded by Councillor Baker, the Council voted unanimously at roll call to pass Councillor's Bill No. 50 on first reading setting the salary for the Municipal Judge for 2016.

2016 CITY EMPLOYEE HEALTH AND INSURANCE RENEWALS

Councillor Pinter moved, seconded by Mayor Pro Tem Briggs, to authorize the City Manager to renew contracts with Cigna and Kaiser Permanente for healthcare, Delta Dental for dental coverage, and Cigna Insurance for Life, Long Term Disability (LTD), Basic and Voluntary Accidental Death and Dismemberment (AD&D), and Survivor Income Benefit (SIB) insurances, and Compass, a health care consumer advocacy service for City employees; authorize the continuation of a four-tier rate structure with the employer and employee medical/dental premium rates as presented; and authorize modifications to the retiree health insurance program. Mr. Tripp clarified that Staff would continue to investigate any future modifications to the retiree health insurance program. The motion carried unanimously.

RESOLUTION NO. 30 APPROVING THE PROPOSED 2016 CITY PAY PLAN

Mayor Pro Tem Briggs moved, seconded by Councillor Garcia, to adopt Resolution No. 30 approving the 2016 Pay Plan. At roll call, the motion passed unanimously.

ADJOURNMENT

There was no further business to come before the City Council, and the Mayor adjourned the meeting at 1:10 a.m.

ATTEST:

City Clerk

Mayor



Agenda Item 7 A

Agenda Memorandum



City Council Meeting
October 26, 2015

SUBJECT: National Family Caregivers Month Proclamation

Prepared By: Alexa Priddy, Communication and Outreach Coordinator

Recommended City Council Action

Mayor Atchison to present a proclamation in recognition of National Family Caregivers Month to the Jefferson County Aging Well Project.

Summary Statement

- The City of Westminster, along with other Jefferson County cities, is joining with the Jefferson County Aging Well Project to support those who give care to a loved one.
- National Family Caregivers Month is a time to thank, support, educate and empower family caregivers. 90 million family caregivers in this country fulfill a vital role on the care team. No one else is in a better position to ensure continuity of care. This month's theme this year is "Respite: Care for Caregivers."
- Members of the Jefferson County Aging Well project will be present to accept the proclamation.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified.

Alternative

None identified.

Background Information

Municipalities across Jefferson County are uniting this year to collectively proclaim November as National Family Caregivers Month in our cities. Led by the Jefferson County Aging Well Project, this effort recognizes the 90 million family caregivers in this country fulfill a vital role on the care team. No one else is in a better position to ensure continuity of care. Family caregivers are the most familiar with their care recipients' medicine regimen; they are the most knowledgeable about the treatment regimen; and they understand best the dietary and exercise regimen.

The Jefferson County Aging Well project, in coordination with The Caregiver Action Network, coordinates National Family Caregivers Month as a time to thank, support, educate and empower family caregivers. The Caregiver Action Network began promoting a weeklong celebration of family caregivers in 1994. President Clinton signed the first presidential proclamation in 1997 and every president since — Democrat and Republican alike — has issued an annual proclamation honoring family caregivers. As awareness of family caregiving grew, National Family Caregivers Week evolved into National Family Caregivers Month.

Jefferson County Aging Well Project's Care-giving and Supportive Services team members feel it is important at the county and city level, as well as the national level, to support those who give care to a loved one. Twenty-nine percent (29%) of the U.S. adult population, or 65.7 million people, are caregivers, including 31% of all households. These are large numbers - and it is important to support their efforts.

The proclamation of November as National Family Caregivers Month aligns with the City's 2015 Strategic Plan Goals: Visionary Leadership, Effective Governance and Proactive Regional Collaboration; Vibrant, Inclusive and Engaged Community; and Beautiful, Desirable, Safe and Environmentally Responsible City.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment - Proclamation

WHEREAS, family caregivers greatly improve the quality of life for their loved ones, spending an average of 20 hours per week providing care, with many caring for their loved ones around the clock; and

WHEREAS, over 90 million family caregivers in the United States are the unacknowledged backbone of the nation's long-term care system by providing daily assistance to manage health and personal care, thus enabling their loved ones to stay in the home longer; and

WHEREAS, family caregivers are the only people who are present with patients in all care settings. Patients may have more than one doctor; nurses change shifts; prescriptions may be filled at different pharmacies. But family caregivers are there as full partners with their loved ones through it all often with no relief or an opportunity to request a time out; and

WHEREAS, considering caregivers' increased risk for health issues from chronic stress it is important for family caregivers to take a respite to recharge; and

WHEREAS, respite services protect a family caregiver's own health, strengthen family relationships, prevent burn-out and can enable a care recipient to stay at home up to three times longer; and

WHEREAS, with the national recognition of the importance of family caregivers in our country growing every year – it is even more essential to encourage these heroes to take some time for respite so they may continue their mission of providing that loving care that only they can provide.

NOW, THEREFORE, I, Herb Atchison, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby recognize November 2015

**NATIONAL FAMILY CAREGIVERS MONTH
With the theme "Respite: Care for Caregivers"**

in the City of Westminster.

Signed this 26th day of October, 2015.

Herb Atchison, Mayor



Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Financial Report for September 2015

Prepared By: Tammy Hitchens, Finance Director

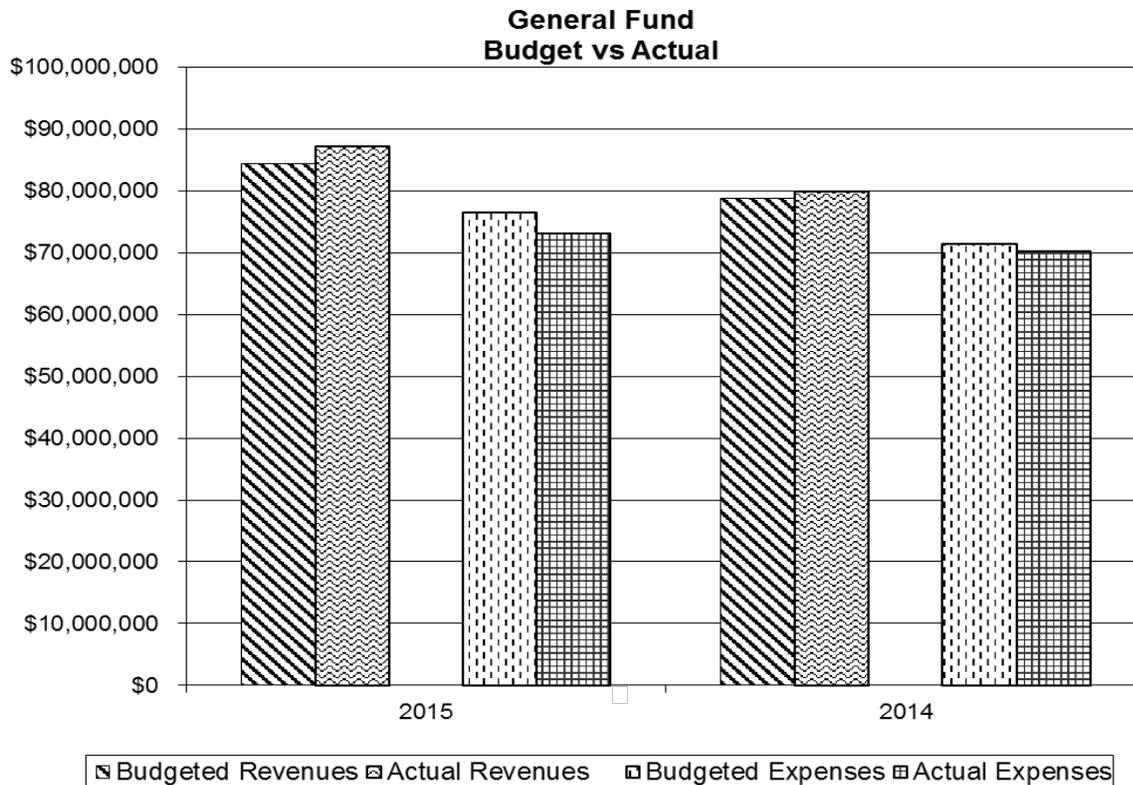
Recommended City Council Action

Accept the Financial Report for September 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 expenses are pro-rated based on 10-year historical averages.

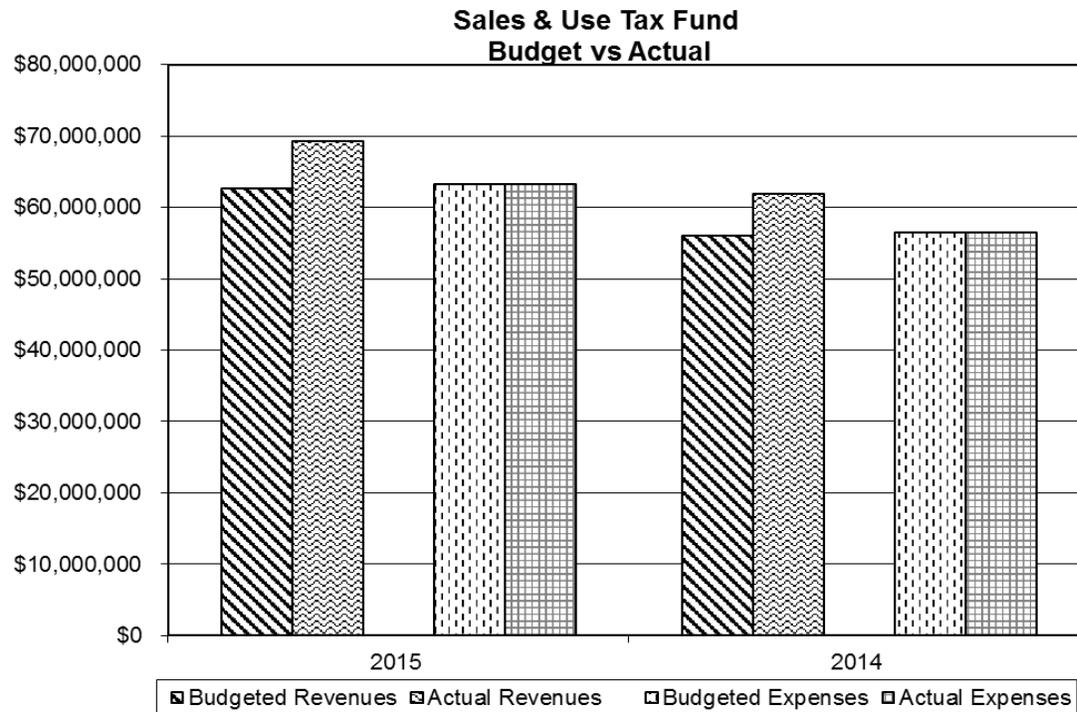
Current projections show General Fund revenues and carryover exceeding expenditures by \$6,184,915. The following graph represents Budget vs. Actual for 2014-2015.



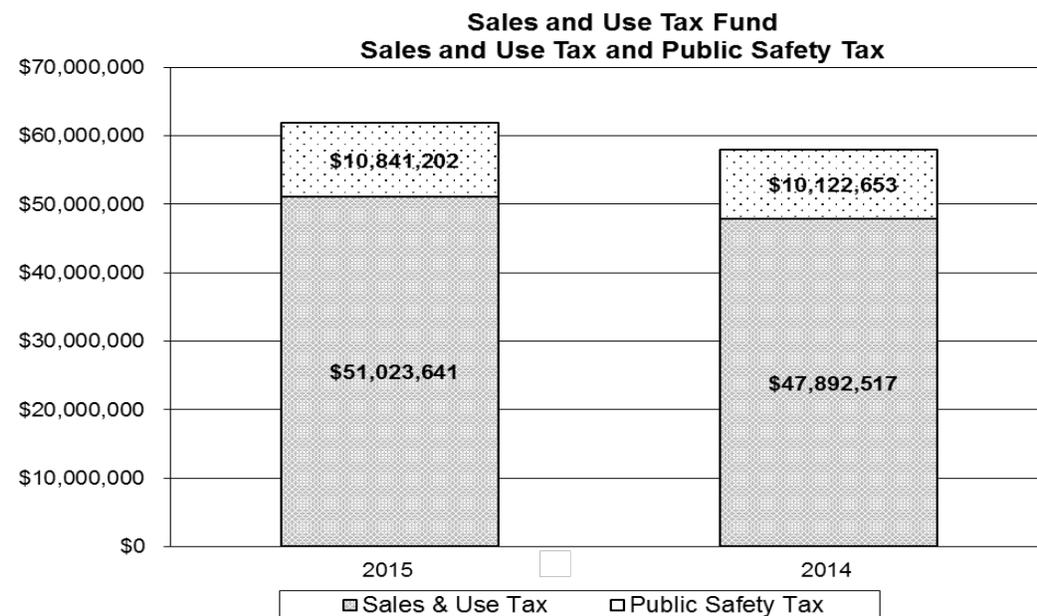
The favorable 2015 revenue variance relates to an increase in license and permitting activity, intergovernmental collections, charges for recreation and other services, fines, and various reimbursements.

Current projections show the Sales and Use Tax Fund revenues and carryover exceeding expenditures by \$6,647,002. On a year-to-date cash basis, total sales and use tax is up 6.5% from 2014. Key components are listed below:

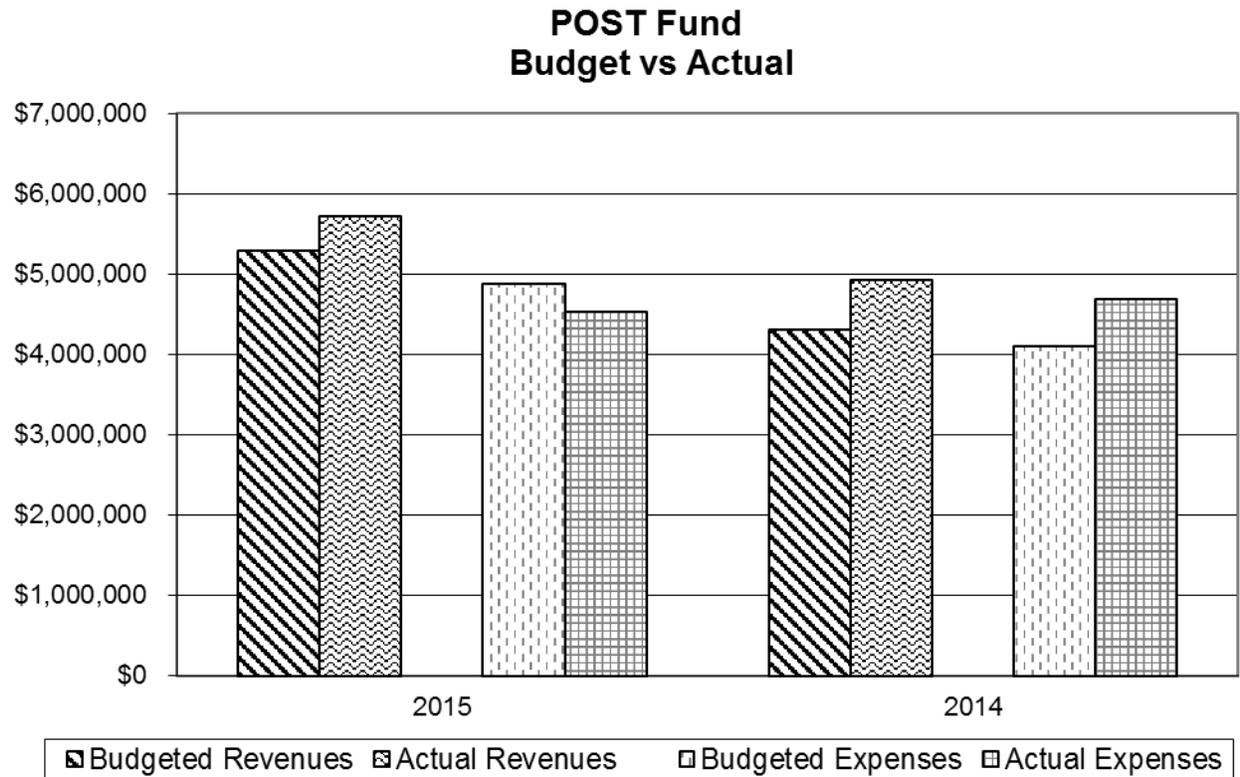
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 8.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 63.6% of all collections, are up 6.0% for the month when compared to 2014.
- Urban renewal areas make up 37.9% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 84.4% of this money is being retained for General Fund use in operating the City.



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

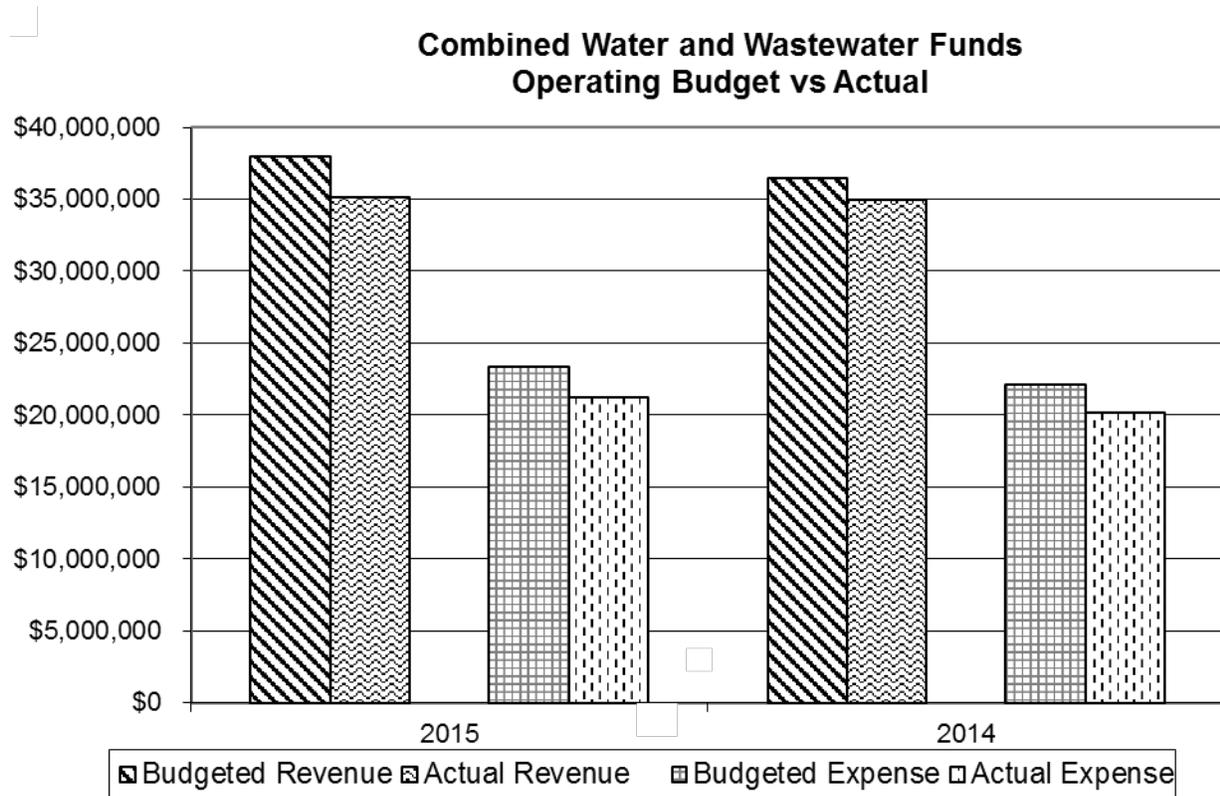


Current projections show Parks, Open Space and Trails (POST) Fund revenues and carryover exceeding expenditures by \$780,389.



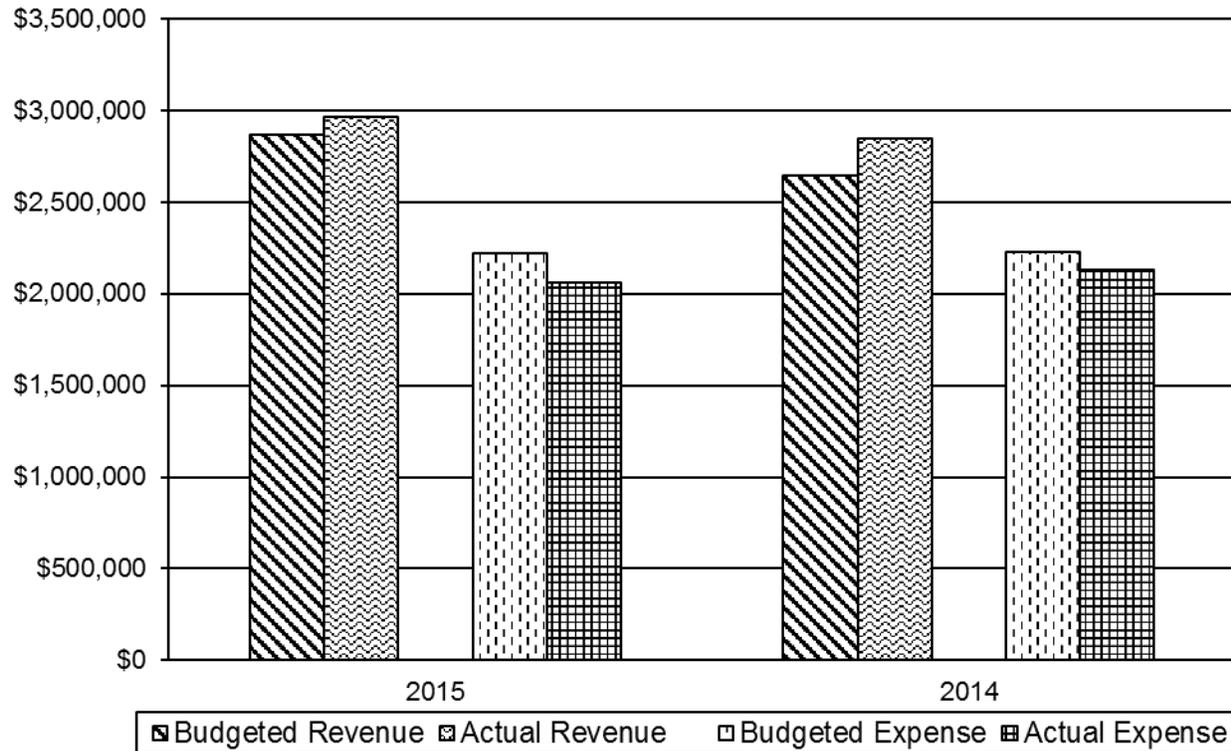
The increase in 2015 revenue is primarily due to an increase in sales tax collections in excess of the prorated budget and carryover. 2014 revenue also exceeded projections due to favorable sales tax collections. The 2014 budget to actual expense variance reflects a POST open space property acquisition funded by grant 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 and carryover by \$2,955,554, 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 \$717,015.



Current projections show combined Golf Course Fund revenues and carryover exceeding expenditures by \$270,811. Operating projections show combined Golf Course Fund revenues exceeding expenditures by \$261,260.

Golf Course Enterprise Operating Budget vs Actual



The 2015 budget to actual revenue variance is mostly attributable to driving range and cart rental fees, and to a lesser extent merchandise sales and lessons.

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

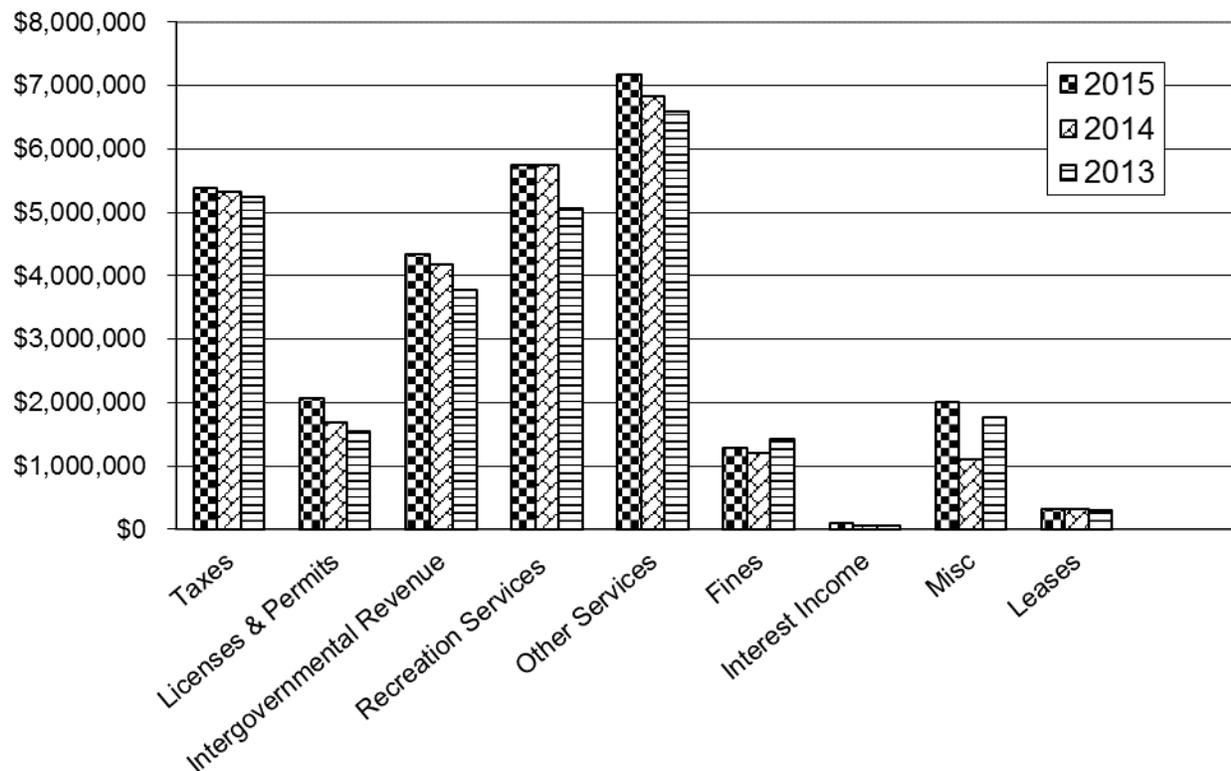
This section includes a discussion of highlights of each fund presented.

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.

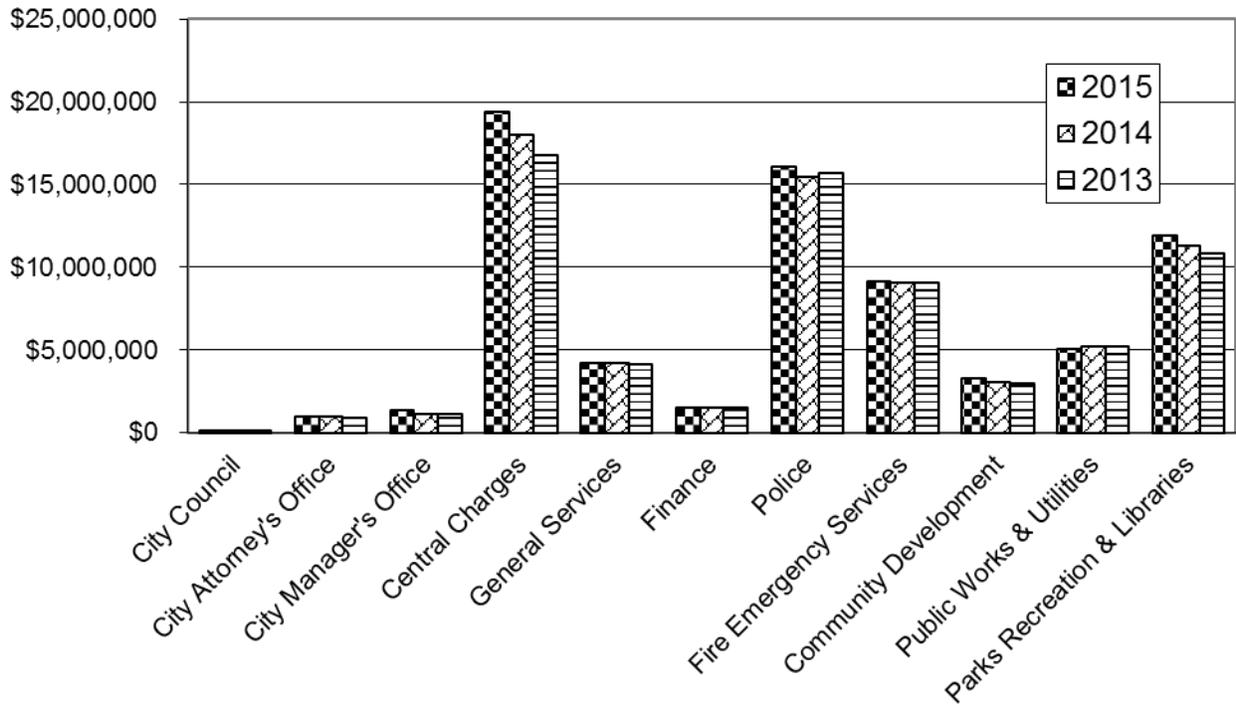
**General Fund Revenues excluding Transfers
2013-2015**



Licenses and Permits revenue is higher than the prior years due to an increase in commercial and residential permits, especially in Adams County. The increase in Intergovernmental revenue is mainly due to Highway Users Tax Fund distributions and an increase in revenue sharing revenues from Thornton. Variances between years in Other Services revenue is due mostly to EMS and infrastructure fees. Fines revenue is up slightly due to an increase in traffic fines. The increase in Miscellaneous revenue is mostly due to a timing difference in billing Thornton for their portion of the debt service payment for the 2005 COPS for the 144th Avenue bridge construction.

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**

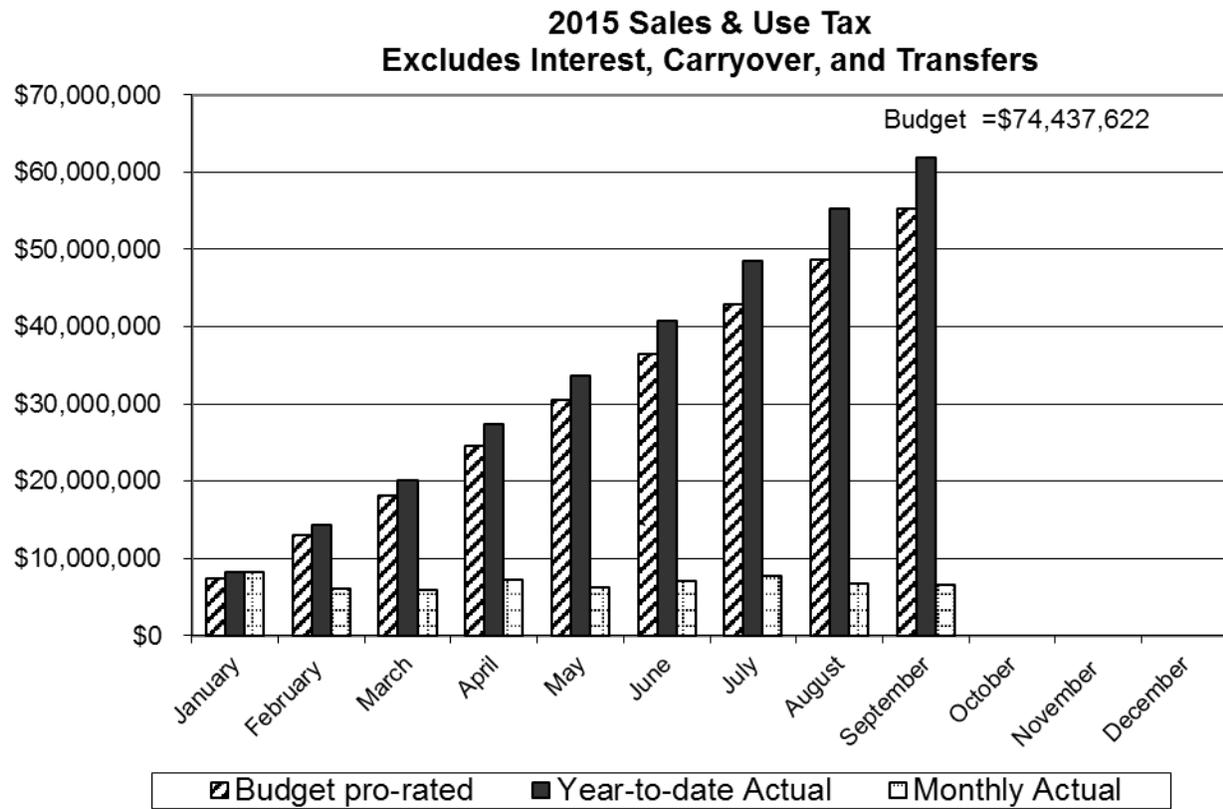


In 2015, City Manager's Office expenditures are slightly higher due to salaries. Central Charges expenditures are higher due predominately to the transfer of carryover to other funds. Police and Community Development expenditures are slightly higher due mostly to salaries and contract services. Parks Recreation and Libraries expenditures are slightly higher due to salaries and the purchase of park services maintenance equipment.

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, make park improvements on a pay-as-you-go basis, and maintain parks, open space and trails. 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.

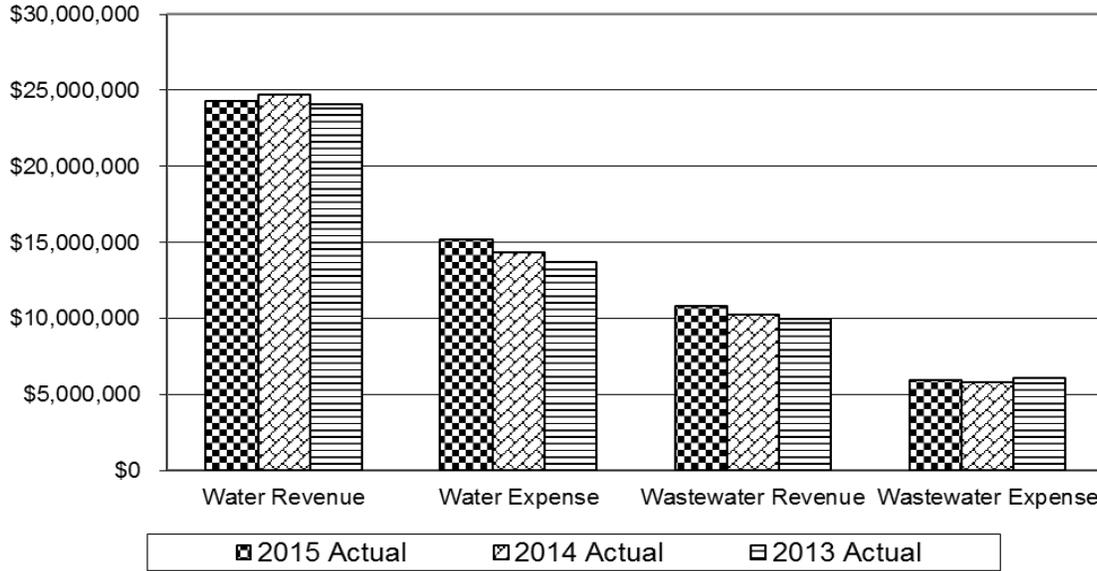


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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.

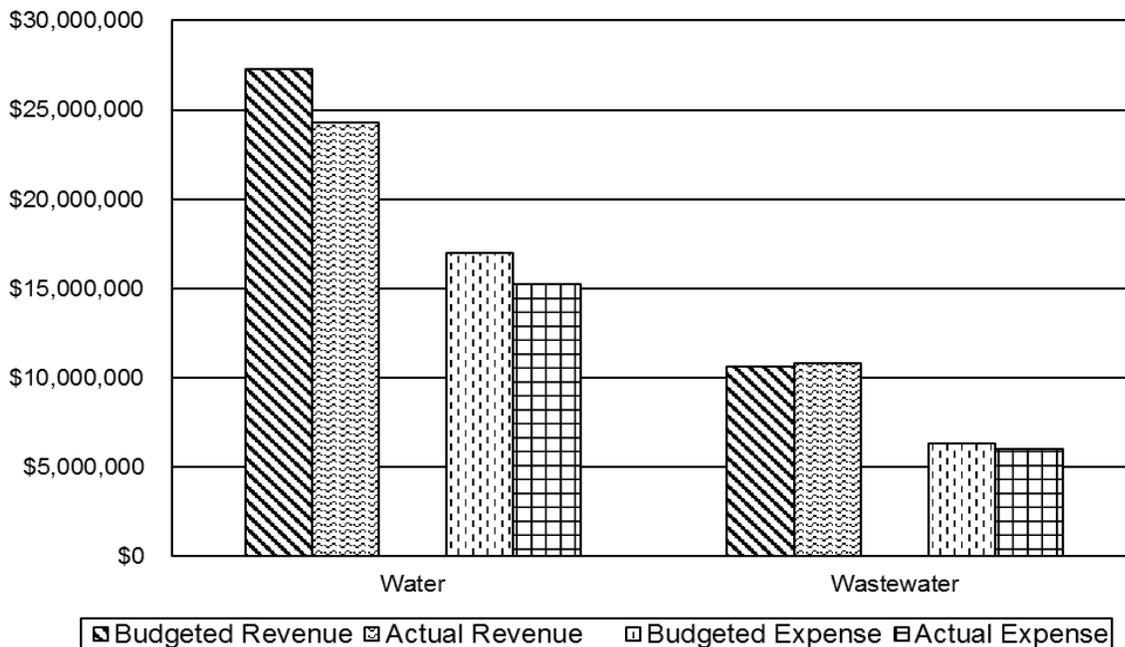
The following graphs represent segment information for the Water and Wastewater funds.

**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**

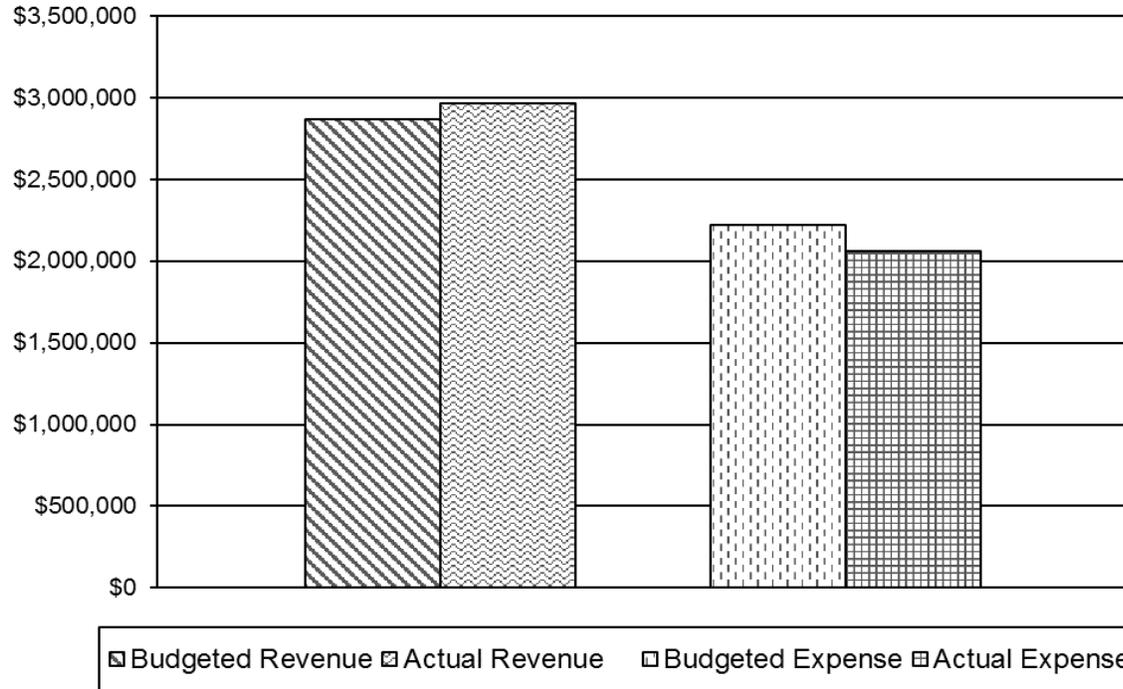


The Water Fund revenue shortfall reflects water consumption impacted by Colorado’s wet spring and early summer.

Golf Course Enterprise (Legacy and Heritage Golf Courses)

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

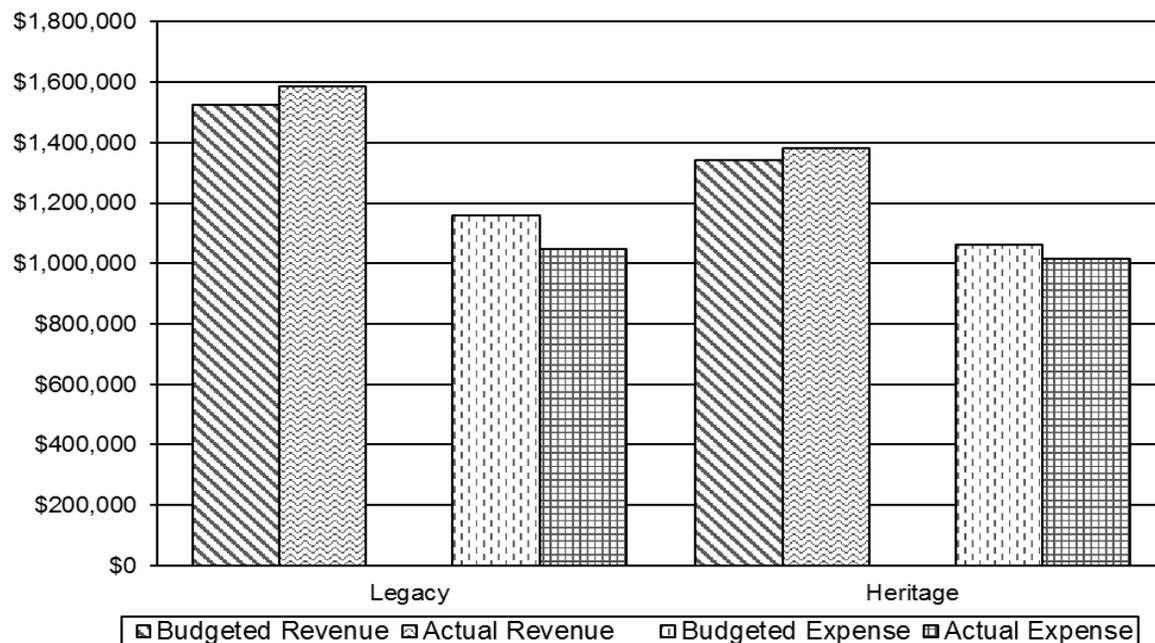
**Combined Golf Courses
2015 Operating Budget vs Actual**



The budget to actual revenue variance reflects increased sales mostly from driving range fees, cart rental fees, and merchandise as well as registrations for junior golf camp and lessons.

