

CITY OF WESTMINSTER

POLICIES AND PROCEDURES

FOR

TITLE 32 DISTRICT FORMATION

DECEMBER 2004

Table of Contents
MSD Policies and Procedures

<u>Section</u>	<u>Page Number</u>
1. Purpose of Policies and Procedures	3
2. Definitions	4
3. Service Plan Considerations	5
4. Criteria for Accepting Applications	5
5. Criteria for Reviewing Applications	6
6. Service Plan Contents	8
7. Administrative Review	9
8. Public Hearing	10
9. Annual Report Required and Reviewed	10
10. Material Modification	12
11. Amendments	12
12. Quinquennial Review	13
13. State Conservation Trust Fund/ Greater Outdoors Colorado Grant Monies	13
14. Dissolution or Consolidation	13
15. Failure to Comply with Policies and Procedures	14
16. Exemptions	14
17. Effective Date	14
18. Service Plan Outline and Table of Contents	Exhibit A
19. Improvements Matrix	Exhibit B
20. Bibliography	Exhibit C

Purpose of Policies and Procedures

Under appropriate circumstances, financing districts, including metropolitan districts organized under the Title 32 of the CRS, Special District Act ("Districts") provide an economic alternative to the development of municipal infrastructure at the expense and risk of the City. The City has previously authorized Districts within its corporate limits for the sole purpose of development of infrastructure within their respective service areas. Through its approving resolutions and intergovernmental agreements with the Districts, the City has restricted the authority and autonomy of the Districts by limiting the Districts' powers to the construction, financing and maintenance of capital infrastructure.

Certain Districts in the Denver metropolitan area have undertaken capital development financed with District bonds exceeding the ability of the Districts to retire such indebtedness and the ability of the local unit of government to maintain and fund replacement of the facilities within the constraints of available municipal resources. It is necessary to coordinate the development of capital facilities between the City and Districts to achieve the most efficient and cost effective delivery of municipal services.

The purpose of establishing these policies are to accomplish the following objectives:

- Have the district pay for infrastructure or other public improvements that the City would normally install,
- Articulate the types of benefits that are expected to inure to the City and its citizens generally in the proposed formation of a special district,
- Avoid having indebtedness of special districts affect the credit rating of the City of Westminster,
- Preserve the financial integrity of the City and its citizens,
- Prevent the shifting of development risk to non-developers,
- Attempt to minimize and insulate the City from risks and controversies that may arise in relation to special districts,
- Attempt to minimize excessive tax burdens upon City residents in special districts,
- Disallow the costs of any such district to be shifted to citizens who are not within the geographic boundaries of the District or receiving benefit from it.

It is the intention of the City of Westminster to accomplish the following objectives if and when a Title 32 Metropolitan Special District is considered and/or approved by the City:

- Achieve improvements that would benefit the City taxpayers by enabling the City to avoid the costs of selected public improvements, whereby the district will finance these improvements either through developer-financed infrastructure or through the public sale of financing bonds. This will help to keep the high quality services high without the increased burden on the City's funds. In addition, those property owners and tenants will be the ones to share in the costs of these improvements and they are the ones benefiting directly by the improvements.
- Impose conditions, restrictions and requirements on the development by existing and future Districts. Restrictions will apply to additional capital infrastructure and the issuance and refunding of indebtedness, in order to preserve the public purpose of the district, the financial integrity of the City and the health, safety, prosperity, security and general welfare of all of the residents and citizens of the City, including the residents and citizens of the Districts. The City of Westminster takes a more protective stand toward the use of special district financing in a residential setting, than in a commercial setting. Research has shown the price of homes in high-end housing developments bears no relation to the tax burden on the residents. In other words, in this area of the Denver metropolitan area, taxpayers do not comparison-shop property taxes when buying a home. On the other hand, however, property taxes in a commercial/business environment are routinely included as a factor in the businessperson's search for competitive lease and rental rates.

The City of Westminster finds that the Special District Act and the existing intergovernmental agreements between the City and the Districts in certain respects do not adequately address the local concerns and interests of the City in regulating the Districts' development of capital facilities and incurring of debt to finance such development, both of which ultimately have a direct financial consequence to the City.