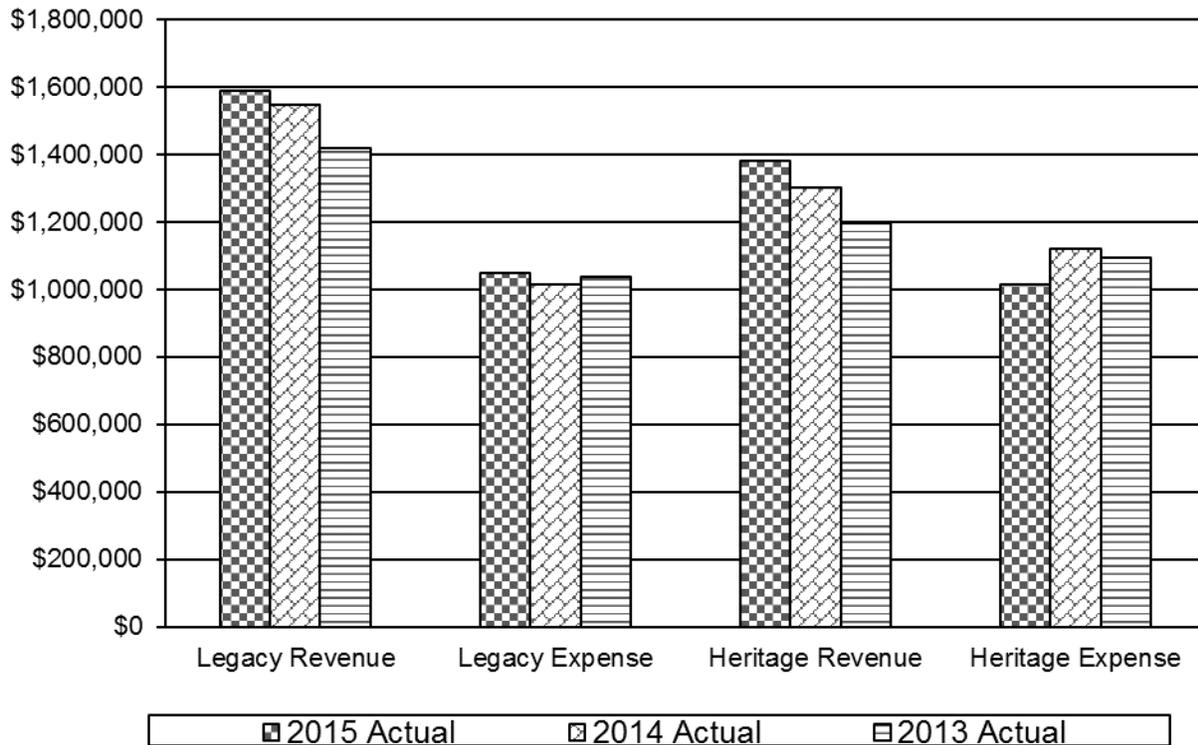
The following graphs represent the information for each of the golf courses.

**Legacy and Heritage Golf Course
2015 Operating Budget vs Actual**



Favorable budget to actual revenue variances reflect an increase in driving range fees, cart rental fees, merchandise sales and registration fees. Various golf course promotions have spurred sales at both courses.

Legacy and Heritage Golf Courses Operating Revenue and Expenditures 2013-2015



Revenues are up at both courses due to increased play and promotional programs. Expenses at Heritage are down due to regular salaries, utilities, and commodity purchases.

This financial report supports City Council’s Strategic Plan Goal of Financially Sustainable Government Providing 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 Nine Months Ending September 30, 2015**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Taxes	5,887,933	5,534,707		5,389,322	(145,385)	97.4%
Licenses & Permits	1,739,217	1,199,060		2,068,327	869,267	172.5%
Intergovernmental Revenue	5,599,670	3,851,322		4,341,328	490,006	112.7%
Charges for Services						
Recreation Services	7,075,498	5,360,497		5,747,403	386,906	107.2%
Other Services	9,871,075	6,672,798		7,171,307	498,509	107.5%
Fines	1,511,000	1,163,627		1,280,603	116,976	110.1%
Interest Income	75,000	57,455		92,757	35,302	161.4%
Miscellaneous	1,725,408	1,485,016	(1)	2,014,193	529,177	135.6%
Leases	401,779	317,737		317,737	0	100.0%
Interfund Transfers	70,882,725	53,738,469		53,738,469	0	100.0%
Other Financing Sources	577,947	577,946		577,946	0	100.0%
Sub-total Revenues	<u>105,347,252</u>	<u>79,958,634</u>		<u>82,739,392</u>	<u>2,780,758</u>	<u>103.5%</u>
Carryover	4,351,768	4,351,768		4,351,768	0	100.0%
Total Revenues	<u>109,699,020</u>	<u>84,310,402</u>		<u>87,091,160</u>	<u>2,780,758</u>	<u>103.3%</u>
Expenditures						
City Council	266,525	192,567		160,042	(32,525)	83.1%
City Attorney's Office	1,347,732	965,926		946,916	(19,010)	98.0%
City Manager's Office	2,374,421	1,680,882		1,388,922	(291,960)	82.6%
Central Charges	32,042,356	20,190,993		19,359,944	(831,049)	95.9%
General Services	6,364,645	4,473,769		4,201,094	(272,675)	93.9%
Finance	2,274,069	1,635,067		1,534,286	(100,781)	93.8%
Police	22,276,043	16,145,526		16,080,421	(65,105)	99.6%
Fire Emergency Services	12,851,780	9,204,770		9,108,951	(95,819)	99.0%
Community Development	4,862,380	3,498,337		3,305,195	(193,142)	94.5%
Public Works & Utilities	8,819,683	6,659,921	(2)	5,025,078	(1,634,843)	75.5%
Parks, Recreation & Libraries	16,219,386	11,758,715		11,891,467	132,752	101.1%
Total Expenditures	<u>109,699,020</u>	<u>76,406,473</u>		<u>73,002,316</u>	<u>(3,404,157)</u>	<u>95.5%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>7,903,929</u>		<u>14,088,844</u>	<u>6,184,915</u>	

(1) Miscellaneous revenue budget to actual variance due mostly to a timing difference in revenue received related to an IGA with Thornton.

(2) Public Works & Utilities expenditures budget to actual variance reflects savings in street maintenance/rehabilitation and street lights.

**City of Westminster
Financial Report
For Nine Months Ending September 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	37,656,343		40,752,440	3,096,097	108.2%
Sales Tx Audit Revenues	729,000	546,750		964,439	417,689	176.4%
S-T Rev. STX	<u>51,274,930</u>	<u>38,203,093</u>		<u>41,716,879</u>	<u>3,513,786</u>	109.2%
Use Tax						
Use Tax Returns	9,020,573	6,446,622		8,685,934	2,239,312	134.7%
Use Tax Audit Revenues	785,000	588,750		620,828	32,078	105.4%
S-T Rev. UTX	<u>9,805,573</u>	<u>7,035,372</u>		<u>9,306,762</u>	<u>2,271,390</u>	132.3%
Total STX and UTX	<u><u>61,080,503</u></u>	<u><u>45,238,465</u></u>		<u><u>51,023,641</u></u>	<u><u>5,785,176</u></u>	112.8%
Public Safety Tax						
PST Tax Returns	13,048,619	9,791,977		10,524,270	732,293	107.5%
PST Audit Revenues	308,500	231,375		316,932	85,557	137.0%
Total Rev. PST	<u><u>13,357,119</u></u>	<u><u>10,023,352</u></u>		<u><u>10,841,202</u></u>	<u><u>817,850</u></u>	108.2%
Interest Income	51,000	38,250		82,226	43,976	215.0%
Interfund Transfers	434,975	326,231		326,231	0	100.0%
Carryover	7,037,908	7,037,908		7,037,908	0	100.0%
Total Revenues	<u><u>81,961,505</u></u>	<u><u>62,664,206</u></u>		<u><u>69,311,208</u></u>	<u><u>6,647,002</u></u>	110.6%
Expenditures						
Central Charges	<u>81,961,505</u>	<u>63,230,606</u>		<u>63,230,606</u>	0	100.0%
Revenues Over(Under) Expenditures	<u><u>0</u></u>	<u><u>(566,400)</u></u>		<u><u>6,080,602</u></u>	<u><u>6,647,002</u></u>	

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2015**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Sales & Use Tax	5,379,727	4,052,152		4,516,008	463,856	111.4%
Intergovernmental Revenue	385,561	385,561		385,561	0	100.0%
Interest Income	10,000	7,500		11,389	3,889	151.9%
Miscellaneous	98,368	73,776		41,085	(32,691)	55.7%
Interfund Transfers	32,025	24,019		24,019	0	100.0%
Sub-total Revenues	<u>5,905,681</u>	<u>4,543,008</u>		<u>4,978,062</u>	<u>435,054</u>	109.6%
Carryover	745,468	745,468		745,468	0	100.0%
Total Revenues	<u>6,651,149</u>	<u>5,288,476</u>		<u>5,723,530</u>	<u>435,054</u>	108.2%
Expenditures						
Central Charges	5,023,027	3,460,038		3,270,104	(189,934)	94.5%
Park Services	1,628,122	1,412,692		1,257,291	(155,401)	89.0%
Total Expenditures	<u>6,651,149</u>	<u>4,872,730</u>		<u>4,527,395</u>	<u>(345,335)</u>	92.9%
Revenues Over(Under) Expenditures	<u>0</u>	<u>415,746</u>		<u>1,196,135</u>	<u>780,389</u>	

**City of Westminster
Financial Report
For Nine Months Ending September 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	56,250		85,730	29,480	152.4%
Intergovernmental Revenue	0	0	(1)	239,750	239,750	
Rates and Charges	49,200,891	37,580,263		34,603,539	(2,976,724)	92.1%
Miscellaneous	410,000	307,500		176,704	(130,796)	57.5%
Total Operating Revenues	49,685,891	37,944,013		35,105,723	(2,838,290)	92.5%
Operating Expenditures						
Central Charges	6,465,084	4,848,813		4,723,409	(125,404)	97.4%
Finance	662,357	472,261		454,732	(17,529)	96.3%
Public Works & Utilities	22,139,736	15,531,982	(2)	13,823,267	(1,708,715)	89.0%
Parks, Recreation & Libraries	152,467	132,341		125,535	(6,806)	94.9%
Information Technology	3,286,908	2,343,565		2,080,744	(262,821)	88.8%
Total Operating Expenditures	32,706,552	23,328,962		21,207,687	(2,121,275)	90.9%
Operating Income (Loss)	16,979,339	14,615,051		13,898,036	(717,015)	
Other Revenue and Expenditures						
Tap Fees	12,685,226	9,513,920	(3)	7,235,016	(2,278,904)	76.0%
Interest Income	360,500	270,375		303,790	33,415	112.4%
Sale of Assets	0	0		6,950	6,950	
Carryover	2,127,282	2,127,282		2,127,282	0	100.0%
Debt Service	(6,543,780)	(2,970,526)		(2,970,526)	0	100.0%
Reserve Transfer In	930,000	930,000		930,000	0	100.0%
Reserve Transfer Out	(1,642,567)	(1,642,567)		(1,642,567)	0	100.0%
Total Other Revenue (Expenditures)	7,916,661	8,228,484		5,989,945	(2,238,539)	
Revenues Over(Under) Expenditures	24,896,000	22,843,535	(4)	19,887,981	(2,955,554)	

(1) Build America Bonds interest rate subsidy.

(2) Reflects savings in personnel services from reallocation of staffing to City Manager's Office.

(3) Tap fee revenue flows are irregular based on development activity as well as quantity and size of meters being installed.

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

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2015**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	56,250		85,730	29,480	152.4%
Intergovernmental Revenue	0	0	(1)	239,750	239,750	
Rates and Charges	35,019,138	26,943,948		23,777,965	(3,165,983)	88.2%
Miscellaneous	400,000	300,000		170,579	(129,421)	56.9%
Total Operating Revenues	<u>35,494,138</u>	<u>27,300,198</u>		<u>24,274,024</u>	<u>(3,026,174)</u>	
Operating Expenditures						
Central Charges	4,503,673	3,377,755		3,249,549	(128,206)	96.2%
Finance	662,357	472,261		454,732	(17,529)	96.3%
Community Development	0	0		0	0	
Public Works & Utilities	15,513,630	10,686,740	(2)	9,316,703	(1,370,037)	87.2%
PR&L Standley Lake	152,467	132,341		125,535	(6,806)	94.9%
Information Technology	3,286,908	2,343,565		2,080,744	(262,821)	88.8%
Total Operating Expenditures	<u>24,119,035</u>	<u>17,012,662</u>		<u>15,227,263</u>	<u>(1,785,399)</u>	89.5%
Operating Income (Loss)	<u>11,375,103</u>	<u>10,287,536</u>		<u>9,046,761</u>	<u>(1,240,775)</u>	
Other Revenue and (Expenditures)						
Tap Fees	10,327,653	7,745,740	(3)	5,253,580	(2,492,160)	67.8%
Interest Income	277,500	208,125		218,168	10,043	104.8%
Sale of Assets	0	0		6,950	6,950	
Carryover	1,218,228	1,218,228		1,218,228	0	100.0%
Debt Service	(5,422,971)	(2,409,549)		(2,409,549)	0	100.0%
Reserve Transfer Out	(783,513)	(783,513)		(783,513)	0	100.0%
Total Other Revenues (Expenditures)	<u>5,616,897</u>	<u>5,979,031</u>		<u>3,503,864</u>	<u>(2,475,167)</u>	
Revenues Over(Under) Expenditures	<u>16,992,000</u>	<u>16,266,567</u>	(4)	<u>12,550,625</u>	<u>(3,715,942)</u>	

(1) Build America Bonds interest rate subsidy.

(2) Reflects savings in personnel services from reallocation of staffing to City Manager's Office.

(3) Tap fee revenue flows are irregular based on development activity as well as quantity and size of meters being installed.

**City of Westminster
Financial Report
For Nine Months Ending September 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	10,636,315		10,825,574	189,259	101.8%
Miscellaneous	10,000	7,500		6,125	(1,375)	81.7%
Total Operating Revenues	<u>14,191,753</u>	<u>10,643,815</u>		<u>10,831,699</u>	<u>187,884</u>	101.8%
Operating Expenditures						
Central Charges	1,961,411	1,471,058		1,473,860	2,802	100.2%
Public Works & Utilities	6,626,106	4,845,242		4,506,564	(338,678)	93.0%
Total Operating Expenditures	<u>8,587,517</u>	<u>6,316,300</u>		<u>5,980,424</u>	<u>(335,876)</u>	94.7%
Operating Income (Loss)	<u>5,604,236</u>	<u>4,327,515</u>		<u>4,851,275</u>	<u>523,760</u>	
Other Revenue and Expenditures						
Tap Fees	2,357,573	1,768,180		1,981,436	213,256	112.1%
Interest Income	83,000	62,250		85,622	23,372	137.5%
Carryover	909,054	909,054		909,054	0	100.0%
Debt Service	(1,120,809)	(560,977)		(560,977)	0	100.0%
Reserve Transfer In	930,000	930,000		930,000	0	100.0%
Reserve Transfer Out	(859,054)	(859,054)		(859,054)	0	100.0%
Total Other Revenues (Expenditures)	<u>2,299,764</u>	<u>2,249,453</u>		<u>2,486,081</u>	<u>236,628</u>	
Revenues Over(Under) Expenditures	<u>7,904,000</u>	<u>6,576,968</u>	(1)	<u>7,337,356</u>	<u>760,388</u>	

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

**City of Westminster
Financial Report
For Nine Months Ending September 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	2,536,500		2,499,036	(37,464)	98.5%
Interest Income	26,000	19,500		28,920	9,420	148.3%
Miscellaneous	0	0	(1)	456,623	456,623	
Other Financing Sources	4,610,000	4,610,000	(2)	4,610,000	0	100.0%
Sub-total Storm Drainage Revenues	<u>8,018,000</u>	<u>7,166,000</u>		<u>7,594,579</u>	428,579	106.0%
Carryover	44,204	44,204		44,204	0	100.0%
Total Revenues	<u>8,062,204</u>	<u>7,210,204</u>		<u>7,638,783</u>	428,579	105.9%
Expenditures						
General Services	86,200	53,789		32,431	(21,358)	60.3%
Community Development	201,396	148,630		131,219	(17,411)	88.3%
PR&L Park Services	200,000	130,000		84,791	(45,209)	65.2%
Public Works & Utilities	338,404	199,320		151,984	(47,336)	76.3%
Total Expenditures	<u>826,000</u>	<u>531,739</u>		<u>400,425</u>	(131,314)	75.3%
Revenues Over(Under) Expenditures	<u>7,236,204</u>	<u>6,678,465</u>	(3)	<u>7,238,358</u>	559,893	

(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 Nine Months Ending September 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	2,861,683		2,962,998	101,315	103.5%
Miscellaneous	4,180	3,642		4,180	538	114.8%
Total Revenues	<u>3,287,930</u>	<u>2,865,325</u>		<u>2,967,178</u>	<u>101,853</u>	103.6%
Operating Expenditures						
Central Charges	186,184	140,720	(1)	169,089	28,369	120.2%
Recreation Facilities	2,651,862	2,081,550		1,893,774	(187,776)	91.0%
Total Expenditures	<u>2,838,046</u>	<u>2,222,270</u>		<u>2,062,863</u>	<u>(159,407)</u>	92.8%
Operating Income (Loss)	<u>449,884</u>	<u>643,055</u>		<u>904,315</u>	<u>261,260</u>	
Other Revenues and Expenditures						
Interest Income	0	0		9,551	9,551	
Other Financing Use	(9,260)	(7,152)		(7,152)	0	100.0%
Debt Service	(819,282)	(354,588)		(354,588)	0	100.0%
Interfund Transfers In	519,969	389,977		389,977	0	100.0%
Interfund Transfers Out	(84,598)	(84,598)		(84,598)	0	100.0%
Carryover	158,287	158,287		158,287	0	100.0%
Total Other Revenue (Expenditures)	<u>(234,884)</u>	<u>101,926</u>		<u>111,477</u>	<u>9,551</u>	
Revenues Over(Under) Expenditures	<u>215,000</u>	<u>744,981</u>	(2)	<u>1,015,792</u>	<u>270,811</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 Nine Months Ending September 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	1,521,623		1,584,996	63,373	104.2%
Miscellaneous	2,190	1,907		2,190	283	114.8%
Total Revenues	<u>1,749,174</u>	<u>1,523,530</u>		<u>1,587,186</u>	<u>63,656</u>	104.2%
Operating Expenditures						
Central Charges	98,935	74,498	(1)	90,591	16,093	121.6%
Recreation Facilities	1,344,018	1,085,970		957,631	(128,339)	88.2%
Total Expenditures	<u>1,442,953</u>	<u>1,160,468</u>		<u>1,048,222</u>	<u>(112,246)</u>	90.3%
Operating Income (Loss)	<u>306,221</u>	<u>363,062</u>		<u>538,964</u>	<u>175,902</u>	
Other Revenues and Expenditures						
Interest Income	0	0		5,226	5,226	
Other Financing Use	(4,590)	(4,662)		(4,662)	0	100.0%
Debt Service	(160,320)	(142,425)		(142,425)	0	100.0%
Interfund Transfers Out	(84,598)	(84,598)		(84,598)	0	100.0%
Carryover	66,287	66,287		66,287	0	100.0%
Total Other Revenue (Expenditures)	<u>(183,221)</u>	<u>(165,398)</u>		<u>(160,172)</u>	<u>5,226</u>	
Revenues Over(Under) Expenditures	<u>123,000</u>	<u>197,664</u>	(2)	<u>378,792</u>	<u>181,128</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 Nine Months Ending September 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	1,340,060		1,378,002	37,942	102.8%
Miscellaneous	1,990	1,735		1,990	255	114.7%
Total Revenues	1,538,756	1,341,795		1,379,992	38,197	102.8%
Operating Expenditures						
Central Charges	87,249	66,222	(1)	78,498	12,276	118.5%
Recreation Facilities	1,307,844	995,580		936,143	(59,437)	94.0%
Total Expenditures	1,395,093	1,061,802		1,014,641	(47,161)	95.6%
Operating Income (Loss)	143,663	279,993		365,351	85,358	
Other Revenues and Expenditures						
Interest Income	0	0		4,325	4,325	
Other Financing Use	(4,670)	(2,490)		(2,490)	0	100.0%
Debt Service	(658,962)	(212,163)		(212,163)	0	100.0%
Interfund Transfers	519,969	389,977		389,977	0	100.0%
Carryover	92,000	92,000		92,000	0	100.0%
Total Other Revenue (Expenditures)	(51,663)	267,324		271,649	4,325	
Revenues Over(Under) Expenditures	92,000	547,317	(2)	637,000	89,683	

(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 SEPTEMBER 2015**

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S/TARGET	499,925	9,779	509,704	464,607	15,948	480,555	8	(39)	6
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	330,102	1,301	331,403	359,427	1,529	360,956	(8)	(15)	(8)
SHOPS AT WALNUT CREEK 104TH & REED TARGET	264,278	4,696	268,974	256,727	1,499	258,226	3	213	4
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	258,106	653	258,759	250,545	1,251	251,796	3	(48)	3
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	201,239	855	202,094	175,494	1,163	176,657	15	(26)	14
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	192,650	682	193,332	190,661	392	191,053	1	74	1
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	190,076	727	190,803	184,397	633	185,030	3	15	3
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	181,294	1,705	182,999	175,347	3,050	178,397	3	(44)	3
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	134,061	14,884	148,945	186,885	59,579	246,464	(28)	(75)	(40)
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	131,255	580	131,835	127,686	373	128,059	3	55	3
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	125,836	1,016	126,852	130,704	6,484	137,188	(4)	(84)	(8)
BRADBURN VILLAGE 120TH & BRADBURN WHOLE FOODS	114,387	408	114,795	14,976	48	15,024	664	750	664
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	114,242	178	114,420	67,370	104	67,474	70	71	70

**CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF SEPTEMBER 2015**

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN LOWE'S	107,715	470	108,185	117,514	2,852	120,366	(8)	(84)	(10)
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	94,512	306	94,818	93,860	149	94,009	1	105	1
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	59,925	107	60,032	63,242	369	63,611	(5)	(71)	(6)
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	58,798	415	59,213	54,615	592	55,207	8	(30)	7
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	54,974	3,955	58,929	52,942	405	53,347	4	877	10
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINTA	48,558	2,595	51,153	21,277	1,166	22,443	128	123	128
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	47,344	656	48,000	85,303	354	85,657	(44)	85	(44)
NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART	46,544	194	46,738	44,202	257	44,459	5	(25)	5
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	8,911	34,947	43,858	15,225	30,439	45,664	(41)	15	(4)
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	35,107	92	35,199	34,326	108	34,434	2	(15)	2
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	34,323	559	34,882	33,504	335	33,839	2	67	3
RANCHO PLAZA SE CORNER 72ND & FEDERAL WALMART MARKET	34,664	118	34,782	8,280	0	8,280	319	--	320
TOTALS	3,368,826	81,878	3,450,704	3,209,116	129,079	3,338,195	5	(37)	3

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

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	4,409,196	189,717	4,598,913	4,057,072	135,710	4,192,782	9	40	10
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	2,886,314	24,948	2,911,262	3,019,175	14,454	3,033,629	(4)	73	(4)
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,546,377	6,438	2,552,815	2,401,265	42,509	2,443,774	6	(85)	4
SHOPS AT WALNUT CREEK 104TH & REED TARGET	2,425,920	26,705	2,452,625	2,298,204	16,141	2,314,345	6	65	6
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,855,874	14,466	1,870,340	1,783,762	10,971	1,794,733	4	32	4
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,665,611	11,038	1,676,649	1,596,824	12,986	1,609,810	4	(15)	4
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,646,943	19,476	1,666,419	1,586,749	22,220	1,608,969	4	(12)	4
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,578,871	13,049	1,591,920	1,580,914	5,857	1,586,771	0	123	0
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,424,149	181,752	1,605,901	1,394,864	244,528	1,639,392	2	(26)	(2)
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,342,958	35,251	1,378,209	1,110,706	36,873	1,147,579	21	(4)	20
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,313,853	13,497	1,327,350	1,235,757	6,851	1,242,608	6	97	7
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	944,845	3,422	948,267	844,054	5,108	849,162	12	(33)	12
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN LOWE'S	839,082	16,513	855,595	746,905	6,231	753,136	12	165	14

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

Center Location Major Tenant	Current Month			Last Year			Percentage Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	759,402	13,637	773,039	636,406	7,904	644,310	19	73	20
BRADBURN VILLAGE 120TH & BRADBURN WHOLE FOODS	667,803	70,176	737,979	150,520	1,555	152,075	344	4,413	385
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	524,274	1,764	526,038	585,452	5,120	590,572	(10)	(66)	(11)
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	496,042	5,168	501,210	533,689	3,404	537,093	(7)	52	(7)
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	478,565	16,939	495,504	444,745	6,451	451,196	8	163	10
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	461,621	7,610	469,231	438,768	8,531	447,299	5	(11)	5
NORTHVIEW 92ND AVE YATES TO SHERIDAN H MART	401,160	5,579	406,739	378,154	4,751	382,905	6	17	6
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	338,799	6,810	345,609	313,094	2,679	315,773	8	154	9
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	317,471	24,264	341,735	302,918	5,033	307,951	5	382	11
WILLOW RUN 128TH & ZUNI SAFEWAY	281,033	1,652	282,685	303,528	1,839	305,367	(7)	(10)	(7)
RANCHO PLAZA SE CORNER 72ND & FEDERAL WALMART MARKET	272,408	5,133	277,541	61,091	358	61,449	346	1,334	352
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINTA	267,658	46,142	313,800	135,994	110,086	246,080	97	(58)	28
TOTALS	30,146,229	761,146	30,907,375	27,940,610	718,150	28,658,760	8	6	8



Agenda Memorandum

City Council Meeting
October 26, 2015



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

Recommended City Council Action

Accept the Third 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 3rd 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 third quarter of 2015, Staff has noted the following summary information:

- Four of the seven claims reported in the third 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	3rd Quarter 2015			YTD Total
	Total Claims	Open	Closed	
Fire	0	0	0	1
General Services	0	0	0	2
Parks, Recreation and Libraries (PRL)	1	0	1	10
Police (PD)	3	3	0	8
Public Works and Utilities (PWU) - Street Maintenance	3	0	3	9
Public Works and Utilities (PWU) - Utility Field Operations	0	0	0	2
TOTAL	7	3	4	32

Risk Management supports Council’s Strategic Plan goal of “Financially Sustainable Government Providing 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 – July through September 2015

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2015-0216	7/5/2015	PRL	Cheryl Steinberg	6101 W 95th Ave., Westminster CO 80031	Large tree limb from a tree on City property fell and damaged claimant's property		Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2015-0235	7/17/2015	PD	Billy Lee	4587 Maroon Cr., Broomfield CO 80023	Claimant's vehicle was accidentally damaged when Westminster Police officers were attempting to arrest a suspect.		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.
2015-0262	8/6/2015	PWU - Streets	Eric Grigg	10701 N Pecos Apt 2007, Northglenn CO 80234	Claimant's vehicle tire and rim were damaged when he hit a reoccurring pothole.	\$ 133.08	Closed	

Quarterly Insurance Claims Report – July through September 2015

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2015-0274	8/10/2015	PD	Brian Doehler	8630 Carr Loop, Westminster CO 80005	Claimant's home was damaged during an altercation between Westminster Police officers and a suspect.	\$ 1,000.00	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.
2015-0307	9/19/2015	PD	Debbie and Bobby Sena	12103 Melody Drive 16-204, Westminster CO 80234	Claimants' property was damaged when Westminster Police officers had to gain access to their unit while chasing a suspect.		Open	CIRSA investigating

Quarterly Insurance Claims Report – July through September 2015

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
CLAIMS SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 3rd QUARTER 2015:								
2015-0217	1/3/2015	PWU - Streets	Amanda Petrovich	1405 S Sierra Dr., Castle Rock CO 80104	Claimant's attorney alleges claimant was injured in a vehicle accident due to inadequate maintenance of a construction zone at U.S. Highway 36 and Sheridan Blvd.		Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. Construction zone was CDOT responsibility.
2015-0225	1/7/2015	PWU - Streets	Joe Bernal	9595 Teller St., Broomfield CO 80021	Claimant's attorney alleges claimant was injured in a vehicle accident on eastbound U.S. Highway 36 at Federal Blvd. due to a dangerous accumulation of snow and ice.		Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. Snow removal on U.S. Highway 36 is CDOT responsibility.
					TOTAL	\$ 1,133.08		



Agenda Item 8 C

Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Revised Employment Agreement with Donald M. Tripp

Prepared By: Debbie Mitchell, General Services Director

Recommended City Council Action

Authorize the Mayor to execute a revised employment agreement with Donald M. Tripp for his services as City Manager for 2016 with an effective date of January 1, 2016, and an automatic renewal for 2017, 2018, 2019 and 2020 unless terminated pursuant to the terms of the agreement.

Summary Statement

- City Council is requested to approve a revised Employment Agreement with Donald M. Tripp for services as City Manager beginning January 1, 2016. The agreement will be automatically renewed four additional years unless it is terminated by City Council or Mr. Tripp in accordance with the termination section of the agreement.
- City Council met with Mr. Tripp for his annual performance appraisal and salary review on October 5, 2015. The attached proposed agreement reflects Council's direction with regard to the renewal of the current agreement.
- Under the proposed revised agreement, Mr. Tripp's combined 2016 salary and deferred compensation will be \$231,125, which represents a 7.5 percent increase over his 2015 combined compensation.
- No additional modifications have been made to the existing agreement with the exception of the effective dates. If approved, the proposed contract between Mr. Tripp and the City will be renewed automatically unless terminated pursuant to the terms of the agreement for the years of 2016 through 2020.

Expenditure Required: \$231,125 plus benefits

Source of Funds: General Fund – City Manager's Office Budget

Policy Issue

Should City Council continue its employment agreement with Donald M. Tripp for his services as City Manager for 2016 through 2020?

Alternative

Council could make adjustments to the employment agreement with Mr. Tripp.

Background Information

Mr. Tripp has extensive experience as an executive leader. He has served the City of Westminster since 2012 as the Director of Parks, Recreation and Libraries and has been employed as City Manager since February 9, 2015. Under Mr. Tripp's leadership, the City continues to use City Council's Strategic Plan to guide the City's ongoing activities. Mr. Tripp continues to champion the City organization's key values of service, pride, integrity, responsibility, innovation and teamwork (SPIRIT). Under his leadership, the City continues to be a leader on many fronts and enjoys an excellent reputation nationwide for the quality of its facilities and programs.

City Council met with Mr. Tripp on October 5, 2015 to review his job performance during the past eight months. The proposed City Manager's employment agreement reflects City Council's direction with regard to his annual salary for 2016. The revised agreement will provide for a combined salary and deferred compensation of \$231,125, a 7.5 percent increase from his 2015 salary. No additional modifications have been made to the existing agreement with the exception of the effective dates. If approved, the proposed contract between Mr. Tripp and the City will be renewed automatically unless it is terminated by City Council or by Mr. Tripp in accordance with the agreement provisions.

The employment agreement allows the City Manager to designate a portion of his salary as deferred compensation up to the maximum allowed under federal law. As in previous years, the proposed employment agreement with City Manager Donald M. Tripp provides that, except in those cases where the agreement provides for a different benefit level, the City Manager will receive the same fringe benefits as those extended to department heads.

Funds are available in the 2016 Budget to cover the expense for the salary and fringe benefits described in the agreement.

The continuation of an employment agreement with Mr. Tripp supports all six of City Council's Strategic Plan Goals by ensuring the City organization will continue to be managed by a highly skilled and experienced chief executive.

Respectfully submitted,

Stephen P. Smithers
Deputy City Manager

Attachment

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January, 2016, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "the CITY" as party of the first part, and DONALD M. TRIPP, hereinafter called "EMPLOYEE", as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to continue employing the services of DONALD M. TRIPP, as City Manager of the City of Westminster as provided by City Charter, Chapter IV, Section 7; and

WHEREAS, it is the desire of the City Council of the CITY (the "City Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to accept such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE, and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties or when the CITY may desire to otherwise terminate his employ; and

WHEREAS, EMPLOYEE has accepted employment as City Manager of the CITY.

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

SECTION 1. DUTIES:

A. The CITY hereby agrees to continue the employment of EMPLOYEE as City Manager of the CITY to perform the duties and functions specified in Section 4.8 of the City Charter and such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. Except as otherwise expressly provided in this Agreement, EMPLOYEE shall be subject to the City of Westminster Personnel Policies and Rules, dated January 12, 2015, as amended ("Personnel Policies and Rules") or any amendments to the Personnel Policies and Rules made during the term of this agreement.

SECTION 2. TERM:

A. It is the intent of the City Council and EMPLOYEE that EMPLOYEE will serve as City Manager for the calendar years of 2016 through 2020, with this Agreement automatically renewing annually within that term provided there is a corresponding annual appropriation. EMPLOYEE agrees to remain in the exclusive employ of the CITY. Further, EMPLOYEE agrees not to become employed by any other employer until this Agreement is terminated. Notwithstanding the foregoing, the term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the services of EMPLOYEE at any time and for any reason, subject only to the provisions set forth in Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3 of this Agreement.

D. This Agreement expires December 31, 2016, and, subject to annual appropriation, will renew for annual terms thereafter until final expiration on December 31, 2020, unless notice of non-renewal for the subsequent year is given on or before October 31st of the then current term, in which case the Severance Payment described in Section 3(A) below shall apply.

SECTION 3. TERMINATION AND SEVERANCE PAYMENT:

A. In the event the City Council by majority vote decides to terminate EMPLOYEE's employment with the CITY before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Manager, then and in that event, the CITY agrees to pay EMPLOYEE a lump sum cash payment equal to his Base Salary for the ensuing twelve (12) months, plus the pro rata share of the amount of deferred compensation to which EMPLOYEE is entitled based on his termination date (the "Severance Payment."). In the event the EMPLOYEE is terminated, the CITY shall be obligated to pay the Severance Payment unless, upon unanimous vote of City Council, Severance Payment is withheld.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a written suggestion by at least four (4) members of the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction and be entitled to the Severance Payment as described in subsection A of this Section 3.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY no less than ninety (90) days' notice in advance in writing, and this agreement shall terminate on the effective date of the resignation.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this Section 3.

E. In the event this Agreement is not renewed by the City Council by execution of a new agreement with EMPLOYEE after final expiration of this Agreement on December 31, 2020, such non-renewal shall be considered a termination as provided for in Section 3(A) hereof and shall entitle EMPLOYEE to the Severance Payment

SECTION 4. SALARY AND EVALUATIONS:

A. Effective, January 1, 2016, and subject to annual appropriation, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual gross salary ("Gross Salary") of \$231,125, which consists of a base salary ("Base Salary") and the amount EMPLOYEE elects to take as deferred compensation. The Base Salary portion of this amount shall be payable in installments at the same time as other employees of the CITY are paid. EMPLOYEE may designate a portion of this amount not to exceed the amount allowed by Federal Law to be paid as a lump sum payment to EMPLOYEE'S deferred compensation plan.

B. The CITY agrees to review EMPLOYEE'S performance annually, no later than October 31st of each year. Salary evaluation each year shall be at the discretion of the CITY.

SECTION 5. HOURS OF WORK:

A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours, in compliance with the Personnel Policies and Rules.

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the expressed prior approval of the City Council, and such consulting or other non-City connected business shall not constitute a conflict of any nature with EMPLOYEE'S work as City Manager. The City Council shall be the sole judge of such conflicts, and its determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. The CITY shall pay EMPLOYEE a monthly car allowance of \$750 to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

The CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

SECTION 8. PROFESSIONAL DEVELOPMENT:

The CITY hereby agrees to budget and to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for the CITY, including but not limited to the International City/County Management Association, the Colorado City/County Management Association, the Colorado Municipal League, and such other national, regional, state and local governmental groups and committees thereof which EMPLOYEE serves as a member.

SECTION 9. GENERAL EXPENSES:

The CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

A. The CITY shall provide EMPLOYEE with all benefits that are provided to all other Department Head level employees by the Personnel Policies and Rules, except that when such benefits are in conflict with this Agreement, this Agreement shall control.

B. EMPLOYEE shall accrue General Leave at the rate prescribed for "over 20" years of continuous municipal service in the City Code and Personnel Policies and Rules and shall be able to use such accrued leave in accordance with the rate of use accorded to employees in the "over 20" category.

- o Additional initial employment package benefits the CITY agrees to provide in 2015 include Administrative Leave of 160 hours, allowable for roll over to 2016.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter or any other law.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.

C. This agreement becomes effective on January 1, 2016, and if automatically renewed and accompanied by a corresponding annual appropriation, shall be in effect through December 31, 2020.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. Nothing in this Agreement shall be construed as creating a multiple fiscal year obligation on the part of the CITY within the meaning of Colorado Constitution Article X, Section 20.

F. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement.

APPROVED by Westminster City Council on this 26th day of October, 2015.

Herb Atchison, Mayor

ATTEST:

City Clerk

Donald M. Tripp

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: GIS Support Maintenance

Prepared By: Dave Murray, GIS Coordinator

Recommended City Council Action

Authorize the City Manager to execute a contract with Environmental Systems Research Institute for software licensing in the amount of \$169,500 to be paid in three yearly payments of \$56,500.

Summary Statement

- The Geographic Information System (GIS) is a computer mapping resource that is used widely throughout the City. For over 23 years, the system has grown in sophistication and integration along with the City’s Information Technology infrastructure. All City Departments use the GIS products and services. The GIS has become an integral part of the way the City provides services to its customers.
- Environmental Systems Research Institute (ESRI) has been the City’s GIS software vendor since 1992. It is a privately held \$3 billion dollar California corporation that has been in business since 1969. ESRI is the leader in Geographic Information Systems computer software development with over 300,000 worldwide customers and a 40% U.S. market share. Its main line of business is to develop computer software that uses databases to store and display information about real-world features. This is done through computer software coding using industry standards and practices. The City has built mission critical applications that are propriety to ESRI software, and that is why the City does not consider sources other than ESRI.
- ESRI has renewed its offer to extend its Small Government Enterprise Licensing Agreement (SGELA) for an additional three years. This license covers unlimited use of most of the ESRI software products. The license is paid yearly in the amount of \$56,500 and can be cancelled at any time. The cost will be covered by several departments. The contract is for a term of three years.
- By approving this license, the City will continue to enjoy the significant benefits that the GIS provides to the community.

Expenditure Required: \$56,500 in 2016; \$56,500 in 2017 subject to annual appropriations: and \$56,500 in 2018 subject to annual appropriations

Source of Funds (Yearly): General Fund – Street Operations Division, Parks, Recreation & Libraries, Fire, Police, Community Development Block Grants Budgets \$11,700
General Capital Improvement Fund – GIS Project \$29,200
Water Fund – UPE Division and Utilities Operations Division Operating Budgets \$15,600

Policy Issue

Should the City contract with ESRI for a three year term, through its Small Government Enterprise Licensing Agreement?

Alternatives

1. Revert to the ESRI licensing model that was in place before 2013. The City paid \$30,300 for individual desktop and server licenses in 2012. This does not include the extensive use of the ESRI cloud based GIS that the City has implemented since the beginning of 2013. Many of the City's current web maps would have to be redesigned using custom programming.
2. Replace the ESRI GIS software with another vendor such as Intergraph or Pitney Bowes. These companies do not have the full range of capabilities that ESRI provides. There would also be substantial training costs involved with switching vendors. The current level of service that the GIS customers enjoy would be disrupted as the staff becomes familiar with the new software. This transition would take a very significant investment of time to implement.
3. Adopt open source GIS software to conduct the City's mapping operations. While open source GIS software has certainly matured in the last few years, it would be quite disruptive to the current operations to attempt to implement open source programs at this time. The City's Storm Water Management System requires specialized programming processes that are proprietary to ESRI. This program calculates over \$260,000 per month in storm water billing impervious fees and would have to be re-written.

The staff recommends that this Small Government Enterprise License Agreement (SGELA) contract be approved by the Westminster City Council.

Background Information

The City of Westminster has been a customer of Environmental Systems Research Institute (ESRI) since 1992. The City first started on mainframe UNIX computers and has moved to Windows based desktops and finally web based mapping. The value that the GIS products and services deliver is recognized and utilized extensively by the Police, Fire, Finance, Public Works and Utilities, Community Development and Parks Recreation and Libraries Departments. This program has both internal and external users that gain a much clearer understanding to the City and its policies through the use of GIS mapping. It truly makes a positive difference in how the City provides services.

The current licensing contract with ESRI is set to expire at the end of January, 2016. The 2015 licensing payment was \$54,000. ESRI bases software costs for enterprise licenses on current jurisdiction population. Westminster is in the medium sized government classification and below the threshold of 115,000 population. Once above this population number, the City will enter into a different tier and the support costs will be much higher.

The approval of this contract gives the City unlimited licenses of the most used desktop and server products. In addition, it allows for 200 online secured mobile users to updated and create content in the ESRI web based cloud hosting service. This is where the software vendor houses the hardware and software to perform the geographic analysis and maps. If the City agrees with the terms of the Small Government Enterprise Licensing Agreement (SGELA), the cost would be \$56,500 per year for 2016 and the same amount in 2017 and 2018, subject to appropriation. During each of the years in this three year contract, the City can opt-out and revert to the pre-2013 licensing structure and payment amount. This previous licensing model was based on individual software quantities and no online web maps. The following departments will share the SGELA licensing cost annually for three years:

Community Development	\$29,700
Public Works and Utilities	\$19,600
Parks Recreation and Libraries	\$ 3,000
Fire	\$ 2,200
Police	\$ 2,000
TOTAL	\$56,500

The GIS Section has recognized the growing demand for GIS mapping data and services. The ability to quickly add new users through the existing SGELA has made GIS administration more efficient. In addition, staff can now train as many users as needed without worrying about service disruptions. The list of products included in the SGELA is listed on page 1 of the contract.

The online and mobile components to the GIS are the fast growing use of this technology at the City. ESRI provides with this license a number of ways to make the City's GIS data available through smart phones, laptops and tablets. Over 80 of the staff have signed on to this service which provides a platform for field crews and management to see utility infrastructure status in the field. Westminster uses the ESRI "ArcGIS" Online website to provide an easy-to-use platform for web map development. This allows for GIS staff and management to quickly provide the maps and data for specific applications.

The contract has been reviewed by the City Attorney's Office and the IT Department. Other jurisdictions in the metro area that have adopted this licensing model include the City of Arvada, the City and County of Broomfield, the City of Commerce City and the City of Brighton. These entities have also recognized the value that this model delivers to their organizations.

The GIS program supports the City's 2015 Strategic Plan Goals of *Visionary Leadership, Effective Governance and Proactive Regional Collaboration; Vibrant, Inclusive and Engaged Community; Dynamic, Diverse Economy; Beautiful, Desirable, Safe and Environmentally Responsible City; and Financially Sustainable Government Providing Excellence in City Services.*

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Small Enterprise License Agreement
Amendment No. 1 to License Agreement



Quotation # 20474100

Date: August 17, 2015

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
11200 Westheimer Rd Suite 630
Houston, TX 77042
Phone: (713) 401-0658 Fax: (713) 782-5958
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Customer # 1549 Contract #

City of Westminster
Community Development Dept
4800 W 92nd Ave
Westminster, CO 80031

ATTENTION: David Murray
PHONE: (303) 658-2400
FAX: (303) 658-3922

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 08/17/2015 To: 11/15/2015

Material	Qty	Description	Unit Price	Total
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement - YEAR 1 - to be paid on or before 1/31/2016	55,500.00	55,500.00
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement - YEAR 1 - to be paid on or before 1/31/2016	1,000.00	1,000.00
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement - YEAR 2 - - to be paid on or before 1/31/2017	55,500.00	55,500.00
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement - YEAR 2 - - to be paid on or before 1/31/2017	1,000.00	1,000.00
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement - YEAR 3 - - to be paid on or before 1/31/2018	55,500.00	55,500.00
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement - YEAR 3 - - to be paid on or before 1/31/2018	1,000.00	1,000.00
			Item Total:	169,500.00
			Subtotal:	169,500.00
			Sales Tax:	0.00
			Estimated Shipping & Handling(2 Day Delivery) :	0.00
			Contract Pricing Adjust:	0.00
			Total:	\$169,500.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Nicholas Popovich	Email: npopovich@esri.com	Phone: (713) 401-0658 x5804
<p>The items on this quotation are subject to the terms set forth herein and the terms of your signed agreement with Esri, if any, or, where applicable, Esri's standard terms and conditions at www.esri.com/legal, which are incorporated by reference. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Acceptance is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's products and services.</p> <p><i>If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630</i></p>		



Esri Use Only:
 Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

**SMALL ENTERPRISE LICENSE AGREEMENT
 COUNTY AND MUNICIPALITY
 (E214-3)**

This Agreement is by and between the organization identified in the Quotation ("Licensee") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Licensee's use of Products and incorporates by reference (i) the Quotation and (ii) the License Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the License Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, and the USA federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
 List of Products**

Unlimited Quantities

Desktop Software and Extensions

ArcGIS for Desktop Advanced
 ArcGIS for Desktop Standard
 ArcGIS for Desktop Basic
 ArcGIS for Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager for Desktop, ArcGIS Data Reviewer

Server Software and Extensions

ArcGIS for Server Workgroup and Enterprise (Advanced, Standard, and Basic)
 ArcGIS for Server Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager for Server, ArcGIS Image Extension for Server

Developer Tools

ArcGIS Engine
 ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Engine Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics
 ArcGIS Runtime Standard
 ArcGIS Runtime Standard Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Network Analyst

Limited Quantities

One (1) Annual Subscription to Esri Developer Network (EDN) Standard*
 One (1) Esri CityEngine Advanced Single Use License
 One (1) Esri CityEngine Advanced Concurrent Use License
 One (1) ArcGIS Online Subscription

OTHER BENEFITS

One (1) ArcGIS Online subscription with specified named users and credits as determined in the program description	Level 4
Number of Esri User Conference registrations provided annually	4
Number of Tier 1 Help Desk individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested**	2
Virtual Campus Annual User License allowance	10,000
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement (Discount does not apply to Small Enterprise Training Package.)	

*Maintenance is not provided for these items.

**Additional sets of backup media may be purchased for a fee.

Licensee may accept this Agreement by signing and returning the whole Agreement with a sales quotation, purchase order, or other document ("Ordering Document") that matches the Quotation and references this Agreement. **ADDITIONAL OR CONFLICTING TERMS IN LICENSEE'S ORDERING DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** Unless otherwise mutually agreed to, this Agreement is effective as of the date of the last signature on the signature page ("Effective Date") or, if no date is provided with the signature, the date of Esri's receipt of Licensee's Ordering Document incorporating this Agreement by reference.

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Licensee)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

LICENSEE CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the License Agreement, the following definitions apply to this Agreement:

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Licensee's organization(s).

"Fee" means the fee set forth in the Quotation.

"Incident" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"License Agreement" means (i) the applicable license agreement incorporated by this reference that is found at <http://www.esri.com/legal/software-license>; composed of the General License Terms and Conditions (E204) and Exhibit 1, Scope of Use (E300); and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed license agreement between the parties that supersedes such electronically acknowledged license agreement.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Licensee during the term of this Agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Licensee.

"Technical Support" means the technical assistance for attempting resolution of a reported Incident through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Licensee's point of contact(s) to provide all Tier 1 Support within Licensee's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Technical Support provided to the Tier 1 Help Desk when an Incident cannot be resolved through Tier 1 Support. Licensee will receive Tier 2 Support from Esri.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Licensee a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the term provided on the first page (i) for the applicable Fee and (ii) in accordance with the License Agreement.

2.2 Consultant Access. Esri grants Licensee the right to permit Licensee's consultants or contractors to use the Products exclusively for Licensee's benefit. Licensee will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Licensee. Access to or use of Products by consultants or contractors not exclusively for Licensee's benefit is prohibited. Licensee may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor Servers for the benefit of Licensee.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. The term of this Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified on the signature page, unless this Agreement is terminated earlier as provided herein. Licensee is only authorized to use Products during the term of this Agreement. For an Agreement with a limited term, Esri does not grant Licensee an indefinite or perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses and all Maintenance, Esri Virtual Campus access, and Esri User Conference registrations terminate on expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will be given a period of thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if Licensee is unable to secure

funding through the legislative or governing body's approval process.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Licensee. Licensee may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Licensee via written notice for incorporation into the Products schedule at no additional charge. Licensee's use of new or updated Products requires Licensee to adhere to applicable additional or revised terms and conditions of the License Agreement.

4.2 Product Life Cycle. During the term of this Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <http://support.esri.com/en/content/productlifecycles>. Updates for Products in the mature and retired phases may not be available. Licensee may continue to use Products already Deployed for the term of this Agreement, but Licensee will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits specified in the most current applicable Esri Standard Maintenance Program document (found at <http://www.esri.com/legal>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Licensee may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Licensee will provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.

4. The Tier 1 Help Desk will be the initial points of contact for all questions and reporting of an Incident. The Tier 1 Help Desk will obtain a full description of each reported Incident and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Incident. The Tier 1 Help Desk may also use any other information and databases that may be developed to satisfactorily resolve the Incident.
5. If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Licensee may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
4. Tier 2 Support will attempt to resolve the Incident submitted by Tier 1 Help Desk.
5. When the Incident is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Licensee's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Licensee will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Licensee will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration date of this Agreement, Licensee will provide Esri with a written report detailing all Deployments. Upon request, Licensee will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Licensee will issue an Ordering Document upon execution of this Agreement and annually thereafter in accordance with the Quotation. Payment will be due and payable within thirty (30) calendar days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) calendar days of execution of this Agreement. Esri's federal ID number is 95-2775-732.
- b. Upon receipt of the initial Ordering Document from Licensee, Esri will authorize download of the Products to Licensee for Deployment. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. For those entities that avoid sales tax by downloading deliverables, request for delivery or receipt of tangible media may cause the Fee to be subject to taxes. Licensee acknowledges that should such taxes become due, Esri has a right to invoice and Licensee will pay any such sales or use tax associated with its receipt of tangible media.
- c. Esri will provide Authorization Codes to activate the nondestructive copy protection program that enables the Products to operate.

8.2 Order Requirements

- a. All orders pertaining to this Agreement will be processed through Licensee's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Licensee name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Licensee is a commercial entity, Licensee will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Licensee with or into another corporation or entity; (ii) Licensee's acquisition of another entity; or (iii) a transfer or sale of all or part of Licensee's organization (subsections i, ii, and iii, collectively referred to as "Ownership Change"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2 If an Ownership Change results in transfer or sale of a portion of Licensee's organization, that portion of Licensee's organization will uninstall, remove, and destroy or transfer the Products to Licensee.
- 9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Licensee will require any successor entity to uninstall, remove, and destroy the Products, and this Agreement will terminate upon such Ownership Change.



**AMENDMENT NO. 1
TO
SMALL ENTERPRISE LICENSE AGREEMENT
COUNTY AND MUNICIPALITY (E214-3)**

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Amendment No. 1 is entered into by and between City of Westminster, Colorado (“Licensee”) and Environmental Systems Research Institute, Inc. (“Esri”) and shall amend the Small Enterprise License Agreement - County and Municipality (“SGELA”), which is comprised of the (i) SGELA, (ii) Esri Quotation #20474100, and (iii) License Agreement (collectively, the “Agreement”). All capitalized terms not defined herein shall have the same meaning as ascribed to them in the Agreement.

1. **License Agreement.** The following changes shall be made to Section 9.10 (Governing Law, Arbitration) of the General License Terms and Conditions (E204) in the License Agreement:

a. **Section 9.10(a).** The following language is hereby deleted from Section 9.10(a):

“Except as provided in Section 9.8, any dispute arising out of or relating to this License Agreement or the breach thereof that cannot be settled through negotiation shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in a court of competent jurisdiction. If Licensee is a US government agency, this License Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613), in lieu of the arbitration provisions of this clause. This License Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.”

b. **Section 9.10(b).** The following language is hereby removed from Section 9.10(b):

“Except as provided in Section 9.8, any dispute arising out of or relating to this License Agreement or the breach thereof that cannot be settled through negotiation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with said rules. The language of the arbitration shall be English. The place of the arbitration shall be at an agreed-upon location.”

2. All other terms and conditions of the Agreement shall remain the same and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed and effective as of the last date written below.

CITY OF WESTMINSTER, COLORADO
(Licensee)

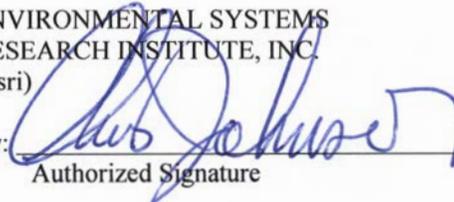
By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By:  _____
Authorized Signature

Printed Name: Chris Johnson

Title: Manager, Commercial & Government Contracts

Date: 10/22/15



Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Downtown Westminster – Parking Structure on Block C-2 Design Build Contract

Prepared By: John Burke, Senior Projects Engineer

Recommended City Council Action

Award the bid and authorize the City Manager to execute a contract with Opus Design Build LLC in the amount of \$2,145,597 for the design and general conditions for construction of the Downtown Westminster Parking Structure on Block C-2.

Summary Statement

The City issued a qualifications based Request For Proposals (RFP) for the Downtown Westminster Parking Structure located on Block C-2 on August 25, 2015. This parking structure is located on the east side of the existing JC Penney's building.

The current construction of the road and utility work on the west side of JC Penney's will eliminate some of JC Penney's parking lot. In addition, there is an active development proposals that would take away most of the parking on the south side of JC Penney's building. As such, the City needs to construct a parking structure to accommodate not only some of JC Penney's parking but also public parking for the future development in the new Downtown Westminster project.

Six design/build teams responded to the RFP and four teams were short listed for interviews. During the interviews it became apparent to the City's review team that Opus Design Build LLC was the most qualified and responsive design/build team.

Based on these costs, staff remains confident that adequate funds are budgeted within the Certificates of Participation for the overall parking garage project.

Expenditure Required: \$2,145,597

Source of Funds: Certificates of Participation issued for Downtown Westminster

Policy Issue

Should City Council contract with Opus Design Build LLC for the design and general conditions for the Downtown Westminster Parking Structure on Block C-2?

Alternative

City Council could chose not to award this contract to Opus Design Build LLC or any other design/build team. This alternative is not recommended as the construction of this parking structure is key to the success of the Downtown Westminster project.

Background Information

The Downtown Westminster Specific Plan adopted by City Council identified two public parking structures. This parking structure located on Block C-2 will be the first one constructed in the new Downtown Westminster project. Per the City's agreement with JC Penney's, the City is required to replace the parking spaces that will be removed through the currently active road and utility construction project.

In addition, JC Penney's requested a pedestrian bridge connection from the parking structure to the second floor of the JC Penney's building. This will allow for weather protected access into JC Penney's from the new parking structure.

The urgency of this construction project is based on two factors. First is the City's now completed negotiations with JC Penney to release their leased parking area surrounding their building and allow the City to begin construction on the new Westminster Boulevard along the western edge of the JC Penney's building. This action will eliminate a number of parking stalls on the west side of JC Penney's. This construction will begin in January of 2016 and continue through the summer months of next year.

Additionally, a private development team, Sherman & Associates, is working on plans to design and construct a project on Blocks B-1 and C-1 on the south side of JC Penney's. This development project could begin construction as early as September of 2016 and will also eliminate some of the surface parking available to employees and patrons of JC Penney's. As such, it is important that the City begins construction of the parking structure on Block C-2 in order to replace the removed surface parking lot prior to September 2016.

Based on the complexity and accelerated time frame for this project, staff elected to proceed with the design/build RFP. A typical design/build project is a faster delivery method, allows for early procurement of long lead items and implements value engineering and real time cost estimates to verify total construction costs will stay within the allocated budget.

Since the RFP was a qualification based selection process, the lowest cost bidder does not have the greatest advantage to win the project. The selection committee considers responsiveness to the RFP, experience on similar projects, experience and proven track record of the of the design/build team working together and value added to the overall project. All these items will add to a higher quality project and reduce the overall risk to the City to deliver the parking structure.

Four design/build teams were short listed for interviews and ultimately the selection committee recommends awarding the design/build contract to Opus Design Build LLC. A summary of the selection team's evaluation is shown in the attached summary provided by CBRE, the City's Owner's Representation firm.

In general, two teams stood out as leaders in their field, the Beck team and Opus Design Build. Both teams are fully integrated design/build companies with in-house design and construction professionals. The Beck team is currently working with the City on the Westminster Station Parking Structure and doing a great job

Of delivering that project on time and on budget. The City has not worked with Opus in the past, but their team is professional and focused on the Downtown Westminster project. One of the major differences between the Beck team and Opus was the fact that Opus demonstrated an exceptional amount of research on the Downtown Westminster project and presented very detailed site logistic and design elements that related to the Specific Plan the City has published. This was the subtle yet extremely important element that separated the two teams.

For this reason, staff is requesting authorization to award the design portion of this design/build contract to Opus Design Build LLC. This amounts to \$533,478 of the total \$2,145,597 contract. The remaining amount of the contract is for general conditions such as bonds, insurance, equipment, services, overhead, profit and personnel. It is important to lock in these general conditions at this stage of the project to guarantee the remaining design/build contract amount will go into the cost of the structure.

The following is a table summary of just the preconstruction and design services proposal amounts:

Beck	Mortenson	Opus	Swinerton
\$497,317	\$511,662	\$533,478	\$585,235

Staff will work with Opus over the next few months to design the parking structure and will return to City Council in the first quarter of 2016 with a request for authorization on the “build” component of this project, which will be subject to a Guaranteed Maximum Price (GMP) contract with Opus Design Build LLC.

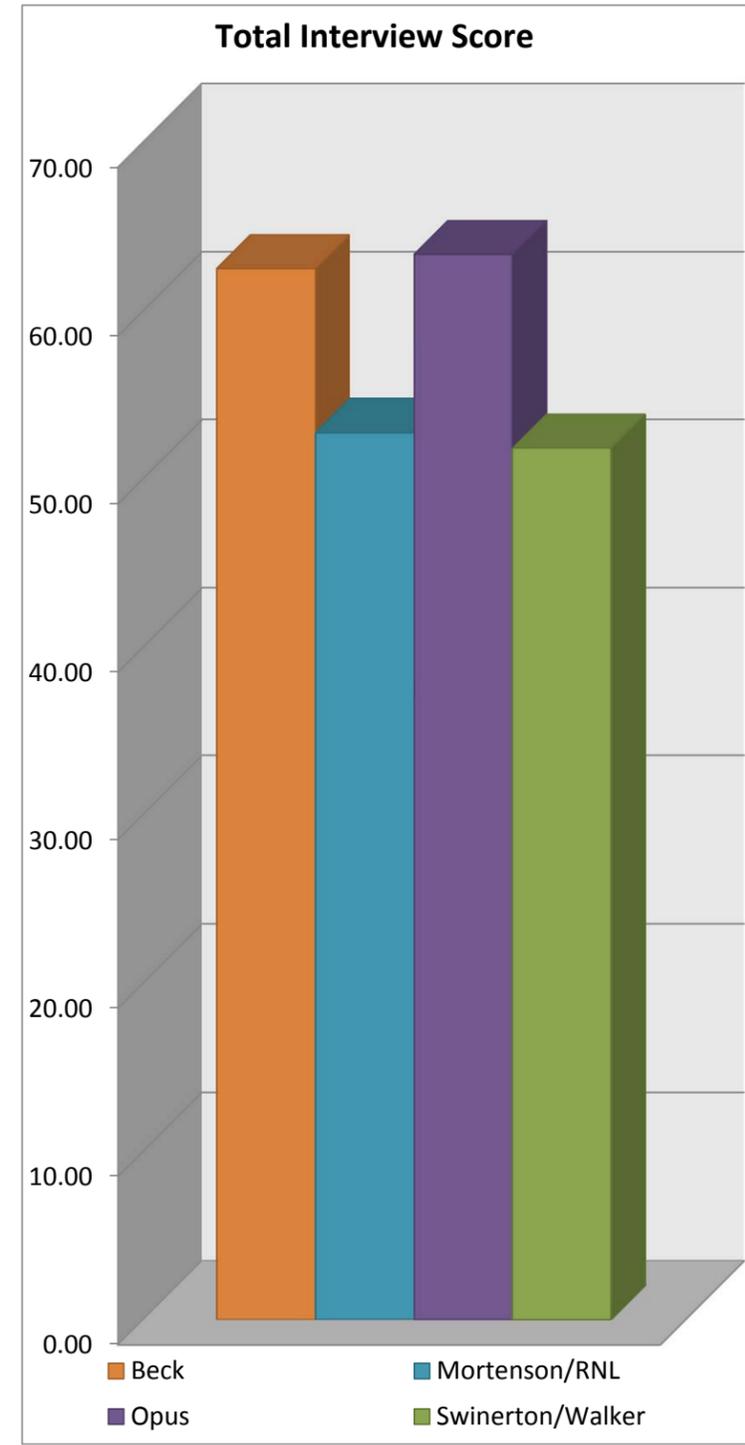
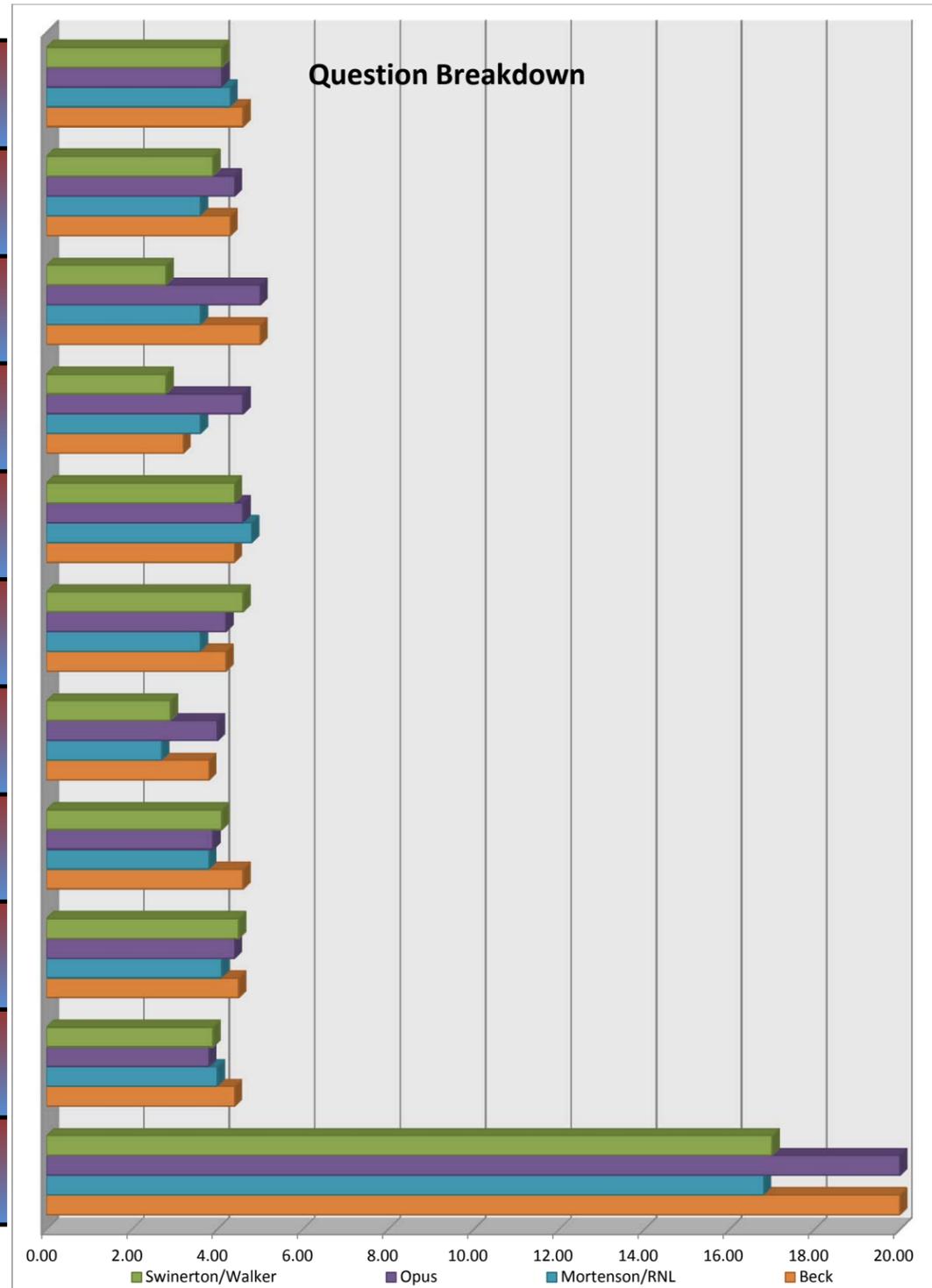
Council action on this item meets elements of two goals in the City’s Strategic Plan: *Dynamic, Diverse Economy* and *Ease of Mobility*.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Selection analysis
Site Map

Presentation	
Good Fit for CoW?	
Current Workload?	
Balance of Budget, Schedule, & Quality	
Example of Conflict and Resolution	
Subcontractor Responsiveness	
Performance Issues and Resolution	
Garage Wrap Experience	
D/B vs D-Bid-B Experience	
GMP Timing	
Schedule Comfort	





DOWNTOWN WESTMINSTER



Agenda Item 8 F

Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Contract for Underwriter Consulting Services

Prepared By: Tammy Hitchens, Finance Director
Rachel Price, Financial Analyst

Recommended City Council Action

Authorize the City Manager to execute, in substantially the same form as attached, a contract with George K. Baum & Company for underwriting services for a one-year period with the option to renew for an additional four years.

Summary Statement

- The City utilizes various debt instruments and strategies to assist with the financing of capital projects. Debt financing requires the specialized knowledge and tools of financial and legal professionals, such as a financial advisor, underwriter, bond counsel, and bond disclosure counsel. Together with Staff, they make up the financial team utilized to issue debt such as revenue bonds, Certificates of Participation (COPS), and loans for large capital projects. Examples include revenue bonds issued to build a water treatment plant, COPS issued to build the Public Safety Center, voter approved revenue bonds issued to develop parks and purchase open space land, and Westminster Economic Development Authority (WEDA) tax increment financing revenue bonds issued for redevelopment in Urban Renewal Areas (URA's).
- The underwriter's role is to assist the City with the structuring of the bond issue and marketing the bonds to investors. An underwriter may purchase some of the bonds on the issue date if they have been unable to sell the bonds to investors. On an ongoing basis, the underwriter may help "make a market" for the city's debt by continuing to buy and sell our securities.
- On August 12, 2015, a Request for Proposal (RFP) was issued for underwriter services. Five proposals were analyzed and finalist interviews held from which Staff recommends George K. Baum & Company be hired as the City's underwriter.
- Funding for underwriting services comes from proceeds of individual debt issues. Prior to debt issuance, Staff will present the Council the information detailing costs for the various consulting and legal fees to be paid from financing proceeds.

Expenditure Required: Varies depending on the type of debt instrument used and amount issued

Source of Funds: Debt financing proceeds

Policy Issue

Should the City of Westminster proceed with contracting for underwriting services with George K. Baum & Company to assist in the structuring and marketing of debt offerings?

Alternatives

1. Select another firm to perform the underwriting services. Staff does not recommend this alternative, as George K. Baum & Company represents the most qualified underwriter provider based on review of the RFP's submitted and presentations made to Staff on September 12, 2015.
2. Select an underwriter for each specific debt issuance. Staff does not recommend this alternative, as having to go to RFP for each debt issuance would delay the issuance process and could result in opportunity costs.
3. Do not use an underwriter to market the City's debt issues. Staff does not recommend this alternative. Public financing is a complex and specialized field requiring professional services of both financial and legal consultants. The services of these professionals result in the City issuing debt efficiently and legally.

Background Information

The City utilizes debt to finance a variety of purchases and capital projects. Issuing debt requires external professional services of specialized financial and legal consultants who are knowledgeable about taxable and tax-exempt municipal finance. Together with Staff and legal counsel, the city's financial advisor and underwriter represent the City's Finance Team for debt issuance. The underwriter is an important member of the team whose role is to structure and market debt to investors to achieve the lowest cost feasible given market conditions at the time of issuance. Given the variety of debt instruments utilized by the City and the complexities inherent in the structuring and marketing of the debt to investors, the services of an underwriter are in integral component to meet the City's objective of issuing debt at the lowest cost, while attracting sufficient interest from investors.

The City has historically used an underwriter for all of its past bonded debt issues. While the firms have changed, the City has taken the approach of going out to competitive bid every 5 years and selecting a single firm to be its underwriter for the next term. Staff feel that having an underwriter already named as part of the City's financing team, regardless of whether debt will be issued during the term, is an advantage over having a competitive process each time for the following reasons. First, if debt is considered, the underwriter is a part of the process from the beginning, which increases their knowledge and helps their efforts to market the bonds later. Second, having the bid process already completed allows the finance team to focus on the debt issuance itself and does not add further delay to getting the deal done. Also, the cost per bond has already been negotiated and is a verifiable known cost when sizing the issue.

An RFP was released in August 2015 requesting the services of an underwriter as the existing contract with Piper Jaffray has expired. Staff analyzed the five RFP's received from which three respondents were selected for interviews. Staff hosted interviews on September 12 with participation from the City's financial advisor to provide their outside perspective. Staff later conducted reference checks on the firm and its personnel the week following the presentation. Based on their written response to the RFP and interview presentation, Staff evaluated each respondent based on multiple attributes including depth of key personnel experience, the firm's experience issuing various types of debt, rating agency presentation experience, the firm's financial soundness, pricing for services, and references.

Based on their RFP response and interview, Staff recommends that an underwriting contract be awarded to George K. Baum. One of the key factors for an underwriter is the personnel that will be working on the debt issues.

Pricing was considered an important component of the selected firm and each responded with a “not to exceed” estimated cost based on issue type as follows based on a cost per \$1,000 of bonds issued. The actual cost by debt issue is uncertain until the time of issuance; however, as indicated below, George K. Baum & Company’s pricing was lowest compared to the other finalist respondents as shown in the following chart.

ISSUE TYPE	George K. Baum	Piper Jaffray	Stifel Nicolaus
Fixed Rate Underwriting Fee (NTE)	\$3.40/1,000	\$3.65/1,000	\$3.75/1,000
Variable Rate Underwriting Fee (NTE)	\$1.00/1,000	\$3.65/1,000	\$2.50/1,000

The firm is dedicated to the Colorado market and municipal finance. Since 2010, George K. Baum & Company have senior managed 181 negotiated issues originating in Colorado. George K. Baum’s public finance team is headquartered in Denver. This ensures Staff have access to these needed professionals in a timely manner, in-person, if needed. Their physical presence here adds to their in-depth knowledge of the Colorado market and its unique pool of investors.

While all of the firms had quality personnel, Staff believes George K. Baum’s personnel best fit the needs of the City. The lead manager for George K. Baum has over 20 years of experience in the field. Additionally, she has previously worked in a municipal government giving her first-hand understanding of our goals and needs. George K. Baum & Company’s staff have had recent successes in each of the various types of structures we may pursue. All of the reference checks on the firm and its staff were exemplary, citing their expertise, professionalism and commitment to the communities they serve.

George K. Baum & Company’s staff have a unique focus on education. They have provided Bond 101 and Rating Agency trainings for clients and elected officials in the past and have suggested this for the City. As the City is preparing for issues, making sure all parties are well-educated on the process as well as the risk/rewards of debt are critical in making sound financial decisions. Furthermore, they have helped craft policies used to improve their clients’ daily activities and compliance efforts.

Underwriting experience was also factored into the decision process. Each firm reviewed has excellent depth of experience, marketing a variety of debt issues throughout the state of Colorado. As such, Staff felt that overall each was very comparable to each other; however, it was felt that George K. Baum & Company had a stronger focus on local marketing within the state of Colorado since they have an underwriting desk located in Denver.

Finally, Staff analyzed the financial strength of each firm relative to its ability to underwrite and purchase any unsold bonds. As stated in their proposal, “One hundred percent of our capital is available to municipal business every day.” George K Baum & Company has a strong balance sheet with more than sufficient excess net capital to underwrite the City’s bonds should takedowns be necessary.

Overall, Staff believes that based on the personnel, pricing, underwriting experience, and financial soundness, George K. Baum & Company is the most qualified firm to represent the City as its underwriter.

The selection of George K. Baum & Company as WEDA’s underwriter helps achieve City Council’s Strategic Plan goal of “Financially Sustainable Government Providing Excellence in City Services” by assisting Staff in making the best financial decisions related to structuring, marketing and issuance of debt.

Staff will be present at the October 26th Council meeting to address any questions or concerns relative underwriting services.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment: Contract for Underwriter Services

AGREEMENT TO FURNISH PUBLIC FINANCE UNDERWRITER SERVICES
TO THE CITY AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS AGREEMENT, made and entered into this 26th day of October, 2015, among the **CITY OF WESTMINSTER**, hereinafter called the "City," the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called "WEDA," and **GEORGE K. BAUM & COMPANY**, a corporation organized pursuant to the laws of the State of Missouri, and doing business in Colorado, hereinafter called the "Consultant," is as follows:

WHEREAS, the City and WEDA wish to enter into an agreement for Underwriting Services; and

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

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

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

I. THE PROJECT

The project consists of Consultant providing underwriter services to the City and WEDA as more specifically described the Scope of Services, attached hereto and incorporated herein as **Appendix A** (hereinafter, the "Project").

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the professional and technical services necessary to complete the Project.

A. Capital Financing

Consultant shall perform the following functions as Consultant:

- (1) Financing Alternatives. The Consultant, in consultation with the City and WEDA officials, auditor, municipal advisor and municipal bond counsel, shall recommend financing alternatives for specific capital projects. Such financing alternatives will be based on revenue projections, and the existing corporate, financial, and legal structure of the City and WEDA. The Consultant shall assist the City and WEDA in evaluating the financing alternatives and make recommendations concerning general obligation and revenue bond financing, lease-purchase and installment purchase financing, participation in federally sponsored programs, and the utilization of insurance guaranty programs and other cost effective financing methods, both long and short term. In addition, the Consultant shall make recommendations concerning the need for short or intermediate-term financing prior to or in conjunction with long-term financing.
- (2) Bond Financing. The Consultant shall assist in recommending to the City and WEDA the method of sale, which will be in the best interest of the City and WEDA. In the case of general obligation bonds, revenue bonds, or other municipal securities, the

recommendations shall include recommendations concerning the advisability of selling the proposed municipal securities either by competitive or negotiated sale. The Consultant shall assist the City and WEDA in the following tasks in connection with the issuance of bonds or other debt securities by the City and WEDA:

- a. Determination of the structure of such financing, including sources of payment, security, maturity schedule, rights of redemption prior to maturity, and other matters concerning the call provision features of the bonds;
 - b. Assisting the City and WEDA and its citizen committees to effectively present the City and WEDA's proposal to the electorate in an organized, thoughtful, and concise manner;
 - c. Preparation and presentation of applications and detailed information about the City and WEDA and the proposed bond issue to appropriate rating agencies, where advisable;
 - d. Use of credit enhancement techniques, such as: direct pay letters of credit, and other such financial instruments;
 - e. Assistance in the review and preparation of an official statement to be distributed to prospective bond purchasers;
 - f. Printing of the bonds;
 - g. Coordination of the legal proceedings recommended by bond counsel, any temporary investment of sale proceeds, and all other necessary arrangements in connection with the delivery of the bonds by the City and WEDA; and
 - h. Bond partial or full refundings, redemptions, advanced refundings.
- (3) Competitive Bids. In the event the City and WEDA elects to solicit bids for the bonds through a public sale, the Consultant may compete in the sale to purchase, directly or indirectly, from the City and WEDA, all or any portion of the bonds sold at competitive bid either as principal alone or as a participant in a syndicate or other similar account.
- (4) Negotiated Sales. In the event of a negotiated sale of a bond issue by the City and WEDA to the Consultant, the Consultant will underwrite the issue. In connection therewith, the Consultant shall prepare financial plans and price the issue. The City and WEDA also reserves the right to compete the negotiated sale.
- (5) The City and WEDA reserves the right to substitute another firm and/or such personnel as the City and WEDA deems best addresses the City and WEDA's needs, on an issue-by-issue basis.
- (6) The Consultant shall at all times comply with applicable requirements and regulations of the Securities and Exchange Commission ("SEC") and the Municipal Securities Rulemaking Board ("MSRB").

III. ADDITIONAL SERVICES

When authorized in writing by the City and WEDA, the Consultant agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written agreement between the City and WEDA and Consultant as to additional compensation for additional services.

IV. CONSULTANT'S FEE

The compensation for the Project shall be according to the contract applicable to that offering, (the Bond Purchase Agreement for negotiated offerings, or Notice of Sale for competitive offerings), and subsequent acceptance and award, (collectively, the Bond Sale Contract). The Consultant's requirement to purchase any bonds shall be subject to the satisfaction of the terms and conditions provided in the Bond Sale Contract.

The Bond Sale Contract shall in all respects supersede any conflicting provisions of this Agreement, except that the Consultant shall be entitled to payment under this Agreement of permitted and approved expenses under Section IV C below. The following guidelines shall apply to a Bond Sale Contract, as applicable:

- A. For negotiated sales, pricing shall be as set forth in Appendix B, attached hereto and incorporated herein.
- B. Other financing expenses as authorized by the City and WEDA through the City and WEDA Manager in connection with a negotiated sale, including, without limitation, bond counsel, rating agency, and printing expenses, shall be paid by the City and WEDA.
- C. No expenses shall be payable to the Consultant under this Agreement in the event of an unsuccessful bond election or an inability to consummate a sale of the City and WEDA's securities. Other financing expenses as authorized by the City and WEDA, including but not limited to third party expenses (i.e. bond counsel) and out-of-state travel, incurred before an unsuccessful election or a failed sale, shall be paid by the City and WEDA.
- D. The approximate underwriting spread for a negotiated sale shall be agreed on by both parties after consideration of similar issues, competitive or negotiated.
- E. The Consultant shall submit invoices to the City and WEDA for services rendered during the preceding month, such invoices to be in the form and detail reasonably required by the City and WEDA. Reimbursable expenses shall be itemized. The City and WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

V. COMMENCEMENT & COMPLETION OF PROJECT

The Project shall be for one (1) year, beginning on the date first referenced above, and, subject to annual appropriation and absent notice of termination as set forth in Section VI below, the Agreement will renew for four (4), additional one (1) year terms following the initial one (1) year term. Compensation in each renewal year shall remain as set forth in Appendix B. However, all payments under this Agreement are subject to annual appropriation of the funds. Therefore, nothing in this Agreement shall be deemed or construed as a multiple year fiscal obligation under the meaning of Colorado Constitution Article X, Section 20, also known as the TABOR Amendment.

VI. TERMINATION

This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon the City and WEDA's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City and WEDA's issuance of said written notice of intent to terminate, the City and WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services the City and WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the City and WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

VII. INSURANCE

During the course of the Project, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado and Professional Liability Insurance in the minimum amount of \$1,000,000, but in any event sufficient to cover Consultant's liability under paragraph X.D. below. Consultant shall maintain an Automobile Liability policy of \$500,000 per person/\$1,000,000 per occurrence and a Commercial General Liability policy of \$500,000 per person/\$1,000,000 per occurrence; or alternatively, Consultant shall maintain an Automobile Liability policy and a Commercial General Liability policy each with a \$1,000,000 per occurrence combined single limit. The City and WEDA shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by the City and WEDA. These coverages shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees. The Consultant shall provide certificates of insurance to the City and WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the City and WEDA in writing within two (2) days of the cancellation of or substantive change to any insurance policy set out herein, and failure to do so shall be a breach of this Agreement.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant represents that it will require a similar affirmation of nondiscrimination in any contract it enters into with a subcontractor as part of the execution of this Agreement.

IX. PROHIBITED INTEREST

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

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

X. GENERAL PROVISIONS

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

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

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of the City and WEDA and Consultant. Upon completion of the Project, or at such other time as the City and WEDA may require, the Consultant shall deliver to the City and WEDA a complete corrected set of drawings in hard copy *and* in an electronic/digital format acceptable to the City and WEDA and such additional copies thereof as the City and WEDA may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

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

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

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

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

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

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of the City and WEDA and the Consultant.

<u>Project Representative for City and WEDA:</u>	<u>Project Representative for Consultant:</u>
Name: Rachel Price Address: 4800 W. 92 nd Avenue Westminster CO 80031 Phone: 303-658-2441 email: rprice@cityofwestminster.us	Name: Robyn Moore Address: 1400 Wewatta Street, Suite 800 Denver, CO 80202 Phone: 303-391-5495 email: moore@gkbaum.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of the City and WEDA and the Consultant or shall be sent via registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. When sent via registered mail, notices shall be effective three (3) days after mailing.

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

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

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

I. Entire Agreement. This Agreement and its attachments shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Except subcontractors identified by name and accepted by the City and WEDA as part of **Appendix A**, Consultant may not employ additional subcontractors to perform work on the Project without the City and WEDA's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

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

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

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

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement

through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

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

This Agreement is expressly contingent upon the approval by Westminster's City Council and WEDA's Board of all the terms set forth herein. In the event this Agreement is not approved in its entirety by either body, no Party shall be bound to the terms of this Agreement.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO FINANCE DEPARTMENT, ATTENTION: RACHEL PRICE.

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

GEORGE K. BAUM & COMPANY

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: Donald M. Tripp

Address:

Address:

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

City Clerk

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By: _____

City Attorney

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

Printed Name:

Title: Executive Director

Address: 4800 West 92nd Avenue
Westminster, CO 80031

ATTEST:

Authority Secretary

APPROVED AS TO LEGAL FORM:

Authority Attorney

I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Agreement.

City Manager

Rev. 3/2014

Appendix A to Services Agreement

Scope of Services

The Consultant agrees that it shall furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, analyses, calculations, and any other facilities or resources necessary to provide the professional services as described hereto and incorporated herein by this reference.

A. Capital Financing

Consultant shall perform the following functions as underwriter:

- (1) **Financing Alternatives:** The Consultant, in consultation with the City and WEDA officials, auditor, financial advisor, and municipal bond counsel, shall recommend financing alternatives for specific capital projects. Such financing alternatives will be based on revenue projections, and the existing corporate, financial and legal structure of the City and WEDA. The Consultant shall assist the City and WEDA in evaluating the financing alternatives and make recommendations concerning general obligation and revenue bond financing, lease-purchase and installment purchase financing, participation in federally sponsored programs, and the utilization of insurance guaranty and other cost effective financing methods, both long and short term. In addition, the Consultant shall make recommendations concerning the need for short or immediate term financing prior to or in conjunction with long term financing.
- (2) **Bond Financing:** The Consultant shall assist in recommending to the City and WEDA the method of sale, which will be in the best interest of the City and WEDA. In the case of general obligation bonds, revenue bonds, or other municipal securities, the recommendations shall include recommendations concerning the advisability of selling the proposed municipal securities either by competitive or negotiated sale. The Consultant shall assist the City and WEDA in the following tasks in connection with the issuance of bonds or other debt securities by the City and WEDA:
 - a. **Determination of the structure of such financing,** including sources of payment, security, maturity schedule, rights of redemption prior to maturity, and other matters concerning the call provision features of the bonds;
 - b. **Preparation of education materials, or survey materials,** in an organized, thoughtful, and concise manner that are suitable for public distribution explain the nature and substance of any bond financings, to the extent that such tasks are not inconsistent with the limitations prescribed in C.R.S. 1-45-117.
 - c. **Preparation and presentation of applications and detailed information about the City and WEDA and the proposed bond issue to appropriate rating agencies,** where advisable;
 - d. **Use of credit enhancement techniques,** such as: direct pay letters of credit, and other such financial instruments;
 - e. **Assistance in the review and preparation of an official statement to be distributed to prospective bond purchasers;**
 - f. **Printing of the bonds;**
 - g. **Coordination of the legal proceedings recommended by bond counsel, and temporary investment of sale proceeds; and all other necessary arrangements in connection with the delivery of bonds by the City and WEDA; and**
 - h. **Bond partial or full refundings, redemptions, advance refundings.**

B. Notwithstanding anything herein, this Agreement does not constitute an agreement for financial advisory services, and Consultant is acting in the capacity of an underwriter, not as a financial advisor as defined in Municipal Securities Rulemaking Board Rule G-23.