- **Residential MSDs:** In general the City is opposed to the creation of MSD's to fund capital construction of residential developments for the following reasons:
 1. Virtually all existing Westminster residential development was funded without MSD's. So the lack of these districts has not adversely affected Westminster residential development.
 2. Creation of a residential MSD creates a differential property tax structure among similar residential developments where the MSD resident is paying significantly more property tax without any commensurate public benefit.
 3. The higher mill levy in MSD projects may make these residents less inclined to support property tax increases.
 4. Buyers of homes in MSD projects are generally unaware of the higher property taxes in their development but can become upset when they later discover this. Residents may be surprised to find out the price of their home did not include the price of streets and utilities in their development which they repay over a 30 or more year period through their property taxes versus the vast majority of Westminster homes where this is not the case.
 5. There would be an arguable public benefit if home prices were lower in MSD projects, reflecting the developers lower capital cost. Studies have shown that this is not the case.
- In summary, there is generally not a compelling public purpose and benefit to form residential districts. In very limited and unique circumstances, the City may support a residential MSD. Examples include:
 1. For the purposes of annexing a highly desirable parcel into the City of Westminster.
 2. For a large scale regional retail and mixed use project (at least 100 acres in size) which provides significant sales tax revenues to the City and includes high quality residential product integrated into the regional retail area in a new urbanism design.
 3. Construction of a unique new urbanism project such as Bradburn which incorporates a significant retail commercial area, office buildings, office and retail units over retail space and a variety of housing types including single family detached and attached products along with significant recreational amenities (pool, clubhouse, etc.), private parks and public parks and open space.
 4. As an incentive for redevelopment.
- The process of determination of compelling, special and unique project is a two-step process described in Section 4 below. If and when they are considered and/or approved, the mill levy cap will be 25 mills. This mill levy will cover debt service and operating expenditures. The debt service portion of the mill levy will disappear when the bonds are redeemed. The operating portion of the mill levy will be encouraged, if not required. It will be reviewed to see if it provides for maintenance of the capital infrastructure to be maintained by the district. In addition, it will be reviewed for reasonableness regarding fees paid to the district, its consultants, or other parties. A district cannot levy this operational mill levy until after Staff reviews the uses for it. This will be fixed mill levy, with no peel-off provision allowed and no other derivations associated with the mill levy.
- Commercial Districts:
 - In general, the City will consider the formation of commercial districts, especially if there are demonstrated benefits to the citizens, residents in general or the City of Westminster itself.
 - The mill levy cap for commercial districts will be 50 mills for commercial and/or non-owner occupied residential, except for the "Gallergherizing" of the mill levy cap. There will be no exceptions to this cap; derivative products may or may not be considered.

In General: The City will not support such districts if the costs of establishing the district, including fees paid to consultants, either directly, or through the issuance of bonds, are outside the public purpose intent of the district formation. The City will make this determination on a case-by-case basis, and will make this decision based on the public purpose and benefit or detriment to the public purpose. Examples of these kinds of costs include but are not limited to: remuneration to developers, underwriting or financial advisory fees at the levels of \$20 per \$1,000 bond or higher. This determination will be made by the City Staff and its consultants.

The City of Westminster further determines that it is necessary and advisable to specify the events and conditions which, under the Special District Act; likely constitute material modifications to an approved District service plan, in the context of the particular business and legal relationship between the City and Districts.

The provisions of this document are also intended to provide procedures for the processing and review of proposals for formation of new Districts, and to define the restrictions and limitations which may be imposed by the City as a condition to the approval of such Districts consistent with the policy and intent of this Document.

The adoption of this document is necessary, requisite and proper for the government and administration of local and municipal matters under the City's home rule powers granted by Article XX, Section 6 of the Constitution of the State of Colorado.

1. Definitions

- A. *Board* means the Board of Directors of a Title 32 Metropolitan Special District.
- B. *District* means a special district organized under the Special District Act whose service area is located wholly or partially within the corporate limits of the City of Westminster. *MSD* will be used for the term *Metropolitan Special District*.
- C. *Petitioners* or *Applicant(s)* means any person(s) proposing a service plan or an amendment to an approved service plan.
- D. *Service Plan* is the service plan required under 32-1-202 of the Special District Act.
- E. *Special District Act* means Article 1 of Title 32, C.R.S.
- F. Certain other terms are defined in the text of this document and shall have the meaning so indicated.

2. Service Plan Considerations

The following sections shall govern the acceptance, processing, review and consideration of service plans, for new Districts. These provisions shall also apply to the consideration of service plan amendments (with the exception of Section 6 on Service Plan Contents).

4. Criteria for Accepting Applications

The City will use certain criteria in determining whether to accept a draft service plan to review for any given MSD:

- Prospective petitioners shall initiate a special district discussion by meeting with a designated City staff representative to discuss the procedures and requirements for a service plan. The City representative shall explain the administrative process, and provide information to assist petitioners in the orderly processing of the proposed service plan. The purpose of the discussion is to allow Staff the opportunity to determine whether the City would entertain the addition of a special district to the existing tax base in the City.

- The City is more concerned about residential MSDs due to the differences in levels of expertise of buyers (residential vs. office) and the practices of shopping for property taxes when shopping for residential purchase prices. Prospective homeowners do not tend to research levels of property taxes, whereas office tenants are usually careful to look at this, especially when triple-net leases are involved. There must be a compelling reason for the City staff to agree to review a residential MSD application. Applications for Residential MSDs will not be accepted unless there is a very special reason, which Staff will determine and communicate to City Council.
- The proposed development shall be in conformity to existing land use and city growth management guidelines. Prior to consideration of the Service Plan, a PDP must have been submitted and approved by the City. Prior to consideration of the Service Plan, an ODP must also have been submitted and approved by the City.
- There shall be special circumstances and benefits to the City that dictate the use of this type of district and its associated financing, as opposed to the developer using privately financed infrastructure improvements.
- Prospective petitioners shall use the Exhibits A-C to comply with the City's review process:
 1. Exhibit A: Service Plan Table of Contents and Outline. The organization of the Service Plan must include a table of contents with appropriate page numbers and must comply with this outline.
 2. Exhibit B: Improvements Matrix, completed to the best of the petitioner's ability.
- Staff shall maintain their discretion on their availability and the timing to conduct the review or time to contract and manage the review process. If time is not available due to other higher priority projects, the application shall be turned down.
- If Staff accepts an application for further review, Staff shall notify the City Manager's office of acceptance, along with the estimated time for review.
- If Staff rejects an application for further review, Staff shall notify the City Council and the City Manager's office of rejection, the reasons why. The notification shall be in the form of a Staff Report sent to the City Council in the next available packet.

5. Criteria for Reviewing Applications

If a project is accepted for review, the City will use the following guidelines in reviewing the service plan:

- Petitioners shall file a complete proposed service plan with the office of the City's Finance Director, with the clear covering statement that both PDP and ODP have been approved and the date of such approval. The proposed service plan shall substantially comply with the format of Exhibit A: Model Service Plan Outline maintained on file with the City of Westminster. A copy of the proposed petition to be filed with the district court must be included with the proposed service plan filed with the City. Five (5) copies of the proposed service plan must be submitted to the Finance Director at the time of application and distributed as follows:
 - Finance Department (1 copy)
 - Community Development (2 copies)
 - City Attorney (1 copy)
- The following timetable will be observed in submitting service plans for consideration. (A more detailed timetable is attached as Exhibit C.) Submission of modified applications may set back or re-start the review period.

The deadline for submittal of a complete service plan has been determined to be the end of May, based on the following deadlines, in reverse order:

- Ballot language must be certified in September of even numbered years.
- This requires that City Council approve the service plan in August, at the latest by the 2nd Council meeting in August (4th Monday in August).
- Staff will need a minimum of three months to review the service plan, negotiate changes and finalize the service plan with the developer
- A complete service plan must be submitted no later than mid-May for City Council approval in August.
- For even-numbered years when May elections are allowed, the calendar outlined above should be adjusted by approximately 5 months to accommodate a submittal deadline of end-December in time for the May special election.
- The service plan submitted MUST be complete. If it is not complete, it will be rejected. It may be re-submitted, but if it is beyond the deadline of mid-May for re-submittal, it will not be reviewed and will be returned to the developer for the next year's calendar.
- City Staff shall be provided at least three months to conduct the entire review once a complete application is submitted. The application outline and contents to be included are included in Exhibit A. All applications must conform to this outline.
- Fees and Remuneration to the City:
 - The application and processing fee for a service plan shall be ten thousand dollars (\$10,000). In addition the City Manager may impose additional fees to reimburse the City for reasonable direct costs related to such special review.
 - In addition to the processing fee, the Petitioners shall also pay the expenses of additional consultants hired by the City to conduct the review.
 - In addition to the fees above, if the City maintains any of the infrastructure, the City will receive an annual fee assessed as a mill levy, sufficient to allow the City to defray the cost of infrastructure maintenance and repair, either constructed by the City or constructed by the District and deeded or donated to the City.
 - Lastly, on any plan amendment or refunding review, the City will receive an administrative fee of \$5,000 and .25%, whichever is greater, of the bonds if/when refunded.

The City will review the proposed millage rate with the City with respect to its potential to jeopardize or impact City or other mill levy elections may need to have in the future. Mill levies on operations and maintenance of improvements will be favored over mill levies for capital construction. This is because of the risk described earlier: if, due to the market, a buyer is paying the same price for property with or without an MSD mill levy, this means the buyer is paying higher than normal taxes to pay for infrastructure costs the developer is passing onto the buyers.

The City wants residential buyers to be aware of the additional tax burden to be imposed. The City mandates early, written and recorded notice of the total (overlapping) tax burden, including the special district millage, along with relevant details such as the length of the debt millage. The City will review the type and timing of the disclosure, which the Petitioners are proposing. The notice shall be recorded against all property within the District prior to the District's certification of the formation of the district to the Colorado Division of Local Government.