C. No expenses shall be payable to the Consultant under this agreement in the event of an unsuccessful bond election or an inability to consummate a sale of the City and WEDA's securities. Other financing

expenses as authorized by the City and WEDA Manager, including but not limited to third party expenses (i.e. bond counsel) and out-of-state travel, incurred before an unsuccessful election or a failed sale, shall be paid by the City and WEDA.

D. The approximate underwriting spread for a negotiated sale shall be agreed upon by both parties after consideration of similar issues, competitive or negotiated.

E. The Consultant shall submit invoices to the City and WEDA for services rendered during the preceding month, such invoices, to be in such form and detail as shall reasonably be required by the City and WEDA. Reasonable expenses shall be itemized. The City and WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

Appendix B to Services Agreement Consultant's Fee Schedule

For the term of this Agreement, including all four (4) potential renewal years, Consultant's fees shall be as follows.

FIXED RATE UNDERWRITING FEE:

Fee for a fixed rate bond issue will not exceed \$3.40/\$1,000 (\$3.40 per bond or 0.0340% of par) with no additional expenses. Consultant will only charge the City and WEDA for any out of state travel related to rating agency or investor presentations.

VARIABLE RATE UNDERWRITING FEE:

For any takedown for Variable Rate Demand Notes (VRDNs) fee will not exceed \$1 per \$1,000 of par amount of bonds. We will not include a management fee and depending on the transaction we may not require underwriter's counsel. It does include other customary expenses (DTC, day loan, CUSIP).

EXPENSES INCURRED BY THE CITY AND WEDA:

Each transaction includes certain expenses that are due to third party providers. These include:

- Bond Counsel
- Disclosure Counsel
- Municipal Advisor
- Bond rating fees
- Paying agent/ trustee fees
- Disclosure document printing
- Travel expenses outside the state of Colorado.

These fees are the responsibility of the City and WEDA.

EXPENSES INCURRED BY CONSULTANT:

Certain costs are incurred by Consultant in the course of transacting each issue. These include:

- Consultant travel costs in Colorado
- Short-term loan expenses
- DTC delivery charges
- CUSIP subscription
- Other delivery-related internal costs

These expenses are the responsibility of Consultant.



Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Bond and Disclosure Counsel for the Refunding of Sales and Use Tax Revenue Bonds (POST) Series 2007D

Prepared By: David Frankel, City Attorney
Tammy Hitchens, Finance Director

Recommended City Council Action

Authorize the City Manager to execute agreements for: bond counsel services with Butler Snow for a fee not to exceed \$28,500 and for disclosure counsel services with Kutak Rock, LLC for a total fee not to exceed \$20,000, both in connection with the proposed refunding of the Special Purpose Sales and Use Tax Revenue Bonds (POST Project) Series 2007D.

Summary Statement

- All special counsel agreements are subject to approval by the City Council in accordance with City Charter requirements.
- Representatives from Butler Snow previously worked for Sherman & Howard, who were legal counsel on the original issue, as well as on a number of past debt financings, including financings for the Water and Wastewater Utility Enterprise, Sales and Use Tax Revenue Bonds, Park, Open Space, and Trails (POST) bonds, and various Certificate of Participation (COPs).
- Kutak Rock represented the City as disclosure counsel for the financing issues noted above.
- The proposed fees are well within the range of fees experienced for similar financings in the past and will be included as part of the issuance cost for this financing.
- Proceeding with this refinancing will save the City well over one million dollars.

Expenditure Required: \$48,500

Source of Funds: Bond Financing Proceeds

Policy Issue

Should the City retain bond and disclosure counsel for the anticipated refunding of the Special Purpose Sales and Use Tax Revenue Bonds (POST Project) Series 2007D?

Alternatives

1. Do not retain special legal counsel for these transactions. This is not recommended because the bonds cannot be closed without an opinion of bond counsel and an Official Statement prepared by disclosure counsel.
2. Retain other firms to complete this work. Staff is very confident in the abilities of these two firms and believes that the background and continuity that they bring to this transaction is critical.

Background Information

External legal counsel is required for the issuance of publicly offered debt by the City. The City intends to refund the \$20 million outstanding of Special Purpose Sales and Use Tax Revenue Bonds (POST Project) Series 2007D, without extending the repayment period. Due to the current interest rate environment, the City has the opportunity to refund the bonds and realize interest savings with a present value (net of bond issuance fees) of approximately \$1.4-\$1.5 million, or over 7% of the refunded par amount of the bonds. This savings threshold exceeds the 3-5% recommended minimum savings threshold by the Government Finance Officers Association of the United States and Canada. The proposed fees would be paid out of proceeds at closing.

As with all public, tax-exempt financings, this financing will require an opinion from a nationally recognized law firm regarding certain tax-related matters. Mr. Dee Wisor of Butler Snow has served as the City's bond counsel on numerous other issues and is thoroughly familiar with the City's Charter, ordinances, and outstanding bond covenants.

In addition, federal securities laws require the City to issue an Official Statement in connection with this financing. Mr. Tom Peltz of Kutak Rock is a recognized expert in disclosure matters under the federal securities laws. This firm has acted in this capacity on numerous other bond issues and financings, and is familiar with the City's financial position, the general economic condition of the City, the City's detailed financial information, and other material facts related to the City's preparation of a satisfactory Official Statement in connection with this financing.

The fees quoted by the recommended firms are reasonable and in line with past financings, and the familiarity of these firms with the City and its financial and legal documents is very valuable. The efficiencies in retaining these firms are significant and will help assure an expeditious closing of this important financing.

This recommended action supports the strategic objectives of a Financially Sustainable Government Providing Excellence in City Services. The anticipated financing requires the services of external legal services to help the City realize interest cost savings through the 2015 refunding of outstanding POST bonds.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments Attach 1: Bond and Disclosure Counsel (Butler Snow)
Attach 2: Bond and Disclosure Counsel (Kutak)

October 7, 2015

City of Westminster
Office of the City Attorney
4800 West 92nd Avenue
Westminster, CO 80031

Attention: David Frankel, Esq.

\$20,000,000
Special Purpose Sales and Use Tax Refunding Revenue Bonds (POST Project)
Series 2015

Dear David:

We are pleased to confirm our engagement as bond counsel to the City of Westminster (the “City”). We appreciate your confidence in us and will do our best to continue to merit it.

We believe it is good practice to set forth in writing (and in some detail) the elements of our mutual understanding in establishing our attorney-client relationship. While some of the matters covered in this engagement letter will never be relevant or of concern between us, we hope you will understand that as attorneys and counselors it is our natural function to try to make communication clear and complete, and to anticipate and resolve questions before they arise. We also believe that the performance of our services may require your effort and cooperation. Consequently, the better we each understand our respective roles, responsibilities and contributions, the more efficient, effective and economical our work for you can be.

Personnel

This letter sets forth the role we propose to serve and the responsibilities we propose to assume as bond counsel to the City in connection with the above referenced bonds (the “Bonds”). . We understand that the City Council has authorized the execution of this letter and has delegated to you the authority to sign this letter and to represent the City during this financing. Dee Wisor and Kim Crawford will be principally responsible for the work performed by Butler Snow LLP on your behalf, and he will report to and take direction from the City Attorney. Where appropriate, certain tasks may be performed by other attorneys or paralegals. At all times, however, Mr. Wisor will coordinate, review, and approve all work completed for the City.

1801 California Street
Suite 5100
Denver, CO 80202

DEE P. WISOR
720.330.2357
dee.wisor@butlersnow.com

T 720.330.2300
F 720.330.2301
www.butlersnow.com

Scope of Employment

Bond counsel is engaged as a recognized expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of bonds. As your bond counsel, we will: examine applicable law; consult with the parties to the transaction prior to the issuance of the Bonds; prepare customary authorizing and operative documents, which may include proceedings relating to: the election authorizing the issuance of the Bonds, the authorization of the sale and issuance of the Bonds, and closing certificates; review a certified transcript of proceedings; and undertake such additional duties as we deem necessary to render the opinion. Subject to the completion of proceedings to our satisfaction, we will render our opinion relating to the validity of the Bonds, the enforceability of the security for the Bonds, and the exclusion of the interest paid on the Bonds (subject to certain limitations which may be expressed in the opinion) from gross income for federal income tax purposes and for Colorado income tax purposes.

As bond counsel, we will not assume or undertake responsibility for assisting in the preparation of the Official Statement with respect to the Bonds (the "Official Statement"), nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of the Official Statement. We understand that Kutak Rock LLP is acting as disclosure counsel to the City in connection with the Official Statement and: (i) will prepare the Official Statement, and (ii) will provide a letter with respect to compliance with the state and federal securities laws upon which the Authority may rely. Our responsibility as bond counsel will include the preparation or review of any description in the Official Statement of: (i) Colorado and federal law pertinent to the validity of and security for the Bonds, as well as the tax treatment of interest paid thereon, (ii) the terms of the Bonds, and (iii) our opinion. In addition, we would like to review a draft copy of the Official Statement so that we may have an opportunity to comment on it; however, such review is only for the protection of our firm and would not serve to protect the City or purchasers of the Bonds.

In rendering our opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation. Our opinion will be addressed to the City and will be executed and delivered by us in written form on the date the Bonds are exchanged for its purchase price (the "Closing"). The opinion will be based on facts and law existing as of their date.

Our services as bond counsel are limited to those contracted for explicitly herein; the City's execution of this letter constitutes an acknowledgment of those limitations. Specifically, but without implied limitation, our responsibilities do not include any representation by Butler Snow LLP in connection with any IRS audit or any litigation involving the City or the Bonds, or any other matter. Neither do we assume responsibility for the preparation of any collateral documents (*e.g.*, environmental impact statements) which are to be filed with any state,

federal or other regulatory agency. Nor do our services include financial advice (including advice about the structure of the Bonds) or advice on the investment of funds related Bonds.

Representation of the City

In performing our services as bond counsel, the City will be our client and an attorney-client relationship will exist between us. We will represent the interests of the City rather than the City Council or its individual members. We will work closely with the City Attorney and will rely on his opinion with regard to specific matters, including pending litigation. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. Our limited representation of the City does not alter our responsibility to render an objective opinion as bond counsel.

Conflicts of Interest

Our firm sometimes represents, in other unrelated transactions, certain of the financial institutions that may be involved in this Bond transaction, such as underwriters, credit enhancers, and banks that act as paying agents or trustees. We do not believe that there is a significant risk that any of these representations will materially limit our ability to provide competent and diligent representation of the City in connection with the Bonds, even though such representations may be characterized as adverse under the Colorado Rules of Professional Conduct (the "Rules"). In any event, during the term of our engagement hereunder, we will not accept a representation of any of these parties in any matter in which the City is an adverse party. However, pursuant to the Rules, we do ask that you consent to our representation of such parties in transactions that do not directly or indirectly involve the City. Your execution of this letter will signify the City's prospective consent to such representations in matters unrelated to the Bonds while we are serving as bond counsel hereunder.

Fee Arrangement

Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing, (ii) the duties we will undertake pursuant to this letter, (iii) the time we anticipate devoting to the financing, and (iv) the responsibilities we assume, we estimate that our fee for this engagement will be \$20,000. Such fee may vary: (i) if the principal amount of the Bonds actually issued increases significantly, (ii) if material changes in the structure of the financing occur, (iii) if unusual or unforeseen circumstances arise which require a significant increase in our time or our responsibilities or (iv) the Bonds are not issued by February 1, 2016. If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will consult with you.

Our fees are usually paid at Closing out of Bonds proceeds. We customarily do not submit any statement until the Closing, unless there is a substantial delay in completing the

financing. We understand and agree that our fees will be paid at Closing out of proceeds. If the financing is not consummated, we understand and agree that we will not be paid. If, for any reason, the financing is completed without our opinion as bond counsel, we will expect to be compensated at our normal hourly rates (currently ranging from \$640 to \$100 depending on personnel) for time actually spent on your behalf, plus disbursements.

Termination of Engagement

The above fees contemplate compensation for usual and customary services as bond counsel as described above. Upon delivery of the opinion, our responsibilities as bond counsel will terminate with respect to this financing, and our representation of the City and the attorney-client relationship created by this engagement letter will be concluded. Specifically, but without implied limitation, we do not undertake to provide continuing advice to the City or to any other party to the transaction. Many post-issuance events may affect the Bonds, the tax-exempt status of interest on the Bonds, or liabilities of the parties to the transaction. Such subsequent events might include a change in the project to be financed with Bond proceeds, a failure by one of the parties to comply with its contractual obligations (*e.g.*, rebate requirements, continuing disclosure requirements), an IRS audit, or a change in federal or state law. Should the City seek the advice of bond counsel on a post-closing matter or seek other, additional legal services, we would be happy to discuss the nature and extent of our separate engagement at that time.

Document Retention

At or within a reasonable period after Closing, we will review the file to determine what materials should be retained as a record of our representation and those that are no longer needed. We will provide you with a copy of the customary transcript of documents after Closing and will return any original documents obtained from you (if a copy is not included in the transcript). Our document retention policy is attached hereto.

Publicity Concerning This Matter.

Often matters such as this are of interest to the public. Also, many clients desire favorable publicity. Therefore, we may publish information on this matter (including but not limited to our firm website) unless you instruct us not to do so. In any event, we will not divulge any non-public information regarding this matter.

Approval

If the estimated fees, the requested consent to the potential future representation of the parties described under "Conflicts of Interest", and other foregoing terms of this engagement are acceptable to you, please so indicate by returning a copy of this letter signed by the officer so authorized, keeping a copy for your files.

We are pleased to have the opportunity to serve as your bond counsel and look forward to a mutually satisfactory and beneficial relationship. We are deeply committed to the proposition that our clients must be satisfied with the quality of our services as well as the amount of our charges. Our effectiveness and your best interest are enhanced by an atmosphere of candor and confidence between us, not only as to the facts and circumstances of the legal issues on which we are working, but also as to the attorney-client relationship itself. If at any time you have questions concerning our work or our fees, we hope that you will contact us immediately.

BUTLER SNOW LLP

By: *Dee P. Wilson*

ACCEPTED AND APPROVED:

CITY OF WESTMINSTER, COLORADO

By: _____

Its: _____

Date: _____

DPW/jw
Enclosure

**NOTICE TO CLIENTS OF BUTLER SNOW'S
RECORD RETENTION & DESTRUCTION POLICY FOR CLIENT FILES**

Butler Snow maintains its client files electronically. Ordinarily, we do not keep separate paper files. We will scan documents you or others send to us related to your matter to our electronic file for that matter and will ordinarily retain only the electronic version while your matter is pending. **Unless you instruct us otherwise, once such documents have been scanned to our electronic file, we will destroy all paper documents provided to us.** If you send us original documents that need to be maintained as originals while the matter is pending, we ordinarily will scan those to our client file and return the originals to you for safekeeping. Alternatively, you may request that we maintain such originals while the matter is pending. If we agree to do that, we will make appropriate arrangements to maintain those original documents while the matter is pending.

At all times, records and documents in our possession relating to your representation are subject to Butler Snow's Record Retention and Destruction Policy for Client Files. Compliance with this policy is necessary to fulfill the firm's legal and ethical duties and obligations, and to ensure that information and data relating to you and the legal services we provide are maintained in strict confidence at all times during and after the engagement. All client matter files are subject to these policies and procedures.

At your request, at any time during the representation, you may access or receive copies of any records or documents in our possession relating to the legal services being provided to you, excluding certain firm business or accounting records. We reserve the right to retain originals or copies of any such records or documents as needed during the course of the representation.

Unless you instruct us otherwise, once our work on this matter is completed, we will designate your file as a closed file on our system and will apply our document retention policy then in effect to the materials in your closed files. At that time, we ordinarily will return to you any original documents we have maintained in accordance with the preceding paragraph while the matter was pending. Otherwise, we will retain the closed file materials for our benefit and subject to our own policies and procedures concerning file retention and destruction. Accordingly, if you desire copies of any documents (including correspondence, e-mails, pleadings, contracts, agreements, etc.) related to this matter or generated while it was pending, you should request such copies at the time our work on this matter is completed.

You will be notified and given the opportunity to identify and request copies of such items you would like to have sent to you or someone else designated by you. You will have 30 days from the date our notification is sent to you to advise us of any items you would like to receive. You will be billed for the expense of assimilating, copying and transmitting such records. We reserve the right to retain copies of any such items as we deem appropriate or necessary for our use. Any non-public information, records or documents retained by Butler Snow and its employees will be kept confidential in accordance with applicable rules of professional responsibility.

Any file records and documents or other items not requested within 30 days will become subject to the terms of Butler Snow's Record Retention and Destruction Policy for Client Files and will be subject to final disposition by Butler Snow at its sole discretion. Pursuant to the terms of Butler Snow's Record Retention and Destruction Policy for Client Files, all unnecessary or extraneous items, records or documents may be removed from the file and destroyed. The remainder of the file will be prepared for closing and placed in storage or archived. It will be retained for the period of time established by the policy for files related to this practice area, after which it will be completely destroyed. This includes all records and documents, regardless of format.

While we will use our best efforts to maintain confidentiality and security over all file records and documents placed in storage or archived, to the extent allowed by applicable law, Butler Snow specifically disclaims any responsibility for claimed damages or liability arising from damage or destruction to such records and documents, whether caused by accident; natural disasters such as flood, fire, or wind damage; terrorist attacks; equipment failures; breaches of Butler Snow's network security; or the negligence of third-party providers engaged by our firm to store and retrieve records.

KUTAK ROCK LLP
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PHILADELPHIA
RICHMOND
SCOTTSDALE
SPOKANE
WASHINGTON, D.C.
WICHITA

October 8, 2015

THOMAS M. PELTZ
thomas.peltz@kutakrock.com
(303) 292-7807

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

Re: Proposed issuance of Special Purpose Sales and Use Tax Revenue Refunding Bonds
(POST Project), Series 2015

Dear David:

We are pleased to submit this letter for our engagement Disclosure Counsel to the City of Westminster (the "City") in the issuance of the above referenced Sales and Use Tax Revenue Refunding Bonds (POST Project), Series 2015 (the "Bonds"). The Bonds are expected to be issued in the approximate principal amount of \$20,000,000 and to close in the fourth quarter of 2015. The City will be assisted in the financing by its financial advisor, FirstSouthwest, and the Bonds are to be underwritten by George K. Baum & Company (the "Underwriter").

Scope of Engagement

Official Statement. In this engagement, we expect to render legal advice to the City in the preparation of an official statement to be used in the offer and sale of the Bonds (the "Official Statement"). In connection with this service, Kutak Rock LLP ("Kutak Rock") will represent to the City that, while we are not passing upon, and do not assume responsibility for, the accuracy, completeness or fairness of the statements contained in the Official Statement, nothing has come to the attention of the attorneys in our firm who have worked on this engagement which leads us to believe that the final Official Statement (other than the financial, statistical or engineering data and information contained therein, any expressions of opinion or projections contained therein, and information provided for inclusion by any bond insurer or other providers of credit enhancement as to which we express no view or belief) as of its date contained, or as of the date hereof contains, any untrue statement of a material fact or as of its date omitted, or as of the date hereof omits, to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

KUTAK ROCK LLP

David Frankel, Esq.
October 8, 2015
Page 2

Bond Purchase Agreement. In our engagement, we also are expected to draft a Bond Purchase Agreement between the City and the Underwriter relating to the purchase of the Bonds by the Underwriter and the sale of the Bonds by the City.

Limitation of Duties. Our duties in this engagement are limited to those expressly set forth above. Among other things, our duties do not include preparing blue sky or investment surveys with respect to the Bonds or making an investigation or expressing any view as to the creditworthiness of the City or the Bonds.

Responsible Attorney. The attorney assigned to this engagement will be Tom Peltz. Mr. Peltz has been acting as counsel to the City of Westminster and related entities for more than 30 years. In providing legal services to the City at the most efficient costs, Mr. Peltz will be assisted by our paralegal who has worked on a number of prior City financings, Ardie White, and by a junior partner at Kutak Rock.

Attorney-Client Relationship

Upon execution of this engagement letter, the City will be our client and an attorney-client relationship will exist between us. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. We further assume that all other parties understand that in this transaction we represent only the City, we are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services as Disclosure Counsel are limited to those contracted for in this letter; the City's execution of this engagement letter will constitute an acknowledgment of those limitations. Our representation of the City and the attorney-client relationship created by this engagement letter will be concluded upon issuance of the Bonds.

Conflicts

As you are aware, our firm represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the City, one or more of our present or future clients will have transactions with the City. It is also possible that we may be asked to represent, in an unrelated matter, one or more of the entities involved in the issuance of the Bonds. We do not believe such representation, if it occurs, will adversely affect our ability to represent you as provided in this letter, either because such matters will be sufficiently different from the issuance of the Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Bonds. Execution of this letter will signify the City's consent to our representation of others consistent with the circumstances described in this paragraph.

KUTAK ROCK LLP

David Frankel, Esq.
October 8, 2015
Page 3

Fees

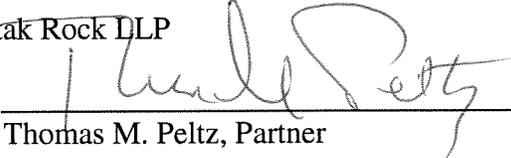
Based upon: (a) our current understanding of the terms, structure, size and schedule of the financing represented by the Bonds; (b) the duties we will undertake pursuant to this engagement letter; (c) the time we anticipate devoting to the financing; and (d) the responsibilities we will assume in connection therewith, our fee will be \$28,500. Our fee may vary: (i) if the principal amount of Bonds actually issued differs significantly from the amount stated above; (ii) if material changes in the structure or schedule of the financing occur; or (iii) if unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility. If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will advise you. We will not expect to be reimbursed for client charges made or incurred on your behalf, such as photocopying, deliveries, long distance telephone charges, facsimile charges, filing fees, computer-assisted research and other expenses.

We understand and agree that our fees will be paid at the Closing. If the financing is not consummated, we understand and agree that we will not be paid for services rendered to the City pursuant to this engagement.

Records

At your request, papers and property furnished by you will be returned. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of this engagement.

If the foregoing terms are acceptable to you, please so indicate by returning the enclosed copy of this engagement letter dated and signed by an authorized officer, retaining the original for your files. We look forward to working with you.

Kutak Rock LLP
By 
Thomas M. Peltz, Partner

Accepted and Approved

City of Westminster

By _____

Title _____

Date: _____



Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: City of Westminster/Westminster Economic Development Authority/Westminster Downtown General Improvement District Intergovernmental Cooperation Agreement

Prepared By: Tammy Hitchens, Finance Director
Robert Byerhof, Treasury Manager
Karen Creager, Special Districts Accountant

Recommended City Council Action

Authorize the City Manager to execute an Intergovernmental Cooperation Agreement between the City of Westminster (City), the Westminster Economic Development Authority (WEDA), and the Westminster Downtown General Improvement District (GID) in substantially the same form as attached providing for reimbursement to the City by either WEDA and/or the GID of certain costs incurred by the City within the boundaries of the Westminster Center Urban Reinvestment Plan Area.

Summary Statement

- The Westminster Center Urban Reinvestment Plan Area, commonly known as Downtown Westminster, was created on April 13, 2009, to facilitate redevelopment of property within the Downtown area.
- In July 2015, the City issued \$40,000,000 in Certificates of Participation (COPS) to help finance improvements related to Phase I of the Downtown Westminster redevelopment project.
- In August 2015, Council approved the creation of the City of Westminster Downtown GID.
- Also in August, 2015, Council, as ex officio Board of Directors of the GID, approved the ballot language to be presented to District voters in the November 2015 election to authorize a mill levy of up to 50 mills to pay for public infrastructure, services and financing costs within the GID's boundaries.
- In consideration of the City constructing the improvements benefitting the Downtown Westminster redevelopment project, the City, WEDA and the GID wish to enter into an Intergovernmental Cooperation Agreement (ICA) to spell out each of the Parties obligations related to the construction and maintenance of public improvements, other public services within the boundaries, and debt service incurred on behalf of redevelopment projects.
- The source of revenues to be used for the obligations in the area will be property tax increment and sales tax increment collected in redevelopment area, property taxes generated from the GID mill levy and other revenues collected by WEDA and the GID.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does the Council support entering into an ICA with WEDA and the Westminster Downtown GID to provide for the reimbursement of capital and maintenance costs along with other contractual obligations associated with the Downtown Westminster project provided all other superior covenants and superior obligations have been met?

Alternative

Do not authorize the execution of the proposed ICA between the City, WEDA and the GID. This alternative is not recommended. The sharing of revenue is necessary given the costs borne by the City for the construction and maintenance of improvements within the URA and other contractual obligations. Additionally, these expenses are a proper and legal use of URA tax increment and GID tax revenues.

Background Information

On April 13, 2009, City Council created the Westminster Center Urban Reinvestment Plan Area to encourage and support the redevelopment of the former Westminster Mall into what is now known as Downtown Westminster. The City and WEDA continue to work together to design and construct public improvements within Downtown Westminster to further enhance the redevelopment strategy. As part of that effort, on August 10, 2015, City Council established the City of Westminster Downtown General Improvement District to fund improvements and operational costs within the GID boundaries. Under the GID structure, a property tax mill levy is assessed on property owners within the GID boundaries. The property owners are the primary beneficiaries of the public improvement, such as streets, lights, parks, parking improvements etc. to be built and such improvements are maintained for the benefit of the users.

In late July, the City issued \$40,000,000 in Certificates of Participation to finance improvements and infrastructure related to Downtown Westminster. Additionally on August 24, 2015, Council, acting as the ex officio board of the GID, approved the ballot language that would authorize a mill levy not to exceed 50 mills to pay for public infrastructure, maintenance, professional services, and financing costs within the district's boundaries and establish multi-year obligations.

Pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City, WEDA, and the GID are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity. On June 27, 2011, and on December 9, 2013, WEDA and City entered into separate ICA's for the reimbursement of certain costs incurred within the Westminster Center Reinvestment Plan area. Staff along with legal counsel recommend that a new ICA be adopted, which includes the recently approved Westminster Downtown GID and affirms the contractual obligations between the ICA parties. Accordingly, an ICA between the entities provides a prudent mechanism for the City to recover expenses incurred for capital investment, maintenance, professional services, and any financing costs made on behalf of WEDA and the GID.

This ICA generally accomplishes the following:

- The City agrees to enter into one or more contracts for the construction of the Improvements as defined in the ICA.
- WEDA agrees to reimburse the City for amounts Advanced and the City's costs as described in the ICA.
- The GID agrees to levy a property tax not to exceed 50 mills.
- WEDA agrees to return the portion of the District's revenues, which are attributable to the District's mill levy, to the District.
- The GID agrees to utilize revenues it receives to assist in paying the costs of certain improvements and services within District's boundaries.

Although the final build-out of Downtown Westminster is years from completion, the recommended action to approve the ICA will establish the contractual obligations needed to provide the City repayment of capital, maintenance, professional services, and any financing costs incurred that benefit WEDA and the District.

The action requested in this agenda memorandum relates to the City's Strategic Plan goals of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and Financially Sustainable Government Providing Excellence in City Services by entering into an intergovernmental cooperation agreement to provide and finance the ongoing needs of the Downtown Westminster development.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment: Intergovernmental Cooperation Agreement

**INTERGOVERNMENTAL COOPERATION AGREEMENT AMONG
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF
WESTMINSTER AND THE CITY OF WESTMINSTER DOWNTOWN GENERAL
IMPROVEMENT DISTRICT REGARDING THE WESTMINSTER CENTER URBAN
REINVESTMENT PROJECT.**

This Intergovernmental Cooperation Agreement (the "Agreement"), dated as of _____, 2015, by and among the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY ("WEDA"), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, the CITY OF WESTMINSTER ("the City"), a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado, the CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT ("District"), a quasi-municipal corporation and body corporate of the State of Colorado duly organized and existing pursuant to Title 31, Article 25, Part 6, C. R.S., as amended (collectively the "Parties").

W I T N E S S E T H

WHEREAS, the City Council of the City has adopted an urban renewal plan known as the "Westminster Center Urban Reinvestment Plan" ("Urban Renewal Plan") under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et. seq., C.R.S., as amended (the "Act"); and

WHEREAS, in accordance with the Urban Renewal Plan and the Act, WEDA is authorized to undertake an urban renewal project and to finance such project by utilization of certain incremental increases in property and sales taxes; and

WHEREAS, the District was created in part to finance the costs of various public improvements and services for the benefit of property described in the Urban Renewal Plan; and

WHEREAS, the Parties desire to provide various public improvements as part of the urban renewal project described in the Urban Renewal Plan, including, without limitation, water and sewer lines, streets, curb and gutter, sidewalks, streetscape, landscape, lighting, security, drainage, telecommunications, signage, parking and transportation facilities, parks, plazas, trails, recreation facilities, public art projects, traffic improvements, utilities and all other necessary, incidental, appurtenant, and convenient facilities, equipment, land and property rights ("Improvements"); and

WHEREAS, in order to finance a portion of the costs of the Improvements, the City has entered into a lease-purchase agreement and in connection therewith there have been issued \$30,000,000 Certificates of Participation, Series 2015A and \$10,000,000 Certificates of Participation, Taxable Series 2015B (the "Certificates"); and

WHEREAS, pursuant to a Cooperation Agreement dated June 27, 2011, between the City and WEDA, WEDA agreed to repay the City (a) \$15,825,000 which the City advanced to WEDA to acquire the Westminster Mall and (b) amounts advanced by the City to WEDA to pay the ongoing costs to maintain the Westminster Mall until its demolition and to demolish the Westminster Mall and prepare the site for redevelopment which amounts equal \$3,591,886 as of the date hereof (collectively, the "2011 Agreement Advances"); and

WHEREAS, the City has also advanced to WEDA \$13,425,523 for the costs of other land acquisitions related to the redevelopment of the Westminster Mall site and has spent \$32,842,409 as of the date hereof and will spend additional amounts in the future to redevelop the Westminster Mall site (together with the 2011 Agreement Advances, collectively, the "Advances"); and

WHEREAS, the Parties are authorized by the Section 112 of the Act to enter into cooperative agreements with respect to projects and activities and are authorized by Section 29-1-203, C.R.S. to enter into contracts to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Parties desire to enter into an agreement setting forth their intent to cooperate as to the provision of the Improvements and the maintenance of such Improvements and to assure that taxes levied by the District are made available to pay the costs of certain improvements and services; and

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, the City, WEDA and the District hereby agree as follows:

1. Improvements. The City or WEDA will enter into one or more contracts for the construction of the Improvements. The City agrees to pay a portion of the cost of the Improvements located within the Urban Renewal Plan from the proceeds of its \$30,000,000 Certificates of Participation, Series 2015A and \$10,000,000 Certificates of Participation, Taxable Series 2015B (the "Certificates") and other legally available funds. WEDA agrees to reimburse the City (a) for the amount of the Advances and (b) for the City's costs related to the financing of the costs of the Improvements and (c) in the event the City pays the costs of the maintenance of said Improvements, for the costs paid by the City to maintain the Improvements. The City will advise WEDA of amounts spent by the City (other than from the proceeds of the Certificates) after the date hereof on redevelopment of the Westminster Mall site and if WEDA consents such amounts will be added to the amount of the Advances to be reimbursed by WEDA.

2. Tax Increment Revenues. In consideration of the District providing improvements and services to benefit property described in the Urban Renewal Plan, WEDA agrees that the portion of revenues that it receives as tax increment revenues that are attributable to the District's annual levy of ad valorem taxes on real and personal taxable property shall be remitted to the District periodically, but no less frequently than annually. In consideration of City financing the Improvements and providing for the maintenance of the Improvements as described in Section 1, WEDA agrees that the revenues that it receives as tax increment revenues pursuant to Section 107(9)(II) of the Act and the Urban Renewal Plan, except for the revenues paid to the District pursuant to the preceding sentence, shall be used by WEDA to reimburse the City for the costs it incurs pursuant to Section 1. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S., and WEDA irrevocably pledges all of its tax increment revenues as described in § 31-25-107(9)(a)(II), C.R.S. to the repayment of the same. WEDA shall not incur any other obligation payable from the tax increment revenues without the consent of the District and the City.

3. Cooperation. The Parties covenant with each other that in any action or challenge of the Urban Renewal Plan and/or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

4. Enforcement. WEDA agrees that it shall enforce the collection of the Tax Increment Revenues.

5. Effective Date; Term. The City and WEDA agree that this agreement supersedes a Cooperation Agreement dated June 27, 2011 (the "2011 Agreement") between the City and WEDA and an Intergovernmental Cooperation Agreement dated as of December 23, 2013 (the "2013 Agreement") between the City and WEDA and the 2011 Agreement and 2013 Agreement are no longer of any force and effect. This Agreement shall become effective as of the date set forth in the initial paragraph hereof. This Agreement shall remain in full force and effect until terminated by mutual consent of the Parties or until the tax allocation provisions of the Urban Renewal Plan terminate, whichever is earlier.

6. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

8. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

EXECUTED this _____, 2015

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director

APPROVED AS TO FORM:

Attorney for Authority

CITY OF WESTMINSTER

By: _____
Mayor

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT

By: _____
Mayor, Presiding Officer of the District

ATTEST

Secretary

APPROVED AS TO FORM:

District's Attorney



Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Intergovernmental Service Agreement with the City of Westminster Downtown General Improvement District

Prepared By: Karen Creager, Special Districts Accountant

Recommended City Council Action

Authorize the City Manager to execute an Intergovernmental Service Agreement with the City of Westminster Downtown General Improvement District in substantially the same form as the attached agreement, regarding the payment of a service fee to the City.

Summary Statement

- The City of Westminster Downtown General Improvement District (District) was created on August 10, 2015, with the primary purpose of acquiring, constructing, installing, operating or maintaining Improvements and/or providing services within and for the District.
- The District has no Staff; therefore, the City provides crucial administrative services to the District.
- The Intergovernmental Service Agreement (IGSA) between the City and the District will outline the obligations with regard to administrative services provided to the District by the City and the District's compensation to the City for such services.
- This agreement is retroactive to January 1, 2015.

Expenditure Required: Administrative Fee: \$10,000/year for 2015-2017. Future expenditures to be determined each year during the annual budget process and pursuant to the terms of the IGSA

Source of Funds: Revenues for the District including property taxes, ownership taxes and interest earnings

Policy Issue

Should City Council authorize the attached IGSA with the District?

Alternative

An alternative would be to not authorize the attached IGSA between the City and the District. This is not recommended as the City provides crucial administrative services that could be more costly if the District were to outsource the services. Additionally, the City is compensated by seven other General Improvement Districts (GIDs) located within the City that utilize City Staff for administrative services.

Background Information

The City of Westminster Downtown General Improvement District was created on August 10, 2015, and is a parcel located on the Downtown redevelopment site. The District was established with the primary purpose of acquiring, constructing, installing, operating or maintaining improvements that may include but are not limited to, public roadways, including road and pedestrian underpasses, site grading, sidewalks, parking improvements, water and sewer lines, landscaping, irrigation, site and traffic lighting, drainage improvements, site amenities such as benches, fountains, required signage, and relocating businesses and/or providing services, which may include but are not limited to, police and fire protection, municipal and building code enforcement, professional services including but not limited to planning, engineering, building and construction inspection, financial administration and legal services, and any other service that the City is authorized to provide within and for the District.

As the District does not have its own professional staff, the City provides various necessary administrative services. These services include but are not limited to, legal (provided no conflict of interest exists between the City and the District), accounting, management and clerical. The District benefits by having the City provide these services as the services would be more costly if the District were to outsource them. Currently, the City has IGSA's with seven other GIDs located within the City for such administrative services provided to these Districts.

The attached IGSA outlines the services that the City will provide and the fee the District will pay to the City for those services. The fee is to be set annually through the budget process and is labeled "Administration" in the District's budget. The fee is due on or before August 1 each year. Services have been provided to the District beginning in 2015; however, no IGSA was in place allowing for the payment of the fee. The attached IGSA is retroactive to January 1, 2015. The IGSA sets the fee at \$10,000 annually for 2015-2017 and provides for repayment of the fee from future excess revenues if the fee is not fully paid when due. The first year the District will receive revenue is 2017. It is anticipated that revenues in 2017 will not be sufficient to pay the full amount of the fee when due until the development progresses.

The action requested in this agenda memorandum relates to the City's Strategic Plan goal of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and Dynamic, Diverse Economy by assuring that the City receives payment, when appropriate, for the services it provides to the Downtown General Improvement District.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment – IGSA Agreement

INTERGOVERNMENTAL SERVICE AGREEMENT

THIS INTERGOVERNMENTAL SERVICE AGREEMENT (the "Agreement") is made and entered into this day ___ of _____ (the "Effective Date") by and between THE CITY OF WESTMINSTER, COLORADO, a Colorado home-rule municipality, and the CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT (the "Parties.")

RECITALS

WHEREAS, the City of Westminster, Colorado (the "City") is a Colorado home-rule municipality, created, established, existing, and acting under the provisions of Article XX of the Constitution of the State of Colorado and the City Charter; and

WHEREAS, the City of Westminster Downtown General Improvement District (the "District") is a quasi-municipal corporation and political subdivision of the State of Colorado, established, existing, and acting pursuant to the provisions of Part 6, Article 25, Title 31, Colorado Revised Statutes (the "Act"); and

WHEREAS, Section 18(2)(a) of Article XIV of the Constitution of the State of Colorado provides that nothing in the Constitution shall be construed to prohibit the State or any of its political subdivisions from cooperating or contracting with one another or with the government of the United States to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt; and

WHEREAS, Part 2 of Article 1 of Title 29 of the Colorado Revised Statutes, as amended, authorizes and enables governments of the State of Colorado to enter into cooperative agreements or contracts; and

WHEREAS, the Constitution and the laws of the State of Colorado permit and encourage local government entities to cooperate with each other to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, the District does not have its own professional staff and is in need of administrative services, including but not limited to legal, accounting, management, financial, clerical and similar services; and

WHEREAS, the City is willing to provide such services in exchange for the consideration set forth in this Agreement; and

WHEREAS, pursuant to C.R.S. § 32-25-611, the District has the power to enter into contracts and agreements affecting the affairs of the District.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, and other good and valuable consideration, the Parties covenant and agree as follows:

ARTICLE I

TERM OF AGREEMENT

SECTION 1. Effective Date of the Agreement; Duration of Agreement Term. The Initial Term of this Agreement shall be January 1, 2015 through December 31, 2015. Thereafter, this Agreement shall automatically renew for additional one-year periods commencing on each January 1 following the Initial Term, provided, however, that either party may terminate this Agreement upon at least thirty (30) days advance notice to the other, in which case this Agreement shall be deemed terminated as of the last day of the month next following the month in which said notice is given, or such other date to which the Parties may agree.

ARTICLE II

SERVICES

SECTION 2.1 City Services. The City agrees to provide to the District administrative services reasonably required to operate the District to fulfill the purposes for which it was created. Such services shall include, but are not limited to, legal (provided no conflict of interest exists between the City and the District), accounting, management, financial, and clerical services (the "Services"). Said Services shall be provided by City staff on an as-needed basis as may be required by the applicable laws and regulations pertaining to the operations of a General Improvement District.

SECTION 2.2 Compensation. As compensation for the Services, the District shall pay the City the lump sum annual fee labeled "Administration" as specified in the Annual Budget as adopted by the District. However, the Administration fee for the initial term of the Agreement and the two subsequent terms will be \$10,000 for each term. This Administration fee shall be due on or before August 1 of the year in which the Services are provided. If the Administration fee is not paid by the District when due, and so long as this Agreement is not terminated, unpaid fees shall accrue and be due and owing without interest when District future excess revenues are available subject to the right of the District to terminate this Agreement. In the event of any termination of this Agreement prior to the August 1 payment date, the District shall pay the City a pro-rated fee based on the length of time the Services were actually provided without payment. In the event of termination, however, there shall be no refund of any previously paid fees to the City.

ARTICLE III

MISCELLANEOUS PROVISIONS

SECTION 3.1 Remedies. A breach by either party to this Agreement shall entitle the non-breaching party to any and all remedies at law or in equity. In any action brought to enforce this Agreement, the prevailing party shall be entitled to recover from the other its reasonable attorneys fees and costs. Before bringing any such action, however, the Parties agree to attempt in good faith a mediated resolution of their dispute using a mutually acceptable professional and independent mediator.

SECTION 3.2 Amendments. This Agreement may be amended at any time by mutual written agreement of the Parties.

SECTION 3.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect, impair or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

SECTION 3.4 TABOR. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation within the meaning of Colorado Constitution Article X, Section 20, commonly known as "TABOR." The obligations of the Parties hereto shall be subject to appropriation of the necessary funds to meet said obligations on an annual basis by the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused their names and seals to be affixed as of the date and year noted above.

CITY OF WESTMINSTER, COLORADO

By: _____
City Manager, City of Westminster

(SEAL)

ATTEST:

City Clerk

**CITY OF WESTMINSTER DOWNTOWN GENERAL
IMPROVEMENT DISTRICT**

By: _____
Mayor, Presiding Officer of the District

(SEAL)

ATTEST:

Secretary



Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Semper and Northwest Water Treatment Facilities HVAC Repair and Replacement Engineering Design Contract

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

Recommended City Council Action

Authorize the City Manager to execute a contract with Beaudin Ganze Consulting Engineers Incorporated, in the amount of \$162,174 for the design of the Semper and Northwest Water Treatment Facilities HVAC Repair and Replacement Project, plus a project contingency amount of \$16,217, for a total authorized expenditure of \$178,391.

Summary Statement

- The City owns and operates two potable water treatment facilities that supply water to our customers. These plants are the Semper Water Treatment Facility (Semper) and the Northwest Water Treatment Facility (Northwest).
- Semper was originally built in 1969, and Northwest was built in 2001. Both plants have heating, ventilation, and air conditioning (HVAC) systems in need of repairs and improvements.
- Work at the Semper facility is driven primarily by age and condition. Work at the Northwest facility is focused on improving safety in chemical storage rooms and reliability in the cooling system of the main electrical equipment room.
- Of the two proposals received for engineering design services, the project team believes Beaudin Ganze Consulting Engineers Incorporated (Beaudin Ganze) submitted the most comprehensive proposal and provides the best value to the City. Staff is recommending that a contract for the project design be awarded to Beaudin Ganze.
- Upon successful completion of the design contract, staff will return to Council with a construction management services contract for Beaudin Ganze, along with a construction contract.
- The design is expected to be completed by May of 2016, with construction completion in late 2016.
- Adequate funds were budgeted and are available for this project.