In addition, two major reviews will be conducted using the following criteria:

1. The Planning/Engineering Guidelines are as follows:
 - a. The developer must have already submitted and had approved both a PDP and an ODP.
 - b. Detailed cost estimates shall be included along with unit prices and numbers of units in sufficient detail to enable Staff to verify estimates.
 - c. Detailed lists of all site improvements shall be included along with a designation of which improvements are to be paid for, constructed by, maintained by, dedicated to (and when conveyed) and by whom: district, developer, HOA or City.

2. The Finance Guidelines are as follows:
 - a. The IGAs and Developer Agreements will be reviewed to determine governance issues, relationships among residents/tenants and board and controls.
 - b. The City will require early, written and significant notice to be given, in writing, to prospective homeowners/tenants of the district.
 - c. Cash flows will be reviewed for all phases of the project through build-out and until debt is paid off.
 - d. Mill levies will be capped at 25-mills for owner-occupied residential, and 50-mills for commercial developments and non-owner occupied residential or retail developments.
 - e. Residential mill levy caps.
 - i. This mill levy will cover debt service and operating expenditures.
 - ii. The debt service portion of the mill levy will be eliminated when the bonds are fully retired or redeemed.
 - iii. The operating portion of the mill levy will be encouraged, if not required. It will be reviewed to see if it provides for maintenance of the capital infrastructure to be maintained by the district. In addition, it will be reviewed for reasonableness regarding fees paid to the district, its consultants or other parties. They cannot levy this operational mill levy until after Staff reviews the specific budgeted uses for it.
 - iv. This will be a fixed mill levy, with no peel-off provisions or other “derivative” provisions attached to it. Reductions in the mill levy will be eliminated where determined appropriate by the Board and the City.
 - f. Commercial mill levy caps.
 - i. This mill levy will cover debt service and operating expenditures.
 - ii. The debt service portion of the mill levy will disappear when the bonds are fully retired or redeemed.
 - iii. The operating portion of the mill levy will be encouraged, if not required. It will be reviewed to see if it provides for maintenance of the capital infrastructure to be maintained by the district. In addition, it will be reviewed for reasonableness regarding fees paid to the district, its consultants or other parties. They cannot levy this operational mill levy until after Staff reviews the specific budgeted uses for it.
 - g. Leverage will be limited to a maximum of 50% of projected assessed value.
 - h. The cash flows will designate the breakout of expenses designated for debt service and operational costs, both in dollars and mills.
 - i. Bond sizing will be reviewed (size, annual debt service, structure and term, credit enhancement). Bond issues beyond 30 years will not be viewed favorable. In addition developer guarantees and the use of any or all components to improve the security of the district on behalf of the homeowner/tenant will be reviewed. The City will make the determination what additional credit enhancements are necessary to secure approval of the service plan. It may not be necessary to use all components, as each case is unique. Each situation will be reviewed on a case-by-case basis.
 - j. Material variations in service plan will be reviewed. The City will determine what constitutes a material modification requiring approval by the City. The following paragraphs must be included in the draft service plan:
 1. On or before September 1 of each year, the district shall submit an annual report and proposed budget, including proposed debt service and O&M levies. The annual report shall explain all major actions taken during the preceding year to implement the Financing Plan and the preliminary engineering plan set forth in the service plan, together with projections for the ensuing fiscal years and such other available information as the City may request. The District shall also file a copy of its statutorily required audit with the City.

2. The City will determine what change constitutes a “material modification” of the Service Plan. Any significant change in the Service Plan shall be submitted to the City and shall first be subject to approval by the City in accordance with the provisions of the Act. Material modifications are include, but are not limited to those items listed in Section 11 Material Modifications.
 - i. Those which add property to the district
 - ii. Other conditions as determined by the City
- k. Amendments will be viewed as necessary, not deleterious to the district, its board or its advisors. The City recognizes there will be changes to the district over time, especially in large, multi-phase developments, and the financing components may need to be adjusted accordingly. However, the City maintains the expectation that the District will work with the City on new and/or strengthened constraints to be imposed beyond the original ones contained in the service plan.

6. Service Plan Contents

The proposed service plan shall include the following:

- A. The information required by Title 32, The Special District Act.
- B. A map of the proposed District's boundaries, which shall have attached a legal description.
- C. An itemization of any costs, which petitioners expect to be assumed by the City for the construction of public improvements.
- D. Identification by names, addresses and phone numbers of those persons who the petitioners intend to be the nominees for the initial Board.
- E. Proof of ownership for all properties within the District, a list of encumbrances on all properties, in a form acceptable to the legal department of the City.
- F. A copy of any and all proposed enabling, controlling, contractual and/or operations documents, which would affect or be executed by the proposed District, including the form of any intergovernmental agreement among the District, the City and any other government, authority or district. Any enabling intergovernmental agreement shall contain the following provisions, unless waived by the City Council:
 1. The District's power and functions shall be limited to construction and financing of public infrastructure.
 2. The District shall be prohibited from ownership and maintenance of public facilities and shall convey to the City all facilities upon completion to City standards.
 3. A prohibition on the District owning, managing, adjudicating or developing water rights and water resources, and water and wastewater treatment and distribution facilities.
 4. Limitations on the mill levy, development exaction and other revenues pledged to service payment of indebtedness of the District and required credit enhancements for District debt in order to preclude the creation of undue financial risk to the District residents and taxpayers.
 5. Appropriate assurances that all facilities are developed by the District to City standards.
 6. Standards and parameters for imposition by the District of capital recovery fees and exaction.
 7. Limitations on the inclusion or exclusion of properties from the District.
 8. Requirements for dissolution of the District upon the accomplishment of the purposes and undertakings for which the District was formed, or for other reasons as reviewed by City Council. (See also Section 15 on Dissolution.)
 9. That a copy of the written notice of every regular or special meeting of the District will be delivered to the City Clerk at least three (3) days prior to such meeting.
 10. That the annual report will be submitted in a timely fashion in accordance with the provisions of these policies.

G. A capital plan including the following:

1. A description of the type of capital facilities to be developed by the District.
2. An estimate of the cost of the proposed facilities.
3. A *pro forma* capital expenditure plan correlating expenditures with development.

H. A financial plan including the following:

1. All proposed sources of revenue and projected District expenses, as well as the assumptions upon which they are based for at the term during which the bonded indebtedness remains outstanding, starting from the date of the District formation.
2. The dollar amount of any anticipated financing, including capitalized interest, costs of issuance, estimated maximum rates and discounts, and any expenses related to the organization and initial operation of the District. Bond sources and uses, amortization schedules and other relevant "bond solution" information must also accompany this portion of the submittal. A designation of the financing as "public sale", "private placement", "developer bonds", etc. must also accompany this portion of the submittal.
3. The total amount of debt issuance planned for all phases of the development period commencing with the formation of the District
4. A detailed repayment plan covering the life of any financing, including the frequency and amounts expected to be collected from all sources and containing a relatively level or flat debt service schedule after build-out.
5. The amount of any reserve fund and the expected level of annual debt service coverage, which will be maintained for any financing.
6. The provisions regarding any credit enhancement, if any, for the proposed financing, including but not limited to developers guarantees, letters of credit, sureties and insurance.
7. The total authorized debt for the District.
8. A list and written explanation of potential risks of the financing.

Exhibits shall include the following:

1. City Council Resolution of Approval
2. Legal Description
3. City of Westminster Vicinity Map
4. Boundary Map
5. Facilities Plan
6. Facilities Diagrams
7. Improvements Matrix (see Exhibit D)
8. District Election Questions
9. Underwriter Commitment Letter
10. Market Research Report and Opinion Letter (Real Estate Absorption Analysis)
11. Forecasted Statements of Sources and Uses of Cash: Full Pro-Forma Income Statements with Amounts and Mill Levies for Debt Service and Operational Costs
12. Full Bond Solutions: Sources and Uses of Bond Proceeds, Amortization Schedules including Use of Capitalized Interest, Other Statistical Information.
13. Intergovernmental Agreement between City of Westminster and District
14. Inter-District Intergovernmental Agreements
15. Such other information as may be deemed necessary or appropriate by the City Manager.

7. Administrative Review

The City has three months from the date of filing of a complete service plan (Items 6A-J) to complete its preliminary review. Such deadline may be extended for up to an additional thirty (30) days, as deemed necessary by the City Manager. Once a review has been completed, a comprehensive analysis shall be made in written Staff Report form to the City Council. The report shall evaluate the service plan and incorporate comments of the City Staff as well as consultants. The report shall set forth the recommendations made in accordance with the review criteria set forth in this Chapter.

8. Public Hearing

The City Manager upon acceptance of the Staff Report on the service plan shall schedule a public hearing at a regular City Council meeting. The Petitioners shall publish public notice in accordance with the requirements of 32-1-204(l)(1.5) of the Special District Act. The public hearing will conform to current City standards regarding procedure, protocol and content.

After the public hearing, the City Council shall take one of three actions in writing applying the criteria prescribed under Section 32-1-204.5 of the Special District Act after consideration of the service plan reports, evidence and testimony accepted or taken at the public hearing:

- A. Approve without condition,
- B. Approve conditionally (with conditions described), or
- C. Disapprove the proposed service plan or amendment.

If the service plan is approved, a resolution of approval shall be adopted.

If the service plan is conditionally approved, the amendments to be made in, or additional information relating to, the service plan, together with the reasons for such amendments, or additional information, shall also be set forth in writing. When such amendments or additional information is completed, the City will schedule a second public hearing for the review, approval or rejection of the service plan.