Expenditure Required: \$178,391

Source of Funds: Utility Capital Improvement Fund - Semper and Northwest Water Treatment Facilities HVAC Repair and Replacement Project

Policy Issue

Should the City execute a contract with Beaudin Ganze for engineering design of the Semper and Northwest Water Treatment Facilities HVAC Repair and Replacement Project?

Alternatives

1. City Council could decline to approve the contract and place the contract on hold. However, the existing HVAC equipment is at the end of its useful life at both the Semper and Northwest facilities, and improvements are necessary to maintain building function at both facilities. Delaying the project is not recommended since it could result in increased maintenance and repair expenses, and safety risks for plant staff.
2. City Council could choose to award the contract to the other consultant that submitted a proposal; however, this is not recommended as staff believes that Beaudin Ganze provides the best value for this project.

Background Information

The City owns and operates two potable water treatment facilities that supply water to our customers. These plants are the Semper Water Treatment Facility (Semper) with a current value estimated at \$100 million and the Northwest Water Treatment Facility (Northwest) with a current value estimated at \$45 million. The Semper facility was built in 1969. Since that time, various expansion and improvement projects have been constructed to maintain service and meet more stringent potable water regulations. The Northwest facility was built in 2001 and has since undergone one expansion project in 2010. Overall, the facilities at both plants have provided many years of high-level service to City water customers but are beginning to age and need repairs. Repairs are especially required at the older Semper facility. The focus of this overall project is repairs/improvements to facility heating, ventilation, and air conditioning (HVAC) systems at the facilities. HVAC is critical at these locations to provide safe air quality for City staff and to maintain air temperatures protective of critical equipment used to operate the plants.

Work at the Semper facility is focused on replacing many HVAC components in the administration building due to age and condition. The project also aims to improve system performance with respect to better zoning for more control over temperatures in various office spaces. Some of the work at Semper includes replacing air conditioning equipment that prevents overheating of equipment used to operate the plant.

Work at the Northwest facility is focused on improving operator safety and the reliability of the HVAC system in critical areas of the plant. New ventilation equipment is necessary for the chemical storage area to maintain safe air quality. New air conditioning is necessary in the main electrical room to prevent equipment overheating during times when the primary unit is offline for repairs.

Major project components for the design phase include:

- a. Repairs/Improvements to the Semper administrative building HVAC systems
- b. Converting the Semper lab conference room to office space with a new HVAC zone
- c. A new cooling system for the Semper High Service Pump Station main electrical room
- d. A backup air condition system to protect equipment in the Northwest main electrical room
- e. New air exchange equipment in the Northwest acid feed room

Project improvements will target use of more efficient equipment to help reduce energy and operating costs. Life cycle cost analysis will be performed for all design alternatives. Another key component of design will be developing a construction sequencing plan such that project construction can proceed without interfering with water treatment facility operations.

City staff sent a Request for Proposals (RFP) to seven engineering firms that specialize in this type of HVAC system design. Two proposals were received on September 10, 2015. Of the firms that declined to

propose, some cited their preference for a design-build approach, not design-bid-build as specified. It is worth noting that those same firms did indicate positive interest in bidding on the construction contract. Another firm declined to provide a proposal citing their preference for a solely qualifications-based selection (with a subsequently negotiated contract), not the qualitative and quantitative selection approach as specified.

Staff evaluated each proposal received based on key criteria:

1. Response to specific requirements in the RFP, clarity and presentation of proposed scope, tasks, and fee.
2. Firm's background and expertise in completing projects of similar size, scope, and complexity;
3. Firm's references related to the ability to complete project requirements on schedule and within budget;
4. Firm's reputation with the City and familiarity with City codes, policy, procedures, and regulations;
5. Professional background and experience of each key person of the project team;
6. Key team member availability and commitment to the project; and
7. Level of effort, competitive firm fee schedule, and competitive hourly rates for staff assigned to this project relative to their experience levels.

The City selection committee scored each firm based on the selection criteria, with Beaudin Ganze achieving the highest score. Because this project incorporates a significant work effort, competitive firm fees were of particular importance. A comparison of each firm's proposed fee is shown below:

FIRM	Hourly Rate Range for Key Staff	Fee Proposal Based on Scope Submitted
Beaudin Ganze Consulting Engineers, Inc.	\$130 - \$169 / hr	\$162,174
The RMH Group, Inc.	\$110 - \$214 / hr	\$170,464

Engineering fees from the proposals received ranged from \$162,174 to \$170,464, with the Beaudin Ganze proposal at \$162,174. In addition to their different fees, proposals ranged in the level of complexity and thoroughness of scope relative to the City's goals for the project. Of the firms that proposed, staff believes that the Beaudin Ganze approach and team were the best for the project. They incorporated strong local staff with proven repair and rehabilitation experience for complex HVAC projects and have successfully provided engineering services to the City on other projects similar in size and scope to the current project.

Staff recommends Beaudin Ganze be awarded the design contract. Following successful completion of this design phase, staff intends to negotiate a subsequent contract for engineering services during construction and will return to City Council for approval of additional work. Overall, the project (with construction) is currently estimated to cost \$1,750,000. The design phase is expected to be completed by May of 2016, with construction completion in late 2016.

The budget for this work (design and construction) was adopted by City Council for 2015 in the Semper and Northwest Water Treatment Facilities HVAC Repair and Replacement Project account.

The Semper and Northwest Water Treatment Facilities HVAC Repair and Replacement Project reduces the risk of water treatment service failures and their associated costs. Well-maintained infrastructure provides excellent service to the City while supporting financial sustainability. Ensuring the best quality in drinking water treatment helps make Westminster a "Beautiful, Desirable, Safe and Environmentally Responsible City."

Respectfully submitted,

Donald M. Tripp
City Manager



Agenda Item 8 K

Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Second Reading of Councillor’s Bill No. 49 re Amendment to the Adopted 2016 Budget

Prepared By: Steve Smithers, Deputy City Manager
Barbara Opie, Assistant City Manager
Ben Goldstein, Senior Management Analyst
Kim Barron, Police Commander
J.R. Clanton, Senior Management Analyst

Recommended City Council Action:

Pass Councillor’s Bill No. 49 on second reading amending the FY2016 budgets of the General, General Reserve, General Fund Stabilization Reserve, Utility, Utility Rate Stabilization Reserve, Utility Capital Project Reserve, Stormwater Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, General Capital Improvement, Conservation Trust and Property Liability/Workers’ Compensation Funds in support of City Council’s Adopted 2015 Strategic Plan.

Summary Statement

- City Council action is requested to pass the attached Councillor’s Bill on second reading, which amends the Adopted 2016 Budget in support of City Council’s Adopted 2015 Strategic Plan.
- This Councillor’s Bill was passed on first reading on October 12, 2015.

Expenditure Required: 2016 = \$257,873,829, plus \$48,103,178 in reserves and \$1,000,000 in contingency

Source of Funds: General, General Reserve, General Fund Stabilization Reserve, Utility, Utility Capital Project Reserve, Utility Rate Stabilization Reserve, Stormwater Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Property Liability/Workers Compensation, Sales & Use Tax, POST, Conservation Trust, General Capital Improvement, and Debt Service Funds

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment: Councillor’s Bill

BY AUTHORITY

ORDINANCE NO. **3804**

COUNCILLOR'S BILL NO. **49**

SERIES OF 2015

INTRODUCED BY COUNCILLORS
Briggs - Pinter

A BILL

FOR AN ORDINANCE AMENDING THE 2016 BUDGETS OF THE GENERAL, WATER, UTILITY CAPITAL PROJECT RESERVE, WASTEWATER, LEGACY RIDGE GOLF COURSE, HERITAGE AT WESTMOOR GOLF COURSE, STORM DRAINAGE, SALES & USE TAX, PARKS OPEN SPACE & TRAILS, CONSERVATION TRUST, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION OR UN-APPROPRIATION FROM THE 2016 ESTIMATED REVENUES IN THE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2016 appropriation for the General, Water, Utility Capital Project Reserve, Wastewater, Legacy Ridge Golf Course, Heritage Golf Course, Storm Drainage, Sales & Use Tax, Parks Open Space & Trails, Conservation Trust, and General Capital Improvement Funds initially appropriated by Ordinance No. 3737 are hereby increased in aggregate by \$64,302,062. This appropriation is due to a budget amendment for revised revenue projections and expense estimates for 2016.

Section 2. The \$64,302,062 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 F-H dated October 12, 2015 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$3,137,092
Water Fund	17,867,123
Utility Capital Project Reserve Fund	(2,156,406)
Wastewater Fund	28,715,257
Legacy Ridge Fund	271,937
Heritage at Westmoor Fund	113,276
Storm Drainage Fund	586,110
Sales & Use Tax Fund	8,070,754
Parks Open Space & Trails Fund	1,256,919
Conservation Trust Fund	172,000
General Capital Improvement Fund	<u>6,268,000</u>
Total	<u>\$64,302,062</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 12th day of October, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 26th day of October, 2015.

ATTEST:

Mayor

City Clerk



Agenda Item 8 L

Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Second Reading of Councillor's Bill No. 50 Amending the Westminster Municipal Code re Municipal Judge Salary

Prepared By: Debbie Mitchell, General Services Director

Recommended City Council Action

Pass Councillor's Bill No. 50 on second reading by setting the salary for the Municipal Judge for 2016.

Summary Statement

- City Council previously approved a revised employment agreement with John A. Stipech for services as Presiding Judge. The agreement will go into effect January 1, 2016, contingent upon the approval of this ordinance on second reading.
- In the previously approved agreement, Judge Stipech's 2016 combined salary and deferred compensation will be \$145,871. The agreement allows the Judge to designate a portion of his salary as City-paid deferred compensation to be paid as a lump sum at the beginning of 2016. The new combined salary and deferred compensation for 2016 is three percent higher than the Judge's compensation in 2015.
- The previously approved agreement with Judge Stipech is similar to the current employment agreement with the exceptions of the effective dates of the contract and the changes in compensation.
- The Councillor's Bill was passed on first reading at the October 12, 2015, Council meeting.

Expenditure Required: \$145,871 plus the cost of fringe benefits as described in the attached employment agreement

Source of Funds: 2016 General Fund - Municipal Court Division Budget

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments: Agreement and Ordinance

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January, 2016, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "the CITY," and JOHN A. STIPECH, hereinafter called "EMPLOYEE," both of whom understand as follows:

WHEREAS, the CITY desires to continue to employ the services of John A. Stipech as Presiding Municipal Judge of the City of Westminster as provided by City Charter, Chapter XVI, Section 16.2; and

WHEREAS, it is the desire of the City Council of the CITY (the "City Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE; and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties or when the CITY may desire to otherwise terminate his employ; and

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

SECTION 1. DUTIES:

A. The CITY hereby agrees to continue the employment of EMPLOYEE as Presiding Municipal Judge of the CITY to perform the duties and functions specified in Section 16.2 of the City Charter, Chapter 22 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall administer the judicial component of the Municipal Court and shall be responsible for providing judicial coverage to insure efficient and expeditious hearing of all matters scheduled for hearing in the Municipal Court.

C. EMPLOYEE and the Court Administrator shall prepare and submit jointly a proposed budget for the Municipal Court, following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

D. EMPLOYEE shall supervise the judicial staff of the Municipal Court as may be authorized by the City Council. EMPLOYEE shall provide advice and direction to the Court Administrator in connection with the governance of the Court staff.

E. Except as otherwise expressly provided in this Agreement, EMPLOYEE shall be subject to the City of Westminster Personnel Policies and Rules, dated January 12, 2015, as amended ("Personnel Policies and Rules").

SECTION 2. TERM

A. It is the intent of the City Council and EMPLOYEE that EMPLOYEE will serve as Presiding Judge by annual appointment for the calendar years 2016 through 2020, with this Agreement automatically renewing annually within that term provided there is a corresponding annual appropriation. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of the CITY. Further, EMPLOYEE agrees not to become employed by any other employer until this Agreement is terminated. Notwithstanding the foregoing, the term "employed" shall not be construed to include other judicial service, private law practice, teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the services of EMPLOYEE at any time and for any reason, subject only to the provisions set forth in Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3 of this Agreement.

D. This Agreement expires December 31, 2016 and, subject to annual appropriation will renew for annual terms thereafter until final expiration on December 31, 2020 unless notice of non-renewal for the subsequent year is given on or before October 31st of the then current term, in which case the Severance Payment described in Section 3(A) below shall apply.

SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAYMENT:

A. In the event the City Council by majority vote decides to terminate EMPLOYEE's employment with the CITY before expiration of the aforementioned term of employment and during such time EMPLOYEE is willing and able to perform the duties of Presiding Municipal Judge, then, and in that event, the CITY agrees to give EMPLOYEE six (6) months' prior written notice or, if no such notice is given, to pay EMPLOYEE a lump sum cash payment equal to his Base Salary for the ensuing six (6) months, plus or minus the pro rata share of deferred compensation to which EMPLOYEE is entitled based on his termination date and the amount of deferred compensation already paid to EMPLOYEE for that year (the "Severance Payment"). In the event the CITY elects to terminate this Agreement without giving EMPLOYEE six (6) months' prior written notice thereof, the EMPLOYEE shall have as his sole and exclusive remedy the Severance Payment as provided in this paragraph, and EMPLOYEE shall have no other rights or claims against the CITY and hereby expressly waives and releases the same. In the event the EMPLOYEE is terminated without six (6) months' prior written notice, then, and in that event, the CITY shall be obligated to pay the Severance Payment unless, upon a unanimous vote of City Council, Severance Payment is withheld.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all City employees, or in the event the CITY refuses, following written notice, to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a written suggestion by at least four (4) members of the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction and be entitled to the Severance Payment as described in subsection A of this Section 3.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY no less than sixty (60) days' notice in advance in writing, and this agreement shall terminate on the effective date of the resignation.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this Section 3.

E. In the event this Agreement is not renewed by the City Council by execution of a new agreement with EMPLOYEE after final expiration of this Agreement on December 31, 2020, such non-renewal shall be considered a termination as provided for in Section 3(A) hereof and shall entitle EMPLOYEE to six (6) months' prior written notice or, upon less notice, the Severance Payment.

SECTION 4. SALARY AND EVALUATIONS:

A. Effective January 1, 2016, and subject to annual appropriation, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual gross salary ("Gross Salary") of \$145,871 which consists of a base salary ("Base Salary") and the amount EMPLOYEE elects to take in deferred compensation. EMPLOYEE may elect to receive a portion of his Gross Salary in the form of a lump sum

amount of deferred compensation up to the then current maximum allowed by law. The Base Salary shall be payable in installments at the same time as other employees of the CITY are paid.

B. The CITY agrees to review EMPLOYEE'S performance annually, no later than October 31 of each year. Salary evaluation each year shall be at the discretion of the CITY. Such evaluation shall consider the salary of judges of similar municipalities.

C. Pursuant to the City Charter, the Base Salary and deferred compensation provided in this Section shall be approved by ordinance of the City Council.

SECTION 5. HOURS OF WORK:

It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end, EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours, in compliance with the Personnel Policies and Rules.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. The CITY shall pay EMPLOYEE a monthly car allowance of \$500 to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

The CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

SECTION 8. PROFESSIONAL DEVELOPMENT:

The CITY agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the CITY, including, but not limited to, the American Bar Association, the Colorado Bar Association, the Colorado Municipal Judges Association, and continuing legal education courses and seminars related to topics of the judiciary. In addition to reasonably funding educational/training programs for EMPLOYEE'S professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each calendar year.

SECTION 9. GENERAL EXPENSES:

The CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

The CITY shall provide EMPLOYEE with all benefits that are provided to Department Head level employees by the Personnel Policies and Rules; provided that when such benefits are in conflict with this Agreement, this Agreement shall control. EMPLOYEE'S years of service with the City in an unbenefited capacity will be treated as years of continuous municipal service when the level of EMPLOYEE's benefits is computed.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter or any other law.

B. EMPLOYEE is ultimately responsible for providing judicial coverage of all docketed matters in the Westminster Municipal Court.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

C. This Agreement becomes effective on January 1, 2016, and, if automatically renewed and accompanied by a corresponding annual appropriation, shall be in effect through December 31, 2020.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

F. Effective January 1, 2016, this Agreement replaces and supersedes prior employment agreements between CITY and EMPLOYEE.

G. Nothing in this Agreement shall be construed as creating a multiple fiscal year obligation on the part of the CITY within the meaning of Colorado Constitution Article X, Section 20.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has voluntarily signed and executed this Agreement.

APPROVED by the Westminster City Council on October 12, 2015, contingent upon approval of the Councillor's Bill amending the Municipal Judge salary.

ATTEST:

Herb Atchison, Mayor

City Clerk

John A. Stipech

APPROVED AS TO LEGAL FORM:

City Attorney

BY AUTHORITY

ORDINANCE NO. **3805**

COUNCILLOR'S BILL NO. **50**

SERIES OF 2014

INTRODUCED BY COUNCILLORS
Briggs - Baker

**A BILL
FOR AN ORDINANCE SETTING THE SALARY OF THE MUNICIPAL JUDGE FOR 2016**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-7-2, W.M.C., is hereby AMENDED as follows:

1-7-2: MUNICIPAL JUDGE: The salary of the Municipal Judge shall be as follows:

~~\$141,622~~145,871 per annum, effective January 1, ~~2015~~2016, payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation. Such deferred compensation amount may, at the Municipal Judge's option, be paid as a lump sum at the beginning of the calendar year.

Section 2. 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 12th day of October, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of October, 2015.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Continued Public Hearing and Action on the Park 12 Hundred Project - Lucent Technologies 2nd Replat Subdivision amending the Comprehensive Plan, Rezoning, a Preliminary Development Plan, and an Official Development Plan

Prepared By: Michelle Stephens, AICP, Senior Planner

Recommended City Council Action

1. Conduct continued public hearing.
2. Pass Councillor’s Bill No. 47 on first reading, amending the Comprehensive Plan designation from Flex/Light Industrial to R-18 for an approximate 17.58-acre portion, from Flex/Light Industrial to Public Parks for an approximate 7.71-acre portion, and from Flex/Light Industrial to Private Parks/Open Space for an approximate 0.945-acre portion of the Lucent Technologies Subdivision 2nd Replat on a finding that the criteria set forth in Section 11-4-16(D)(4) of the Westminster Municipal Code have been met.
3. Pass Councillor’s Bill No. 48 rezoning from M-1 (Industrial District) to PUD (Planned Unit Development) an 82.421-acre property based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code have been met.
4. Approve the Park 12 Hundred Preliminary Development Plan based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met.
5. Approve the Park 12 Hundred Official Development Plan based on a finding that the criteria set forth in Section 11-5-15 of the Westminster Municipal Code have been met.

Summary Statement

- Crescent Properties is proposing the construction of a 320-unit apartment project at the northeast corner of 116th Avenue and Pecos Street.
- The Park 12 Hundred project includes the area south of the Digital Globe campus (previously referred to as “the Avaya building/campus”) and east of the The Ranch residential development.
- The property is currently designated as Flex/Light Industrial in the Comprehensive Plan and zoned M-1. The applicant is requesting an amendment to the Comprehensive Plan from Flex/Light Industrial to R-18 for a 17.58 acre portion of the site to allow for the consideration and approval of a multi-family residential project and to Public Park for 7.71 acres of the site to allow for the dedication and construction of a public park as part of an overall redevelopment strategy. A 0.945-acre portion of the development (Outlot B), located along the southwestern edge of the 7.71-acre public park outlot is proposed to be designated as Private Park/Open Space, as the developer will retain ownership of the detention pond. An additional approximately 0.064 acres of Parcel PA-2 will be dedicated as City right-of-way to allow a detached sidewalk to be constructed adjacent to 116th Avenue.
- A rezone to Planned Unit Development and approval of the Preliminary Development Plan for the entire site (82.421 acres) will promote development of a regional employment center complete with housing. This is part of an overall redevelopment strategy for the site that began in 2012.
- The proposed Official Development Plan allows for the construction of 320 multi-family rental units along with accessory parking and community space.

Expenditure Required: \$0

Source of Funds: N/A

October 12th, 2015 City Council Continued Public Hearing

The Park 12 Hundred project public hearing was continued at the October 12, 2015, City Council meeting after nearly 6 hours of testimony from the staff, applicant, and public. The hearing was continued in order to allow the Council time to review the information that was presented to them during the public hearing. At the October 26th meeting the Council will allow the applicant to finish its presentation and may follow-up with staff to answer any outstanding questions, which may include:

- What is the difference in estimated water consumption/resources from the current land use designation Flex/Light Industrial to R-18?
- What is the fiscal impact of changing the land use classification from Flex/Light Industrial, to R-18?
- What are the proposed project's impacts to public safety (fire and police) services?
- Is the school district forecast of 24 students appropriate?

Additional information requests from the City Council may also be answered by City staff. If new evidence is introduced at the October 26th meeting, the public will be afforded the opportunity to comment on the new evidence.

Staff has attached the seven new written comments received since the October 12th hearing (Attachment F), which are also summarized in Attachment E. Any new public comments received by staff after the publication date of this agenda memo will be entered into the record at the October 26th meeting.

Sections of the October 12th Agenda Memo are included below for reference.

Policy Issues

1. Should the City approve an amendment to the Comprehensive Plan from Flex/Light Industrial to R18?
2. Should the City approve an amendment to the Comprehensive Plan from Flex/Light Industrial to Public Parks?
3. Should the City approve an amendment to the Comprehensive Plan from Flex/Light Industrial to Private Parks/Open Space?
4. Should the City approve a rezone from M-1 to Planned Unit Development?
5. Should the City approve the Park 12 Hundred - Preliminary Development Plan?
6. Should the City approve the Park 12 Hundred - Official Development Plan?

Alternatives

1. Deny the proposed Comprehensive Plan Amendment from Flex/Light Industrial to R-18 in order to maintain the City's supply of employment lands per Comprehensive Plan Policy LU-P-16. Although the proposed Park 12 Hundred redevelopment strategy provides new housing and a public park adjacent to an employment center and satisfies many Comprehensive Plan goals and policies, it does not address the Comprehensive Plan's Flex/Light Industrial land use designation's intent to "provide and protect land for flexible employment uses." To achieve an improved jobs to housing balance, the Plan focuses on attracting higher intensity employment development into the City. In order for this strategy to be successful, the plan goal recommends that current stock of employment lands must be protected from encroachment by other uses.

This alternative is not recommended as staff believes the applicant has demonstrated that the amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Plan. Staff believes that the amendment is in compliance with the criteria outlined in the Westminster Municipal Code (WMC) Section 11-4-16(D)(4).

2. Deny the proposed Comprehensive Plan Amendment from Flex/Light Industrial to Public Parks. This alternative is not recommended as additional public parklands will benefit this area of the City.

Currently there are 9 public parks with approximately 14 acres of parkland located within a half-mile of the Park 12 Hundred site. The addition of this 7.71 acre park provides more than 50% new park area for the residents of this part of Westminster. Staff believes the applicant has demonstrated that the amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Plan. The amendment is in compliance with the criteria outlined in WMC Section 11-4-16(D)(4).

3. Deny the proposed Comprehensive Plan Amendment from Flex/Light Industrial to Private Parks/Open Space. This alternative is not recommended as the amendment to Private Parks/Open Space ensures the Comprehensive Plan remains consistent with actual land use. The 0.945 acre outlot proposed to be designated as Private Parks/Open Space is currently, and will continue to be, the development's detention pond. Ownership will be retained by the private property owner. Staff believes the applicant has demonstrated that the amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Plan. The amendment is in compliance with the criteria outlined in WMC Section 11-4-16(D)(4).
4. Deny the proposed rezone from M-1 to Planned Unit Development (PUD). This alternative is not recommended. The Planned Unit Development (PUD) District is intended to provide the means and the guidelines through which tracts of land are developed through an overall development plan that integrates the land uses and site considerations for the land as a unit (Section 11-4-7(A), WMC). The proposed project is part of an overall redevelopment strategy for the previous Avaya campus, which began in 2012, with the approval of the subdivision separating what is now the Digital Globe site from the Park 12 Hundred portion of the site. Subsequently the demolition of 354,000 square feet of the central building was approved. The proposal to allow multi-family residential on 17.58 acres of the 82.421 acre site is consistent with the owner's plan for the overall redevelopment of this site. The rezone from M-1 to PUD is in compliance with the criteria outlined in WMC Section 11-5-3.
5. Deny the Park 12 Hundred Preliminary Development Plan (PDP). This alternative is not recommended (if the City Council approves the proposed Comprehensive Plan amendment) as the PDP provides a clear framework for the revitalization of this employment center. The proposed transect of higher intensity flex/light industrial uses (east side of the site) to multi-family housing (south and west side of the site) to lower intensity park and single family uses (west of the site) provides a buffer for the existing single family neighborhood, while still allowing for the development of flex/light industrial uses on the remainder of the site. The PDP is in compliance with the criteria set forth in Section 11-5-14 of the WMC. However, if the City Council denies the proposed Comprehensive Plan amendment to R-18, staff recommends the denial of the PDP as it is inconsistent with the current Flex/Light Industrial land use designation of the property.
6. Deny the Park 12 Hundred Official Development Plan (ODP). This alternative is not recommended. If the City Council approves the proposed Comprehensive Plan amendment and PDP, the ODP is in compliance with the criteria set forth in Section 11-5-15 of the WMC. The proposed project creates a transect of lower intensity uses adjacent to Pecos Street and The Ranch to higher intensity light industrial uses (to be proposed as part of a future ODP) adjacent to Huron Street. The proposed multi-family housing will provide additional housing options for this key employment center. If the City Council denies the proposed Comprehensive Plan amendment to R-18 and/or PDP, staff recommends the denial of the ODP as it would not meet the criteria set forth in Section 11-5-15 of the WMC.
7. Approve the Park 12 Hundred PDP and ODP with conditions. Components of the PDP and/or ODP can be amended if the City Council considers elements require refining. This alternative is not recommended as staff believes the project satisfies the requirements of the WMC and Design Guidelines.

8. Continue the project. Although this alternative is not recommended, City Council may require additional time to understand impacts of the proposed project or provide the developer time to reach suggestions from City Council and/or the neighbors.

Background Information

Nature of Request

The owner of the Park 12 Hundred property has requested the review and approval of Comprehensive Plan amendments, a rezone, a Preliminary Development Plan and an Official Development Plan as part of an overall revitalization strategy for the 82.421-acre parcel. The site was formerly the southern portion of the Avaya campus generally bounded by 116th Avenue, Huron Street, 120th Avenue and Pecos Street. The northern portion of the old Avaya campus is now occupied by Digital Globe.

There are three Comprehensive Plan amendments proposed. The first request is to amend the Comprehensive Plan land use designation from Flex/Light Industrial to R-18 for a 17.58 acre portion of the Southwest corner of the property to allow for the development of a market rate 320-unit multi-family apartment development. The second request is to amend the Comprehensive Plan land use designation from Flex/Light Industrial to Public Parks for a 7.71-acre portion of property to allow for the dedication and development of a public park as part of the development of the multi-family units. The third amendment is proposed in order to designate the existing detention pond as Private Parks/Open Space, which is located along the southwest corner of the land that will be dedicated as public park. This amendment ensures the Comprehensive Plan remains consistent with actual land use as the pond will continue to be owned and maintained by the property owner.

A rezoning from M-1 to Planned Unit Development (PUD) is requested for the redevelopment of the parcel with uses other than those permitted in the M-1 zoning district, including multi-family housing. Per WMC, Section 11-5-4(A), an application for a rezoning to PUD must be accompanied by a request for approval of a Preliminary Development Plan (PDP). The PDP defines the land uses, building height, and setbacks necessary to guide future development approvals. The proposed PDP includes the development framework for the entire 82.421-acre parcel, including planning area 1 and 2 (PA-1 and PA-2). PA-1 is a 56.121-acre area identified for office, light industrial, and support commercial uses. PA-2 contain 26.272 acres of property and are identified by the PDP for multi-family residential and park uses.

Location

The 82.421-acre site is located east of Pecos Street, west of Huron Street, north of 116th Avenue, and south of the Digital Globe (formerly Avaya) building. (Please see Attachment A).

Comprehensive Plan Amendments

As part of an overall redevelopment strategy for a neighborhood that provides a mix of uses, including employment lands, multi-family residential, and park, the applicant is requesting an amendment from the Flex/Light Industrial land use designation to the R-18, Private Parks/Open Space, and Public Parks land use designations in order to allow for the revitalization of the Lucent Technologies 2nd Replat subdivision (formerly the Avaya Campus). The R-18 land use designation is intended to accommodate a mix of higher density housing types, including apartments, which are proposed with the Park 12 Hundred project. The Comprehensive Plan notes that R-18 “shall be located along arterial streets, near transit centers or available transit, and within or near activity center with a mix of supportive uses.” Pecos and Huron Streets are both identified as 4-lane arterial streets within the Comprehensive Plan and Comprehensive Roadway Plan (CRP). 116th Avenue is identified as a collector street. The Wagon Road Regional Transportation District (RTD) Park-n-Ride is located within walking distance of this project at the corner of Huron Street and 120th Avenue. It is served by the 8, 12, 120, 120X, 122X, 128, AA bus routes. Existing services and amenities are located along 120th Avenue. Future ODP applications may also include support commercial ancillary to the flex/light industrial uses.

The Public Parks land use designation applies to all City-owned parks. If this project is approved, the applicant will subdivide and dedicate the 7.71-acre area (Outlot A) for development and use as a public

park. Staff believes the designation as Public Park for this area is consistent with the intent of this land use and ensures the Comprehensive Plan remains current with development.

The Private Parks/Open Space land use designation is applied to private lands that provide passive and active recreational opportunities. The existing detention pond (Outlot B), which will continue to serve as the detention pond for the development, provides passive recreation as it is surrounded by mature vegetation. The development of the public park around the detention pond will contribute to the passive recreation opportunities provided by the detention pond.

The Westminster Municipal Code (Section 11-4-16) requires the owner of the property requesting an amendment to the Comprehensive Plan to prove the amendment is in the public good and in overall compliance with the purpose and intent of the Plan. Staff believes the applicant has demonstrated that the amendments are in the public good.

The current Flex/Light Industrial land use designation is reflective of the site's historic use as an industrial campus. Since the adoption of the Comprehensive Plan the Avaya Campus has been subdivided (Lucent Technologies 2nd Replat) and reconfigured. Changes include the demolition of a portion of the large building located in the center of the campus and the addition of the Adams County offices to the site. The proposed amendments to R-18, Private Parks and Open Space, and Public Parks will promote the continued revitalization of the property while also retaining property for future employment uses and provide valuable public park space. The proposed amendments are consistent with Plan policies, including:

- Achieve a balance of uses (Comp Plan Policy LU-G-2)
- Provide lands designated for employment uses (Comp Plan Policy LU-G-3)
- Ensure high-density residential is served by transit (Comp Plan Policy LU-G-6)
- Provide opportunities for a range of housing (Comp Plan Policy LU-G-7)
- Promote redevelopment as a pathway to economic revitalization (Comp Plan Policy LU-G-9)
- Promote the development of employment uses with convenient access (Comp Plan Policy LU-P-17)
- Focus high-density residential development within walking distance of employment and transit (Comp Plan Policy LU-P-26)
- Provide new smaller, high quality parks that address the need of high-density and mixed-use developments (Comp Plan Policy PRLO-G-2)
- Ensure that new development contributes to the provision and maintenance of adequate parks (Comp Plan Policy PRLO-P-4)

Noting the policies above, the Comprehensive Plan also aims to improve the balance between jobs and housing by attracting higher intensity employment development into the City. The lands identified in the Comprehensive Plan as Flex/Light Industrial may be needed to accommodate the projected employment growth in Westminster. Additional employment growth will allow the City's economic base to further meet the needs of the community, offering higher-paying jobs in growing industries.

Staff recognizes the site's proximity to an established single-family neighborhood and the concerns regarding noise and traffic related to the proposed multi-family residential project, which may be approved if the Comprehensive Plan amendment is approved. However, staff believes that light industrial land uses are more intense than multi-family land uses and that the proposed multi-family portion of this development provides a buffer for the single-family neighborhood from the existing and future industrial uses. For example, trucks traversing the site and loading activities could result in more noise especially in early morning hours than a housing development.

The proposed Comprehensive Plan amendment facilitates the revitalization of the old Avaya site and meets the locational criteria defined in the R-18 and Public Parks land use designation descriptions. The revitalization of this site as outlined in the PDP and ODP into an employment center with supportive

housing and public park as part of urban neighborhood is in the interest of the public good and meets the intent of the Comprehensive Plan.

Rezoning

The property is currently zoned M-1, which is defined as an industrial zone intended for manufacturing and office by the WMC. The rezoning from M-1 to PUD is necessary for the redevelopment of the parcel with uses other than those permitted in the M-1 zoning district. Additionally, the WMC requires rezoning to PUD for development 2 acres or greater. Multi-family housing is not permitted in the M-1 zoning district. The standards for review and approval of the proposed rezone are described below.

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 was published in the Westminster Window on October 1, 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 September 28, 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 1, 2015.

Property Owner / Developer

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Denver, CO 80221

Applicant

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1101 Bannock St.
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Surrounding Land Use and Comprehensive Land Use Plan Designation

Development Name	Zoning	Comprehensive Land Use Designation	Current Use
North: Lucent Technologies 2 nd Replat	M-1	Flex / Light Industrial	Digital Globe and Other Light Industrial Uses
West: The Ranch	PUD	R-3.5	Residential (Single-Family Detached)
South: Westbury and Skyview Apartments	R-4; PUD	R-18 Residential; Office / RD Low	Apartments; Professional Office
East: City of Northglenn	N/A	N/A	Multi-Family and Single Family Residential, Office: Tri-State headquarters

Project Information

The PDP sets the development framework for the entire 82.421-acre parcel, including Planning Area 1 and 2 (PA-1 and PA-2). PA-1 is a 56.121-acre area identified for office, light industrial, and support commercial uses. PA-2 contains 26.272 acres of property and is identified by the PDP for multi-family residential, open space, and a public park. The ODP includes the development details for PA-2.

Examples of how the proposal complies with the City's land development regulations and guidelines as well as the criteria contained in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code (Attachment D) is included below.

Site Design

The PDP includes the entire 82.421-acre project site, which will be divided into two parcels if the project is approved. The first parcel, PA-1, is a 56.121-acre parcel that is currently developed with a 5,407-square foot flex/light industrial building and is available for future development of additional industrial uses along Huron Street. The second parcel, PA-2, is 26.272 acres. It includes the future lot for the multi-family development and two outlots that will be developed as the Public Park and the private detention area (private open space). A 7.71-acre portion of PA-2 (Outlot A) is proposed to be dedicated to the City to satisfy the development's Public Land Dedication requirement (Section 11-6-8(B), WMC). The 7.71-acre PLD area surrounds the 0.945-acre (Outlot B) detention pond/private open space.

The multi-family development is comprised of 15 residential buildings, one clubhouse building, community open space, and several amenity structures and trash enclosures. Eight of the buildings and the clubhouse are located on the west side of the development and the remaining seven structures are oriented around a more than half-acre neighborhood open space on the east side of the development. An almost 8-acre public park will be developed along 116th Avenue between the two clusters of multi-family housing. The design and construction of the public park will be completed by the City and will include parking for park visitors. The applicant has petitioned the City Council for the creation of a General Improvement District (GID), which was approved on August 10, 2015. The establishment of this GID is solely to create a maintenance mechanism for the park.

The multi-family units will be separated from the light industrial land use by the construction of an 8-foot high screen wall along the northern edge of the project. Along Pecos Street, the structures are setback a minimum 80 feet from the curb edge of the street. Additionally, this project will be buffered from The Ranch with berming and landscape, including mature trees, as well as the 112-foot wide Pecos Street right-of-way.

The buildings are oriented toward the street consistent with the City's design guidelines and parking is screened to closest apartment from public rights of way by the placement of the buildings.

Circulation and Transportation

One access from Pecos Street and one access from 116th Avenue are proposed for the multi-family development. One existing access from Pecos Street at the far northern boundary of the multi-family development is being closed as part of this development. Any additional access revisions beyond the limits of the multi-family development will be reviewed as part of any future development proposals (ODPs).

A traffic study was submitted as part of the Park 12 Hundred multi-family ODP. It was prepared by John Aldridge of Aldridge Transportation Consultants, LLC, a reputable traffic consultant with decades of experience in the preparation of these sorts of studies. That study, which was reviewed and approved by the City's Engineering Division staff, determined that the addition of 320 multi-family units does not warrant any changes to, or the addition of, traffic signals on public streets surrounding the project. Furthermore, City staff conducted its own independent investigation of traffic signal warrants specifically for the intersection of 116th Avenue and Pecos Street. Staff's investigation considered future traffic volumes generated by this development as well as currently existing traffic volumes. The results of this investigation revealed that the intersection of 116th Avenue and Pecos Street does not meet any of the

City's warrants for signalization. A minimum of two of the City's eight warrants must be met in order for an intersection to be considered for signalization.

One of the warrants considered by staff during the traffic signal investigation was "accident history." According to Westminster Police Department official records, a total of three preventable accidents occurred in the vicinity of the 116th Avenue/Pecos Street intersection during the past five years. That figure is well below the number of accidents that would fulfill the applicable traffic signal warrant criteria.

City staff also conducted an independent "Speed Study" along Pecos Street in the vicinity of 116th Avenue. The posted speed limit is 40 miles per hour. That study indicated that the "85th Percentile speed," a measure used by traffic engineers to determine the appropriateness of a posted speed, is 44 mph in the southbound direction and 43 mph in the northbound direction. This means that 85% of the southbound vehicles observed during the test period were traveling at speeds of 44 mph or less, and 85% of the northbound vehicles were traveling at 43 mph or less. While the 85th Percentile speed does exceed the posted speed limit, it is extremely common for 85th Percentile speeds to be five to seven mph above the posted speed. In conclusion, the 40 mph posted speed along Pecos Street is appropriate, and the actual speeds measured for vehicles traveling along this route are somewhat slower than would normally be expected.

Landscape Design

The proposed landscape design integrates the multi-family development with the existing campus landscaping to provide a comprehensive character for this mixed-use employment center. The site layout maximizes the preservation of existing mature vegetation, including the naturalized drainage corridor. The proposed landscape palette, including the landscape median located at the entrance of the site, meets both the Multi-Family Design Guidelines and the Landscape Regulations.

School Land Dedication

The WMC (Section 11-6-8(F)) requires a dedication of school land or cash-in-lieu of land. For this site, the City has determined that a land dedication would not serve the public interest. Therefore, a fee in lieu of the land dedication is required. The cash-in-lieu fee is a fixed amount based on the type of unit and is due at the time of final plat. For 320 multi-family dwellings a fee of \$112 per dwelling totals \$35,840. This amount may change prior to the completion of this project as the school fee is adjusted annually.

Public Land Dedication and Parks

The City Code (Section 11-6-8(B)) requires 12.0 acres of public land dedication per 1,000 residents for a multi-family development. The estimated projected population for this 320-unit development is 640 persons. For 640 persons the public land dedication required is 7.68 acres. The applicant is proposing to dedicate 7.71 acres of public land (Outlot A), which will be developed as a public park through the utilization of this project's park development fee.

The City Code (Section 11-6-8(C)) requires a Park Development Fee prior to issuance of a Certificate of Occupancy for the first unit in any building. For 320 units the total fee of \$394,880 is due to the City (\$1,234/unit). This fee amount may change prior to completion of this project as the park development fee is adjusted annually in accordance with the Consumer Price Index (CPI) as established for the Denver Metropolitan Area.

In addition to the 7.71-acre public land dedication and \$394,880 park development fee, the applicant has petitioned the City Council for the creation of a General Improvement District (GID), which was approved on August 10, 2015. The GID Board authorized a special election and the ballot language necessary to levy a property tax that will support the maintenance and operating costs of the park at its August 24, 2015 meeting. The property owner(s) will vote on this property tax on the November 2015 ballot. As part of their decision, the City Council noted that the creation of the GID did not limit or predetermine their action on future actions on this property, such as the proposed Park 12 Hundred project, and that the creation of the GID was solely to create a maintenance mechanism for the park.

Architecture/Building Materials

The apartment buildings proposed for the project are 3-story walk-up buildings with integrated garages. Surface parking is provided for guest parking and resident use. The project includes a mix of unit types, with a combination of one, two, and three bedroom units. The buildings consist of stone veneer and sided exteriors, generous glazing, and shingle roofs. The buildings have multiple off-sets, varied roof lines, porches, and other architectural elements to create strong shadow lines, interesting and attractive elevations, and a desirable, human-scaled environment. The building design meets the requirements of the Multi-Family Design Guidelines.

Signage

Two primary monument entrance signs are proposed for the development at the entrance from Pecos Street and two smaller, secondary monument entrance signs are proposed for the development at the entrance from 116th Avenue. The sign size and location meet the requirements of WMC 11-11, Sign Regulations, and the signage design matches the character of the development.

Lighting

Per the ODP, all site lighting will be directed downward. There will be no off-site glare allowed. Staff does not believe the lighting proposed for the multi-family project will negatively impact the adjacent uses. Lighting for future industrial uses will be reviewed when future ODPs for development are submitted for review and approval.

Public Art

The dedication (or a fee-in-lieu) of public art is a requirement of multi-family development. City staff has determined that a structure of dogs running, valued at \$62,500, is acceptable as the public art for this project. The public art dedication for this project will be located within the public park area.

Westminster Municipal Code Requirements

Staff has evaluated the proposals in light of the City's adopted development standards for PDPs and ODPs. The standards are below with staff's analysis following each item individually.

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 believes that the land uses proposed by this project are in conformance with the City's Comprehensive Plan, including the R-18, Public Park, and Flex/Light Industrial land use designations, and all City Codes, ordinances and policies. The addition of the multi-family and public park areas contribute to the revitalization of a diverse and vibrant employment center.

Please note, the proposed project will not be in compliance with the City's Comprehensive Plan and all City Codes, ordinances, and policies if the Comprehensive Plan amendment is not approved by the City Council.

- 2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.* The PUD includes criteria for development of the site that include building height, setbacks, and landscape buffers.