If the service plan is disapproved, a resolution for such disapproval shall be adopted, including the reason(s) for such disapproval. In the manner and to the extent provided in this Chapter, the City Council shall maintain continuing jurisdiction over the operations and affairs of the District, after approval of the service plan and/or amendment(s).

9. Annual Report Required and Reviewed

Not later than September 1 of each calendar year, each District shall file an annual report (the "Annual Report") with the City Clerk at the City's administrative offices. The annual report shall reflect activity and financial events of the District through the preceding December 31 (the "report year"). The annual report shall include the following:

- A. A narrative summary of the progress of the District in implementing its service plan for the report year.
- B. Except when an exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (i.e. balance sheet) as of December 31 of the report year and the statement of operations (i.e. revenues and expenditures) for the report year.
- C. Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of public facilities in the report year, as well as any capital improvements or projects proposed to be undertaken in the five (5) years following the report year.
- D. Unless disclosed within a separate schedule to the financial statements, a summary of the financial obligations of the District at the end of the report year, including the amount of outstanding indebtedness, the amount and terms of any new District indebtedness or long-term obligations issued in the report year, the amount of payment or retirement of existing indebtedness of the District in the report year, the total assessed valuation of all taxable properties within the District as of January 1 of the report year, and the current mill levy of the District pledged to debt retirement in the report year.
- E. The District's budget for the calendar year in which the annual report is submitted.
- F. A summary of residential and/or commercial development, which has occurred within the District for the report year, whichever is appropriate.
- G. A summary of all fees, charges and assessments imposed by the District as of January 1 of the report year.
- H. Certification of the Board that no action, event or condition enumerated in Section 11 of these policies has occurred in the report year.
- I. The name, business address and telephone number of each member of the Board and its chief administrative officer and general counsel, together with the date, place and time of the regular meetings of the Board.
- J. In the event the annual report is not received by the City Clerk on a timely basis, notice of such default shall be given by the City Clerk to the Board of such District, at its last known address. The failure of the District to file the annual report within thirty (30) days of the mailing of such default notice by the City Clerk shall empower the City Council to impose the sanctions authorized in Section 16 of these policies. The remedies provided for noncompliance with the filing of the annual report shall be supplemental to the remedy authorized under Section 32-1-209 of the Special District Act.

10. Material Modifications

In general, the City will determine whether a change to the Service Plan constitutes a material modification of the Service Plan. The examples listed below include, but are not limited to what constitutes a material modification. The occurrence of any of the following actions, events or conditions subsequent to the date of approval of the service plan or most recent amendment thereto are presumed to be changes of a basic or essential nature of a District, requiring a service plan amendment.

- A. Revision to mill levy beyond existing caps, increased bond authorization, increase in level of bonded indebtedness beyond bond authorization.
- B. Default in the payment of principal or interest of any District bonds, notes, certificates, debentures, contracts or other evidences of indebtedness or borrowing issued or incurred by the District when:
- C. Institution of a proceeding for debt adjustment or the confirmation of a plan for adjustment of debt under Chapter 9 of the Bankruptcy Code.
- D. Failure of the District to develop any capital facility proposed in its service plan when necessary to service approved development within the District.
- E. Failure of the District to realize at least seventy-five percent (75%) of the development revenues (including developer contributions, loans or advances) projected in the financial portion of the service plan during the three-year period ending with the report year. Development revenue is defined as fees and charges imposed by the District on residential and commercial development, excluding taxes, provided that the disparity between projected and realized revenue exceeds fifty thousand dollars (\$50,000).
- F. Refundings of any kind, including the following:
 - a. Those that extend the term of indebtedness will not be allowed.
 - b. Those which allow the reimbursement of significant fees to consultants and/or the developer, even though the mill levy is not increased will not be allowed.
 - c. Those in which the savings (present value or nominal) are not passed on to the property owners and/or tenants will not be allowed.
- G. The occurrence of any event or condition, which is defined under the service plan or intergovernmental agreement as necessitating a service plan amendment.
- H. The default by the District under any intergovernmental agreement with the City.
- I. The disconnection from the corporate limits of any property within the District's boundaries exceeding either ten percent (10%) of the service area of the District or ten (10) acres in area.
- K. Any of the events or conditions enumerated in 32-1-207(2) of the Special District Act.

In the event it is found a material modification has taken place, the District shall submit its request for an amendment in accordance with these policies. Upon a finding that no material modification has taken place, the District shall be relieved from obtaining an amendment for the events or occurrences reviewed by the City Council. The City Council shall retain the prerogative to require an amendment thereafter if the change or deviation, on a cumulative basis, subsequently becomes material. In making its determination, the City Council shall consider, among other relevant information, whether the modification will have a probable adverse financial impact on the City.

11. Amendments

Within ninety (90) days of the occurrence of an action, event or condition enumerated above in the section on Material Modification, the Board shall forward an appropriate petition to the City Council for approval requesting a service plan amendment ("amendment"). The only exception to this procedure would be wherein the City has determined that no material modification has occurred under the hearing procedure of the section above. The petition for amendment shall include the following information:

- A. Any information or documentation required under the applicable provisions of the Special District Act.
- B. Any changes since the service plan was last reviewed and approved by the City Council to any of the information, assumptions or projects furnished in conjunction with the petition for approval of organization of a District or contained in the service plan.
- C. A detailed explanation of the activity, events or conditions which resulted in the material modification to the service plan, including what action was taken or alternatives considered, if any, by the District to avoid the action, event or condition.

- D. The impact of the material modification on the District's ability to develop the capital facilities and infrastructure necessary to meet its capital development plan.
- E. The effect of the material modification on the District's ability to retire as scheduled its outstanding financial obligations and its ability to issue and market additional indebtedness to finance additional capital expenditures.
- F. A current financial plan for the District reflecting development absorption rates anticipated within the District's service area, projected annual revenues and expenditures based upon such projected absorption rates, debt issuance and amortization schedules, and a projection of anticipated capital outlays.
- G. The financial impact of the modification on existing residents of the District.
- H. An updated five-year capital improvements plan.
- I. What alternatives or options are available to the District if the requested amendment is not approved.

All of the required information shall be supported by appropriate technical analysis, reports and supporting documents of qualified professionals and consultants. The amendment shall be processed and reviewed in the same manner as prescribed by these policies for an initial service plan. Except that the submittal requirements of this Section shall be substituted for those of the section titled Service Plan Contents. The application fee shall remain at one thousand dollars (\$1,000). This Section shall not impair the right of the City to bring an action in the district court to enjoin the activities of the District pursuant to 32-1-207(3)(b) of the Special District Act.

12. Quinquennial Review

The quinquennial review required under Section 32-1-1101.5 of the Special District Act shall be subject to the following procedures:

- A. Five (5) copies of the application shall be submitted to the City Manager together with an application fee of one thousand dollars (\$1,000).
- B. Within sixty (60) days of receipt of a complete application, the City Manager shall submit a report to the City Council including a recommendation as to the statutory findings that should be made by the City Council on the application.
- C. The application shall be reviewed and considered at a regular meeting of the City Council held within sixty (60) days of the submission of the report of the City Manager.
- D. The City Council shall consider all evidence and testimony, as it deems relevant to its consideration of the application written.
- E. A written decision on the application shall be made by resolution of the City Council within twenty (20) days of conclusion of its review and consideration of the application.

13. State Conservation Trust Fund; Greater Outdoors Colorado Grant Monies

The District shall not claim any entitlement to moneys from the State Conservation Trust Fund. The District shall remit to Westminster all moneys it may receive from this Fund.

14. Dissolution or Consolidation

In the event there is reason to believe that the purposes for which the District was created have been accomplished, a public hearing shall be conducted before the City Council to determine whether the District should be dissolved. Prior written notice of such hearing shall be provided to the Board of Directors of the District. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District shall agree to file a petition in District Court for dissolution. In any event, such dissolution shall not occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations. Provided, however, that the failure of the District to provide for the payment or discharge of all or any portion of its subordinate lien bonds shall not serve as a bar to dissolution.

The District shall not file a request with the District Court to consolidate with another title 32 district without the prior written approval of Westminster.

15. Failure to Comply with Policies and Procedures

Should any District fail to request and obtain a service plan amendment when required under the terms of these policies or otherwise fail to fully and completely comply with these policies, the City Council by resolution may impose one (1) or more of the following sanctions, as it deems appropriate:

- A. Exercise any applicable remedy under the Special District Act.
- B. Withhold the issuance of any permit, authorization, acceptance or other administrative approval necessary for the District's development of public facilities or construction.
- C. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default.
- D. Exercise any other legal remedy, including seeking injunctive relief against the District, to force compliance with the provisions of this Chapter.

16. Exemption

If any District has not undertaken development of capital facilities or issued any indebtedness, it may apply to the City for an exemption from compliance with these policies. The City Council shall grant an exemption if the Board submits a resolution to the City Council stating that upon issuance of the exemption, the District's authorization under the service plan and the intergovernmental agreement with the City to undertake development of capital facilities or issue any indebtedness is suspended.

With issuance of the exemption, the District shall be excluded from compliance with these policies except that the District annually, not later than September 1, shall submit financial statements from the previous year and the budget for the current year.

Prior to any District with an exempt status undertaking capital development or issuing any indebtedness authorized under its service plan or the Special District Act other than regulatory reporting, it shall fully comply with the provisions of these policies.