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.*

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.*

Adjacent uses include an established single-family neighborhood, multi-family and industrial uses. The proposed PUD follows best planning practice by mirroring like uses and transitioning from more intense industrial development on the north and east sides of the site to less intense multi-family and park uses on the west and south side of the PUD. Additionally, the setbacks defined in the PDP are consistent with the City of Westminster Design Standards, which are established to mitigate negative impacts of development. Staff believes that the proposed project is compatible and harmonious with existing development and future 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.*

Staff believes that this criterion has been met. The project design, including large setbacks, berms, screen walls, landscape and internal circulation mitigate any 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.*

No adverse impacts are anticipated as the proposed PUD is consistent with the proposed Comprehensive Plan amendment. The site design provides buffering and setbacks from adjacent uses of differing intensities.

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.*

No changes to existing accesses, drive aisles, or parking are proposed as part of the PDP. Changes to the site circulation will be evaluated with the ODP as well as future ODPs for the Flex/Light Industrial areas of the site. Staff believes the PDP meets this criterion.

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.*

Right-of-way will be dedicated along 116th Avenue to allow for the construction of a detached sidewalk. The right-of-way is necessary due to the grade change of the site.

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, WMC.*

The PDP includes clear performance standards related to building height, setbacks, and land use, which will guide all future project design.

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

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 believes that the plan proposed by this project is in conformance with the City's Comprehensive Plan, including the R-18, Public Park, and Flex/Light Industrial land use designations, and all City Codes, ordinances and policies. The provision of housing and public park adjacent to an employment center contributes to an overall redevelopment strategy for the site that is consistent with the City Codes and policies.

Please note, if the proposed Comprehensive Plan amendment and rezoning to PUD are approved the plan will comply with this criterion.

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).*

The plan is in compliance with the proposed PDP being processed concurrently with this ODP.

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

Staff believes that the buildings, landscaping, parking, pedestrian and vehicular circulation proposed in this ODP are consistent with best planning practices and City of Westminster Design Guidelines. Notably, the site layout includes parking areas and garages located interior to the site, while building facades fronting the public streets are well articulated, include a variety of high-quality materials, and have varied roof lines to help minimize the 3-story mass.

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.*

No exceptions from the standard Code requirements are requested as part of this ODP.

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

The proposed plan creates a transect of more intense (industrial) to less intense (parkland) land uses from east to west across the site. The proposed multi-family project is screened from the future and existing employment uses by an 8-foot wall and proposed landscape. In addition to the wall and landscape, the multi-family use will also be buffered from the industrial use with a large setback that varies from 110 feet to 220 feet.

The existing single-family neighborhood to the west of the site (The Ranch) is screened and buffered from the proposed multi-family by landscaping, berming/grade changes, and the 112-foot wide Pecos Street right-of-way. The site layout minimizes the number of units facing west. Additionally parking and dumpsters are located interior to the site, which minimizes noise impacts to the existing Ranch community.

The plan provides community open space for the residents of the apartment complex as well as the addition of a needed public park for the enjoyment of the larger neighborhood. Staff believes that the proposed plan is compatible with existing development and future 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.*

The plan is compatible with existing development and future development in the surrounding area. The site design includes large setbacks (minimum 80 feet from the curb edge of Pecos

Street to the building), landscape including mature trees, and berming on the east, south, and north sides to ensure it is compatible with existing uses.

7. *The plan has no significant adverse impacts on future land uses and future development of the immediate area.*
There is a potential opportunity cost impact to the City with the degradation of the existing employment land base and construction of multi-family housing; however no adverse impacts are foreseen upon future land uses or other development in the immediate area, as the ODP complies with the WMC and City of Westminster Design Guidelines.
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.*
This proposed development is designed with logical groupings of residential structures supported by neighborhood amenities, such as a pool and clubhouse.
9. *Building height, bulk, setbacks, lot size, and lot coverage are in accordance with sound design principles and practice.*
Building height, bulk, and setbacks are all consistent with the City of Westminster Design Guidelines. The three-story walk up buildings proposed provide a mixture of quality materials. Building layout and open space contribute to a well-planned community complete with areas for residents to meet and gather.
10. *The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.*
The proposed architecture and materials palette is consistent with the City of Westminster Design Guidelines. The buildings are compatible with the adjacent development and are comprised of a mix of stone veneer, siding, generous glazing, and shingle roofs.
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.*
Setbacks, walls, and a variety of landscape treatments provide an appropriate visual buffer adjacent to the development.
12. *Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.*
The proposed development meets this criterion.
13. *Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.*
A traffic impact study was submitted for this project that assessed capacity and existing traffic volumes. The report concluded, and City staff agree, that the existing roadway system will continue to operate well with no roadway improvements. Additionally, the City's Engineering Division Staff conducted an independent investigation and concluded that no changes to or additions of traffic signals are warranted on public streets surrounding the project.
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.*
No new public streets are proposed as part of this development. One existing access point along Pecos Street will be closed to concentrate access to this project from one access along Pecos Street and one access along 116th Avenue. The proposed access is over 300 feet from the intersection of Pecos Street and 116th Avenue. Right-of-way will be dedicated along 116th Avenue to allow for the construction of a detached sidewalk. The right-of-way is necessary due to the grade change of the site.

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.*

A network of internal sidewalks connect the residential buildings to each other, neighborhood amenities, and to the public sidewalk along Pecos Street and 116th Avenue.

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.*

The project complies with this criterion.

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

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

160 Service Commitments were awarded in the 2014 competition, which represents all of the commitments required for the total proposed 320-unit residential development.

Referral Agency Responses

A copy of the proposed plans was sent to the following agencies: Adams County, Xcel Energy, and Adams County School District 12. Staff received responses from Xcel Energy and Adams County School District 12. The School District staff noted that they had no objections to the proposal and estimates the project would result in the addition of 12 elementary school students, 6 middle school students and 6 high school students. The concerns from Xcel Energy, including that the applicant receive the appropriate permits from Xcel Energy have been addressed on the ODP.

Neighborhood Meeting and Public Comments

On Monday April 6, 2015, a neighborhood meeting was held to solicit feedback on the Park 12 Hundred project. Approximately 38 people attended. A presentation was given by the developer, Crescent Communities, and included an explanation of the traffic study. Generally, attendees voiced their opposition to the proposed development. Their concerns included noise, traffic, safety, and an increase in undesirable activities due to the rental units.

A second, smaller neighborhood meeting was organized by the applicant on June 9, 2015, and included representatives from The Ranch Filings 1, 2, 3, and 4 homeowners' associations. The meeting focused on traffic concerns and included the City Engineer, Dave Downing, Transportation Engineer, Mike Normandin, and Case Planner, Walter Patrick.

29 phone calls and emails related to this project were received prior to the Planning Commission meeting. The majority of the contacts have noted their opposition for the reasons stated above. One caller noted his support if the rules and regulations in place are followed by the project and we have received two letters in support of the project from employers currently located on the site. Several residents of The Ranch who attended the Planning Commission meeting have been in contact with staff since the meeting and continue to note their opposition to the project.

A third neighborhood meeting was organized and held by the applicant on September 22nd. The attendees restated their overall opposition to the project, while also asking the developer to redesign or relocate the residential units and clubhouse away from Pecos Street in order to eliminate any potential conflicts or negative impacts to The Ranch properties. Details from this meeting and staff's response are outlined above in the "Planning Commission Recommendation" section.

Notice of the public hearing was sent on October 1, 2015, by the applicant to all adjacent property owners within 300 feet of the PDP boundary on the north, south, and east sides, and within 400 feet on the west

side. Additionally, notice was sent to all of the HOAs associated with The Ranch development registered with the City.

City Council Strategic Plan

Staff believes that The Park 12 Hundred project and proposed Comprehensive Plan amendment and rezone meet the City Council's Strategic Plan Goal of a *Vibrant, Inclusive, and Engaged Community*. The Park 12 Hundred project will revitalize the former light industrial site and provide diversity, jobs, and amenities to an established neighborhood utilizing existing infrastructure.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachments

- Attachment A -Vicinity Map
- Attachment B - Comprehensive Plan Designation Map
- Attachment C - Zoning Map
- Attachment D - Criteria and Standards for Land Use Applications
- Attachment E – Summary of New Public Comment
- Attachment F – Copies of all New Written Public Comment Received since 10/12/2015 City Council Meeting
- Attachment G – Comprehensive Plan Amendments Ordinance with Exhibits
- Attachment H – Rezoning Ordinance with Exhibits

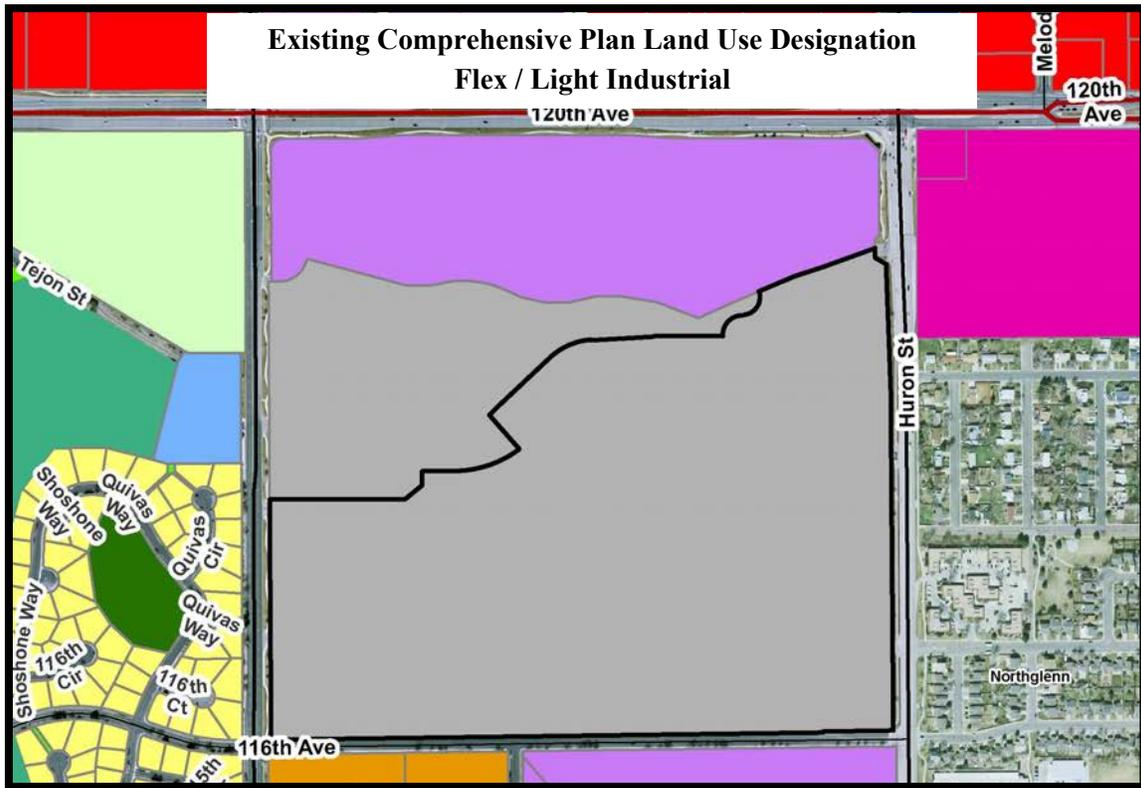
Park 12 Hundred - Vicinity Map



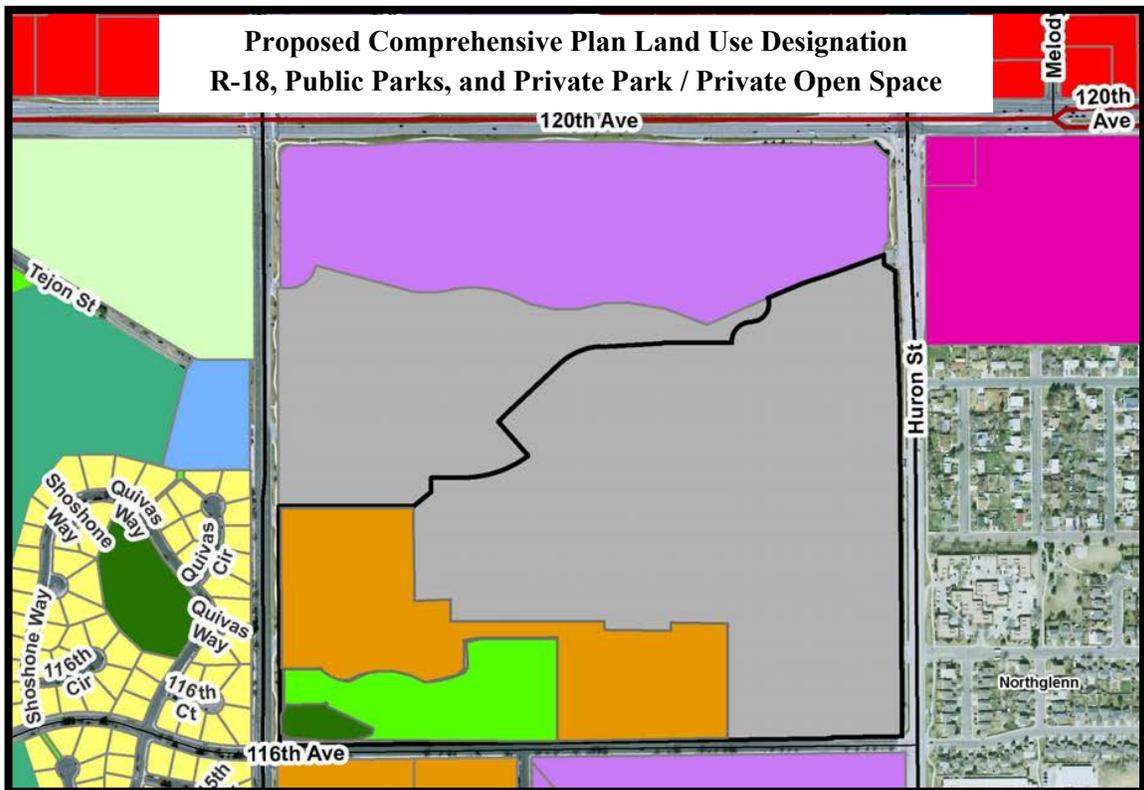
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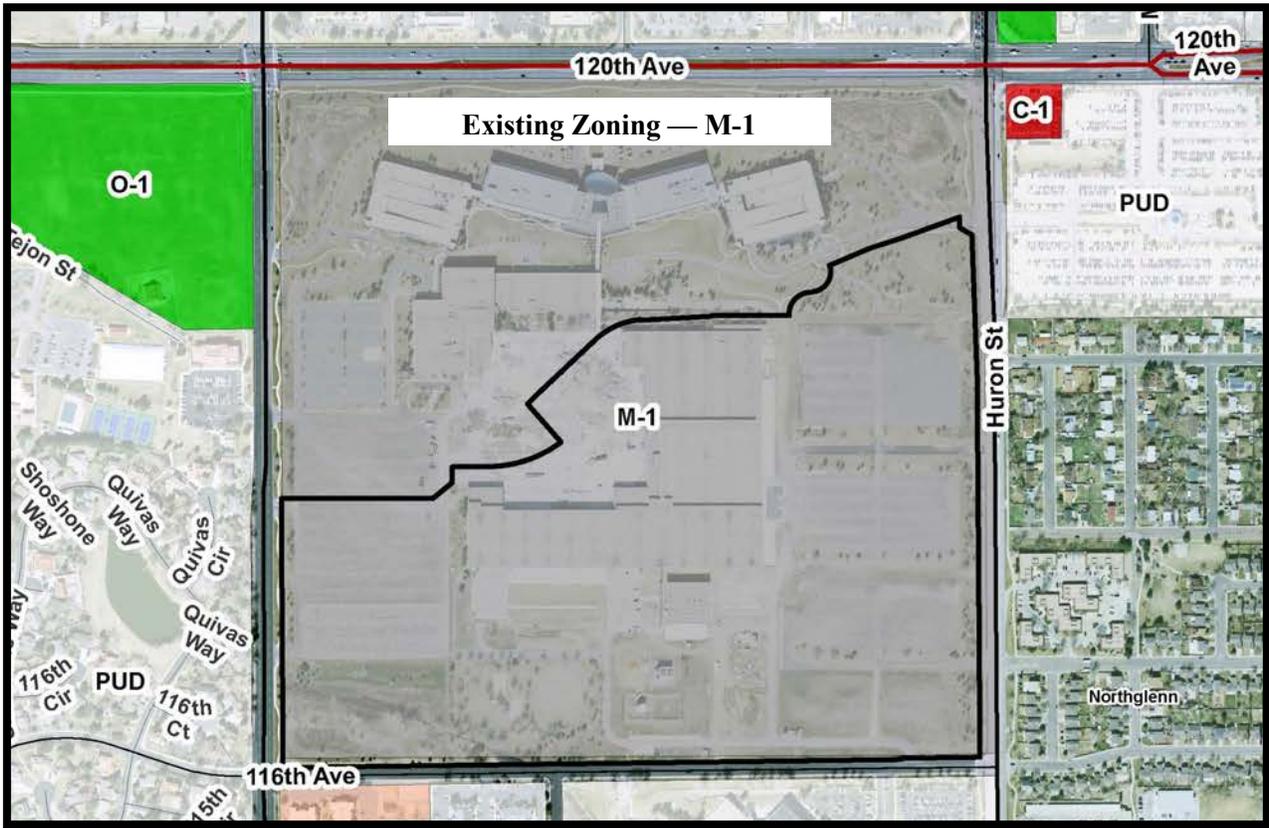
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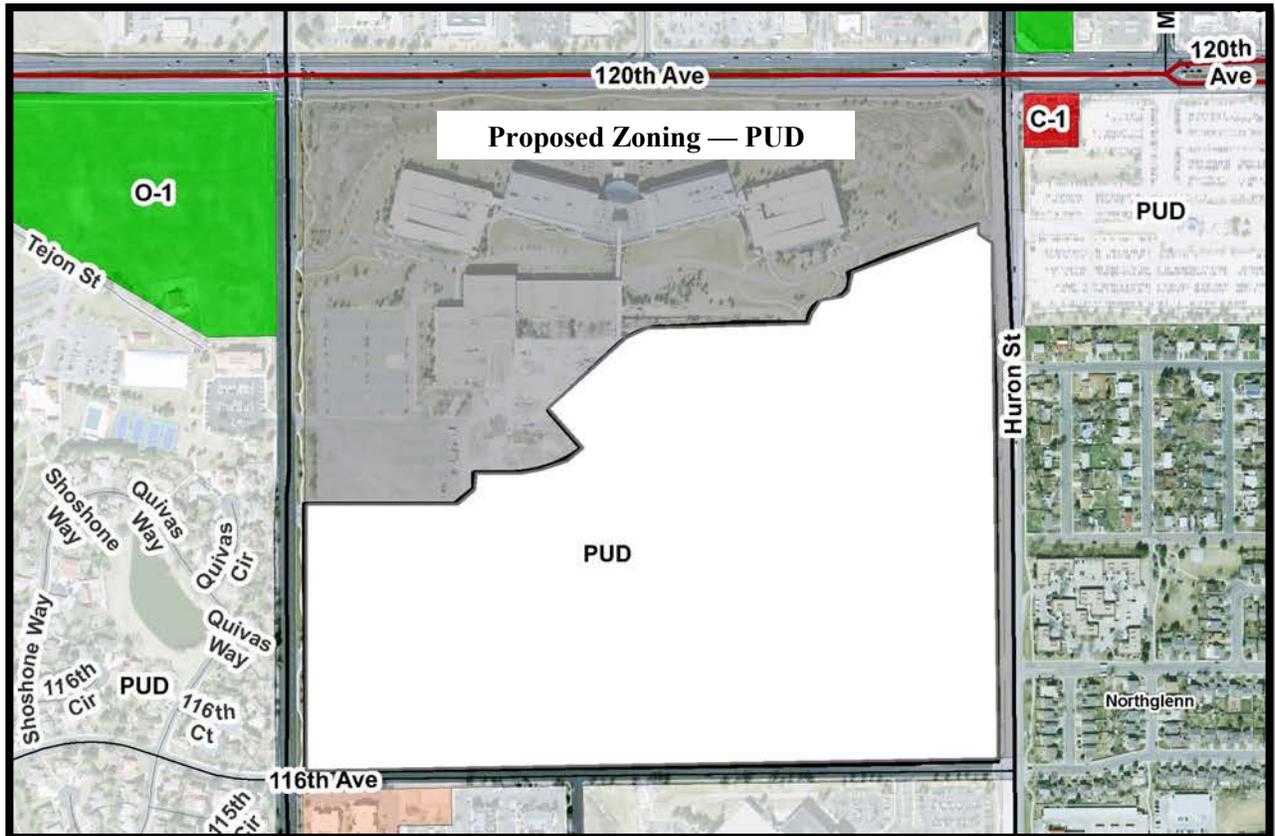


Park 12 Hundred	Retail Commercial	City Open Space	Public/Quasi Public
R-3.5	Office	Public Parks	Major Creek Corridor
R-18	Office/RD Low	Private Park / Private Open Space	
Mixed Use Center	Flex/Light Industrial	Golf Courses	





Park 12 Hundred	O-1	R-2	R-E
B-1	PUD	R-4	T-1
C-1	R-3	R-5	
M-1	R-1	R-A	



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.

Summary of Public Comment Recived After City Council 10/12/2015

John Schnell	10/13/2015	Opposed. Pro and Con list. Emails/Letters to Mayor and Councilor Baker.
Dave Tarpley	10/13/2015	Information. Email to Councilor de Cambra
George Allaman	10/14/2015	Opposed. Density, Aesthetic impacts, Transient Residents, Too many cars. Opposed. Prefers industrial. Meeting time should have been better allocated. Emails/Letters to
Lisa Dudley	10/15/2015	Mayor and Councilors.
George Werkmeister	10/15/2015	Opposed. Neighborhood does not want it.
Ed McAuliffe	10/16/2015	Support. Counters claims of those opposed. Emails to Mayor and Councilors.
Sherry Conner	10/18/2015	Opposed. Traffic concerns, especially along 120th.

John C. Schell
 1715 West 115th Circle
 Westminster, CO, 80234
 720-929-1519
 October 13th, 2015

Mayor Herb Atchison
 4800 W. 92nd Ave.
 Westminster, CO 80031

Dear Mayor Atchison,

I am a Ranch homeowner with my home being between 500 and 600 feet from the proposed development site.

As a Westminster taxpayer and one of your constituents, I assume it is not too late to voice my thoughts on the proposed “1200 Hundred” project. While we continue to feel less represented by our Federal representatives, I still believe that representative government works at the local level.

Regardless of time pressures to make a decision, I would like to be confident that we will not make a decision until we have exhausted the discussion on this matter.

With respect to the proposed “12 Hundred” project (as well as any other project for that matter), there are two high level considerations:

- 1) Will the community as a whole benefit from the project?
- 2) Will individuals be negatively by the project?

Note: Individuals do include the “12 Hundred” property owners.

There are three possible impacts for the community and for individuals:

- Positive (beneficial)
- Neutral
- Negative

The following impact scenarios are possible:

	Community	Individuals	Action
A	Positive	Positive	Approve project, everybody wins
B	Positive	Neutral	Approve project
C	Neutral	Positive	Approve project
D	Neutral	Neutral	Consider alternatives resulting in positives
E	Positive	Negative	Disapprove project, or compensate individuals
F	Negative	Positive	Disapprove project
G	Negative	Neutral	Disapprove project
H	Neutral	Negative	Disapprove project
J	Negative	Negative	Disapprove project

Scenarios A, B, C and G, H, J are no brainers.

D likely warrants disapproval of the project as no one seems to benefit.

E and F require we weigh the negative vs. the positive aspects of the project.

Where individuals are negatively impacted, a compelling community benefit should be required. As with eminent domain, an approval should result in some form of compensation being made to the individuals impacted.

While the Ranch homeowners were not exactly represented by Johnny Cochran, I think there was a compelling case presented to say that Ranch homeowners will be negatively impacted. While we can debate about how much the Ranch will be impacted,

there is no question that the overall impact is neither neutral nor positive. The overwhelming majority of Ranch homeowners who have expressed an opinion believe the impact is negative.

In trying to examine the benefits / costs, a table of PROs/CONS is illustrative:

Community		Individuals	
PROS	CONS	PROS	CONS
7 acres of Park	Decreased Ranch Property Taxes	"12 Hundred" property owner's profit	Decreased Ranch Property Values
Tax revenue from Apartments?	Fewer Jobs (lost opportunity)		Increased Crime
	Cost to maintain park		Increased population density
	Cost of additional Police		Decrease in privacy for East residents
	Cost of additional Fire		Destruction of eastern viewshed
	Cost of additional School		Increased noise
	Cost of additional infrastructure?		Increased commute traffic
	Increased population density		Increased neighborhood car traffic
	Increased traffic		
	Impact of toxic material at site???		
	Increased Crime		

Summary:

- Without having to actually quantify the PROs vs. CONSs, it seems like there are an overwhelming number of CONSs with very little on the PRO side.
- I think we can have a discussion over how to weigh the commercial business interests of the "12 Hundred" over the interests of the people that live in the neighborhood.
- The most significant potential PRO is not quantified which is what the community stands to gain fiscally. This is a critical piece of the discussion. There are infrastructure costs associated with supporting an additional 600+ resident. tax revenue impacts (both positive and negative).

With the data presented so far, there is no compelling benefit to either the community or the Ranch community. On the contrary, it seems like this project is a lose-lose scenario. I am a high tech employee that has to work in Longmont as there are few high tech jobs in Westminster. I would favor the generation of high tech jobs in Westminster in addition to other retail development that would produce employment for Westminster residents as well as tax revenue for the city. The burden of additional residents on the infrastructure creates not only a fiscal cost but a quality of life cost to the community, especially residents of the Ranch community.

I therefore cannot see any ethical / responsible grounds for doing anything but REJECT this rezoning proposal.

Sincerely,
John C. Schell

Stephens, Michelle

From: maria de cambra <mariaforwestminster@gmail.com>
Sent: Wednesday, October 14, 2015 12:27 PM
To: Stephens, Michelle
Cc: Frankel, David
Subject: Fwd: Council meeting 10/12/2015

FYI

----- Forwarded message -----

From: maria de cambra <mariaforwestminster@gmail.com>
Date: Tuesday, October 13, 2015
Subject: Council meeting 10/12/2015
To: David Tarp levy <datarpley@aol.com>

Hi David,

No I was not. I had surgery on saturday and was unable to attend the meeting Monday.

Let me know if you have any further questions

Maria

On Tuesday, October 13, 2015, David Tarp levy <datarpley@aol.com> wrote:

Just checking--were you at the council meeting on 10/12/2015. Wasn't sure who was absent

Regards,

Dave tarpley

Datarpley@aol.com

Sent from my iPad

Stephens, Michelle

From: herb.atchison@netzero.net
Sent: Wednesday, October 14, 2015 1:43 PM
To: Stephens, Michelle
Subject: Fw: Please Oppose the Park 12 Hundred Apartment Development

FYI

Herb Atchison
 Mayor
 City of Westminster
 303-915-5625

----- Forwarded Message -----

From: George Allaman <allaman.george@gmail.com>
 To: herb.atchison@netzero.com
 Subject: Please Oppose the Park 12 Hundred Apartment Development
 Date: Wed, 14 Oct 2015 11:45:32 -0600

Dear Mayor Atchison -

Thank you for your long consideration of public testimony on the Park 12 Hundred apartment development issue Monday night. I have to say I was very impressed with your command of what could have been a very contentious public meeting.

Please oppose the Park 12 Hundred apartment development at the next hearing on 10/26/15 for the following reasons:

- the negative impact to the Ranch and surrounding areas due to increased population density with its accompanying:
 - added noise, litter, and pollution
 - increased crime
 - increased traffic (vehicular and pedestrian)
- aesthetic impacts of relatively densely packed multi-tenant buildings higher than surrounding homes
- influx of yet more transient residents (renters, not homeowners) to the area
- added parked cars on nearby streets since 1.59 parking spaces per unit is inadequate
- added load to already overloaded Wagon Road Park & Ride

The Park & Ride parking lot is already full every weekday all day. Added parking load will spill out into surrounding streets. Many current riders will choose to drive rather than deal with searching for a parking spot in surrounding streets and a long walk to the bus stop.

Pecos Street near the proposed development is underloaded, but all three of the other thoroughfares nearby that would have to bear the added traffic, 112th Ave, Huron, and 120th Ave, are already close to capacity. I say this as someone who drives them several times a day myself, not as a traffic load analyst. They may be able to bear

added load but at the expense of speed and safety. Driving will become slower, more stressful, and more dangerous.

The City of Westminster already has the second highest population density in Colorado at 4,116 people/sq. mile. The City of Denver with a population ten times ours comes in third at only 3,552 people/sq. mile (86% of ours). Broomfield at 15th place has only 1,351 (33%), and crowded Boulder at 22nd place weighs in at only 735 (18%). These figures are taken from <http://zipatlas.com/us/co/city-comparison/population-density.htm>. I think it is time for Westminster to put a lid on population density. I think we need companies and jobs, not more people.

Above 300 people/ sq. mile, the following things, among others, increase, according to <http://www.newgeography.com/content/003945-health-happiness-and-density>:

- air pollution and respiratory diseases
- colon cancer, breast cancer and total cancer mortality
- mental illness, stress, depression, and anxiety
- heart attacks
- anti-social behavior in children

I think the R18 rezoning issue is irrelevant. If the city were to rezone in order to attract, for instance, a new grocery store, coffee shops, restaurants, and yoga studios to Park 12 Hundred, surrounding residents would be in favor, as there are few such amenities anywhere nearby. The addition of 320 apartments with no added amenities would aggravate this problem since the added tenants would also need to drive miles to access these already crowded amenities. Attractive well-maintained office buildings would also be welcome.

The Western Electric/AT&T/Lucent/Avaya/Digital Globe facility has been harmonious with the surrounding area for many decades. If it ain't broke, don't fix it. I believe adding 320 families to the area with their cars would have a huge impact and destroy the "the jewel of the City" as Planning Commissioner McConnell called The Ranch, as would the huge 24-hour car-crushing plant that proponents of the development hinted at Monday night as the alternative. That is a false choice. The City needs neither and nearby residents want neither. I think there is no win for the City here.

The Council was extremely generous in staying up so late to hear all testimony from residents at the hearing last night - thank you very much. However, I believe the bulk of testimony opposed was not heard due to the late hour. Almost all of the residents who wanted to speak, including myself, had to leave prior to being able to speak, due to school children at home in my case (a single dad, I had to leave at 11 PM), health reasons (many Ranch residents are of retirement age), and other responsibilities.

In addition, I think few of the residents of surrounding impacted communities even know of this development and zoning change yet. The developer only notified people within 400' of the boundaries and this is a small fraction of the nearby residents impacted. I am guessing that most of the audience Monday night heard about the application via Nextdoor.com, as I did, and in The Ranch Filing # 3 where I live, only about half the residents are on Nextdoor.com. If ALL the nearby residents knew of this proposal I think attendance and general outcry would have been double or triple what it was.

Thank you,

George Allaman
11275 Raritan St.
The Ranch Filing #3, Westminster
720 261 9165

From: herb.atchison@netzero.net
To: [Stephens, Michelle](mailto:Stephens,Michelle)
Subject: Fw: Thank you and concerns
Date: Thursday, October 15, 2015 2:00:05 PM

FYI

Herb Atchison
Mayor
City of Westminster
303-915-5625

----- Forwarded Message -----

From: The Dudleys <mldudley22@hotmail.com>
To: "herb.atchison@netzero.com" <herb.atchison@netzero.com>,
"bbriggs@cityofwestminster.us" <bbriggs@cityofwestminster.us>,
"bbaker@cityofwestminster.us" <bbaker@cityofwestminster.us>,
"mdecambra@cityofwestminster.us" <mdecambra@cityofwestminster.us>,
"agarcia@cityofwestminster.us" <agarcia@cityofwestminster.us>,
"epinter@cityofwestminster.us" <epinter@cityofwestminster.us>,
"aseitz@cityofwestminster.us" <aseitz@cityofwestminster.us>
Subject: Thank you and concerns
Date: Thu, 15 Oct 2015 19:10:22 +0000

Dear City Council Members,

Thank you for the job you do which is not easy! I especially wanted to thank you for keeping marijuana OUT of Westminster. We live in Westminster, but see the impact in Northglenn. It is an absolute travesty that a pot shop could legally go into a center across the street from a high school. The kids may not be able to buy it there, but what message does it send to them? It is already having a negative impact, but that's another story.

I appreciated the bold comments made by one Councilor concerning the Hwy 36 construction. I am just shocked that a decision was made to allow an overseas company to be granted a 50 year construction project. If their bids were lower, it still wasn't right. Another solution could have been found.

Concerning the Pecos development, I came to the meeting that night as a resident of the Ranch and hoping for a NO vote on this. Many residents came, expecting for their voices to be heard in a reasonable amount of time. As the night went on with the Developer obviously filling the time of presentation to discourage residents from speaking, people became angry and frustrated. There are deep concerns about density, increased traffic and safety. The Huron/112, Huron/120, Pecos/120 are already dense with traffic. How many tragic accidents have occurred at 120/Pecos? Too many! The land in question was originally zoned for light industrial. It may take a bit more time to find the right fit, but it has long term impact and should not be a rash decision for immediate profit.

The stall tactics used on Monday night were not right. The Developer could have been given 30-45 minutes to make a presentation. Residents should have also been limited so that all could speak - 5-10 minutes per person would have been appropriate. It makes no sense for a meeting to drag on past 2 in the morning.

Thank you again for all the work you do, including the recent Standley Lake project.

Lisa Dudley
Westminster, CO

**A Balance Transfer Card With An Outrageously Long Intro Rate And No
Balance Transfer Fees That Can Save You Thousands**

[http://www.nextadvisor.com/blog/2015/01/02/chase-slate-best-bet-for-balance-transfers/?
kw=grav_dsk_brill-100-19](http://www.nextadvisor.com/blog/2015/01/02/chase-slate-best-bet-for-balance-transfers/?kw=grav_dsk_brill-100-19)

Stephens, Michelle

From: herb.atchison@netzero.net
Sent: Thursday, October 15, 2015 12:54 PM
To: Stephens, Michelle
Subject: Fw: Opposition to the Apartment developement (Please forward)

FYI

Herb Atchison
Mayor
City of Westminster
303-915-5625

----- Forwarded Message -----

From: George Werkmeister <georgewerkmeiste@aol.com>
To: herb.atchison@netzero.com
Cc: lyeager@CityofWestminster.us
Subject: Opposition to the Apartment developement (Please forward)
Date: Thu, 15 Oct 2015 14:41:28 -0400

Dear Mr. Mayor and Council members,

I am writing to respectfully request that the City Council Members disapprove the requested apartment development on Pecos Street just to the east side of the Ranch subdivision.

As I am sure you know from the turnout at the last hearing this issue is not something that this neighborhood wants or needs. Based on the unusually high turn out I'm sure that everyone on the council is perfectly clear on the position of the residents of this neighborhood and the sounding neighborhoods as well. Because of the extended time for presentations and the late hour, the Council Members did not even hear all of the opposing statements that were so carefully and passionately written. If they had, the level of opposition expressed would have been even greater than it was.

It is tragic that this project has progressed this far and we are still having to voice our opposition to this projects requests for city approval. I believe that much of the time and expense of this action could have been spared if the planning commission had done it's job properly in the beginning phase of public hearings and neighborhood notifications. As I understand it, the notifications at the planning stage to residents for projects such as these is only required to go out to sites within a very limited area. As in this case at least half of this small area is vacant land and may also include the apartments to the south of this purposed site which are inhabited by people, that for all practical reason, have no permeate interests in this neighborhood over the long haul.

A good example to compare with, is the requirement for the surveys that are required just to obtain a liquor license in the city of Westminster. In these cases a much larger and more representative area is required to be surveyed.

It could also be noted that this required process could be for a simple addition of a liquor counter in an already established retail store which would produce little or no effect on the neighborhood at all.

Based on these circumstances I believe that the city has an obligation to disapprove this project and should direct that more comprehensive policies for citizen input be implemented by the Planning Board, if an accurate opinion of the affected residents is to be truly considered.

Very sincerely
George Werkmeister

A Balance Transfer Card With An Outrageously Long Intro Rate And No Balance Transfer Fees That Can Save You Thousands

http://www.nextadvisor.com/blog/2015/01/02/chase-slate-best-bet-for-balance-transfers/?kw=grav_dsk_brill-100-19

Stephens, Michelle

From: Baker, Bruce
Sent: Friday, October 16, 2015 7:49 PM
To: Stephens, Michelle
Subject: Fw: No opposition to Park 1200

From: Ed McAuliffe <edward.mcauliffe44@gmail.com>
Sent: Friday, October 16, 2015 10:40 AM
To: Herb Atchison; Briggs, Bob; Baker, Bruce; De Cambra, Maria; Garcia, Alberto; Pinter, Emma; Seitz, Anita
Subject: No opposition to Park 1200

Hello, Mayor Atchison and City Councillors!

My daily experience tells me that there is no reason to oppose the apartments proposed for Park 1200.

The Ranch streets are generally quiet and there are no "speed through" streets. The Ranch is fully built out with no lots at risk for unwelcome additions. The homes and landscaping are generally attractive. We have enormous and lovely tracts of open space in our immediate neighborhood.

- Northglenn Northwest Open Space
- The Open Space which hosts the new community garden
- The Ranch Park, horse pasture and barn.
- Vogel Pond Open Space
- Megzger Open Space (which now is accessed by the wonderful new pedestrian and cycling tunnels under 120th and Zuni)
- The Ranch golf course (though not public, nonetheless an open and beautiful space)

The Ranch is already flanked by many multifamily developments, none of which have any significant impact on the peace and tranquility of our neighborhood.

With regard to specific fears my neighbors have raised:

- Pecos was designed to handle big traffic from the once active AT&T factory. It can certainly handle the small additional traffic from the proposed apartments.
- My wife and I lived in an apartment when we were financially struggling. We were not criminals and none of our apartment neighbors were criminals.
- The specter of disease related to crowded living conditions (suicide, mental health issues, even colon cancer as alleged in a recent neighborhood email) may apply at a macro level. To expect a detectable localized increase in such distresses from a modest additional apartment development is not reasonable.
- Increased poverty in the Ranch as a result of a neighboring apartment complex is a similarly absurd idea.

- Threatened decreases in property values (\$50,000 per property) fly in the face of reality. Metro wide property values continue accelerating.
- I trust our city's zoners and planners to make sure that high architectural and landscaping standards are fulfilled.
- Traffic congestion in north metro is already a fact and will not be significantly affected by this new development.
- Canadian real estate developers and local real estate developers have an equal probability of being ethical. The converse is also true. "Out of state" is not synonymous with "unethical". Nor does "local" guarantee a happy result.

On the other hand I would agree with the derisive laughter at the recent council meeting when the school district's projection of a dozen or so new students was mentioned. This begs further clarification but is a school board matter, not a municipal matter.

I have no objection to the proposed development. I would welcome new taxpayers and open space users. Our lives in The Ranch will not change whether or not the apartments materialize.

Edward P McAuliffe
1709 W 113th Avenue
Westminster 80234

Stephens, Michelle

From: herb.atchison@netzero.net
Sent: Sunday, October 18, 2015 10:20 PM
To: Stephens, Michelle
Subject: Fw: Please vote no to new apartments

FYI

Herb Atchison
Mayor
City of Westminster
303-915-5625

----- Forwarded Message -----
From: Sherry Conner <sherryla@ecentral.com>
To: herb.atchison@netzero.com
Subject: Please vote no to new apartments
Date: Sun, 18 Oct 2015 21:19:14 -0600

I have lived in the Ranch for 22 years and am concerned these additional apartments on 116th and Pecos will impact the neighborhood with too much traffic in the immediate area, especially on 120th. I am sure you are aware of the large apartment complex being built on 120th and Zuni. The amount of traffic on 120th is already bogged down during the day and this new development will make it worse (along with the one on Zuni).

It is disappointing that an area which was originally zoned as light industrial is now being rezoned for apartments. If the city planning board originally zoned this as light industrial, what has changed so now it is being rezoned to allow apartment dwelling?

Please vote no to these apartments. We really love our community and don't look forward to the impact that the increased congestion would have to our lifestyle.

Thank you.

Cable TV Is Dying. Here's What Comes Next

http://www.fool.com/mms/mark/cable-tv-vsl?utm_source=gravity&utm_medium=contentmarketing&utm_campaign=tv_ss&source=esagrvid0000001&v=9

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **47**

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:

a. An application for amendments 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 property depicted in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designation from "Flex/Light Industrial" to "R-18" for a 17.58 acres portion, from "Flex/Light Industrial" to "Public Parks" for a 7.71 acres portion, and from "Flex/Light Industrial" to "Private Parks and Open Space" for a 0.945 acre portion of the Lucent Technologies Subdivision 2nd Replat, generally located north of 116^h Avenue, east of Pecos Street, and west of Huron Street.

b. Such application has been referred to the Planning Commission, which body held a public hearing thereon on September 8, 2015, 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 amendments will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Plan. The change from the Flex/Light Industrial land use designation to the R-18, the Public Parks, and the Private Parks and Open Space land use designations will provide multi-family housing adjacent to employment uses and will be consistent with the City Council's vision to become the "Front Range's next urban center."

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 property as more particularly depicted on attached Exhibit A, which is incorporated herein by reference, to R-18, Public Parks, and Private Parks and Open Space land use designations, respectively.

Section 3. SEVERABILITY: If any section, paragraph, clause, word or any other part of this Ordinance shall be 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 26th day of October, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of November, 2015.

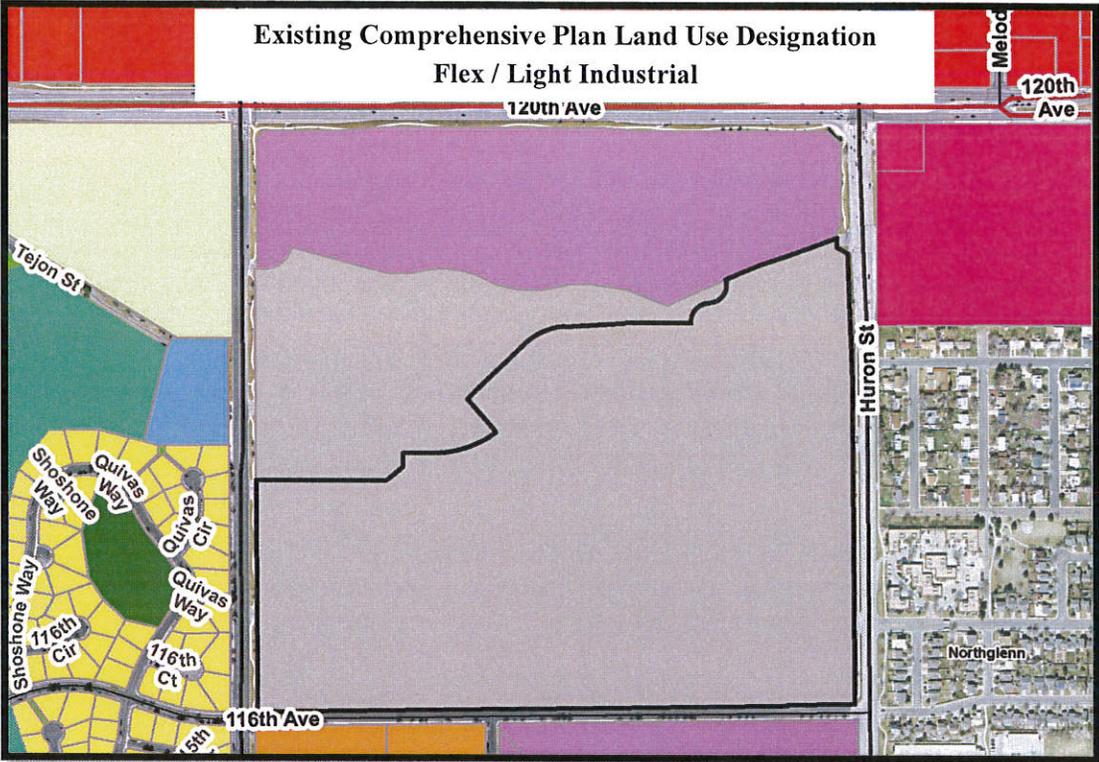
Mayor

ATTEST:

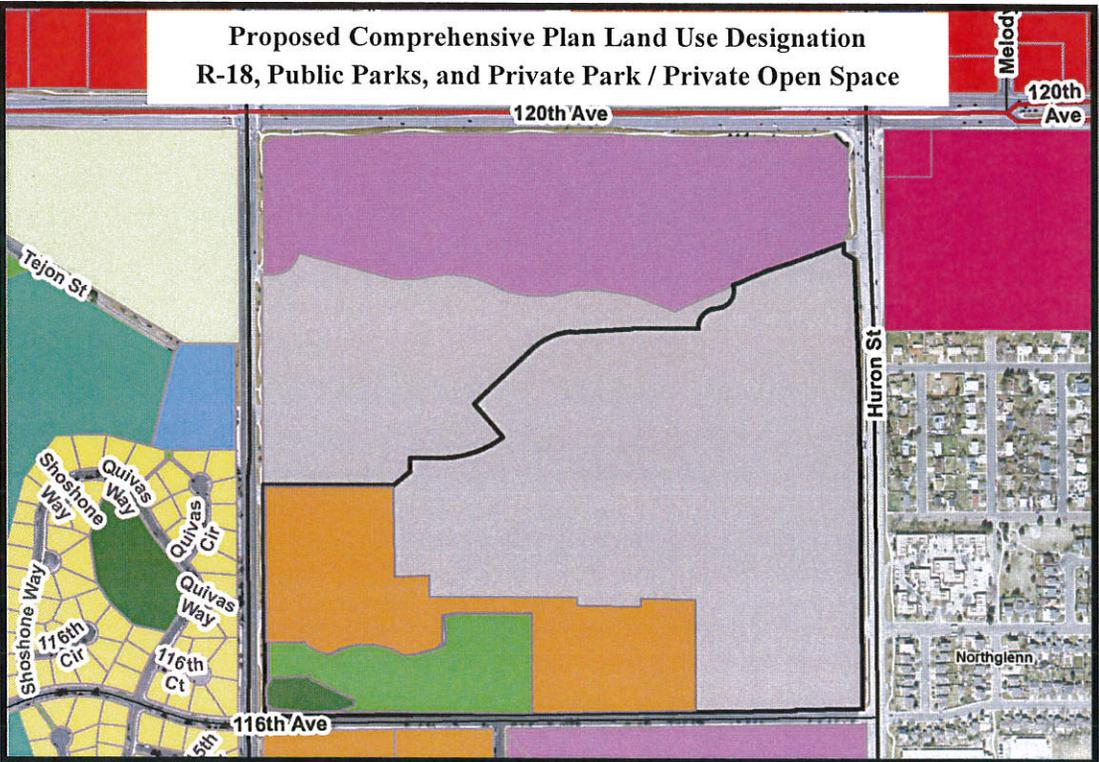
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Park 12 Hundred	Retail Commercial	City Open Space	Public/Quasi Public
R-3.5	Office	Public Parks	Major Creek Corridor
R-18	Office/RD Low	Private Park / Private Open Space	
Mixed Use Center	Flex/Light Industrial	Golf Courses	



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **48**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE AMENDING THE ZONING OF THE CRESCENT
AT PARK 12 HUNDRED PROPERTY, AN 82.421 ACRE PARCEL
GENERALLY LOCATED ON THE NORTH SIDE OF 116TH AVENUE
AND EAST OF PECOS STREET AND WEST OF HURON STREET,
ADAMS COUNTY, COLORADO FROM INDUSTRIAL (M-1) TO
PLANNED UNIT DEVELOPMENT (PUD)**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for rezoning of the property generally located north of 116^h Avenue, east of Pecos Street, and west of Huron Street, as described in attached Exhibit A, incorporated herein by reference, from the M-1 zone to the PUD zone has been submitted to the City for its approval.
- b. That the notice requirements of Section 11-5-13, W.M.C., have been met.
- c. That such application has been referred to the Planning Commission, which body held a public hearing thereon on September 8, 2015, and has recommended approval of the requested amendment.
- d. That Council has completed a public hearing on the requested rezoning pursuant to the provisions of Title XI, Chapter 5, W.M.C., and has considered the criteria in §11-5-14, W.M.C..
- e. That based on the evidence produced at the public hearing, a rezoning to the proposed PUD zoning district complies with all requirements of City Code, including, but not limited to, the provisions of §11-5-14, W.M.C., regarding standards for approval of planned unit development zoning and §11-4-3, W.M.C., requiring compliance with the Comprehensive Plan.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property, described in Exhibit A, attached hereto and incorporated herein by reference, from the M-1 zoning district to the PUD zoning district, as depicted on Exhibit B, attached hereto.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. 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 26th day of October, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 9th day of November, 2015.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

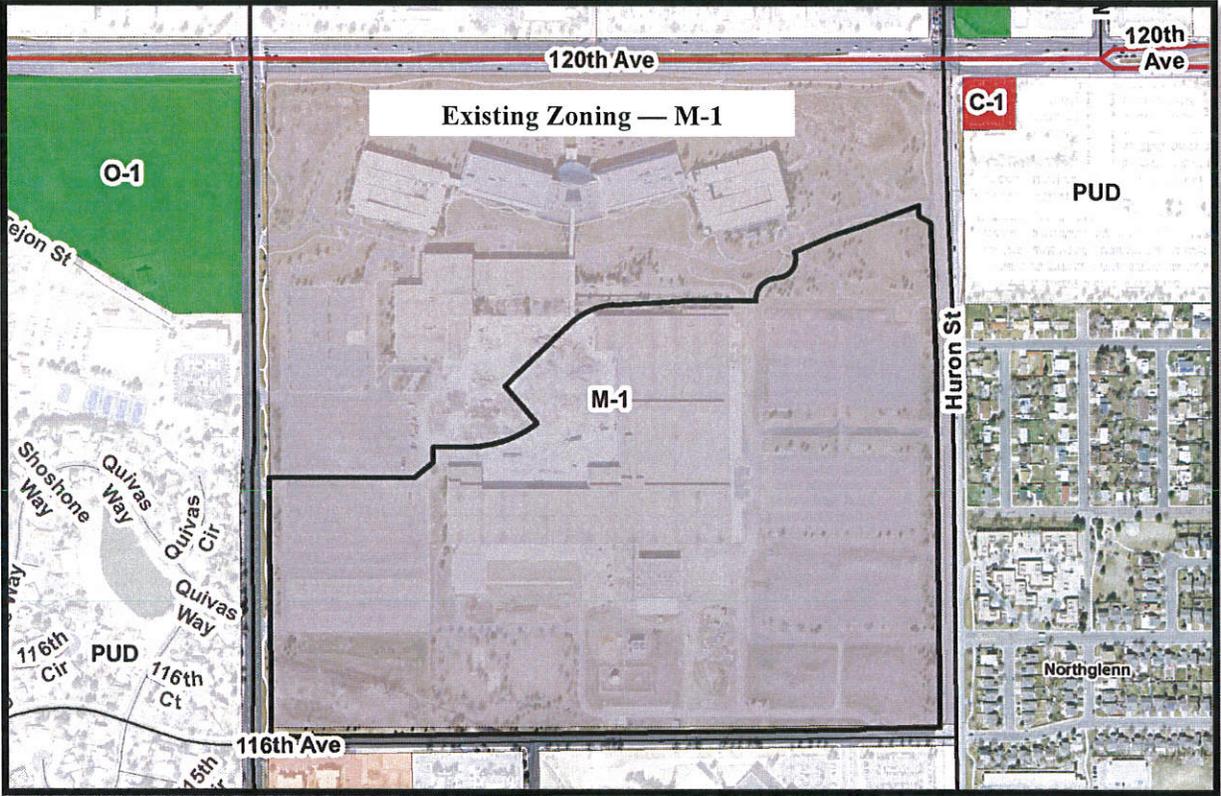
City Attorney's Office

EXHIBIT A

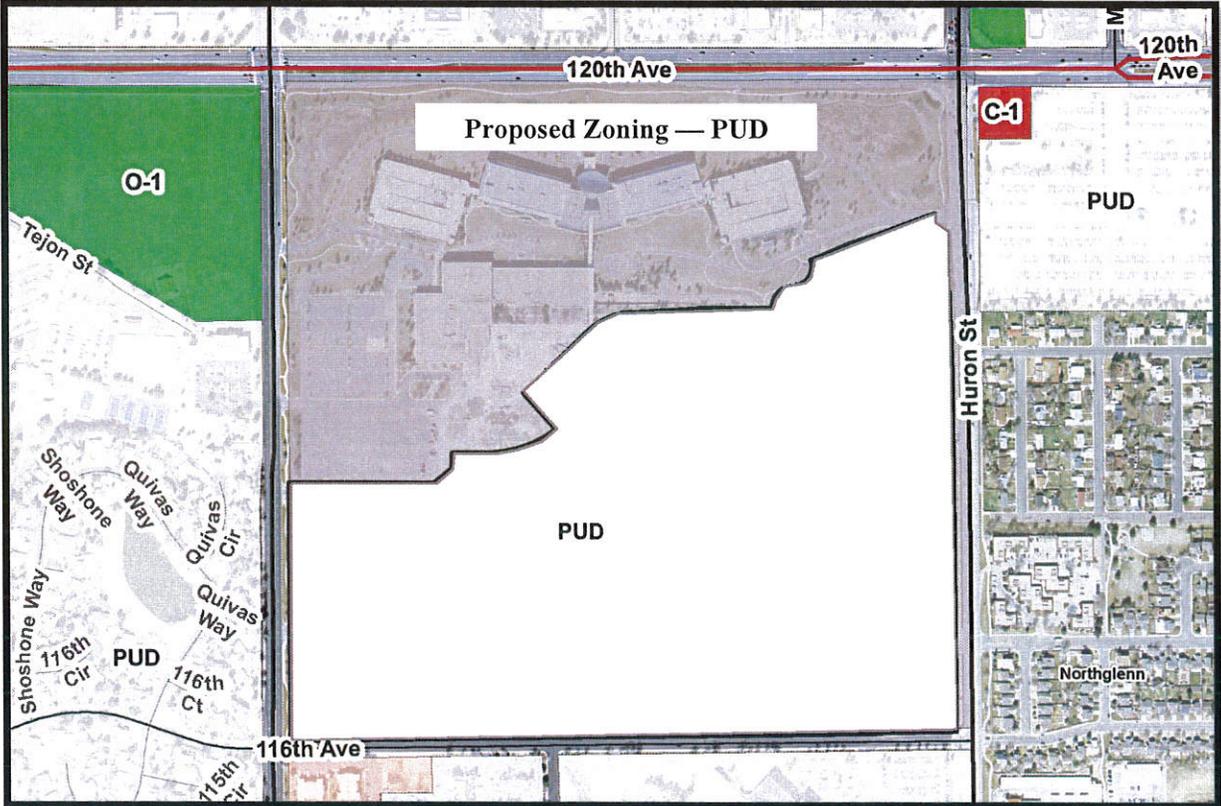
LOT 1C, LUCENT TECHNOLOGIES 2ND REPLAT.

CITY OF WESTMINSTER, COUNTY OF ADAMS
STATE OF COLORADO

CONTAINING 82.421 ACRES OF LAND, MORE OR LESS.



	Park 12 Hundred		O-1		R-2		R-E
	B-1		PUD		R-4		T-1
	C-1		R-3		R-5		
	M-1		R-1		R-A		





Agenda Memorandum

City Council Meeting
October 26, 2015



SUBJECT: Councillor's Bill No. 51 Creating the Westminster Inclusivity Board

Prepared By: Alexa Priddy, Communication and Outreach Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 51 on first reading, approving the addition of a new Chapter in Title II of the Westminster Municipal Code authorizing the establishment of the Westminster Inclusivity Board.

Summary Statement

- At the October 19 Study Session, the City Council reviewed the recommendations by the Westminster Inclusivity Task Force to form the Westminster Inclusivity Board.
- City Council did not have additional revisions to the proposed Chapter 14 to the Westminster Municipal Code.
- While it was discussed in the Staff Report, Staff identified a recommendation that was absent from the original draft ordinance regarding term limits of Inclusivity Board members. The ordinance attached to this Agenda Memo contains the following addition to 2-14-1 of the City Code: "Each member may serve up to three (3) consecutive terms, after which time the member shall be required to take at least a one-term break in service before being eligible for membership again."
- Based on these discussions, Staff recommends a 13-member board structure with two alternates. The role of the board would be to advise City Council on matters pertaining to inclusivity in the City of Westminster.
- The Westminster Inclusivity Task Force saw significant need to address issues of inclusivity in the City of Westminster. Issues of inclusiveness identified by the Task Force included many issues common to modern cities: housing and homelessness, education, participation and civil discourse, mental and physical health, food access and disparity, language access, racial and other inequalities.
- The creation of an Inclusivity Board would assist City Council in proactively addressing inclusivity issues in the City of Westminster. This proposal also supports the City Council's 2015 Strategic Plan Goal of a Vibrant, Inclusive and Engaged Community where Westminster is represented by inclusive cultural, business, nonprofit and geographic participation, and where members of the community are involved in activities and empowered to address community needs and important community issues.

Expenditure Required: Estimated \$8,000-\$10,000

Source of Funds: General Fund – City Manager's Office

Policy Issue

Should City Council establish an Inclusivity Board?

Alternatives

1. City Council could take no action on this issue.
2. City Council could ask existing staff to facilitate citizen connection to service groups that address issues identified by the Task Force.
3. City Council could designate a new staff position solely for the promotion of inclusivity issues at the City of Westminster.

Background Information

On October 19, 2015, City Council reviewed the recommendations and draft ordinance from the Westminster Inclusivity Task Force for the creation of the Inclusivity Board. The Council discussed the recommendations and suggested no additional revisions to the proposed mission, vision, bylaws or draft ordinance. Based on these discussions, Staff recommends a 13-member board structure with two alternates. The role of the board would be to advise City Council on matters pertaining to inclusivity in the City of Westminster.

In January 2015, City Council directed Staff to form an Inclusivity Task Force to develop a recommendation for a potential Inclusivity Board to be created by Council this year. The first meeting of the Inclusivity Task Force was January 21, 2015. The Task Force met twice monthly for eight months, from January 2015 through September 2015. They created a timeline for their work divided into two phases. The first phase was dedicated to acquiring information both from experts in prioritized topical areas and through research into other community approaches to inclusivity. The second phase of the Task Force effort was focused on developing the recommendation for an Inclusivity Board. The results of this effort are the recommendations set forth in the October 19 Study Session, as well as the attached Councillor's Bill creating the Inclusivity Board.

If Council proceeds in passing the proposed Councillor's Bill creating the Inclusivity Board, it will be a significant accomplishment toward furthering the strategic vision of the City Council. The creation of the Inclusivity Board furthers Council's Strategic Plan goals of a Vibrant, Inclusive and Engaged Community where Westminster is represented by inclusive cultural, business, nonprofit and geographic participation and where members of the community are involved in activities and empowered to address community needs and important community issues.

Respectfully submitted,

Donald M. Tripp
City Manager

Attachment: Proposed Councillor's Bill

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **51**

SERIES OF 2015

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE CREATING CHAPTER 14, TITLE II, OF THE WESTMINSTER MUNICIPAL CODE TO ESTABLISH THE INCLUSIVITY BOARD

WHEREAS, in late 2014, City Council expressed interest in forming an Inclusivity Task Force with the purpose of developing recommendations to City Council on the possible creation of an Inclusivity Board; and

WHEREAS, the Inclusivity Task Force members were interviewed and chosen, and the Task Force met from January 2015 through September 2015 to learn about issues of inclusivity and to synthesize its recommendations to City Council; and

WHEREAS, the Task Force, after its nine months of dedicated work proposes the vision statement of the Inclusivity Board shall be, "The Inclusivity Board envisions a diverse, healthy and inclusive Westminster"; and

WHEREAS, the Task Force also proposes the mission statement of the Inclusivity Board shall be, "The mission of the Board is to foster this vision by encouraging collaboration, education, advocacy, empowerment and engagement encompassing all Westminster residents, businesses and their employees, community organizations, nonprofit agencies and governmental entities"; and

WHEREAS, based on what it studied and learned, the Task Force feels the Inclusivity Board should pursue its vision and achieve its mission by:

- Modeling inclusivity within the Board by the active recruitment of a diverse and inclusive membership; and
- Working to open and maintain reciprocal lines of communication between city administration and citizens who experience exclusion. This includes, but is not limited to serving as an accessible resource for residents concerning affordable shelter, adequate livelihood, education, health care, city services, civic participation, or other forms of exclusion the Inclusivity Board may identify as information emerges or conditions evolve; and
- Fostering collaboration across existing programs and organizations at local, state and national levels, including other city boards or commissions within and outside Westminster; and
- Encouraging civil discourse and involvement in promoting a safer, healthier and more inclusive environment for all residents in the City of Westminster; and
- Synthesizing and collecting demographic data to evaluate needs and assess the successes of Westminster becoming a truly inclusive city, particularly in key areas of health, education and housing.

WHEREAS, the Task Force encourages the City to proactively and strategically recruit individuals reflective of the diversity of the City for membership on the Board, and City Council agrees that it is of significant importance to the Board; and

WHEREAS, City Council, having heard the full report of the Inclusivity Task Force and having considered all of its recommendations, now desires to adopt the following ordinance creating the Inclusivity Board.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title II, W.M.C., is hereby AMENDED by the addition of a new Chapter 14, which shall read as follows:

CHAPTER 14

INCLUSIVITY BOARD

2-14-1: CREATION

2-14-2: ADVISORY MEMBERS

2-14-3: POWERS AND DUTIES

2-14-4: MEETINGS

2-14-5: BYLAWS

2-14-6: ACTING CHAIRPERSON; QUORUM

2-14-1: CREATION: There is hereby created the Inclusivity Board, hereinafter referred to as “the Board,” consisting of up to thirteen (13) regular members with two (2) alternate members. Each member may serve up to three (3) consecutive terms, after which time the member shall be required to take at least a one-term break in service before being eligible for membership again.

2-14-2: ADVISORY MEMBERS: An employee appointed by the City Manager’s Office, and one (1) member of the City Council, to be appointed by the Mayor, shall be advisory members of the Board and shall have the right to participate in all meetings of the Board; except that they shall not have the right to vote.

2-14-3: POWERS AND DUTIES: The powers of the Board shall be advisory only and shall be as follows:

- (A) To proactively advise and respond, as requested, to City Council and staff on issues of inclusivity.
- (B) To advocate for the entire community and collaborate to promote and encourage a climate of inclusion.
- (C) To obtain feedback on matters of inclusivity from the community proactively or at the request of City Council or staff, and recommend appropriate courses of action.
- (D) To provide advice on creating a climate of inclusion and increasing cultural competency within the Westminster organization.
- (E) To research, proactively advise and respond to requests from City Council and Staff about ways other cities optimize participation by all residents in the civic, economic, cultural and social life of the community.
- (F) To proactively advise and to respond to requests from City Council and staff on ways to educate, encourage and engage citizen participation, including but not limited to reaching out to faith communities, schools and community organizations.
- (G) To proactively advise and to respond to requests from City Council and staff on ways to attract people from a wide range of cultures, beliefs, orientations, ages, physical capacities and socio-economic levels to live, work and play in Westminster.

(H) To facilitate and ensure the regular collection of comprehensive demographic information about the entire Westminster population using a variety of methods to ensure input from all types of people, regardless of location, physical limitations, or variety of languages.

(I) To facilitate communication in order to proactively connect underserved or excluded populations with appropriate City services and resources and with services provided in the private/non-profit sectors, while also encouraging collaboration among affected communities, and private and public sectors.

(J) To actively pursue continuing education in the various areas of inclusivity for the benefit of the Inclusivity Board, City Council and staff, with sufficient revenue available to seek, as needed, outside counsel and experts in the field.

(K) To work with City staff to obtain feedback from the community and recommend ways to improve communication between diverse communities within the City, while fostering relationships among people and organizations by sharing cultures and ideas.

(L) To perform any other related duties as may be assigned by City Council.

2-14-4: MEETINGS: The Board shall decide on a meeting day and time. The Board shall meet monthly unless there is no business to discuss, as the Chairperson of the Board requests. A record of the minutes of each meeting shall be kept and placed in the office of the City Clerk for public inspection. Except as provided by subsection 2-1-6(A), W.M.C., all meetings of the Board shall be open to the public. Each member of the Board shall be required to vote on each item before the Board, unless a conflict of interest has been determined to exist.

2-14-5: BYLAWS: The Board shall make and adopt its own bylaws in conformity with applicable statutes and ordinances, and the Board shall review its bylaws annually for necessary updating.

2-14-6: ACTING CHAIRPERSON; QUORUM: The Vice-Chairperson of the Board shall assume the duties of the Chairperson in the absence of the Chairperson. In the absence of both the Chairperson and Vice-Chairperson, the Board shall designate an Acting Chairperson, if necessary. A quorum shall consist of a majority of those members entitled to act, and a decision of a majority of the quorum of such members shall control.

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 26th day of October, 2015.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of November, 2015.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

AGENDA

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
SPECIAL MEETING**

MONDAY, OCTOBER 26, 2015

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (August 10, 2015)
- 3. Public Hearings and New Business**
 - A. Contract for Underwriter Consulting Services
 - B. Westminster Downtown GID/City/WEDA Intergovernmental Cooperation Agreement
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, AUGUST 10, 2015, AT 10:34 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 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 July 27, 2015, as written. The motion carried unanimously.

PUBLIC HEARING REGARDING SUPPLEMENTAL APPROPRIATION TO THE 2015 BUDGET

At 10:35 p.m., the Chair opened a public hearing to consider a supplemental appropriation to the 2015 budget. Staff had no formal presentation and was available to answer any questions, of which there were none. The Chair invited public comment. No one wished to speak and the public hearing was closed at 10:36 p.m.

RESOLUTION NO. 164 AUTHORIZING A SUPPLEMENTAL APPROPRIATION

Board Member Seitz moved, seconded by Vice Chairperson Briggs, to adopt Resolution No. 164 authorizing a supplemental appropriation to the 2015 Westminster Economic Development Authority budget. On roll call vote, the motion passed 6:1 with Board Member Baker voting no.

LEASE AMENDMENT FOR DOWNTOWN ROAD & INFRASTRUCTURE CONSTRUCTION

It was moved by Board Member Pinter and Seconded by Vice Chairperson Briggs to authorize the Executive Director to execute a Lease Amendment Agreement with J.C. Penney, in substantially the same form as attached, to accommodate road and infrastructure construction for the Downtown Westminster project, including authorization for funding the lease surrender payment in an amount not to exceed \$680,000.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 10:38 p.m.

ATTEST:

Chairperson

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
October 26, 2015



SUBJECT: Contract for Underwriter Consulting Services

Prepared By: Tammy Hitchens, Finance Director
Rachel Price, Financial Analyst

Recommended Board Action

Authorize the Executive Director to execute a contract, in substantially the same form as attached, with George K. Baum & Company for underwriting services for a one-year period with the option to renew for an additional four years.

Summary Statement

- WEDA utilizes various debt instruments and strategies to assist with the financing of capital projects. Debt financing requires the specialized knowledge and tools of financial and legal professionals, such as a financial advisor, underwriter, bond counsel, and bond disclosure counsel. Together with Staff, they make up the financial team utilized to issue debt such as tax increment financing revenue bonds issued for redevelopment in Urban Renewal Areas (URA's).
- The underwriter's role is to assist WEDA with the structuring of the bond issue and marketing the bonds to investors. An underwriter may purchase some of the bonds on the issue date if they have been unable to sell the bonds to investors. On an ongoing basis, the underwriter may help "make a market" for the WEDA's debt by continuing to buy and sell our securities.
- On August 12, 2015 a Request for Proposal (RFP) was issued for underwriter services. Five proposals were analyzed and finalist interviews held from which Staff recommends George K. Baum & Company be hired as WEDA's underwriter.
- Funding for underwriting services comes from proceeds of individual debt issues. Prior to debt issuance, Staff will present the Board the information detailing costs for the various consulting and legal fees to be paid from financing proceeds.

Expenditure Required: Varies depending on the type of debt instrument used and amount issued

Source of Funds: Debt financing proceeds

Policy Issue

Should the Board proceed with contracting for underwriting services with George K. Baum & Company to assist in the structuring and marketing of debt offerings?

Alternative

1. Select another firm to perform the underwriting services. Staff does not recommend this alternative, as George K. Baum & Company represents the most qualified underwriter provider based on review of the RFP's submitted and presentations made to Staff on September 12, 2015.
2. Select an underwriter for each specific debt issuance. Staff does not recommend this alternative, as having to go to RFP for each debt issuance would delay the issuance process and could result in opportunity costs.
3. Do not use an underwriter to market WEDA's debt issues. Staff does not recommend this alternative. Public financing is a complex and specialized field requiring professional services of both financial and legal consultants. The services of these professionals result in WEDA issuing debt efficiently and legally.

Background Information

WEDA utilizes debt to finance a variety purchases and capital projects. Issuing debt requires external professional services of specialized financial and legal consultants who are knowledgeable about taxable and tax-exempt municipal finance. Together with Staff and legal counsel, the WEDA's financial advisor and underwriter represent WEDA's Finance Team for debt issuance. The underwriter is an important member of the team whose role is to structure and market debt to investors to achieve the lowest cost feasible given market conditions at the time of issuance. Given the variety of debt instruments utilized by WEDA and the complexities inherent in the structuring and marketing of the debt to investors, the services of an underwriter are in integral component to meet the WEDA's objective of issuing debt at the lowest cost, while attracting sufficient interest from investors.

WEDA has historically used an underwriter for all of its past bonded debt issues. While the firms have changed, WEDA has taken the approach of going out to competitive bid every 5 years and selecting a single firm to be its underwriter for the next term. Staff feel that having an underwriter already named as part of WEDA's financing team, regardless of whether debt will be issued during the term, is an advantage over having a competitive process each time for the following reasons. First, if debt is considered the underwriter is a part of the process from the beginning, which increases their knowledge and helps their efforts to market the bonds later. Second, having the bid process already completed allows finance team to focus on the debt issuance itself and does not add further delay to getting the deal done. Also, the cost per bond has already been negotiated and is a verifiable known cost when sizing the issue.

An RFP was released in August 2015 requesting the services of an underwriter as the existing contract with Piper Jaffray has expired. Staff analyzed the five RFP's received from which three respondents were selected for interviews. Staff hosted interviews on September 12 with participation from WEDA's financial advisor to provide their outside perspective. Staff later conducted reference checks on the firm and its personnel the week following the presentation. Based on their written response to the RFP and interview presentation, Staff evaluated each respondent based on multiple attributes including depth of key personnel experience, the firm's experience issuing various types of debt, rating agency presentation experience, the firm's financial soundness, pricing for services, and references.

Based on their RFP response and interview, Staff recommends that an underwriting contract be awarded to George K. Baum. One of the key factors for an underwriter is the personnel that will be working on the debt issues.

Pricing was considered an important component of the selected firm and each responded with a "not to exceed" estimated cost based on issue type as follows based on a cost per \$1,000 of bonds issued. The

actual cost by debt issue is uncertain until the time of issuance; however, as indicated below, George K. Baum & Company’s pricing was lowest compared to the other finalist respondents as shown in the following chart.

ISSUE TYPE	George K. Baum	Piper Jaffray	Stifel Nicolaus
Fixed Rate Underwriting Fee (NTE)	\$3.40/1,000	\$3.65/1,000	\$3.75/1,000
Variable Rate Underwriting Fee (NTE)	\$1.00/1,000	\$3.65/1,000	\$2.50/1,000

The firm is dedicated to the Colorado market and municipal finance. Since 2010, George K. Baum & Company has senior managed 181 negotiated issues originating in Colorado. George K. Baum’s public finance team is headquartered in Denver. This ensures Staff have access to these needed professionals in a timely manner, in-person, if needed. Their physical presence here adds to their in-depth knowledge of the Colorado market and its unique pool of investors.

While all of the firms had quality personnel, Staff believes George K. Baum’s personnel best fit the needs of WEDA. The lead manager for George K. Baum has over 20 years of experience in the field. Additionally, she has previously worked in a municipal government giving her first-hand understanding of our goals and needs. George K. Baum & Company’s staff have had recent successes in each of the various types of structures we may pursue. All of the reference checks on the firm and its staff were exemplary, citing their expertise, professionalism and commitment to the communities they serve.

George K. Baum & Company’s staff have a unique focus on education. They have provided Bond 101 and Rating Agency trainings for clients and elected officials in the past and have suggested this for WEDA. As WEDA is preparing for issues, making sure all parties are well-educated on the process as well as the risk/rewards of debt are critical in making sound financial decisions. Furthermore, they have helped craft policies used to improve their clients’ daily activities and compliance efforts.

Underwriting experience was also factored into the decision process. Each firm reviewed has excellent depth of experience, marketing a variety of debt issues throughout the state of Colorado. As such, Staff felt that overall each was very comparable to each other; however, it was felt that George K. Baum & Company had a stronger focus on local marketing within the state of Colorado since they have an underwriting desk located in Denver.

Finally, Staff analyzed the financial strength of each firm relative to its ability to underwrite and purchase any unsold bonds. As stated in their proposal, “One hundred percent of our capital is available to municipal business every day.” George K Baum & Company has a strong balance sheet with more than sufficient excess net capital to underwrite the WEDA’s bonds should takedowns be necessary.

Overall, Staff believes that based on the personnel, pricing, underwriting experience, and financial soundness, George K. Baum & Company is the most qualified firm to represent WEDA as its underwriter.

The selection of George K. Baum & Company as WEDA’s underwriter helps achieve City Council’s Strategic Plan goal of “Financially Sustainable Government Providing excellence in City Services” by assisting Staff in making the best financial decisions related to structuring, marketing and issuance of debt.

Staff will be present at the October 26th Board meeting to address any questions or concerns relative underwriting services.

Respectfully submitted,

Donald M. Tripp
Executive Director

AGREEMENT TO FURNISH PUBLIC FINANCE UNDERWRITER SERVICES
TO THE CITY AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS AGREEMENT, made and entered into this 26th day of October, 2015, among the **CITY OF WESTMINSTER**, hereinafter called the "City," the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called "WEDA," and **GEORGE K. BAUM & COMPANY**, a corporation organized pursuant to the laws of the State of Missouri, and doing business in Colorado, hereinafter called the "Consultant," is as follows:

WHEREAS, the City and WEDA wish to enter into an agreement for Underwriting Services; and

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

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

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

I. THE PROJECT

The project consists of Consultant providing underwriter services to the City and WEDA as more specifically described the Scope of Services, attached hereto and incorporated herein as **Appendix A** (hereinafter, the "Project").

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the professional and technical services necessary to complete the Project.

A. Capital Financing

Consultant shall perform the following functions as Consultant:

- (1) Financing Alternatives. The Consultant, in consultation with the City and WEDA officials, auditor, municipal advisor and municipal bond counsel, shall recommend financing alternatives for specific capital projects. Such financing alternatives will be based on revenue projections, and the existing corporate, financial, and legal structure of the City and WEDA. The Consultant shall assist the City and WEDA in evaluating the financing alternatives and make recommendations concerning general obligation and revenue bond financing, lease-purchase and installment purchase financing, participation in federally sponsored programs, and the utilization of insurance guaranty programs and other cost effective financing methods, both long and short term. In addition, the

Consultant shall make recommendations concerning the need for short or intermediate-term financing prior to or in conjunction with long-term financing.

- (2) Bond Financing. The Consultant shall assist in recommending to the City and WEDA the method of sale, which will be in the best interest of the City and WEDA. In the case of general obligation bonds, revenue bonds, or other municipal securities, the recommendations shall include recommendations concerning the advisability of selling the proposed municipal securities either by competitive or negotiated sale. The Consultant shall assist the City and WEDA in the following tasks in connection with the issuance of bonds or other debt securities by the City and WEDA:
 - a. Determination of the structure of such financing, including sources of payment, security, maturity schedule, rights of redemption prior to maturity, and other matters concerning the call provision features of the bonds;
 - b. Assisting the City and WEDA and its citizen committees to effectively present the City and WEDA's proposal to the electorate in an organized, thoughtful, and concise manner;
 - c. Preparation and presentation of applications and detailed information about the City and WEDA and the proposed bond issue to appropriate rating agencies, where advisable;
 - d. Use of credit enhancement techniques, such as: direct pay letters of credit, and other such financial instruments;
 - e. Assistance in the review and preparation of an official statement to be distributed to prospective bond purchasers;
 - f. Printing of the bonds;
 - g. Coordination of the legal proceedings recommended by bond counsel, any temporary investment of sale proceeds, and all other necessary arrangements in connection with the delivery of the bonds by the City and WEDA; and
 - h. Bond partial or full refundings, redemptions, advanced refundings.
- (3) Competitive Bids. In the event the City and WEDA elects to solicit bids for the bonds through a public sale, the Consultant may compete in the sale to purchase, directly or indirectly, from the City and WEDA, all or any portion of the bonds sold at competitive bid either as principal alone or as a participant in a syndicate or other similar account.
- (4) Negotiated Sales. In the event of a negotiated sale of a bond issue by the City and WEDA to the Consultant, the Consultant will underwrite the issue. In connection therewith, the Consultant shall prepare financial plans and price the issue. The City and WEDA also reserves the right to compete the negotiated sale.
- (5) The City and WEDA reserves the right to substitute another firm and/or such personnel as the City and WEDA deems best addresses the City and WEDA's needs, on an issue-by-issue basis.

- (6) The Consultant shall at all times comply with applicable requirements and regulations of the Securities and Exchange Commission (“SEC”) and the Municipal Securities Rulemaking Board (“MSRB”).

III. ADDITIONAL SERVICES

When authorized in writing by the City and WEDA, the Consultant agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written agreement between the City and WEDA and Consultant as to additional compensation for additional services.

IV. CONSULTANT'S FEE

The compensation for the Project shall be according to the contract applicable to that offering, (the Bond Purchase Agreement for negotiated offerings, or Notice of Sale for competitive offerings), and subsequent acceptance and award, (collectively, the Bond Sale Contract). The Consultant’s requirement to purchase any bonds shall be subject to the satisfaction of the terms and conditions provided in the Bond Sale Contract.

The Bond Sale Contract shall in all respects supersede any conflicting provisions of this Agreement, except that the Consultant shall be entitled to payment under this Agreement of permitted and approved expenses under Section IV C below. The following guidelines shall apply to a Bond Sale Contract, as applicable:

- A. For negotiated sales, pricing shall be as set forth in Appendix B, attached hereto and incorporated herein.
- B. Other financing expenses as authorized by the City and WEDA through the City and WEDA Manager in connection with a negotiated sale, including, without limitation, bond counsel, rating agency, and printing expenses, shall be paid by the City and WEDA.
- C. No expenses shall be payable to the Consultant under this Agreement in the event of an unsuccessful bond election or an inability to consummate a sale of the City and WEDA’s securities. Other financing expenses as authorized by the City and WEDA, including but not limited to third party expenses (i.e. bond counsel) and out-of-state travel, incurred before an unsuccessful election or a failed sale, shall be paid by the City and WEDA.
- D. The approximate underwriting spread for a negotiated sale shall be agreed on by both parties after consideration of similar issues, competitive or negotiated.
- E. The Consultant shall submit invoices to the City and WEDA for services rendered during the preceding month, such invoices to be in the form and detail reasonably required by the City and WEDA. Reimbursable expenses shall be itemized. The City and WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

V. COMMENCEMENT & COMPLETION OF PROJECT

The Project shall be for one (1) year, beginning on the date first referenced above, and, subject to annual appropriation and absent notice of termination as set forth in Section VI below, the Agreement will renew for four (4), additional one (1) year terms following the initial one (1) year term. Compensation in each renewal year shall remain as set forth in Appendix B. However, all payments under this Agreement are subject to annual appropriation of the funds. Therefore, nothing in this Agreement shall be deemed or

construed as a multiple year fiscal obligation under the meaning of Colorado Constitution Article X, Section 20, also known as the TABOR Amendment.

VI. TERMINATION

This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon the City and WEDA's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City and WEDA's issuance of said written notice of intent to terminate, the City and WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services the City and WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the City and WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

VII. INSURANCE

During the course of the Project, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado and Professional Liability Insurance in the minimum amount of \$1,000,000, but in any event sufficient to cover Consultant's liability under paragraph X.D. below. Consultant shall maintain an Automobile Liability policy of \$500,000 per person/\$1,000,000 per occurrence and a Commercial General Liability policy of \$500,000 per person/\$1,000,000 per occurrence; or alternatively, Consultant shall maintain an Automobile Liability policy and a Commercial General Liability policy each with a \$1,000,000 per occurrence combined single limit. The City and WEDA shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by the City and WEDA. These coverages shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees. The Consultant shall provide certificates of insurance to the City and WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the City and WEDA in writing within two (2) days of the cancellation of or substantive change to any insurance policy set out herein, and failure to do so shall be a breach of this Agreement.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant represents that it will require a similar affirmation of nondiscrimination in any contract it enters into with a subcontractor as part of the execution of this Agreement.

IX. PROHIBITED INTEREST

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

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

X. GENERAL PROVISIONS

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

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

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of the City and WEDA and Consultant. Upon completion of the Project, or at such other time as the City and WEDA may require, the Consultant shall deliver to the City and WEDA a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to the City and WEDA and such additional copies thereof as the City and WEDA may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

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

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

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

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

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

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of the City and WEDA and the Consultant.

<u>Project Representative for City and WEDA:</u>	<u>Project Representative for Consultant:</u>
Name: Rachel Price Address: 4800 W. 92 nd Avenue Westminster CO 80031 Phone: 303-658-2441 email: rprice@cityofwestminster.us	Name: Robyn Moore Address: 1400 Wewatta Street, Suite 800 Denver, CO 80202 Phone: 303-391-5495 email: moore@gkbaum.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of the City and WEDA and the Consultant or shall be sent via registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. When sent via registered mail, notices shall be effective three (3) days after mailing.

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

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

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

I. Entire Agreement. This Agreement and its attachments shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations

and letters of intent, whether written or oral, pertaining to the Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Except subcontractors identified by name and accepted by the City and WEDA as part of **Appendix A**, Consultant may not employ additional subcontractors to perform work on the Project without the City and WEDA's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

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

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

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

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

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

This Agreement is expressly contingent upon the approval by Westminster's City Council and WEDA's Board of all the terms set forth herein. In the event this Agreement is not approved in its entirety by either body, no Party shall be bound to the terms of this Agreement.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO
FINANCE DEPARTMENT, ATTENTION: RACHEL PRICE.

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

GEORGE K. BAUM & COMPANY

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: Donald M. Tripp

Address:

Address:

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

City Clerk

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By: _____
City Attorney

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

Printed Name:

Title: Executive Director

Address: 4800 West 92nd Avenue
Westminster, CO 80031

ATTEST:

Authority Secretary

APPROVED AS TO LEGAL FORM:

Authority Attorney

I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Agreement.

City Manager

Rev. 3/2014

Appendix A to Services Agreement Scope of Services

The Consultant agrees that it shall furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, analyses, calculations, and any other facilities or resources necessary to provide the professional services as described hereto and incorporated herein by this reference.

A. Capital Financing

Consultant shall perform the following functions as underwriter:

- (1) **Financing Alternatives:** The Consultant, in consultation with the City and WEDA officials, auditor, financial advisor, and municipal bond counsel, shall recommend financing alternatives for specific capital projects. Such financing alternatives will be based on revenue projections, and the existing corporate, financial and legal structure of the City and WEDA. The Consultant shall assist the City and WEDA in evaluating the financing alternatives and make recommendations concerning general obligation and revenue bond financing, lease-purchase and installment purchase financing, participation in federally sponsored programs, and the utilization of insurance guaranty and other cost effective financing methods, both long and short term. In addition, the Consultant shall make recommendations concerning the need for short or immediate term financing prior to or in conjunction with long term financing.
- (2) **Bond Financing:** The Consultant shall assist in recommending to the City and WEDA the method of sale, which will be in the best interest of the City and WEDA. In the case of general obligation bonds, revenue bonds, or other municipal securities, the recommendations shall include recommendations concerning the advisability of selling the proposed municipal securities either by competitive or negotiated sale. The Consultant shall assist the City and WEDA in the following tasks in connection with the issuance of bonds or other debt securities by the City and WEDA:
 - a. Determination of the structure of such financing, including sources of payment, security, maturity schedule, rights of redemption prior to maturity, and other matters concerning the call provision features of the bonds;
 - b. Preparation of education materials, or survey materials, in an organized, thoughtful, and concise manner that are suitable for public distribution explain the nature and substance of any bond financings, to the extent that such tasks are not inconsistent with the limitations prescribed in C.R.S. 1-45-117.
 - c. Preparation and presentation of applications and detailed information about the City and WEDA and the proposed bond issue to appropriate rating agencies, where advisable;
 - d. Use of credit enhancement techniques, such as: direct pay letters of credit, and other such financial instruments;
 - e. Assistance in the review and preparation of an official statement to be distributed to prospective bond purchasers;
 - f. Printing of the bonds;
 - g. Coordination of the legal proceedings recommended by bond counsel, and temporary investment of sale proceeds; and all other necessary arrangements in connection with the delivery of bonds by the City and WEDA; and
 - h. Bond partial or full refundings, redemptions, advance refundings.