17. Effective Date

These policies shall take effect January 1, 2005.

Exhibit A
Service Plan Outline and Table of Contents

- I. INTRODUCTION
- II. PURPOSE OF DISTRICT
- III. PROPOSED DISTRICT BOUNDARIES/MAPS
- IV. PROPOSED LAND USE/POPULATION PROJECTIONS
- V. DESCRIPTION OF PROPOSED SERVICES
 - a. Types of Improvements
 - i. Water
 - ii. Streets
 - iii. Others
 - b. Standards of Construction/Statement of Compatibility
 - c. Facilities to Be Contracted and/or Acquired
- VI. DISSOLUTION/CONSOLIDATION
- VII. CONSERVATION TRUST FUND
- VIII. ASSESSED VALUATION
- IX. DEVELOPER REIMBURSEMENT
- X. PROPOSED AGREEMENT
- XI. ESTIMATED COSTS OF FACILITIES
- XII. OPERATION AND MAINTENANCE/ESTIMATED COSTS
- XIII. FINANCIAL PLAN/PROPOSED INDEBTEDNESS
 - a. Proposed General Obligation Indebtedness
 - b. Debt Limit
 - c. Mill Levy
 - d. Modification of Service Plan
 - e. Cost Summary and Bond Development
 - f. Economic Viability
 - g. Projections of Assessed Valuation
 - h. Operations
- XIV. FAILURE TO COMPLY WITH SERVICE PLAN
- XV. RESOLUTION OF APPROVAL
- XVI. DISCLOSURE
- XVII. ANNUAL REPORT
- XVIII. CONCLUSION

Attachments

- A. Legal Description of District Boundaries
- B. District Boundary Map
- C. Vicinity Map
- D. List of Interested Parties
- E. Description of Facilities and Costs
- F. Water Improvements
- G. Streets and Safety Protection Improvements
- H. Financial Plan
- I. Operation and Maintenance Expenses
- J. Matrix: Improvement, Built by, Donated to City of Westminster Maintained by (District, Developer, City, etc.)

Exhibit B: Improvements Matrix

Bradburn Public Improvements

Improvement	Paid for by	Constructed by	Maintained by	Dedicated to	Date of Conveyance	Estimated Maintenance Cost
Drainage Improvements	District	District	City	City	Final Plat	TBD
Landscape/Fence Improvements	District	District	District	Easement ⁽¹⁾	N/A	TBD
Community Entrances	Developer	Developer	District	District	Final Plat	TBD
Community Recreation Facilities	District	District	District	District	Completion	TBD
Private Open Space and Private Parks	District	District	District	District	Final Plat	TBD
Public Open Space and Public Parks	District	District	City	City	Final Plat	N/A
Alleys	District	District	TBD	TBD	TBD	TBD
Offsite Road Improvements	District	District	CDOT	CDOT	N/A	N/A
All Interior Streetscape	District	District	Property owner	Easement ⁽¹⁾	N/A	N/A
All Interior Streets	District	District	City	City	Completion	TBD
All Interior Storm Sewers	District	District	City	City	Completion	TBD
Sanitary Sewer Mains	District	District	City	City	Completion	TBD
Water Mains	District	District	City	City	Completion	TBD
Gas Mains	Developer	PSC	PSC	Easement	N/A	N/A
Electric Lines	Developer	PSC	PSC	Easement	N/A	N/A
Telecommunications	Developer	Developer		Easement	N/A	N/A
Detention Pond on Private Open Space	District	District	District	District	Final Plat	TBD
Detention Pond on Public Open Space	District	District	District	N/A	N/A	TBD
All Project Engineering and Construction Management including District Facilities	Developer	N/A	N/A	N/A	N/A	N/A
Over lot Grading – All	Developer	Developer	N/A	N/A	N/A	N/A

⁽¹⁾ District landscape maintenance on dedicated City right-of-way will be permitted by landscape maintenance easement from City.

Exhibit C – Bibliography

1. Douglas County – Special District Service Plans Application Submittal instructions and Review Procedures, March 2002.
2. Adams County – Special District Guidelines and Regulations, July 2000.
3. Town of Castle Rock – Title 11, Special District Oversight, October 1992.
4. City of Thornton - Chapter 66 pertaining to Powers of Metropolitan Special Districts, July 2000.
5. City of Aurora – Chapter 122 regarding Title 32 Districts, Undated but we’ve had this in the file since Fall 2000 when we started to draft these policies.
6. Town of Firestone – Title 13 regarding Formation of Special Districts, approx. June 2003.
7. City of Colorado Springs – Resolution Establishing City Financial Policy Regarding the Use of Certain Districts Authorized under Titles 31 and 32 CRS, August, 2000.