B. Notwithstanding anything herein, this Agreement does not constitute an agreement for financial advisory services, and Consultant is acting in the capacity of an underwriter, not as a financial advisor as defined in Municipal Securities Rulemaking Board Rule G-23.

C. No expenses shall be payable to the Consultant under this agreement in the event of an unsuccessful bond election or an inability to consummate a sale of the City and WEDA's securities. Other financing expenses as authorized by the City and WEDA Manager, including but not limited to third party expenses (i.e. bond counsel) and out-of-state travel, incurred before an unsuccessful election or a failed sale, shall be paid by the City and WEDA.

D. The approximate underwriting spread for a negotiated sale shall be agreed upon by both parties after consideration of similar issues, competitive or negotiated.

E. The Consultant shall submit invoices to the City and WEDA for services rendered during the preceding month, such invoices, to be in such form and detail as shall reasonably be required by the City and WEDA. Reasonable expenses shall be itemized. The City and WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

**Appendix B to Services Agreement
Consultant's Fee Schedule**

For the term of this Agreement, including all four (4) potential renewal years, Consultant's fees shall be as follows.

FIXED RATE UNDERWRITING FEE:

Fee for a fixed rate bond issue will not exceed \$3.40/\$1,000 (\$3.40 per bond or 0.0340% of par) with no additional expenses. Consultant will only charge the City and WEDA for any out of state travel related to rating agency or investor presentations.

VARIABLE RATE UNDERWRITING FEE:

For any takedown for Variable Rate Demand Notes (VRDNs) fee will not exceed \$1 per \$1,000 of par amount of bonds. We will not include a management fee and depending on the transaction we may not require underwriter's counsel. It does include other customary expenses (DTC, day loan, CUSIP).

EXPENSES INCURRED BY THE CITY AND WEDA:

Each transaction includes certain expenses that are due to third party providers. These include:

- Bond Counsel
- Disclosure Counsel
- Municipal Advisor
- Bond rating fees
- Paying agent/ trustee fees
- Disclosure document printing
- Travel expenses outside the state of Colorado.

These fees are the responsibility of the City and WEDA.

EXPENSES INCURRED BY CONSULTANT:

Certain costs are incurred by Consultant in the course of transacting each issue. These include:

- Consultant travel costs in Colorado
- Short-term loan expenses
- DTC delivery charges
- CUSIP subscription
- Other delivery-related internal costs

These expenses are the responsibility of Consultant.

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
October 26, 2015



SUBJECT: Westminster Economic Development Authority/City of Westminster/Westminster Downtown General Improvement District Intergovernmental Cooperation Agreement

Prepared By: Tammy Hitchens, Finance Director
Robert Byerhof, Treasury Manager
Karen Creager, Special Districts Accountant

Recommended Board Action

Authorize the Executive Director to execute an Intergovernmental Cooperation Agreement between the Westminster Economic Development Authority (WEDA), the City of Westminster (City), and the Westminster Downtown General Improvement District (GID), in substantially the same form as attached, providing for reimbursement to the City by either WEDA and/or the GID of certain costs incurred by the City within the boundaries of the Westminster Center Urban Reinvestment Plan Area.

Summary Statement

- The Westminster Center Urban Reinvestment Plan Area, commonly known as Downtown Westminster, was created on April 13, 2009, to facilitate redevelopment of property within the Downtown area.
- In July 2015, the City issued \$40,000,000 in Certificates of Participation (COPS) to help finance improvements related to Phase I of the Downtown Westminster redevelopment project.
- In August 2015, Council approved the creation of the City of Westminster Downtown GID.
- Also in August 2015, Council, as ex officio Board of Directors of the GID, approved the ballot language to be presented to District voters in the November 2015 election to authorize a mill levy of up to 50 mills to pay for public infrastructure, services and financing costs within the GID's boundaries.
- In consideration of the City constructing the improvements benefitting the Downtown Westminster redevelopment project, the City, WEDA and the GID wish to enter into an Intergovernmental Cooperation Agreement (ICA) to spell out each of the Parties obligations related to the construction and maintenance of public improvements, other public services within the boundaries, and debt service incurred on behalf of redevelopment projects.
- The source of revenues to be used for the obligations in the area will be property tax increment and sales tax increment collected in redevelopment area, property taxes generated from the GID mill levy and other revenues collected by WEDA and the GID.

Expenditure Required: Amounts billed to WEDA and GID by the City

Source of Funds: WEDA property tax and sales tax increment, GID property tax revenues, and other revenues collected by WEDA and the GID

Policy Issue

Does the Board support entering into an ICA with the City and the Westminster Downtown GID to provide for the reimbursement of capital and maintenance costs along with other contractual obligations associated with the Downtown Westminster Urban Center project provided all other superior covenants and superior obligations have been met?

Alternative

Do not authorize the execution of the proposed ICA between the City, WEDA and the GID. This alternative is not recommended. The sharing of revenue is necessary given the costs borne by the City for the construction and maintenance of improvements within the URA and other contractual obligations. Additionally, these expenses are a proper and legal use of URA tax increment and GID tax revenues.

Background Information

On April 13, 2009, City Council created the Westminster Center Urban Reinvestment Plan Area to encourage and support the redevelopment of the former Westminster Mall into what is now known as Downtown Westminster. The City and WEDA continue to work together to design and construct public improvements within Downtown Westminster to further enhance the redevelopment strategy. As part of that effort, on August 10, 2015, City Council established the City of Westminster Downtown General Improvement District to fund improvements and operational costs within the GID boundaries. Under the GID structure, a property tax mill levy is assessed on property owners within the GID boundaries. The property owners are the primary beneficiaries of the public improvement, such as streets, lights, parks, parking improvements etc. to be built and such improvements are maintained for the benefit of the users.

In late July, the City issued \$40,000,000 in Certificates of Participation to finance improvements and infrastructure related to Downtown Westminster. Additionally on August 24, 2015, Council, acting as the ex officio board of the GID, approved the ballot language that would authorize a mill levy not to exceed 50 mills to pay for public infrastructure, maintenance, professional services, and financing costs within the district's boundaries and establish multi-year obligations.

Pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City, WEDA, and the GID are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity. On June 27, 2011, and on December 9, 2013, WEDA and City entered into separate ICAs for the reimbursement of certain costs incurred within the Westminster Center Reinvestment Plan area. Staff along with legal counsel recommend that a new ICA be adopted, which includes the recently approved Westminster Downtown GID and affirms the contractual obligations between the ICA parties. Accordingly, an ICA between the entities provides a prudent mechanism for the City to recover expenses incurred for capital investment, maintenance, professional services, and any financing costs made on behalf of WEDA and the GID.

This ICA generally accomplishes the following:

- The City agrees to enter into one or more contracts for the construction of the Improvements as defined in the ICA.
- WEDA agrees to reimburse the City for amounts Advanced and the City's costs as described in the ICA.

- The GID agrees to levy a property tax not to exceed 50 mills.
- WEDA agrees to return the portion of the District's revenues, which are attributable to the District's mill levy, to the District.
- The GID agrees to utilize revenues it receives to assist in paying the costs of certain improvements and services within District's boundaries.

Although the final build-out of Downtown Westminster is years from completion, the recommended action to approve the ICA will establish the contractual obligations needed to provide the City repayment of capital, maintenance, professional services, and any financing costs incurred that benefit WEDA and the District.

The action requested in this agenda memorandum relates to the City's Strategic Plan goals of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and to a Financially Sustainable Government Providing Excellence in City Services by entering into an intergovernmental cooperation agreement to provide and finance the ongoing needs of the Downtown Westminster development.

Respectfully submitted,

Donald M. Tripp
Executive Director

Attachment – Intergovernmental Cooperation Agreement

**INTERGOVERNMENTAL COOPERATION AGREEMENT AMONG
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF
WESTMINSTER AND THE CITY OF WESTMINSTER DOWNTOWN GENERAL
IMPROVEMENT DISTRICT REGARDING THE WESTMINSTER CENTER URBAN
REINVESTMENT PROJECT.**

This Intergovernmental Cooperation Agreement (the “Agreement”), dated as of _____, 2015, by and among the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (“WEDA”), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, the CITY OF WESTMINSTER (“the City”), a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado, the CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT (“District”), a quasi-municipal corporation and body corporate of the State of Colorado duly organized and existing pursuant to Title 31, Article 25, Part 6, C. R.S., as amended (collectively the “Parties”).

W I T N E S S E T H

WHEREAS, the City Council of the City has adopted an urban renewal plan known as the “Westminster Center Urban Reinvestment Plan” (“Urban Renewal Plan”) under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et. seq., C.R.S., as amended (the “Act”); and

WHEREAS, in accordance with the Urban Renewal Plan and the Act, WEDA is authorized to undertake an urban renewal project and to finance such project by utilization of certain incremental increases in property and sales taxes; and

WHEREAS, the District was created in part to finance the costs of various public improvements and services for the benefit of property described in the Urban Renewal Plan; and

WHEREAS, the Parties desire to provide various public improvements as part of the urban renewal project described in the Urban Renewal Plan, including, without limitation, water and sewer lines, streets, curb and gutter, sidewalks, streetscape, landscape, lighting, security, drainage, telecommunications, signage, parking and transportation facilities, parks, plazas, trails, recreation facilities, public art projects, traffic improvements, utilities and all other necessary, incidental, appurtenant, and convenient facilities, equipment, land and property rights (“Improvements”); and

WHEREAS, in order to finance a portion of the costs of the Improvements, the City has entered into a lease-purchase agreement and in connection therewith there have been issued \$30,000,000 Certificates of Participation, Series 2015A and \$10,000,000 Certificates of Participation, Taxable Series 2015B (the “Certificates”); and

WHEREAS, pursuant to a Cooperation Agreement dated June 27, 2011, between the City and WEDA, WEDA agreed to repay the City (a) \$15,825,000 which the City advanced to WEDA to acquire the Westminster Mall and (b) amounts advanced by the City to WEDA to pay the ongoing costs to maintain the Westminster Mall until its demolition and to demolish the Westminster Mall and prepare the site for redevelopment which amounts equal \$3,591,886 as of the date hereof (collectively, the “2011 Agreement Advances”); and

WHEREAS, the City has also advanced to WEDA \$13,425,523 for the costs of other land acquisitions related to the redevelopment of the Westminster Mall site and has spent \$32,842,409 as of the date hereof and will spend additional amounts in the future to redevelop the Westminster Mall site (together with the 2011 Agreement Advances, collectively, the “Advances”); and

WHEREAS, the Parties are authorized by the Section 112 of the Act to enter into cooperative agreements with respect to projects and activities and are authorized by Section 29-1-203, C.R.S. to enter into contracts to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Parties desire to enter into an agreement setting forth their intent to cooperate as to the provision of the Improvements and the maintenance of such Improvements and to assure that taxes levied by the District are made available to pay the costs of certain improvements and services; and

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, the City, WEDA and the District hereby agree as follows:

1. Improvements. The City or WEDA will enter into one or more contracts for the construction of the Improvements. The City agrees to pay a portion of the cost of the Improvements located within the Urban Renewal Plan from the proceeds of its \$30,000,000 Certificates of Participation, Series 2015A and \$10,000,000 Certificates of Participation, Taxable Series 2015B (the "Certificates") and other legally available funds. WEDA agrees to reimburse the City (a) for the amount of the Advances and (b) for the City's costs related to the financing of the costs of the Improvements and (c) in the event the City pays the costs of the maintenance of said Improvements, for the costs paid by the City to maintain the Improvements. The City will advise WEDA of amounts spent by the City (other than from the proceeds of the Certificates) after the date hereof on redevelopment of the Westminster Mall site and if WEDA consents such amounts will be added to the amount of the Advances to be reimbursed by WEDA.

2. Tax Increment Revenues. In consideration of the District providing improvements and services to benefit property described in the Urban Renewal Plan, WEDA agrees that the portion of revenues that it receives as tax increment revenues that are attributable to the District's annual levy of ad valorem taxes on real and personal taxable property shall be remitted to the District periodically, but no less frequently than annually. In consideration of City financing the Improvements and providing for the maintenance of the Improvements as described in Section 1, WEDA agrees that the revenues that it receives as tax increment revenues pursuant to Section 107(9)(II) of the Act and the Urban Renewal Plan, except for the revenues paid to the District pursuant to the preceding sentence, shall be used by WEDA to reimburse the City for the costs it incurs pursuant to Section 1. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S., and WEDA irrevocably pledges all of its tax increment revenues as described in § 31-25-107(9)(a)(II), C.R.S. to the repayment of the same. WEDA shall not incur any other obligation payable from the tax increment revenues without the consent of the District and the City.

3. Cooperation. The Parties covenant with each other that in any action or challenge of the Urban Renewal Plan and/or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

4. Enforcement. WEDA agrees that it shall enforce the collection of the Tax Increment Revenues.

5. Effective Date; Term. The City and WEDA agree that this agreement supersedes a Cooperation Agreement dated June 27, 2011 (the "2011 Agreement") between the City and WEDA and an Intergovernmental Cooperation Agreement dated as of December 23, 2013 (the "2013 Agreement") between the City and WEDA and the 2011 Agreement and 2013 Agreement are no longer of any force and effect. This Agreement shall become effective as of the date set forth in the initial paragraph hereof. This Agreement shall remain in full force and effect until terminated by mutual consent of the Parties or until the tax allocation provisions of the Urban Renewal Plan terminate, whichever is earlier.

6. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

8. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

EXECUTED this __ day of _____, 2015.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director

APPROVED AS TO FORM:

Attorney for Authority

CITY OF WESTMINSTER

By: _____
Mayor

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF WESTMINSTER DOWNTOWN GENERAL
IMPROVEMENT DISTRICT

By: _____
Mayor, Presiding Officer of the District

Attest

Secretary

APPROVED AS TO FORM:

District's Attorney

AGENDA

**CITY OF WESTMINSTER DOWNTOWN
GENERAL IMPROVEMENT DISTRICT
MEETING**

MONDAY, OCTOBER 26, 2015

AT 7:00 P.M.

1. **Roll Call**
2. **Minutes of Previous Meeting** (August 24, 2015)
3. **New Business**
 - A. Resolution No. 2 re Contract and Administrative Authority for City of Westminster Downtown General Improvement District
 - B. Downtown GID/City/WEDA Intergovernmental Cooperation Agreement
 - C. Intergovernmental Service Agreement with the City
4. **Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE DOWNTOWN
GENERAL IMPROVEMENT DISTRICT MEETING
MONDAY, AUGUST 24, 2015, AT 7:56 P.M.

ROLL CALL

Present at roll call were Chairperson Atchison, Vice Chairperson Briggs, and Board Members Baker, De Cambra, Garcia, Pinter, and Seitz. Also present were Donald M. Tripp, Executive Director, David Frankel, Attorney, and Linda Yeager, Secretary.

RESOLUTION NO. 1 CALLING FOR A SPECIAL ELECTION

It was moved by Vice Chairperson Briggs, seconded by Board Member Seitz, to adopt Resolution No. 1 calling for a special election for the City of Westminster Downtown General Improvement District to be held in November 2015. On roll call vote, the motion carried by a 6:1 vote with Board Member Baker voting no.

ADJOURNMENT

There was no further business and the meeting adjourned at 7:58 p.m.

Chairperson

ATTEST:

Secretary

Downtown GID Agenda Item 3 A

Agenda Memorandum

City of Westminster Downtown General Improvement District Meeting
October 26, 2015



SUBJECT: Resolution No. 2 re Contract and Administrative Authority for the City of Westminster Downtown General Improvement District

Prepared By: Karen Creager, Special District Accountant

Recommended Board Action

Adopt Resolution No. 2 outlining the Executive Director's authority to enter into contracts and make purchases on behalf of the City of Westminster Downtown General Improvement District and to delegate these activities to appointed City of Westminster Staff in a manner consistent with practices established for the City under the Westminster Municipal Code, as it may be amended from time to time, and all current and future administrative memoranda.

Summary Statement

- The City of Westminster Downtown General Improvement District (District) was established on August 10, 2015, with the primary purpose of acquiring, constructing, installing, operating or maintaining Improvements, and/or providing services within and for the District.
- Westminster City Council serves as the ex-officio Board of the District.
- The District is a component unit of the City of Westminster (City). In accordance with Governmental Accounting Standards Board Statement (GASB) No. 14, *The Financial Reporting Entity*, and as amended by GASB Statement No. 61, *The Reporting Entity: Omnibus*, component units are legally separate entities for which the City is considered to be financially accountable. Financial accountability means that the City appoints a voting majority to the governing board and has the ability to impose its will upon the entity and/or accepts potential responsibility for the entity's financial benefits and burdens.
- Blended component units are, in substance, part of City operations. Therefore data from these units are combined with the City in its Comprehensive Annual Financial Report.
- The City's external auditors include the District as part of the City's annual audit in accordance with practices established by the City.
- Under a separate agenda action item for tonight's meeting, the City and the District is considering an intergovernmental cooperation agreement authorizing the City to provide certain administrative services and to bill the District for such services.
- The standard operating procedure (SOP) for the District is that the day-to-day activities are performed in accordance with City Code provisions and City administrative memoranda. The adoption of the attached resolution will formalize the SOP.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the Board adopt the attached Resolution outlining the Executive Director's authority to enter into contracts, make purchases and administer the day-to-day activities of the District?

Alternatives

1. One alternative is to not adopt the Resolution formalizing the administration of the day-to-day activities of the District. This alternative is not recommended. Without professional staff, the District utilizes City Staff for administrative services. Additionally, the District is a blended component unit of the City with the District audited as part of the City's annual audit and subject to the same financial reporting requirements as the City. It is prudent to have the component units that are required to be included within the City's financial report adhere to the same policies and procedures as the City. Therefore, it is recommended that this Resolution be adopted to formalize what has been standard practice.
2. Another alternative is to adopt separate procedures for entering into contracts, making purchases and administering the day-to-day activities of the District. This alternative is also not recommended. Adopting procedures that differ from the City's would be administratively cumbersome and would require the City's external auditors to change their audit program for the District, thereby increasing the fee for the City's annual audit.

Background Information

The District was established on August 10, 2015, with the primary purpose of acquiring, constructing, installing, operating or maintaining improvements that may include but are not limited to public roadways, including road and pedestrian underpasses, site grading, sidewalks, parking improvements, water and sewer lines, landscaping, irrigation, site and traffic lighting, drainage improvements, site amenities such as benches, fountains, required signage, and relocating businesses and/or providing services that may include but are not limited to police and fire protection, municipal and building code enforcement, professional services including but not limited to planning, engineering, building and construction inspection, financial administration and legal services, and any other service that the City is authorized to provide within and for the District. City Council serves as the ex-officio Board of the District. Since the District does not employ its own professional staff, the City and the District are considering authorizing an intergovernmental service agreement that provides for the City to provide administrative services, including but not limited to legal, accounting, management, clerical, information technology, and similar services in exchange for consideration to the City. This agreement is being presented for approval to the Board of the District and the Westminster City Council under a separate agenda at tonight's meeting.

The District is a blended component unit of the City of Westminster. In accordance with Governmental Accounting Standards Board Statement (GASB) No. 14, *The Financial Reporting Entity*, and as amended by GASB Statement No. 61, *The Reporting Entity: Omnibus*, component units are legally separate entities for which the City is considered to be financially accountable. Financial accountability means that the City appoints a voting majority to the governing board and has the ability to impose its will upon the entity and/or accepts potential responsibility for the entity's financial benefits and burdens.

On August 26, 2002, the Westminster Housing Authority (WHA), another blended component unit of the City, adopted a resolution outlining the authority of the Executive Director. This resolution provided for WHA to operate in a manner consistent with practices established for the City under the Westminster Municipal Code and various policies and procedures outlined in Administrative Memoranda issued by the City Manager's Office. This action was prudent as WHA has no professional staff and contracts with the City to provide such Staff. The City's other blended component units including seven general improvement districts and the Westminster Economic Development Authority followed suit and formalized the SOP by resolution on October 13, 2014. Additionally, the City's audit includes each blended component unit as

part of the City's annual audit in accordance with the practices established for the City. In order to formalize this SOP for the Downtown General Improvement District, the attached resolution is presented to the Board for approval.

The action requested in this agenda memorandum relates to the City's Strategic Plan goal of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and Dynamic, Diverse Economy by setting forth the policies and procedures by which the City's component units operate to ensure that their resources are used for the purposes intended.

Respectfully submitted,

Donald M. Tripp
Executive Director

Attachment – Resolution

CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT

RESOLUTION

RESOLUTION NO. **2**

INTRODUCED BY BOARD MEMBERS

SERIES 2015

**A RESOLUTION CONCERNING CONTRACT AND ADMINISTRATIVE AUTHORITY FOR
THE CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT**

WHEREAS, the City of Westminster Downtown General Improvement District (District) is a quasi-municipal corporation and political subdivision of the State of Colorado, duly organized, existing, and acting pursuant to the provisions of Part 6, Article 25, Title 31, Colorado Revised Statutes; and

WHEREAS, the District was established on August 10, 2015; and

WHEREAS, a general description of the improvements to be acquired, constructed and installed within the District and the services to be provided are as follows:

IMPROVEMENTS generally to be acquired, constructed, installed, operated, and/or maintained may include but are not limited to public roadways, including road and pedestrian underpasses, site grading, sidewalks, parking improvements, water and sewer lines, landscaping, irrigation, site and traffic lighting, drainage improvements, site amenities such as benches, fountains, required signage, and relocating businesses.

SERVICES generally to be provided may include but are not limited to police and fire protection, municipal and building code enforcement, professional services including but not limited to planning, engineering, building and construction inspection, financial administration and legal services, and any other service that the City is authorized to provide; and

WHEREAS, the Board of Commissioners wishes to formalize policies and procedures for the daily operations of the District; and

WHEREAS, the District is a blended component unit of the City of Westminster with the District's financial activities required to be included as part of the City's annual audit and included in the City's Comprehensive Annual Financial Report; and

WHEREAS, the District and the City are cooperating by authorizing an intergovernmental service agreement on October 26, 2015 that provides for the City to provide administrative services in order to accomplish District's goals and activities.

NOW, THEREFORE, the Board of Commissioners of the District resolves that:

The scope of the District's Executive Director's authority to enter into contracts and make purchases on behalf of the District shall be consistent with the limits set forth in Title XV of the Westminster Municipal Code, as it may be amended from time to time, and all current and future City Manager administrative memoranda, and the Executive Director is further authorized, but not required, to delegate such contract and purchasing authority to City staff who may be appointed by the Executive Director, acting as the City Manager, from time to time.

PASSED AND ADOPTED this 26th day of October, 2015.

ATTEST:

District Secretary

Mayor, Presiding Officer of the District

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney, Attorney for the District

Downtown GID Agenda Item 3 B

Agenda Memorandum

City of Westminster Downtown General Improvement District Meeting
October 26, 2015



SUBJECT: Westminster Downtown General Improvement District/City of Westminster\Westminster Economic Development Authority Intergovernmental Cooperation Agreement

Prepared By: Tammy Hitchens, Finance Director
Robert Byerhof, Treasury Manager
Karen Creager, Special Districts Accountant

Recommended Board Action

Authorize the Mayor, as the Presiding Officer of the City of Westminster Downtown General Improvement District, to execute an Intergovernmental Cooperation Agreement between the City of Westminster (City), the Westminster Economic Development Authority (WEDA), and the City of Westminster Downtown General Improvement District (GID), in substantially the same form as attached, providing for reimbursement to the City by either WEDA and/or the GID of certain costs incurred by the City within the boundaries of the Westminster Center Urban Reinvestment Plan Area.

Summary Statement

- The Westminster Center Urban Reinvestment Plan Area, commonly known as Downtown Westminster, was created on April 13, 2009 to facilitate redevelopment of property within the Downtown area.
- In July 2015, the City issued \$40,000,000 in Certificates of Participation (COPS) to help finance improvements related to Phase I of the Downtown Westminster redevelopment project.
- In August 2015, Council approved the creation of the City of Westminster Downtown GID.
- Also in August, 2015, Council, as ex officio Board of Directors of the GID, approved the ballot language to be presented to District voters in the November 2015 election to authorize a mill levy of up to 50 mills to pay for public infrastructure, services and financing costs within the GID's boundaries.
- In consideration of the City constructing the improvements benefitting the Downtown Westminster redevelopment project, the City, WEDA and the GID wish to enter into an Intergovernmental Cooperation Agreement (ICA) to spell out each of the Parties obligations related to the construction and maintenance of public improvements, other public services within the boundaries, and debt service incurred on behalf of redevelopment projects.
- The source of revenues to be used for the obligations in the area will be property tax increment and sales tax increment collected in redevelopment area, property taxes generated from the GID mill levy and other revenues collected by WEDA and the GID.

Expenditure Required: Amounts billed annually to WEDA and GID by the City

Source of Funds: WEDA property tax and sales tax increment, GID property tax revenues, and other revenues collected by WEDA and the GID

Policy Issue

Does the Board support entering into an ICA with the City and the Westminster Economic Development Authority to provide for the reimbursement of capital and maintenance costs along with other contractual obligations associated with the Downtown Westminster project provided all other superior covenants and superior obligations have been met?

Alternative

Do not authorize the execution of the proposed ICA between the City, WEDA and the GID. This alternative is not recommended. The sharing of revenue is necessary given the costs borne by the City for the construction and maintenance of improvements within the URA and other contractual obligations. Additionally, these expenses are a proper and legal use of URA tax increment and GID tax revenues.

Background Information

On April 13, 2009, City Council created the Westminster Center Urban Reinvestment Plan Area to encourage and support the redevelopment of the former Westminster Mall into what is now known as Downtown Westminster. The City and WEDA continue to work together to design and construct public improvements within Downtown Westminster to further enhance the redevelopment strategy. As part of that effort, on August 10, 2015, City Council established the City of Westminster Downtown General Improvement District to fund improvements and operational costs within the GID boundaries. Under the GID structure, a property tax mill levy is assessed on property owners within the GID boundaries. The property owners are the primary beneficiaries of the public improvement, such as streets, lights, parks, parking improvements etc. to be built and such improvements are maintained for the benefit of the users.

In late July, the City issued \$40,000,000 in Certificates of Participation to finance improvements and infrastructure related to Downtown Westminster. Additionally on August 24, 2015, Council, acting as the ex officio board of the GID, approved the ballot language that would authorize a mill levy not to exceed 50 mills to pay for public infrastructure, maintenance, professional services, and financing costs within the district's boundaries and establish multi-year obligations.

Pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City, WEDA, and the GID are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity. On June 27, 2011, and on December 9, 2013, WEDA and City entered into separate ICA's for the reimbursement of certain costs incurred within the Westminster Center Reinvestment Plan area. Staff along with legal counsel recommend that a new ICA be adopted, which includes the recently approved Westminster Downtown GID and affirms the contractual obligations between the ICA parties. Accordingly, an ICA between the entities provides a prudent mechanism for the City to recover expenses incurred for capital investment, maintenance, professional services, and any financing costs made on behalf of WEDA and the GID.

This ICA generally accomplishes the following:

- The City agrees to enter into one or more contracts for the construction of the Improvements as defined in the ICA.

- WEDA agrees to reimburse the City for amounts Advanced and the City's costs as described in the ICA.
- The GID agrees to levy a property tax not to exceed 50 mills.
- WEDA agrees to return the portion of the District's revenues, which are attributable to the District's mill levy, to the District.
- The GID agrees to utilize revenues it receives to assist in paying the costs of certain improvements and services within District's boundaries.

Although the final build-out of Downtown Westminster is years from completion, the recommended action to approve the ICA will establish the contractual obligations needed to provide the City repayment of capital, maintenance, professional services, and any financing costs incurred that benefit WEDA and the District.

The action requested in this agenda memorandum relates to the City's Strategic Plan goal of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and to a Financially Sustainable Government Providing Excellence in City Services by entering into an intergovernmental cooperation agreement to provide and finance the ongoing needs of the Downtown Westminster development.

Respectfully submitted,

Donald M. Tripp
Executive Director

Attachment – IGA Agreement

**INTERGOVERNMENTAL COOPERATION AGREEMENT AMONG
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF
WESTMINSTER AND THE CITY OF WESTMINSTER DOWNTOWN GENERAL
IMPROVEMENT DISTRICT REGARDING THE WESTMINSTER CENTER URBAN
REINVESTMENT PROJECT**

This Intergovernmental Cooperation Agreement (the “Agreement”), dated as of _____, 2015, by and among the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (“WEDA”), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, the CITY OF WESTMINSTER (“the City”), a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado, the CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT (“District”), a quasi-municipal corporation and body corporate of the State of Colorado duly organized and existing pursuant to Title 31, Article 25, Part 6, C. R.S., as amended (collectively the “Parties”).

W I T N E S S E T H

WHEREAS, the City Council of the City has adopted an urban renewal plan known as the “Westminster Center Urban Reinvestment Plan” (“Urban Renewal Plan”) under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et. seq., C.R.S., as amended (the “Act”); and

WHEREAS, in accordance with the Urban Renewal Plan and the Act, WEDA is authorized to undertake an urban renewal project and to finance such project by utilization of certain incremental increases in property and sales taxes; and

WHEREAS, the District was created in part to finance the costs of various public improvements and services for the benefit of property described in the Urban Renewal Plan; and

WHEREAS, the Parties desire to provide various public improvements as part of the urban renewal project described in the Urban Renewal Plan, including, without limitation, water and sewer lines, streets, curb and gutter, sidewalks, streetscape, landscape, lighting, security, drainage, telecommunications, signage, parking and transportation facilities, parks, plazas, trails, recreation facilities, public art projects, traffic improvements, utilities and all other necessary, incidental, appurtenant, and convenient facilities, equipment, land and property rights (“Improvements”); and

WHEREAS, in order to finance a portion of the costs of the Improvements, the City has entered into a lease-purchase agreement and in connection therewith there have been issued \$30,000,000 Certificates of Participation, Series 2015A and \$10,000,000 Certificates of Participation, Taxable Series 2015B (the “Certificates”); and

WHEREAS, pursuant to a Cooperation Agreement dated June 27, 2011, between the City and WEDA, WEDA agreed to repay the City (a) \$15,825,000 which the City advanced to WEDA to acquire the Westminster Mall and (b) amounts advanced by the City to WEDA to pay the ongoing costs to maintain the Westminster Mall until its demolition and to demolish the Westminster Mall and prepare the site for redevelopment which amounts equal \$3,591,886 as of the date hereof (collectively, the “2011 Agreement Advances”); and

WHEREAS, the City has also advanced to WEDA \$13,425,523 for the costs of other land acquisitions related to the redevelopment of the Westminster Mall site and has spent \$32,842,409 as of the date hereof and will spend additional amounts in the future to redevelop the Westminster Mall site (together with the 2011 Agreement Advances, collectively, the “Advances”); and

WHEREAS, the Parties are authorized by the Section 112 of the Act to enter into cooperative agreements with respect to projects and activities and are authorized by Section 29-1-203, C.R.S. to enter into contracts to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Parties desire to enter into an agreement setting forth their intent to cooperate as to the provision of the Improvements and the maintenance of such Improvements and to assure that taxes levied by the District are made available to pay the costs of certain improvements and services; and

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, the City, WEDA and the District hereby agree as follows:

1. Improvements. The City or WEDA will enter into one or more contracts for the construction of the Improvements. The City agrees to pay a portion of the cost of the Improvements located within the Urban Renewal Plan from the proceeds of its \$30,000,000 Certificates of Participation, Series 2015A and \$10,000,000 Certificates of Participation, Taxable Series 2015B (the "Certificates") and other legally available funds. WEDA agrees to reimburse the City (a) for the amount of the Advances and (b) for the City's costs related to the financing of the costs of the Improvements and (c) in the event the City pays the costs of the maintenance of said Improvements, for the costs paid by the City to maintain the Improvements. The City will advise WEDA of amounts spent by the City (other than from the proceeds of the Certificates) after the date hereof on redevelopment of the Westminster Mall site and if WEDA consents such amounts will be added to the amount of the Advances to be reimbursed by WEDA.

2. Tax Increment Revenues. In consideration of the District providing improvements and services to benefit property described in the Urban Renewal Plan, WEDA agrees that the portion of revenues that it receives as tax increment revenues that are attributable to the District's annual levy of ad valorem taxes on real and personal taxable property shall be remitted to the District periodically, but no less frequently than annually. In consideration of City financing the Improvements and providing for the maintenance of the Improvements as described in Section 1, WEDA agrees that the revenues that it receives as tax increment revenues pursuant to Section 107(9)(II) of the Act and the Urban Renewal Plan, except for the revenues paid to the District pursuant to the preceding sentence, shall be used by WEDA to reimburse the City for the costs it incurs pursuant to Section 1. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S., and WEDA irrevocably pledges all of its tax increment revenues as described in § 31-25-107(9)(a)(II), C.R.S. to the repayment of the same. WEDA shall not incur any other obligation payable from the tax increment revenues without the consent of the District and the City.

3. Cooperation. The Parties covenant with each other that in any action or challenge of the Urban Renewal Plan and/or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

4. Enforcement. WEDA agrees that it shall enforce the collection of the Tax Increment Revenues.

5. Effective Date; Term. The City and WEDA agree that this agreement supersedes a Cooperation Agreement dated June 27, 2011 (the "2011 Agreement") between the City and WEDA and an Intergovernmental Cooperation Agreement dated as of December 23, 2013 (the "2013 Agreement") between the City and WEDA and the 2011 Agreement and 2013 Agreement are no longer of any force and effect. This Agreement shall become effective as of the date set forth in the initial paragraph hereof. This Agreement shall remain in full force and effect until terminated by mutual consent of the Parties or until the tax allocation provisions of the Urban Renewal Plan terminate, whichever is earlier.

6. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

8. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

EXECUTED this _____ day of _____, 2015

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director

APPROVED AS TO FORM:

Attorney for Authority

CITY OF WESTMINSTER

By: _____
Mayor

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF WESTMINSTER DOWNTOWN GENERAL
IMPROVEMENT DISTRICT

By: _____
Mayor, Presiding Officer of the District

Attest

Secretary

APPROVED AS TO FORM:

District's Attorney

Downtown GID Agenda Item 3 C

Agenda Memorandum

City of Westminster Downtown General Improvement District Meeting
October 26, 2015



SUBJECT: Intergovernmental Service Agreement with the City of Westminster

Prepared By: Karen Creager, Special Districts Accountant

Recommended Board Action

Authorize the Executive Director to execute an Intergovernmental Service Agreement with the City of Westminster in substantially the same form as the attached agreement regarding the payment of a service fee to the City.

Summary Statement

- The City of Westminster Downtown General Improvement District (District) was created on August 10, 2015, with the primary purpose of acquiring, constructing, installing, operating or maintaining Improvements and/or providing services within and for the District.
- The District has no Staff; therefore, the City provides crucial administrative services to the District.
- The Intergovernmental Service Agreement (IGSA) between the City and the District will outline the obligations with regard to administrative services provided to the District by the City and the District's compensation to the City for such services.
- This agreement is retroactive to January 1, 2015.

Expenditure Required: Administrative Fee: \$10,000/year for 2015-2017. Future expenditures to be determined each year during the annual budget process and pursuant to the terms of the IGSA

Source of Funds: Revenues for the District including property taxes, ownership taxes and interest earnings

Policy Issue

Should the Board authorize the attached IGSA with the City?

Alternative

An alternative would be to not authorize the attached IGSA between the District and the City. This is not recommended as the City provides crucial administrative services that could be more costly if the District were to outsource the services. Additionally, the City is compensated by seven other General Improvement District (GIDs) located within the City that utilize City Staff for administrative services in a very cost-effective manner.

Background Information

The City of Westminster Downtown General Improvement District was created on August 10, 2015 and is a parcel located on the Downtown redevelopment site. The District was established with the primary purpose of acquiring, constructing, installing, operating or maintaining improvements that may include but are not limited to public roadways, including road and pedestrian underpasses, site grading, sidewalks, parking improvements, water and sewer lines, landscaping, irrigation, site and traffic lighting, drainage improvements, site amenities such as benches, fountains, required signage, and relocating businesses and/or providing services that may include but are not limited to police and fire protection, municipal and building code enforcement, professional services including but not limited to planning, engineering, building and construction inspection, financial administration and legal services, and any other service that the City is authorized to provide within and for the District.

As the District does not have its own professional staff, the City provides various necessary administrative services. These services include but are not limited to, legal (provided no conflict of interest exists between the City and the District), accounting, management and clerical. The District benefits by having the City provide these services as the services would be more costly if the District were to outsource them. Currently, the City has IGSA's with seven other GID's located within the City for such administrative services provided to these Districts.

The attached IGSA outlines the services that the City will provide and the fee the District will pay to the City for those services. The fee is to be set annually through the budget process and is labeled "Administration" in the District's budget. The fee is due on or before August 1 each year. Services have been provided to the District beginning in 2015; however, no IGSA was in place allowing for the payment of the fee. The attached IGSA is retroactive to January 1, 2015. The IGSA sets the fee at \$10,000 annually for 2015-2017 and provides for repayment of the fee from future excess revenues if the fee is not fully paid when due. The first year the District will receive revenue is 2017. It is anticipated that revenues in 2017 will not be sufficient to pay the full amount of the fee due until development progresses.

The action requested in this agenda memorandum relates to the City's Strategic Plan goal of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and Dynamic,

SUBJECT: IGSA with the City of Westminster

Page 3

Diverse Economy by assuring that the City receives payment, when appropriate, for the services it provides to the Downtown General Improvement District.

Respectfully submitted,

Donald M. Tripp
Executive Director
Attachment – IGSA Agreement

INTERGOVERNMENTAL SERVICE AGREEMENT

THIS INTERGOVERNMENTAL SERVICE AGREEMENT (the “Agreement”) is made and entered into this day ___ of _____ (the “Effective Date”) by and between THE CITY OF WESTMINSTER, COLORADO, a Colorado home-rule municipality, and the CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT (the “Parties.”)

RECITALS

WHEREAS, the City of Westminster, Colorado (the “City”) is a Colorado home-rule municipality, created, established, existing, and acting under the provisions of Article XX of the Constitution of the State of Colorado and the City Charter; and

WHEREAS, the City of Westminster Downtown General Improvement District (the “District”) is a quasi-municipal corporation and political subdivision of the State of Colorado, established, existing, and acting pursuant to the provisions of Part 6, Article 25, Title 31, Colorado Revised Statutes (the “Act”); and

WHEREAS, Section 18(2)(a) of Article XIV of the Constitution of the State of Colorado provides that nothing in the Constitution shall be construed to prohibit the State or any of its political subdivisions from cooperating or contracting with one another or with the government of the United States to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt; and

WHEREAS, Part 2 of Article 1 of Title 29 of the Colorado Revised Statutes, as amended, authorizes and enables governments of the State of Colorado to enter into cooperative agreements or contracts; and

WHEREAS, the Constitution and the laws of the State of Colorado permit and encourage local government entities to cooperate with each other to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, the District does not have its own professional staff and is in need of administrative services, including but not limited to legal, accounting, management, financial, clerical and similar services; and

WHEREAS, the City is willing to provide such services in exchange for the consideration set forth in this Agreement; and

WHEREAS, pursuant to C.R.S. § 32-25-611, the District has the power to enter into contracts and agreements affecting the affairs of the District.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, and other good and valuable consideration, the Parties covenant and agree as follows:

ARTICLE I

TERM OF AGREEMENT

SECTION 1. Effective Date of the Agreement; Duration of Agreement Term. The Initial Term of this Agreement shall be January 1, 2015 through December 31, 2015. Thereafter, this Agreement shall automatically renew for additional one-year periods commencing on each January 1 following the Initial Term, provided, however, that either party may terminate this Agreement upon at least thirty (30) days advance notice to the other, in which case this Agreement shall be deemed terminated as of the last day of the month next following the month in which said notice is given, or such other date to which the Parties may agree.

ARTICLE II

SERVICES

SECTION 2.1 City Services. The City agrees to provide to the District administrative services reasonably required to operate the District to fulfill the purposes for which it was created. Such services shall include, but are not limited to, legal (provided no conflict of interest exists between the City and the District), accounting, management, financial, and clerical services (the "Services"). Said Services shall be provided by City staff on an as-needed basis as may be required by the applicable laws and regulations pertaining to the operations of a General Improvement District.

SECTION 2.2 Compensation. As compensation for the Services, the District shall pay the City the lump sum annual fee labeled "Administration" as specified in the Annual Budget as adopted by the District. However, the Administration fee for the initial term of the Agreement and the two subsequent terms will be \$10,000 for each term. This Administration fee shall be due on or before August 1 of the year in which the Services are provided. If the Administration fee is not paid by the District when due, and so long as this Agreement is not terminated, unpaid fees shall accrue and be due and owing without interest when District future excess revenues are available subject to the right of the District to terminate this Agreement. In the event of any termination of this Agreement prior to the August 1 payment date, the District shall pay the City a pro-rated fee based on the length of time the Services were actually provided without payment. In the event of termination, however, there shall be no refund of any previously paid fees to the City.

ARTICLE III

MISCELLANEOUS PROVISIONS

SECTION 3.1 Remedies. A breach by either party to this Agreement shall entitle the non-breaching party to any and all remedies at law or in equity. In any action brought to enforce this Agreement, the prevailing party shall be entitled to recover from the other its reasonable attorneys fees and costs. Before bringing any such action, however, the Parties agree to attempt in good faith a mediated resolution of their dispute using a mutually acceptable professional and independent mediator.

SECTION 3.2 Amendments. This Agreement may be amended at any time by mutual written agreement of the Parties.

SECTION 3.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect, impair or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

SECTION 3.4 TABOR. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation within the meaning of Colorado Constitution Article X, Section 20, commonly known as "TABOR." The obligations of the Parties hereto shall be subject to appropriation of the necessary funds to meet said obligations on an annual basis by the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused their names and seals to be affixed as of the date and year noted above.

CITY OF WESTMINSTER, COLORADO

By: _____
City Manager, City of Westminster

(SEAL)

ATTEST:

City Clerk

**CITY OF WESTMINSTER DOWNTOWN
GENERAL IMPROVEMENT DISTRICT**

By: _____
Mayor, Presiding Officer of the District

(SEAL)

ATTEST:

Secretary